

CLAYTON UTZ

[Public version]

Trade Practices Act 1974

Undertakings to the Australian Competition and
Consumer Commission given for the purpose of
section 87B

by

Toll Holdings Limited
ACN 006 592 089

The Clayton Utz contact for this document is
Michael Corrigan on +61 2 9353 4187

Clayton Utz
Lawyers
Levels 19 - 35 No. 1 O'Connell Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T + 61 2 9353 4000 F + 61 2 8200 6700

www.claytonutz.com

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Undertakings under section 87B of the Trade Practices Act

Recitals

- A. Toll is a provider of transport and logistics services. Patrick is a provider of port stevedoring, transport and logistics services. Toll and Patrick each hold a 50% interest in Pacific National, which, amongst other things, provides rail line haul services for the interstate movement of containerised freight between each of Sydney and Melbourne and Perth.
- B. On 22 August 2005, Toll announced its intention to make offers under an off-market takeover bid for all the shares in Patrick that it did not already own ("**Proposed Acquisition**"). On 15 September 2005, Toll provided a bidder's statement under the Corporations Act to Patrick setting out the terms of the Offer.
- C. Toll's bidder's statement provides that the Offer is subject to a number of conditions including a condition that Toll receives notice that the Commission does not propose to intervene or seek to prevent the Proposed Acquisition.
- D. On 18 January 2006, following consideration of the Proposed Acquisition under the Commission's informal merger clearance process, the Commission announced that it would oppose the Proposed Acquisition on the grounds that it would contravene section 50 of the Act.
- E. On 9 February 2006, the Commission commenced proceedings in the Federal Court of Australia seeking orders to restrain the Proposed Acquisition from proceeding ("**Proceedings**").
- F. Toll has previously denied that the Proposed Acquisition would substantially lessen competition in contravention of section 50 of the Act and has filed a defence in the proceedings.
- G. Toll offers to the Commission pursuant to section 87B of the Act the following undertakings to address and remedy the allegations contained in the Commission's Statement of Claim dated 9 February 2006.
- H. On the basis of the implementation of the terms of these Undertakings the Commission does not object to the Proposed Acquisition and will discontinue the Proceedings on a final basis.

1. Commencement and Duration of Undertakings

1.1 Commencement

- (a) Clauses 1 to 3, 8.2, 14 and 17 to 19 of these Undertakings come into effect when these Undertakings are accepted by the Commission.
- (b) Clauses 4 to 16 of these Undertakings come into effect on the Trigger Date, save for clauses 8.2 and 14.

1.2 Minimum Acceptance

Toll undertakes that it will not waive the condition contained in Section 16.12(a) of the Offer unless it has first received that number of acceptances pursuant to the Offer ("**Controlling Acceptances**") which, when aggregated with the shares in Patrick in which Toll already has a relevant interest, result in Toll having a relevant interest in more than 50% of the shares in Patrick.

1.3 Termination

These Undertakings will terminate on the first to occur of:

- (a) the date on which the Commission consents to the withdrawal of these Undertakings in accordance with section 87B of the Act; or
- (b) 31 March 2011.

2. Undertakings to divest businesses

Subject to clauses 1.1 and 1.3, Toll undertakes to the Commission, that upon the occurrence of the Trigger Date, Toll will:

- (a) in accordance with the sale process set out in clauses 3 and 4, divest, or procure Patrick to divest (as the case may be), to Pre-approved Purchasers or Approved Purchasers:
 - (i) the PN Shares;
 - (ii) the Patrick Bass Strait Shipping Business;
 - (iii) the Patrick Tasmanian Freight Forwarding Business; and
 - (iv) the Vehicle Transport Business;
- (b) sell the PrixCar Interest in accordance with the sale process set out in clauses 3 and 5; and
- (c) procure Pacific National to lease or make available the East-West Rail Assets in accordance with the process set out in clauses 3 and 8.

3. Prior to Trigger Date

3.1 Pre-approval of purchaser

Prior to the Trigger Date, Toll will comply with clause 8.2(a)(ii) (concerning the identification of a prospective Operator), and use its best endeavours to identify prospective purchasers for each of the Divestment Businesses ("**Proposed Purchaser**") that:

- (a) are prepared to enter into a conditional agreement with Toll for the purchase of the relevant Divestment Businesses;
- (b) are independent of and have no direct or indirect controlling interest in Toll, Patrick or Pacific National;
- (c) Toll believes in good faith, having made reasonable inquiries, are of good financial standing and have an intention to operate the relevant Divestment Business as a going concern; and
- (d) in the case of the PN Shares, is not a participant in rail line haul or freight forwarding in Australia, and is not the Operator as defined in these Undertakings.

3.2 Commission may object

- (a) Within 5 Business Days of Toll selecting a Proposed Purchaser, Toll will provide the Commission with the following information and such other information that the

Commission reasonably requires to assess whether the Proposed Purchaser satisfies the criteria set out in sub-clauses 3.1(a) to 3.1(d) inclusive:

- (i) the name, address and all other available contact details of the Proposed Purchaser;
 - (ii) a copy of a signed or otherwise agreed conditional sale and purchase agreement with the Proposed Purchaser;
 - (iii) a description of any business carried on in Australia by the Proposed Purchaser; and
 - (iv) the names of the ultimate holding company and directors of the Proposed Purchaser.
- (b) Toll will use best endeavours to notify the Commission of an intended Proposed Purchaser as early as possible prior to seeking approval under clause 3.2(a), and request the Commission to advise whether it is likely to raise any objection to that purchaser.
- (c) If within 20 Business Days of receipt of the information from Toll referred to in clause 3.2(a) (or such further period as Toll and the Commission may agree) the Commission does not object to the Proposed Purchaser, Toll will use its best endeavours to complete the sale of the Divestment Business to the Proposed Purchaser in accordance with the conditional sale and purchase agreement referred to in clause 3.2(a) as soon as practicable after the Trigger Date.
- (d) The Commission may only object to the Proposed Purchaser on the basis that it has formed the opinion that sale to the Proposed Purchaser is likely to result in a substantial lessening of competition in a market in Australia when compared to the likely competition in that market in the absence of the Proposed Acquisition and in that event, the Commission will provide Toll with a written statement of its reasons including the material facts it relies on for its view, on a confidential basis.
- (e) Upon receipt of a notice of objection as provided under clause 3.2(d) (which Toll undertakes not to challenge), Toll must identify an alternative Proposed Purchaser for consideration by the Commission pursuant to this clause 3.2 as soon as practicable after receiving notice of the Commission's objection.

4. Sale Process post Trigger Date

4.1 Pre-approved purchaser

If a conditional sale agreement is entered into with a Proposed Purchaser in accordance with clause 3.2 (hereafter referred to as "**Pre-approved Purchaser**"), Toll will divest the relevant Divestment Business or Businesses in accordance with these Undertakings and in accordance with the terms of the conditional sale and purchase agreement referred to in clause 3.2(a)(ii), to the Pre-approved Purchaser as soon as practicable after the Trigger Date.

4.2 Invitation to Tender

If, prior to the Trigger Date, no Pre-approved Purchaser has been identified for one or more of the Divestment Businesses, Toll will, within 45 days after the Trigger Date, invite offers to purchase the relevant Divestment Businesses by:

- (a) sending notices to prospective purchasers identified by Toll; and
- (b) publishing details of the invitation to tender in appropriate publications,

notifying prospective purchasers that the relevant Divestment Businesses will be offered by sale and requesting registration of expressions of interest in the relevant Divestment Businesses within 30 days of the date of despatch of the notices. Toll will provide to the Commission, within 5 Business Days of despatch, copies of the notices and invitation together with the list of addressees.

4.3 Initial Sale Period

- (a) Toll will use its best efforts to sell the Divestment Businesses pursuant to clause 4.2 to Approved Purchasers within [confidential] from the Trigger Date.
- (b) Within 5 Business Days of a binding agreement to purchase a Divestment Business being executed in response to Toll's invitation referred to in clause 4.2, Toll will provide the Commission with particulars of the purchaser, and a copy of the duly executed sale agreement on a confidential basis.
- (c) Toll will use best endeavours to notify the Commission of an intended purchaser as early as possible prior to seeking approval under clause 4.3(b), and request the Commission to advise whether it is likely to raise any objection to that purchaser.

