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From: [Treasury]
Sent: Tuesday, 1 July 2003 4:25 p.m.
To: [Minister of Finance's Office]
Cc: [First NZ Capital] ; [Treasury]
Subject: Toll discussions this morning

The following is where we got to with Toll this morning

Capital and access fees

As discussed we proposed that the Crown's non-recovered capital contribution to the track be limited to the \$100 million in the HoA, and that we are prepared to spend the annual sums, but would wish to recover them thru the access fee. Toll came back that this was less than the NPV cost of the Tranz Rail HoA, and also that it made it more difficult to get Tranz Rail re-established as a viable rail operator. As a compromise we suggested that in addition to the \$100 million, \$25 million of capex for each of the first three years be treated as non-recoverable. Toll suggested four years instead of three. We have yet to reach agreement on this.

Volume incentives

We suggested to Toll that one way of creating the kind of volume incentives they have proposed would be to set growth thresholds for particular trades (forestry/logging and containers would be obvious candidates) and for any volume generated above the thresholds there would be no per tonne/kilometer charge. (Recalling that for each train journey the access charge structure will be a mix of a fixed train path charge, paid irrespective of loading, and a per tonne kilometer charge)

Step in rights

Toll are prepared to raise the 60% volume thresholds in the current HoA to 70%. They would however want some comfort about how that might be treated on an individual line in the event they had greatly increased rail tonnages across the country.

Other operators

Toll have no problems with existing other operators (Taieri Gorge; heritage operators) continuing their role.

Process

As discussed we appear to have a significant legal problem. Andrew Simmonds advises that it would not be possible for Toll (or anyone else in the same situation for that matter) to reach an agreement with the Crown prior to gaining control of the company, and then to vote for that agreement at a shareholders meeting. We are currently checking this view within Buddle Findlay, but it appears a major obstacle to any binding agreement with Toll or anyone else prior to their getting control of the company.

That aside, the objective would be to reach agreement (if possible) on a HoA with Toll this week, for announcement when Michale Cullen is back in town on 14 July. The Toll HoA would build extensively on the HoA already agreed with Tranz Rail.