

Memorandum

To The Treasury

From First NZ Capital

Date 5 December 2002

Re **Rail American and Toll Holdings**

At Treasury's request, in mid October 2002 First NZ Capital approached on a confidential basis both RailAmerica and Toll Holdings to explore their interest in a possible consortium arrangement with the Crown to make an offer to acquire 100% of Tranz Rail and subsequently restructure the company. Under the restructuring, the Crown would acquire the rail infrastructure and the other party would own all of the other operating assets of Tranz Rail. It was emphasised that the Crown had made no decision to pursue such a course of action.

Both parties expressed strong interest in the proposal. RailAmerica has previously undertaken a detailed due diligence evaluation of Tranz Rail, so was better placed than Toll to respond in detail to the proposal. Toll advised that it was in the midst of a major acquisition and could not devote significant resource to the proposal until early in the New Year. It was willing to attend meetings in New Zealand prior to then to progress the proposal.

RailAmerica proposed that it would make a takeover offer for Tranz Rail after first entering into an agreement with the Crown for the Crown to acquire the rail infrastructure if the offer was successful. The indicative financial parameters mentioned implied that the amount to be paid by the Crown would fund the bulk of the takeover consideration payable by RailAmerica.

RailAmerica proposed that it would enter into a long-term lease of the infrastructure from the Crown for no consideration. In return, RailAmerica would pay for infrastructure maintenance and capital expenditure. RailAmerica made it clear that it would want to control the infrastructure and rail operations and did not support open access. It considers that open access would result in "cherry picking" of Tranz Rail's most profitable routes and services by other operators and weaken the company's ability to retain its current network.

Toll stated that it is comfortable with the principle of open access, which it is familiar with in Australia. However, in First NZ Capital's view Toll is much less knowledgeable about Tranz Rail and New Zealand transport economics than RailAmerica. It is possible that Toll may be less comfortable with open access once it is more familiar with these matters. Because of the exploratory nature of the discussions, the issue of open access was not more fully discussed with either party.

In summary, RailAmerica expressed enthusiasm for the proposal and was keen to progress it. Toll expressed interest in further discussions in the New Year.