4.4 Sale consents

- (a) Without affecting Toll's obligations under clause 4.3, the sale and/or assignment of any assets, licences, permits or approvals used by, or in, the Divestment Businesses at the date of these Undertakings that are leased or subject to third party consent upon a change of control or transfer of the business will be subject in each case to Toll obtaining the relevant written consent of the lessor or third party to the continuation of the use, after the sale of such business in accordance with this Undertaking, of such asset, licence, permit or approval (including the transfer, assignment or novation of such instrument if appropriate) by the Divestment Business, on no less favourable terms than enjoyed by the Divestment Business at the date of this Undertaking ("**Third Party Consents**").
- (b) Toll must:
 - (i) use its best endeavours to procure all Third Party Consents as soon as practicable after the execution of the binding agreement referred to in clause 4.3(b);
 - (ii) comply with all reasonable requirements necessary to obtain all Third Party Consents including providing necessary information promptly to the lessor or third party;
 - (iii) promptly pay the costs and expenses of any lessor or third party reasonably incurred in providing the Third Party Consent; and
 - (iv) act in good faith in its negotiations to obtain all Third Party Consents.
- (c) If Toll is unable to procure any necessary Third Party Consent to a sale within 90 days after the execution of the binding agreement referred to in clause 4.3(b) (or such further time as the Commission may agree), Toll must nominate an alternative Proposed Approved Purchaser who may be acceptable to the lessor or third party concerned and comply again with clause 4.3.

4.5 Obligations pending or if no novation or assignment

If the divestment of any of the Divestment Businesses requires the novation or assignment of any contracts, third party rights, licences, permits, or approvals, unless and until such a

novation or assignment occurs, and to the extent permissible under any relevant contract, licences, permits, or approvals, Toll will require that the purchaser shall perform on behalf of Toll, Patrick or Pacific National as the case may be, all obligations of Toll, Patrick or Pacific National as the case may be, following completion. If the purchaser performs such obligations, Toll will account to the purchaser for any amounts paid by the purchaser to Toll, Patrick or Pacific National after completion in respect of that contract.

4.6 Appointment of Proposed Agent

- (a) If at the expiration of the Initial Sale Period, any of the Divestment Businesses have not been sold in accordance with clause 4.3 ("**Unsold Divestment Businesses**") Toll must within 10 Business Days of the end of such period, identify a person as a prospective sales agent for each Unsold Divestment Business ("**Proposed Agent**").
- (b) The Proposed Agent must in each case be a person that is independent of Toll, Patrick and Pacific National and has the qualifications and experience necessary to effect the sale of the relevant Unsold Divestment Business.
- (c) Toll will advise the Commission in writing within 5 Business Days of Toll selecting each Proposed Agent, of the identity of the Proposed Agent together with such information that the Commission reasonably requires to assess whether the Proposed Agent satisfies the criteria set out in clause 4.6(b).
- (d) If, within 5 Business Days of receipt of the information from Toll referred to in clause 4.6(c) (or such further period as the Commission and Toll may agree):
 - (i) the Commission does not object to the Proposed Agent, Toll will appoint the Proposed Agent as soon as practicable thereafter and forward to the Commission a copy of the executed terms of appointment of the Proposed Agent; or
 - (ii) the Commission does object to the Proposed Agent, Toll must either (at the Commission's election):
 - A. identify an alternative prospective sales agent for the Unsold Divestment Businesses for consideration by the Commission pursuant to this clause 4.6; or
 - B. appoint the nominee of the President of the Institute of Chartered Accountants of Australia as the Proposed Agent and Toll must require him or her to carry out the functions contemplated pursuant to clause 4.7.

4.7 Sale by the Approved Agent

- (a) Within 5 Business Days of the appointment of the Proposed Agent or expiry of the specified objection period referred to in clause 4.6(d) (whichever comes first), ("**Approved Agent**"), Toll must:
 - (i) procure and/or grant the Approved Agent all necessary power and authority to divest, sell and transfer the relevant Unsold Divestment Businesses in the manner and on the terms considered appropriate by the Approved Agent, in its sole discretion, to ensure compliance with these Undertakings; and
 - (ii) **[confidential]**

- (b) Within 5 Business Days after the appointment of the Approved Agent, Toll will procure, execute and provide an unconditional and irrevocable power of attorney in favour of the Approved Agent that:
 - (i) grants the Approved Agent all rights and powers necessary to permit the Approved Agent to effect the divestiture of the relevant Unsold Divestment Business; and
 - (ii) unconditionally (save for fraud, negligence or breach of duty) indemnifies the Approved Agent against loss and damage incurred by the Approved Agent, arising directly or indirectly from the Approved Agent exercising or attempting to exercise the powers and rights conferred upon it under the power of attorney.
- (c) Toll will provide the Approved Agent with:
 - (i) all relevant information available to Toll; and
 - (ii) all reasonable assistance,to enable the Approved Agent to divest, sell and transfer the relevant Unsold Divestment Businesses as quickly as possible.
- (d) Toll will indemnify the Approved Agent against any loss and damage incurred by the Approved Agent in the course of carrying out his or her functions in accordance with the terms of his or her appointment. Toll will promptly pay the costs of the Approved Agent in the performance of his or her functions under clause 4.7(a).

5. PrixCar Interest sale process

5.1 Sale under the PrixCar Shareholders Agreement

- (a) Within 30 days of the Trigger Date, Toll will cause Toll (FHL) Pty Limited (ACN 004 272 860) ("**FHL**") to give a notice ("**Transfer Notice**") to the directors of PrixCar Services Limited (ACN 007 063 505) ("**PrixCar**") that FHL proposes to transfer all of its 725,283 shares ("**PrixCar Sale Shares**") in PrixCar in accordance with clause 5 of the agreement between Kawasaki (Australia) Pty Limited (ACN 000 748 621), A.R.C. Strang Pty Limited (ACN 062 605 850), Finemore Holdings Limited (ACN 004 272 860) and Conaust Limited (ACN 000 049 301) dated 31 March 1995 as varied by Deed dated 26 June 1996 ("**PrixCar Shareholders' Agreement**").
- (b) Toll will provide the Commission on a confidential basis with a copy of the Transfer Notice and other documents offering to sell or purchase the PrixCar Sale Shares pursuant to clause 5 of the PrixCar Shareholders' Agreement, within 5 Business Days of Toll despatching or receiving (as the case may be) such documents.
- (c) Toll will cause FHL to do everything necessary to dispose of its PrixCar Sale Shares pursuant to clause 5 of the PrixCar Shareholders' Agreement.

5.2 Inability to effect sale

If the sale process provided for under clause 5 of the PrixCar Shareholders' Agreement does not result in a sale of all of the PrixCar Sale Shares, the PrixCar Interest will be sold in accordance with the process set out in clauses 4.6 to 4.7 of these Undertakings.

6. Approved Purchasers post Trigger Date

6.1 Approved Purchaser

- (a) Unless the Commission requires otherwise, Toll must not sell and must not authorise the Approved Agent to sell, the Divestment Businesses to a purchaser other than an Approved Purchaser.
- (b) An Approved Purchaser is a prospective purchaser of the Divestment Businesses that:
 - (i) is independent of and has no direct or indirect controlling interest in Toll, Patrick or Pacific National;
 - (ii) Toll believes in good faith, having made reasonable inquiries, is of good financial standing and has an intention to operate the Divestment Business as a going concern;
 - (iii) in the case of the PN Shares, is not a participant in rail line haul or freight forwarding in Australia, and is not the Operator as defined in these Undertakings; and
 - (iv) has not been objected to by the Commission within the objection period specified in clause 6.2(c).

6.2 Commission may object

- (a) Within 5 Business Days of Toll or the Approved Agent reaching a "conditional sale" agreement with a prospective purchaser for a Divestment Business ("**Proposed Approved Purchaser**"), Toll will provide the Commission with the following information and such other information that the Commission reasonably requires to assess whether the purchase of the Divestment Business by the Proposed Approved Purchaser satisfies the criteria set out in clause 6.1(b)(i) to 6.1(b)(iii) inclusive:
 - (i) the name, address and all other available contact details of the Proposed Approved Purchaser;
 - (ii) a copy of a signed conditional sale and purchase agreement with the Proposed Approved Purchaser;
 - (iii) a description of the business carried on in Australia by the Proposed Approved Purchaser; and
 - (iv) the names of the ultimate holding company and directors of the Proposed Approved Purchaser.
- (b) Toll will use best endeavours to notify the Commission of an intended Proposed Approved Purchaser as early as possible prior to seeking approval under clause 6.2(a), and request the Commission to advise whether it is likely to raise any objection to that purchaser.
- (c) If, within 20 Business Days of receipt of the information from Toll referred to in clause 6.2(a) (or such further period as Toll and the Commission may agree) the Commission does not object to the Proposed Approved Purchaser, Toll will use its best endeavours to complete the sale of the Divestment Business to the Proposed Approved Purchaser in accordance with the conditional sale and purchase

agreement referred to in clause 6.2(a)(ii), as soon as practicable after the Trigger Date.

