
From: Robert Barton
Sent: Monday, 29 October 2007 2:03 p.m.
To: ^MOF: Chris MacKenzie
Cc: William Peet
Subject: Chronology
Attachments: 1019781_1.DOC

Importance: High

Chris

Rather rough sorry, but best OTK and i could do in the time avialable.

Robt

Chronology of interactions with Toll NZ – 2003 to 2007

(nb: Due to the preparation time available, this chronology is incomplete. The chronology outlines the formal meetings and key events, but omits numerous informal contacts including phone calls and emails).

2003

April ??: Discussions between Toll Holdings and Treasury/MoF office

May-June: negotiations on Heads of Agreement 2 (HOA2) with Toll (agreement signed 6 June); no subsidies and commitment to investment by each party

August: Minister of Finance confirms agreement with Toll continues exclusive access, based on ability to put capital in to rebuild fleet and pay full access charges in the long term rather than get a subsidy (see attached release, 7 August)

June -September: Toll launches bid for all of Tranz Rail; achieves 84%

Mid October: Toll takes board and management control of Tranz Rail Ltd.

2004

February -June: Negotiations on NRAA (based on HOA2)

30 June: The National Rail Access Agreement is signed. Crown buys back track for \$1, commits to \$200m expenditure on it. Toll commits to spend \$100m on rolling stock.

1 September: ONTRACK took over management of "trackco"

November – December: Without prejudice discussions to settle TAC for period 2005 - 2008.

21 December: Letter from ONTRACK to Toll requesting confirmation whether a negotiated settlement is a material prospect.

24 December: Letter from Toll stating that the differences in price remain and stating that an upward revised TAC "may not allow Toll NZ to attract freight to rail and remain competitive".

24 December: Letter from Toll to the Minister of Finance expressing concern with NRAA price negotiations and making reference to a "agreement" reached with the Crown.

2005

January: ONTRACK seeks formal confirmation from Treasury as to whether there is an overriding arrangement between the Crown and Toll that the TAC would be set, going forwards, at \$38m with additional ONTRACK costs tagged as "public service".

13 January: Letter from ONTRACK to Toll reverting to formal NRAA processes.

31 March: Delivery of 2005/2008 ONTRACK Forecast.

8 April: Toll approaches ONTRACK to seek support for a draft submission to the Crown seeking subsidies for rail.

April: Meeting between Chris Mackenzie, Treasury, ONTRACK and Toll to discuss negotiations relating to NRAA (recorded in letter dated 24 March 2005 from office of the Minister of Finance to Cam Moore).

26 April: Treasury report to Minister of Finance that formal TAC setting process required.

4 May: Delivery of 2005/2008 Toll Forecast.

5 - 25 May :Good faith negotiations regarding differences in Forecasts

30 May: Letter ONTRACK to Toll stating good faith negotiations ended and proposing an "Alternative Approach" which would set an interim TAC for 2005/2006 while settlement of the formal NRAA TAC process occurred.

31 May : Meeting Treasury, ONTRACK and Toll to discuss alternative model to NRAA

May/June: Substantive negotiations between Treasury and Toll regarding alternatives to the NRAA.

June: Toll seeks government intervention due to differences in forecast expenditures.

July:Minister of Finance offers interim NRAA TAC arrangement to Toll while independent audit process proceeds.

July: Correspondence ONTRACK and Toll regarding interim arrangements while alternative structure to NRAA negotiated.

2006

17 February: ONTRACK and Toll attend meeting at Treasury regarding NRAA

27 February: Toll rejects proposal put by Treasury

1 & 16 March: Further meetings between Treasury, ONTRACK and Toll to discuss rail access and

27 March: Toll makes presentation to Minister of Finance and indicate that:

- Toll may investigate a "restructured rail" if unable to secure acceptable variation to pricing principle"
- Restructured rail" would involve Toll exiting freight services over approximately 40% of current rail network".
- There would be reduced Toll investment in above rail assets.