- (d) The Commission may only object to the Proposed Approved Purchaser on the basis that it has formed the opinion that sale to the Proposed Approved Purchaser is likely to result in a substantial lessening of competition in a market in Australia when compared to the likely competition in that market in the absence of the Proposed Acquisition and in that event, the Commission will provide Toll with a written statement of its reasons including the material facts it relies on for its view, on a confidential basis.
- (e) In the event of an objection as provided under clause 6.2(d) (which Toll undertakes not to challenge), Toll must identify an alternative Proposed Approved Purchaser for consideration by the Commission pursuant to this clause 6.2 as soon as practicable.
- (f) The obligations set out in clause 6.1 and this clause 6.2 do not apply in respect of the sale of the PrixCar Interest unless the sale is effected pursuant to clause 5.1(g) of the PrixCar Shareholders' Agreement.

7. No Other Sale

7.1 No other sale

Unless the Commission otherwise permits, Toll will not, and will procure that Patrick and Pacific National (as relevant) do not, sell or divest any legal or equitable interest in, or control over, the Divestment Businesses except in accordance with these Undertakings.

7.2 Preservation of Assets

- (a) Toll agrees that it will not, and will procure that Patrick and Pacific National (as relevant) do not, during the term of these Undertakings, except in accordance with these Undertakings, transfer the control of the Divestment Businesses and the East-West Rail Assets without the prior written consent of the Commission and it will not remove or make any material adverse change to the Divestment Businesses (including, but not limited to, service levels, plant, equipment, staffing levels, level of management, premises and inventory).
- (b) Pending the sale of the Divestment Businesses, Toll will itself and will procure that Patrick and Pacific National (as relevant) take all reasonable steps, including without limitation, making reasonable capital expenditure, to ensure that the:
 - (i) Divestment Businesses and the East-West Rail Assets are:
 - A. operated as a going concern and in the ordinary and normal course, having regard to the nature of the Divestment Business and the operator's previous practice, in order to preserve the value of the Divestment Business and to maintain its trading and financial position; and
 - B. maintained and preserved in substantially the same condition as at the date of these Undertakings; and
 - (ii) sale of the Divestment Businesses takes place as expeditiously and effectively as practicable following the Trigger Date.

8. Divestment of Rail Assets

8.1 East-West Rail Assets

- (a) Upon a request made to Toll by or on behalf of a prospective Operator prior to, or within 12 months after, the Trigger Date, Toll undertakes to cause Pacific National to lease or otherwise make available to an Operator as soon as practicable thereafter, for the Start Up Period (save for the Selected Train Paths), any or all of the following rights and assets which collectively form the "**East-West Rail Assets**":
- (i) the Selected Train Paths;
 - (ii) the Rolling Stock;
 - (iii) the Ancillary Services; and
 - (iv) the Terminal Access,
- as provided for in clauses 8.5 to 8.8 respectively, as requested by the Operator.
- (b) Toll will use best endeavours to agree with the Operator all of the terms on which the rights set out in clause 8.1(a) will be provided to an Operator on the basis that they are to be offered at fair market value, and in default of agreement, such terms will be determined by the Leasing Agent, acting (as an expert and not an arbitrator) reasonably to determine terms and rates that are fair on a commercial arms length basis.
- (c) Toll's offer under clause 8.1(a) will be on terms that the Operator unconditionally accepts and agrees that the Leasing Agent's decisions made under this clause 8 will be final and binding on Toll, Pacific National and the Operator, provided that, to the extent that the Operator is dissatisfied with a relevant decision of the Leasing Agent made under clause 8 and notifies Toll in writing within seven days of the decision of that fact, Toll will permit an Operator to withdraw its acceptance of the relevant rights to take up the East-West Rail Assets.
- (d) If the Operator elects to take up only some of the rights comprising the East-West Rail Assets, Toll undertakes in the first 12 months after the Trigger Date to re-offer any remaining rights to another Operator in accordance with these Undertakings, provided that the rights so re-offered do not increase Toll's obligations beyond those applicable if only one Operator had taken up all the rights.

8.2 Prior to Trigger Date

- (a) Prior to the Trigger Date, Toll will use its best endeavours:
- (i) to identify and conditionally appoint a Leasing Agent in accordance with this clause 8 to act as an independent facilitator of the arrangements contemplated by this clause 8, being a person:
 - A. suitably qualified and experienced in the sale or leasing of rail assets and independent of Toll, Patrick and Pacific National;
 - B. independent of and having no direct or indirect controlling interest in Toll, Patrick or Pacific National; and
 - (ii) to identify a prospective operator or operators of the East-West Rail Assets ("**Operator**").

- (b) Toll undertakes and agrees that the terms of appointment of the Leasing Agent will include that in fulfilling the arrangements contemplated by this clause 8 the Leasing Agent is acting as an expert and not an arbitrator and all determinations and decisions of the Leasing Agent are made in its sole discretion.
- (c) Toll will provide the Leasing Agent with:
 - (i) all relevant information available to Toll; and
 - (ii) all reasonable assistance,
 to enable the Leasing Agent to fulfil the arrangements contemplated by this clause 8 quickly as possible.
- (d) Toll will indemnify the Leasing Agent against any loss and damage incurred by the Leasing Agent in the course of carrying out his or her functions in accordance with the terms of his or her appointment. Toll will promptly pay the costs of the Leasing Agent in the performance of his or her functions.

8.3 Operator

- (a) Unless the Commission requires otherwise, Toll must not permit Pacific National to lease or make available the East-West Rail Assets to a person other than an Operator approved under clause 8.4.
- (b) An Operator of the East-West Rail Assets must:
 - (i) be independent of and having no direct or indirect controlling interest in Toll, Patrick or Pacific National;
 - (ii) be independent of any entity that acquires and must not itself acquire the PN Shares;
 - (iii) be an entity whom Toll believes in good faith, having made reasonable inquiries, is of good financial standing and has an intention to operate the East-West Rail Assets as a going concern; and
 - (iv) not be the subject of objection by the Commission within the specified objection period referred to in clause 8.4(b).

8.4 Commission may object to Operator and Leasing Agent

- (a) Within 5 Business Days of Toll identifying a proposed Operator or Leasing Agent (either being a "**Nominee**"), Toll will provide the Commission with the following information and such other information that the Commission reasonably requires to assess whether the Nominee satisfies the criteria set out in clauses 8.3(b)(i) to 8.3(b)(iii) in the case of the Operator, and clause 8.2(a)(i) in the case of the Leasing Agent:
 - (i) the name, address and all other available contact details of the Nominee;
 - (ii) a copy of a signed or agreed conditional agreement proposed with the Nominee;
 - (iii) a description of the business carried on in Australia by the Nominee; and
 - (iv) the names of the ultimate holding company and directors of the Nominee.

- (b) If, within 20 Business Days of receipt of the information from Toll referred to in clause 8.4(a) (or such further period as Toll and the Commission may agree):
- (i) the Commission does not object to the Nominee, Toll will use its best endeavours to execute an agreement with the Nominee substantially in the form of the conditional agreement referred to in clause 8.4(a)(ii), as soon as practicable after the Trigger Date; or
 - (ii) the Commission does object to the Nominee in accordance with clause 8.4(b)(iii), Toll must within 30 days identify one or more alternative Nominees for consideration by the Commission pursuant to this clause 8.4;
 - (iii) the Commission may only object to a proposed Operator on the basis that:
 - A. it has formed the opinion that provision of the East-West Rail Assets to that person is likely to result in a substantial lessening of competition in a market in Australia when compared to the likely competition in that market in the absence of the Proposed Acquisition; or
 - B. in the Commission's opinion:
 - 1) the inadequacy of the prospective Operator's expertise or financial resources to purchase and conduct the East-West Rail Assets; or
 - 2) the insufficient likelihood of the prospective Operator being a vigorous and effective competitor in the provision of rail line haul services on the East-West Corridor,
- and in that event, the Commission will provide Toll with a written explanation of its reasons and the material facts on a confidential basis (which objection Toll undertakes not to challenge).

8.5 Selected Train Paths

- (a) Subject to clause 8.5(c), Toll will, within 30 days of receipt of written notice from one Operator (which must be given within 12 months of the Trigger Date), cause Pacific National to relinquish all rights to 5 return train paths per calendar week (on separate days) on the East-West Corridor as nominated by the Operator in order that they may be allocated by ARTC to the Operator. Toll will accept without objection the first three train paths nominated by the Operator, and in the case of the fourth and fifth train paths, Toll has the right, within 5 days of the Operator's notice, to nominate substitute train paths having similar qualities and features as those requested by the Operator. In the event the Operator rejects the substitute path nominations, the Leasing Agent will determine, within 30 days of either party referring the dispute to the Leasing Agent, which of these alternative sets of train path options is to be relinquished by Toll in accordance with the following process. The Leasing Agent will determine, acting as an expert and not an arbitrator (whose decision will be final and binding on Toll), that the Operator's original nominated paths will be relinquished by Toll unless the Leasing Agent determines that Toll's substitute path nominations have similar qualities and features to the train paths nominated by the Operator having regard to the:
- (i) commercial attractiveness;

- (ii) similarity of arrival and departure times; and
 - (iii) the day of the week,
- of those train paths.
- (b) Toll will use its best endeavours to procure the consent of ARTC to the relinquishment of all rights to the Selected Train Paths and the granting of the Selected Train Paths to the Operator, as soon as practicable after nomination by the Operator, and will comply with all reasonable requirements necessary to do so, including providing all necessary information and assistance promptly to ARTC and the Operator.
 - (c) Toll's obligations under this clause 8.5 are subject to Pacific National having been allocated by ARTC on or after 1 July 2006 at least 5 weekly return train paths which can be relinquished under clause 8.5(a).
 - (d) To the extent that Toll causes Pacific National to relinquish any train paths on the East-West Corridor under this clause 8.5, Toll further undertakes to procure that Pacific National relinquishes the corresponding rights to:
 - (i) operate the relevant connecting train paths in Western Australia under the control of WestNet Rail Pty Ltd; and
 - (ii) (if a Perth/Sydney path is requested by the Operator), operate the relevant connecting train paths under the control of the Rail Infrastructure Corporation and Rail Corporation of New South Wales, as the case may be.

8.6 Rolling Stock

- (a) Within 30 days of receipt of written notice from the Operator (which must be given within 12 months of the Trigger Date), Toll will cause Pacific National to make available at the option of the Operator for purchase or lease up to 12 "NR Class" locomotives or a combination of up to 3 "NR Class" and up to 9 "G Class" locomotives ("**Selected Locomotives**"), and sufficient Wagons to make up three train sets up to the maximum length permitted by the track operators on the East-West Corridor. The Selected Locomotives and Wagons ("**Rolling Stock**") are to be, in the reasonable opinion of the Leasing Agent, in good order and condition and, where appropriate, suitable for double-stacking. The purchase or lease terms and conditions including lease payments (which are to be at fair market rates), are, if not agreed between Toll and the Operator within 30 days of the date of the notice referred to above, to be determined by the Leasing Agent, in its sole discretion, within a further 30 days after consultation with Toll and the Operator.
- (b) Toll will require that the Leasing Agent obtain an independent valuation of the Rolling Stock by a suitably qualified valuer appointed by the Leasing Agent. The Leasing Agent will use the valuation report as the basis on which the Leasing Agent will determine the leasing payments or sale price for the Rolling Stock as the case may be under this clause 8.6. The Leasing Agent's determination of the leasing payments or sale price for the Rolling Stock under this clause 8.6 will be final and binding.
- (c) Prior to sale or lease to the Operator, Toll will cause Pacific National to carry out, at Toll's expense and within a reasonable period identified by the Leasing Agent, any improvements to the Rolling Stock reasonably identified by the Leasing Agent in its sole discretion.

- (d) In respect of any Locomotives leased to the Operator under this clause, notwithstanding clause 8.1(a), the Operator has the option, at the end of the Start Up Period, by at least 12 months prior written notice to Pacific National, to extend the term of the lease for a further period of 12 months on the same terms and conditions, save that the lease payments will be adjusted during that further period to reflect the then current market value of the Locomotive lease as determined by the Leasing Agent (acting as an expert).

8.7 Ancillary services

Toll will, within 30 days of receipt of written notice from one Operator (which must be given within 12 months of the Trigger Date), procure that Pacific National provide the following Ancillary Services to the Operator during the Start Up Period in relation to rail services on the East-West Corridor, at fair market rates and otherwise on reasonable commercial terms as agreed, or in default of agreement within 30 days of Toll providing the proposed rates and terms to the Operator, as determined by the Leasing Agent within a further 45 days (acting as an expert):

- (a) crewing;
- (b) fuelling;
- (c) provisioning; and
- (d) maintenance.

8.8 Terminal Access

- (a) Within 30 days of the Trigger Date, Toll will procure that Pacific National:
 - (i) gives notices of termination or surrender of all of its rights and interests under the lease ("**Dynon Lease**") of the Dynon Terminal with Victoria Rail Track Corporation ("**VicTrack**"), the licence for use of Lot 75 at the Dynon Terminal, and the leases or licences for the Selected Tracks and Land east of the Dynon Terminal in accordance with the terms of the lease and licence held by Pacific National;
 - (ii) thereafter, comply with the make good obligations on termination contained in the Dynon Lease;
 - (iii) appoint the Leasing Agent to continue negotiations with VicTrack on behalf of Pacific National, in the event the surrender is not completed within 90 days of Pacific National's notice, and Toll will procure that Pacific National executes and provides a power of attorney in favour of the Leasing Agent that grants the Leasing Agent all rights and powers necessary to permit the Leasing Agent to:
 - A. operate and/or control the Dynon Terminal; and
 - B. effect the surrender of the Dynon Terminal referred to in clause 8.8(a)(i) on terms satisfactory to Vic Track that the Licensing Agent determines to be fair and reasonable between the parties.
- (b) Toll will cause Pacific National to provide access, for the purpose of loading and unloading trains, storage and all necessary ancillary activities, during the Start Up Period to the Operator to either or both the South Dynon Terminal ("**South Dynon Access**") and the Chullora Terminal ("**Chullora Terminal Access**") sufficient to

accommodate 5 East-West Corridor services per week including, without limitation, the Selected Train Paths.

- (c) The terms and conditions of access under clause 8.8(b) will be negotiated between Toll and the Operator. If within 60 days of the commencement of negotiations by the Operator (or such other period agreed between Toll and the Operator), the parties have not agreed the terms and conditions of access, the Leasing Agent will within a period of 60 days and acting as an expert and not an arbitrator (whose decision will be final and binding on Toll) determine the terms and conditions of access after consultation with Toll and the Operator, having regard to the terms and conditions of access to terminals provided for under the Victorian Rail Access Regime.
- (d) For the purposes of this clause 8.8:
 - (i) **Selected Tracks** is defined as the following rail tracks shown on the map at Annexure E to the Undertakings:
 - A. the rail track from co-ordinate A (at easting co-ordinate 2493848.30 and northing co-ordinate 2410991.96) to co-ordinate B (at easting co-ordinate 2494297.77 and northing co-ordinate 2410917.85);
 - B. the rail track from co-ordinate C (at easting co-ordinate 2494295.40 and northing co-ordinate 2410914.23) to co-ordinate D (a “toe of points” where one track splits into two separate tracks) (at easting co-ordinate 2494318.56 and northing co-ordinate 2410892.85);
 - C. the rail track from co-ordinate D (at easting co-ordinate 2494318.56 and northing co-ordinate 2410892.85) to co-ordinate E (at easting co-ordinate 2494935.30 and northing co-ordinate 2410252.62);
 - D. the rail track from co-ordinate D (at easting co-ordinate 2494318.56 and northing co-ordinate 2410892.85) to co-ordinate F (at easting co-ordinate 2494932.36 and northing co-ordinate 2410249.00); and
 - E. the rail track from co-ordinate G (at easting co-ordinate 2494803.89 and northing co-ordinate 2410362.10) to co-ordinate H (at easting co-ordinate 2494933.84 and northing co-ordinate 2410242.14).

The rail tracks from co-ordinates D to E and D to F are commonly known as the 'disconnected outside goods lines'. The co-ordinates referred to in this clause are co-ordinates used in the “VicGrid Datum GDA94” map projection system, which, for the removal of doubt, is the same map system used by VicTrack to plot co-ordinates on maps of the primary infrastructure leases in the Dynon Terminals Precinct.