March/April : Discussions Toll with (respectively) ONTRACK and Treasury regarding "restructured rail".

12 April: Toll correspondence to Minister of Finance stating that Toll is not required to operate a nationwide rail freight service, that in the absence of a sustainable and viable TAC Toll may not make all capital investments, proposing a an alternative TAC and raising the possibility of "restructuredf rail".

May: Notification by Toll of intention to sell Transcenic service.

7 May: Presentation Toll to ONTRACK regarding asset values

15 May: Meeting ONTRACK, Treasury and office of Minister of Finance regarding ONTRACK & Toll negotiations.

29 May: Letter from Treasury to Toll referencing a meeting on 18 May 2006 regarding the possible introduction of a regulated utility model in place of the NRAA, and, separately, offering a 12 month financial support package in respect of the Overlander.

2 June: Letter Toll to Treasury stating that the track access charge should be set at a rate which ensures a "viable" toll business and informing Treasury that the proposed ONTRACK TAC would result in substantial increases in customer prices.

8 June 2006: Toll indicates to ONTRACK that independent review of TAC is required and stating that land release and line segment pricing are matters that should be progressed.

12 June : ONTRACK appoints Mr Wilson QC as Independent Auditor.

22 June: Meeting ONTRACK/Toll to discuss TACC/NRAA negotiations.

21 June: Letter Toll to Board of ONTRACK reinforcing "restructured rail" proposal.

19 June : Letter from Mark Rowsthorn to Minister of Finance confirming delay to sale of Transcenic and notifying Minister that NRAA approach will not achieve goals sought by the Crown.

21 July: Meeting ONTRACK and Toll regarding appointment of experts to support Bill Wilson QC.

28 August: Toll Application for interim relief against independent auditor appointment.

12 September: Minister of Finance meeting with Toll (Jackson) on TAC and NRAA future. Officials present from Treasury and ONTRACK.

18 September: Application for removal of interim injunction.

24 October: Cabinet agreed, pending the outcome of the expert determination process, to freeze the TAC at the 2005/06 level of \$48 million pa.

24 October: Treasury/ONTRACK/Toll meeting on TAC and NRAA.

2 November: Treasury/ONTRACK/Toll meeting continuation.

6 November: Treasury/ONTRACK/Toll meeting on TAC and NRAA (in Auckland).

November 2006- February 2007 : Independent Audit process completed

2007

9 February: Independent Auditor completes Determination of TAC. Determines that TAC should increase by \$6 million pa, (plus CPI adjusted, plus WACC and depreciation).

9 February: Treasury meeting with Toll NZ (Jackson and Devonport) which canvassed Toll's long term interest in continuing to own Toll rail (which they confirmed) and explored options of how the Crown might assist in acquiring new rolling stock (put/call option; or Crown purchase and lease to Toll).

28 March: Meeting between Minister of Finance and Mark Rowsthorn (then Chairman of Toll NZ Ltd). Consensus that a more fundamental re-think of NRAA required.

28 March: Follow up meeting Treasury/Toll (Jackson): Toll suggesting new approach of sale and lease-back of rail assets.

3 April: Treasury/Toll meeting to explore Toll's concept of sale and lease-back of rail assets. Toll seeking a long term concession (franchise) as exclusive rail operator.

12 April: Treasury/ Toll meeting: continuation.

19 April: Treasury/ Toll meeting: continuation (in Auckland). Various models explored, particularly whether Toll would have a regulated rate of return or if it would simply receive a management fee from the Crown.

1 May: Treasury/ Toll meeting: continuation

10 May: Treasury/ Toll meeting: continuation (in Auckland)

6 June: Treasury/ Toll meeting: continuation

14 June: Treasury/ Toll meeting: continuation

2 July: Toll advised that Govt, pending resolution of amended NRAA, had waived the TAC increase determined by the independent expert, and extended the freeze on the TAC at \$48 million plus \$6 m for WACC and depreciation.

September: Toll Holdings buys out minority interests in Toll NZ