- (ii) **Land** is defined as:
 - A. the Selected Tracks defined in this clause;
 - B. the land surrounding the Selected Tracks, up to 3 metres on either side of the middle of the Selected Tracks;

- C. where the land surrounding the Selected Tracks suitable for the upkeep and maintenance of the Selected Tracks is less than 3 metres, all land necessary for the proper upkeep and maintenance of the tracks.

8.9 Sale of PN Shares is subject to this clause

For the avoidance of doubt, the sale of the PN Shares, as required under clause 2(a)(i), will take place on terms that the purchaser assumes the same obligation as Toll assumes under clauses 8 and 9.

8.10 Sales consents and Toll to cooperate

- (a) Toll's obligation to procure necessary third party consents under clause 4.4 also applies in respect of the sale and leasing of the East-West Rail Assets.
- (b) Toll undertakes to cooperate fully with the Leasing Agent and to provide the Leasing Agent with such information and assistance as is necessary to enable the Leasing Agent to carry out his or her functions under these Undertakings.

8.11 Minto

- (a) Toll will offer to sell, and will cause Patrick to offer to sell each of Toll's and Patrick's interests (with clear title) in the rail siding known as Lot 1 of DP 1021772 to the owner of Lot 2 of DP 1021772 (the intermodal terminal at Minto known as the Macarthur Intermodal Shipping Terminal) ("**Minto Siding Sale**"), within 10 days of the Trigger Date:
 - (i) at a price and on terms agreed between Toll and the purchaser; or
 - (ii) failing agreement as to price pursuant to clause 8.11(a)(i) within 30 days of the Trigger Date, at the fair market value which will be determined in writing by an independent expert, appointed as follows:
 - A. the matter will be referred to an independent valuer who must be a valuer with relevant industry expertise agreed between Toll and the purchaser; or
 - B. if Toll and the purchaser are not able to agree upon an independent expert pursuant to clause 8.11(a)(ii)A within 14 further days, the independent valuer will be the nominee of the President of the Institute of Chartered Accountants of Australia; or
 - (iii) failing agreement as to non price terms pursuant to clause 8.11(a)(i) within 30 days of the Trigger Date, upon the terms and conditions determined by the Leasing Agent in its sole discretion acting as an expert and not an arbitrator (whose decision will be final and binding on Toll and Patrick) and having regard to generally accepted standard New South Wales land transfer forms.
- (b) The decision of the independent valuer under clause 8.11(a)(ii)A will be final and binding upon Patrick and Toll. The costs of the independent valuer are to be shared equally by the parties.

9. Other Rail undertakings

9.1 PN Shareholders Agreement

- (a) Toll undertakes that on the sale of the PN Shares in accordance with these Undertakings, it will enter into and give effect to a shareholders agreement with either the Pre-approved Purchaser or the Approved Purchaser (as the case may be) of the PN Shares that include the terms and conditions described in Annexure C ("**PN Shareholders Agreement**").
- (b) Toll further undertakes that once it has completed the sale of the PN Shares in accordance with these Undertakings, Toll will not increase its Economic Interest in Pacific National beyond 50%.
- (c) For this purpose "**Economic Interest**" means:
 - (i) interest in a company or partnership, including shares, voting rights, rights to receive dividends, rights to receive other distributions of income or capital, rights to receive a share of proceeds on winding up;
 - (ii) but excludes rights to purchase the interest of the other shareholder in Pacific National if seeking to divest its interest, where the exercise of those rights is subject to no objection being raised by the Commission or Toll obtaining approval (on a formal or informal basis) from the Commission or the Australian Competition Tribunal.
- (d) Toll will use its best endeavours to cause Pacific National not to discriminate in the operation of the Intermodal Business in favour of Toll's freight forwarding or logistics operations on the price and service quality of Pacific National's service offerings on a like for like basis, provided that this does not apply to discrimination which:
 - A. makes only reasonable allowance for differences in the cost or likely cost of providing services resulting from differences in the volume or nature of the services supplied; or
 - B. results from doing an act in good faith to meet a price or benefit offered by a competitor of Pacific National.
- (e) In order to ensure compliance with the commitment in clause 9.1(d), Toll will use best endeavours to procure that Pacific National will:
 - (i) enter into a contract, or include in an existing contract, if requested by any customer of the Intermodal Business, KPIs relating to:
 - A. proportion of requested slot allocations versus slot allocations actually received;
 - B. number of containers left behind;
 - C. turnaround times at relevant terminals;
 - D. freight availability at relevant terminals; and
 - E. damage to goods in transit;
 - (ii) collect, retain and provide to the Auditor appointed under clause 9.4 a report every 12 months which sets out:

- A. the average price per TEU actually charged to Toll and each of the other 10 largest customers of the Intermodal Business (as measured by TEU's carried) during the previous 12 month period;
 - B. proportion of Toll's requested slots versus slot allocations received compared with the average proportion of requested slots versus slot allocations for all freight forwarding customers excluding Toll;
 - C. actual numbers of Toll containers left behind on a terminal by terminal basis compared with the average number of containers left behind on a terminal by terminal basis for all freight forwarding customers excluding Toll;
 - D. turnaround times for Toll's freight forwarding operations at relevant terminals compared with turnaround times at relevant terminals for all freight forwarding customers excluding Toll;
 - E. freight availability for Toll's freight forwarding operations at relevant terminals compared with freight availability at relevant terminals for all freight forwarding customers excluding Toll; and
 - F. level of damage to goods in transit for goods transported on behalf of Toll's freight forwarding operations compared with the average level of damage to goods in transit for goods transported on behalf of all freight forwarding customers excluding Toll; and
- (iii) have the report referred to in (ii) above subject to audit in accordance with clause 9.4.

9.2 Toll's dealings with Pacific National

Without limiting the generality of clause 9.1(a) or any other obligations in these Undertakings, Toll undertakes to the Commission that in respect of the Intermodal Business:

- (a) Toll will not participate in the appointment or supervision of the executive management of the Intermodal Business other than through its representation on the Board of Pacific National;
- (b) Any dealings between Toll and the Intermodal Business are to be conducted on an arms-length commercial basis;
- (c) Toll will not seek to involve itself or interfere with the commercial activities and operations of the Intermodal Business other than:
 - (i) by appointing Board members which are, at all times, obliged in that capacity to act in the best interests of Pacific National; and
 - (ii) in Toll's capacity as a counterparty to a transaction or proposed transaction in which all dealings are to be on an arms-length basis; and
- (d) Toll will not have access to confidential customer information about the Intermodal Business or arising from the operation of the Intermodal Business. For the avoidance of doubt:

- (i) confidential customer information includes, but is not limited to, information regarding a freight forwarder's customers and information regarding a freight forwarder's request for capacity on rail services operated by the Intermodal Business;
- (ii) this clause does not preclude Toll from having access to aggregate information reasonably necessary for reporting purposes or to exercise its rights under the PN Shareholders Agreement.

9.3 Pacific National Compliance

Toll undertakes to use best endeavours to procure that Pacific National comply on its part with the arrangements specified in clause 9.2.

9.4 Audit

- (a) Toll must, by 31 March each year, for a period of five years commencing 31 March 2007, provide an Auditor's report to the Commission at Toll's expense, reporting on:
 - (i) Toll's compliance with clauses 9.1(d), 9.1(e), 9.2, 9.4(b) and 11.1 hereof;
 - (ii) any qualifications made by the Auditor in forming its view;
 - (iii) any recommendations by the Auditor to improve the integrity of audit process and the elimination of any qualifications, including without limitation, any recommendations to improve Pacific National's processes or reporting systems; and
 - (iv) Pacific National's compliance with clauses 6, 7, 8, 9, 10, 11 and 12 set out in Annexure C as incorporated into the PN Shareholders Agreement.
- (b) Toll undertakes to use its best endeavours to procure Pacific National to implement any recommendations of the Auditor made pursuant to clause 9.4(a)(iii) as soon as reasonably practicable after the release of the relevant Auditor's report.
- (c) Toll undertakes to use its best endeavours to procure Pacific National to cooperate fully with the Auditor and to provide the Auditor with such information and assistance as is necessary to enable the Auditor to carry out his or her functions as set out in this clause 9.4.
- (d) Toll undertakes to cooperate fully with the Auditor and to provide the Auditor with such information and assistance as is necessary to enable the Auditor to carry out his or her functions as set out in this clause 9.4.
- (e) Toll shall authorise the Auditor to engage any technical expertise as the Auditor reasonably requires to conduct the audits.
- (f) Toll will use its best endeavours to procure that Pacific National informs at least the largest 20 customers (by revenue received) of the Intermodal Business by letter of the name and contact details of the Auditor as soon as practicable after the Commission has approved the Auditor. Toll will attach copies of the Recitals and clauses 9.1, 9.2, 9.3, 9.4 and Annexure C of these Undertakings to the letter to be sent to the customers.
- (g) Toll will not prevent the Commission from providing the Auditor's report to the shareholders of Pacific National (other than Toll).

- (h) The auditor ("**Auditor**") must be an independent person with appropriate expertise approved of by the Commission.

9.5 PN Management

Toll may only second or otherwise provide senior management to the Intermodal Business where the Board of Pacific National has given its prior approval in writing at a duly constituted Board Meeting at which full particulars have been provided to the Board for the proposed arrangements, the executives concerned, their arrangements or other benefits provided by Toll and such other information that the Board requires to be satisfied that such an arrangement is not likely to give rise to any breach of these Undertakings, including, without limitation, the disclosure to Toll of confidential customer information about the Intermodal Business consistent with clause 9.2(d).

9.6 Hook & Pull Contract extension

Toll will cause Pacific National to extend the current Hook & Pull Contract with SCT from its expiry on 13 October 2007 until the date on which the SCT Locomotives are available and operational and otherwise on the terms of the letter of agreement set out in Annexure D.

9.7 ARTC Train Path Agreement

Toll undertakes that it will cause Pacific National to:

- (a) waive and abandon its rights under clause 2.8 of the ARTC Track Access Agreement, insofar as they relate to the East-West Corridor; and
- (b) consent to ARTC exercising its discretion as ARTC sees fit to grant or renew train paths to Pacific National on the East-West Corridor on expiry of that Agreement on 30 June 2006.

9.8 Unwinding contracts

- (a) If the Commission in its absolute discretion forms the view that a contract, arrangement or understanding entered into by Patrick between 22 August 2005 and the Trigger Date whether alone or in conjunction with the Proposed Acquisition is likely to have the effect of substantially lessening competition in a market, Toll will, to the extent lawfully allowed, cause Patrick to unwind, terminate or otherwise set aside any such arrangement.
- (b) Toll undertakes that it will:
 - (i) cause Patrick not to exercise Patrick's option to acquire FCL Interstate Transport Services Pty Ltd (ACN 007 429 567) ("**FCL**") announced by Patrick to the Australian Stock Exchange on 1 December 2005 or, if that option has been exercised, Toll will procure that Patrick sell the interest thereby acquired in FCL as if it was a "Divestment Business" in accordance with the provisions of clauses 4, 6 and 7 hereof;
 - (ii) cause Patrick to lawfully terminate the Alliance Agreement dated 14 October 2005 between Patrick and FCL as soon as reasonably practicable after the Trigger Date;
 - (iii) cause Patrick to act reasonably in the exercise of any of its rights, powers and remedies under the Term Loan Agreement between FCL and Patrick dated 31 October 2005 ("**Term Loan Agreement**") and the Transaction Documents (as defined in the Term Loan Agreement); and

- (iv) give the Commission 7 days notice of any intention to demand repayment of the Amount Owing (as defined in the Term Loan Agreement) prior to the Final Repayment Date (as defined in the Term Loan Agreement), except if the right, power or remedy arises from an Event of Default described in clause 11.1(1) or 11.1(8) of the Term Loan Agreement.

10. Uncompleted Transactions

10.1 Inability to complete

If for any reason Toll is prevented from or is otherwise unable to:

- (a) complete the divestment and sale of any Unsold Divestment Business in accordance with these Undertakings;
- (b) procure Pacific National to perform the arrangements referred to under clauses 8 and 9 of these Undertakings; or
- (c) procure Patrick to perform the Undertakings set out in clause 9.8,

(any of which events is referred to as an "**Uncompleted Transaction**"), the occurrence of an Uncompleted Transaction, from time to time, will constitute a breach of these Undertakings and the provisions of this clause will apply.

10.2 Notification

If an Uncompleted Transaction occurs, Toll will promptly advise the Commission and provide the Commission with any information reasonably requested by the Commission about the Uncompleted Transaction, and Toll's proposal to address and remedy the circumstances arising as a result of the Uncompleted Transaction.

10.3 Other divestment

If the Commission decides that the circumstances arising from an Uncompleted Transaction will not be remedied to its reasonable satisfaction within a time which is acceptable to the Commission, Toll undertakes to sell and dispose of such other assets and/or businesses within its power and control and will otherwise take such steps in the manner contemplated by these Undertakings as would be sufficient to address and remedy the circumstances arising as a result of the Uncompleted Transactions and the relevant allegations of breach of section 50 of the Act contained in the Commission's statement of claim filed in the Proceedings.

10.4 Application to Court

- (a) The Commission may at any time after it is notified of an Uncompleted Transaction under clause 10.2 bring an application to the Court under subsection 87B(4) of the Act in respect of the breach of these Undertakings by Toll ("**Remedy Application**") seeking orders which may include but are not limited to orders directing Toll to sell or procure the sale of such other assets and/or businesses within its power and control and otherwise take such steps in the manner contemplated by these Undertakings as would be sufficient to address and remedy the circumstances arising as a result of the Uncompleted Transaction and the relevant allegations of breach of section 50 of the Act contained in the Commission's statement of claim filed in the Proceedings;
- (b) Toll undertakes that it will not:

- (i) oppose the bringing of any Remedy Application by the Commission under paragraph (a); and
- (ii) contest any Remedy Application on any basis which is inconsistent with:
 - A. the spirit or the letter of these Undertakings; or
 - B. the relevant allegations of breach of section 50 of the Act contained in the Commission's statement of claim filed in the Proceedings,

including on a basis that the original acquisition by Toll, or the failure to perform or complete any of its obligations in these Undertakings, would not or would not be likely to breach section 50 of the Act; and
- (c) Subject to the terms of this clause 10.4, the Commission and Toll may each lead evidence and make submissions to the Court as to what orders should be made under subsection 87B(4) of the Act in all the circumstances to give effect to the spirit and the letter of these Undertakings and to address and remedy the circumstances arising as a result of the Uncompleted Transaction and the relevant allegations of breach of section 50 of the Act contained in the Commission's statement of claim filed in the Proceedings.

11. Port undertakings

11.1 No discrimination

- (a) Toll will ensure that neither Toll nor Patrick discriminate in favour of Toll's or Patrick's freight forwarding or logistics operations on the price and service quality of the service offerings (on a like for like basis) provided by Patrick in relation to the landside delivery, storage or pickup of containerised freight (by rail and road) at Patrick's container terminals in Sydney, Melbourne, Brisbane and Fremantle, provided that this does not apply to discrimination which:
 - (i) makes only reasonable allowance for differences in the cost or likely cost of providing services resulting from differences in the volume or nature of the services supplied; or
 - (ii) results from doing an act in good faith to meet a price or benefit offered by a competitor of Patrick.
- (b) In order to ensure compliance with the commitment in clause 11.1(a), Toll will:
 - (i) include, if requested by any customer of a Patrick container terminal, in the contract for that customer, KPIs relating to access to and use of the terminals;
 - (ii) collect, retain and provide to the Auditor a report every 12 months which sets out the average price and performance KPIs provided to Toll and Patrick during the previous 12 month period compared to other customers who have required use of those KPIs; and
 - (iii) have the report referred to in 11.1(b)(ii) above subject to audit in accordance with clause 9.4.
- (c) For the purposes of this clause 11.1, the KPIs relate to the Container Transaction Time Performance Benchmark, which means the average time taken for a truck to be moved between the entry gate, unload and/or load and depart through the

terminal exit gate divided by the average number of containers delivered and received for each transaction during a three month period at the relevant terminal.

12. Conditions precedent

12.1 Condition Precedent

Notwithstanding anything to the contrary in these Undertakings, neither clause 13, or 15 herein shall have any force or effect whatsoever unless and until Toll publicly announces its intention to declare its Offer to be free of the minimum acceptance condition set out in clause 16.12(a) of the Offer.

12.2 Condition Subsequent

Notwithstanding anything to the contrary in these Undertakings, each of clauses 13 and 15 herein shall cease to have any force or effect if and when Toll has acquired 100% of the shares in Patrick, such that Patrick is a wholly-owned subsidiary of Toll.

13. Indemnity

13.1 Indemnified Entities

Toll undertakes to indemnify on demand each of the Indemnified Entities respectively for:

- (a) the amount (if any) by which the gross sale price received by the Indemnified Entity for the Patrick Business is less than the fair market value of the relevant Patrick Business as determined by an independent expert appointed in accordance with clause 13.2;
- (b) all transaction costs and expenses properly incurred in connection with the sale of the relevant Patrick Business;
- (c) all liabilities which the Indemnified Entity incurs by way of warranties and indemnities provided to a Purchaser of the relevant Patrick Business or otherwise in connection with the sale to that Purchaser; and
- (d) any loss suffered by Pacific National by reason of the operation of clauses 8 and 9,

so as to ensure that minority shareholders in Patrick and the Indemnified Entities are not adversely affected by the implementation of these Undertakings.

13.2 Appointment of independent expert

- (a) Toll will nominate for approval by the Commission, and provide such relevant information as is reasonably required by the Commission, an expert for the purposes of clause 13.1(a) that is ("**Nominated Expert**"):
 - (i) independent of Toll, Patrick, the purchaser of the Patrick Business or any other entity that responded to the invitation to tender for the divestment of the Patrick Business; and
 - (ii) suitably qualified and experienced to assess the fair market value of the Patrick Business.
- (b) If, within 20 Business Days of receipt of the nomination and information from Toll referred to in clause 13.2(a):

- (i) the Commission does not object to the Nominated Expert, Toll will appoint the independent expert and require him or her to carry out the functions contemplated under clause 13.1(a); or
- (ii) the Commission does object to the Nominated Expert, Toll must either:
 - A. identify an alternative nominee for consideration by the Commission pursuant to this clause 13.2; or
 - B. appoint the nominee of the President of the Institute of Chartered Accountants of Australia as the independent expert and require him or her to carry out the functions contemplated under clause 13.1(a).
- (c) Toll will bear the cost of the independent expert in connection with the discharge of his or her functions under clause 13.1(a).

14. Hold separate

14.1 Pacific National undertaking

Except to the extent necessary to facilitate the divestment of the PN Shares in accordance with these Undertakings and subject to this paragraph Toll undertakes that, during the period commencing on the date of this Undertaking and ending on the date that Toll no longer has the power to appoint a majority of the board of directors of Pacific National by reason of these Undertakings or otherwise, Toll will take all steps reasonably required to:

- (a) not sell or transfer the PN Shares or make any material change to the attributes or extent of the PN Business, except in accordance with these Undertakings;
- (b) operate the PN Business as a separate and independently viable going concern;
- (c) procure that the management, sales, service and operations of the PN Business are conducted by management of Pacific National separate from the management, sales, service, administration and operations of Toll;
- (d) not employ or otherwise engage or offer to employ or engage, directly or indirectly, any employee or servant engaged in the activities of the PN Business. For the avoidance of doubt, Toll will not seek to cause the Pacific National Intermodal Business to employ any Toll employee whose employment with Toll is terminated for whatever reason during the Hold Separate Period in any role at the Pacific National Intermodal Business;
- (e) ensure that the PN Business is operated independently of Toll's operations, including by empowering it independently to:
 - (i) acquire and requisition payment for sufficient and timely deliveries of all goods and services required in respect of the PN Business;
 - (ii) continue to market, price and sell all goods and services as were provided prior to the Trigger Date by the PN Business; and
 - (iii) maintain all current contracts and agreements relating to the PN Business;

- (f) subject to clauses 14.3(a) and 14.3(b):
 - (i) keep the books and records of the PN Business separate from those of the operations of Toll; and
 - (ii) direct management of the PN Business and Toll's management to act in accordance with this clause 14.1;
- (g) provide and maintain:
 - (i) access to sufficient working capital and sources of credit for the PN Business; and
 - (i) current levels of promotional, advertising, sales and technical assistance, marketing and merchandising support for the PN Business,

so as to ensure (so far as it is within Toll's reasonable ability to do so) that the PN Business is able to continue to provide the same level and quality of services that it was providing prior to the Proposed Acquisition;

Prior to the Trigger Date, Toll's obligations to comply with clauses 14.1(a) to (g) hereof are qualified by the extent of Toll's lawful power and ability to comply with those obligations.

14.2 Patrick Businesses undertaking

Except to the extent necessary to facilitate the divestment of the Patrick Businesses in accordance with these Undertakings, Toll undertakes that, during the Hold Separate Period, it will take all steps reasonably required to:

- (a) not sell or transfer the Patrick Businesses or make any material change to the attributes or extent of the Patrick Businesses, except in accordance with these Undertakings;
- (b) operate the Patrick Businesses as separate and independently viable going concerns;
- (c) procure that the management, sales, service and operations of the Patrick Businesses respectively are conducted by management separate from the management, sales, service, administration and operations of Toll;
- (d) not employ or otherwise engage or offer to employ or engage, directly or indirectly, any employee or servant engaged in the activities of the Patrick Businesses;
- (e) ensure that the Patrick Businesses are operated independently of Toll's operations, including by empowering them independently to:
 - (i) acquire and requisition payment for sufficient and timely deliveries of all goods and services required in respect of the Patrick Businesses;
 - (ii) continue to market, price and sell all goods and services as were provided prior to the Trigger Date by the Patrick Businesses; and
 - (iii) maintain all current contracts and agreements relating to the Patrick Businesses;
- (f) subject to clauses 14.3(a) and 14.3(b):
 - (i) keep the books and records of the Patrick Businesses separate from those of the operations of Toll;

- (ii) ensure that no information in relation to the Patrick Businesses is requested or received by Toll directly or indirectly from Patrick; and
- (iii) direct management of the Patrick Businesses and Toll's management to act in accordance with this clause 14.2;
- (g) provide and maintain:
 - (i) access to sufficient working capital and sources of credit for the Patrick Businesses; and
 - (ii) current levels of promotional, advertising, sales and technical assistance, marketing and merchandising support for Patrick Businesses,

so as to ensure (so far as it is within Toll's reasonable ability to do so) that the Patrick Businesses are able to continue to provide, the same level and quality of services that they were providing prior to the Proposed Acquisition.

14.3 Access to information

- (a) During the Hold Separate Period, Toll is entitled to receive and use:
 - (i) all publicly available information and information already in the possession of Toll as at the Trigger Date;
 - (ii) all information necessary to enable Toll to comply with legal and reporting obligations in Australia, including taxation, accounting and ASX continuous and periodical disclosure obligations;
 - (iii) such aggregate commercial and financial information compiled by the PN Business or the Patrick Businesses as is reasonably necessary to enable the directors of Toll to fulfil their duties as directors; and
 - (iv) such aggregate commercial and financial information compiled by the PN Business and the Patrick Businesses as is reasonably necessary to enable Toll to effect any divestiture of the PN Shares or the Patrick Businesses in accordance with these Undertakings.
- (b) Toll has the right to defend any legal claims, investigations or enforcement actions threatened or brought in respect of the PN Business or the Patrick Business and to access such books, records, information and staff assistance as is reasonably necessary for this purpose.
- (c) For the avoidance of doubt, but subject to clause 14.2 and this clause 14.3, Toll is not entitled to (either directly or indirectly) access, request, receive or use customer contract, pricing data or any other information of the Patrick Businesses which would be properly considered to be classified as commercial-in-confidence in the normal course of business.

15. Shareholder Proceedings

- (a) If Shareholder Proceedings are commenced, Toll undertakes that it will take and cause to be taken all steps lawfully and reasonably available to defend such proceedings.
- (b) If, by any Final Judgment any of the Indemnified Entities or Pacific National is restrained permanently from giving effect to any of the transactions contemplated by these Undertakings, then the provisions of clause 10 apply.

16. Further Information

- (a) Toll will provide the Commission with copies of any executed agreement in connection with the sale of any Divestment Business promptly when it is entered into.
- (b) Toll will provide the Commission with such information as the Commission reasonably requests in relation to the fulfilment of these Undertakings.

17. Obligations to procure and notify

17.1 Related Bodies Corporate

Where the performance of an obligation under these Undertakings requires a Related Body Corporate of Toll to take or refrain from taking some action, Toll will use its best endeavours to procure that Related Body Corporate to take or refrain from taking that action as the case may be.

17.2 Effective Date

Toll must inform the Commission in writing of the date of the Trigger Date, within 5 Business Days of the Trigger Date.

17.3 Service of Notices on the Commission

Any notice or other communication to the Commission pursuant to these Undertakings must be sent to:

General Manager - Mergers & Assets Sales Branch
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Facsimile: (02) 6243 1199

or in whatever manner the Commission subsequently notifies Toll.

18. Confidentiality and no derogation

18.1 Confidentiality

The period specified in clause 4.3(a), the provisions of clause 4.7(a)(ii) and Schedule D to these Undertakings are provided to the Commission, on a confidential basis.

18.2 No derogation

Toll acknowledges that nothing in these Undertakings:

- (a) restricts the right of the Commission to take action under the Act in the event that divestiture of the Divestment Businesses is not implemented in accordance with these Undertakings; nor
- (b) prevents the Commission from taking enforcement action at any time whether during or after the period of these Undertakings in respect of any breach by Toll of any of these Undertakings.

19. Definitions and interpretation

19.1 Definitions

In these Undertakings, unless the context indicates otherwise:

Act means the *Trade Practices Act 1974* (Cth) as in force as at the date of these Undertakings.

Ancillary Services mean the services referred to in clause 8.7.

Approved Agent means the sales agent of the Unsold Divestment Businesses appointed pursuant to clause 4.6(d)(i) and 4.6(d)(ii)B.

Approved Purchaser means a Proposed Approved Purchaser that has not been objected to by the Commission within the objection period specified in clause 6.2(c).

ARTC means Australian Rail Track Corporation Limited ACN 081 455 754.

ARTC Track Access Agreement means the track access arrangement between ARTC and Pacific National (ACT) Limited (formally known as National Rail Corporation Limited) dated 10 January 2002 and any subsequent Track Access Agreement between those parties.

Auditor is defined in clause 9.4(h).

Autotrans Business means Toll's private vehicle transportation, logistics and relocation business in Australia conducted by Autotrans Express (Aust) Pty Ltd ACN 080 635 365.

Business Day means a day on which all banks are open for business generally in the State of Victoria but does not include any Saturday, Sunday or public holiday.

Chullora Terminal Access is defined in clause 8.8(b).

Commission means the Australian Competition and Consumer Commission.

Controlling Acceptances is defined in clause 1.2.

Corporations Act means the *Corporations Act 2001* (Cth) as in force as at the date of these Undertakings.

Court means the Federal Court of Australia.

court means any of the Supreme Courts of the States or of the Territories or the Federal Court of Australia.

Devonport Berthing Rights means all the leasehold interests of Patrick to the berth face and land adjacent to the berth face at the port of Devonport as specified in Annexure B, together with all leasehold improvements and any licences and other rights associated with the leasehold interests.

Divestment Businesses means the businesses referred to in clauses 2(a) and 2(b) and "Divestment Business" means each of those businesses.

Dynon Lease is defined in clause 8.8.

Dynon Terminal means the rail terminal within the Dynon terminal precinct north of Dynon Road, Melbourne, currently leased by Pacific National from the Victorian Rail Track Corporation.

East-West Corridor means all of the standard gauge rail tracks between:

- (a) Melbourne, Adelaide and Perth; and
- (b) Sydney, Broken Hill and Perth; and
- (c) Perth, Adelaide and Brisbane.

East-West Rail Assets means all or any combination of the assets and rights referred to in clause 8.1(a).

Economic Interest is defined in clause 9.1(c).

Final Judgment means the final decision of a court or the Takeovers Panel in any Shareholder Proceedings in respect of which there is no right of appeal (including by reason of the effluxion of any period prescribed for the filing of such an appeal) to restrain on a permanent basis any of Toll, Patrick, Pacific National or any of their respective controlled entities from doing (or, as the case may be, refraining from doing) any material act which is required (or, as the case may be, prohibited) by or under these Undertakings.

FCL is defined in clause 9.8.

FHL is defined in clause 5.1(a).

Final Judgment Date means the date on which:

- (a) Final Judgment is given in any Shareholder Proceedings; or
- (b) a judgment given in any Shareholder Proceedings becomes a Final Judgment.

Hold Separate Period for each Divestment Business means the period commencing on the Trigger Date and ending on the last to occur of:

- (a) if Shareholder Proceedings are instituted and an injunction is granted restraining the sale of the Divestment Businesses, the date on which such injunction is discharged; or
- (b) completion of the sale of the relevant Divestment Business.

Hook & Pull Contract means the Rail Services Agreement between SCT and Pacific National (Victoria) Limited ACN 075 295 644 (formally known as Freight Victoria Limited) dated 1 August 2000 and due to expire on 13 October 2007.

Indemnified Entities means Patrick and each of the related bodies corporate of Patrick which own assets of the Divestment Businesses.

Initial Sale Period means the period referred to in clause 4.3.

Intermodal Business means the Pacific National business of providing rail linehaul services on the East-West Corridor to freight forwarders. For the avoidance of doubt, this excludes the Bluescope Steel linehaul business, but includes the operation of terminals by Pacific National as part of its East-West Corridor services.

Leasing Agent means the agent responsible for facilitating the arrangements set out in clause 8 as appointed under clause 8.2(a)(i).

Minto Siding Sale is defined in clause 8.11.

Nominated Expert is defined in clause 13.2(a).

Nominee is defined in clause 8.4(a).

Offer means Toll's offers to acquire all the issued shares in Patrick dated 29 September 2005.

Operator means the Operator of the East-West Rail Assets as determined under clause 8.3(b).

Pacific National means Pacific National Pty Ltd ACN 098 060 550 and its Related Bodies Corporate.

Patrick means Patrick Corporation Limited ACN 008 660 124 and its Related Bodies Corporate from time to time.

Patrick Bass Strait Shipping Business means the operations conducted by Patrick Shipping Pty Limited ACN 009 540 032 on the Trigger Date as a going concern between Melbourne and Tasmania (or if these operations and assets are exclusively conducted and owned by a corporate entity, 100% of the shares in that entity) including but not limited to:

- (a) the Vessels;
- (b) the Devonport Berthing Rights and the Webb Dock East Berthing Rights;
- (c) the employees;
- (d) goodwill;
- (e) business contracts; and
- (f) all the other assets used by Patrick predominantly in the Patrick Bass Strait Shipping Business.

Patrick Businesses means the Patrick Bass Strait Shipping Business, the Patrick Tasmanian Freight Forwarding Business and the Vehicle Transport Business (only if Toll elects on or before the Trigger Date that it be the Patrick business), and "**Patrick Business**" means each of those businesses.

Patrick Tasmanian Freight Forwarding Business means all the assets, operations, employees, goodwill, business contracts, leases and licences, permits and authorities used in Patrick's freight forwarding operation between Tasmania and mainland Australia at the Trigger Date (or if these operations and assets are exclusively conducted and owned by a corporate entity, 100% of the shares in that entity) including but not limited to its freight depots, vehicles, personnel and contracts.

PN Business means all the businesses conducted by Pacific National which includes, but is not limited to, the provision of rail line haul services for the interstate movement of containerised freight between each of Sydney and Melbourne, and Perth.

PN Shareholders mean Toll and either the Pre-approved Purchaser or the Approved Purchaser (as the case may be) of the PN Shares.

PN Shareholders Agreement means the agreement referred to in clause 9.1.

PN Shares means the 50% of the issued share capital of Pacific National held by Toll at the time these Undertakings are given.

Pre-approved Purchaser means the Proposed Purchaser that has not been objected to by the Commission within the objection period specified in clause 3.2(c).

PrixCar is defined in clause 5.1(a).

PrixCar Interest means the entire rights and interests of Toll (FHL) Pty Limited ACN 004 272 860 in shares in the capital of PrixCar Services Limited ACN 007 063 505.

PrixCar Sale Shares is defined in clause 5.1(a).

PrixCar Shareholders' Agreement is defined in clause 5.1(a).

Proposed Acquisition means the proposed acquisition by Toll of all of the shares in Patrick not already owned by Toll as discussed in Recital B.

Proposed Agent means the prospective sales agent of the Unsold Divestment Businesses selected by Toll in accordance with clause 4.6(a).

Proposed Approved Purchaser means the prospective purchaser of the Divestment Businesses identified by Toll in accordance with clause 6.2(a).

Proposed Purchaser means the prospective purchaser of the Divestment Businesses identified by Toll in accordance with clause 3.1.

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Remedy Application is defined in clause 10.

Rolling Stock means the Selected Locomotives and Wagons referred to in clause 8.6.

SCT means Twentieth Super Pace Nominees Pty Ltd ACN 005 855 327 atf Byrnes Unit Trust ABN 37 757 194 158, trading as Specialized Container Transport.

SCT Locomotives means the locomotives to be acquired by SCT from Downer EDI Limited referred to in the press release of SCT on 16 November 2005.

Selected Locomotives means the locomotives referred to in clause 8.6.

Selected Train Paths means the train paths referred to in clause 8.5.

Shareholder Proceedings means proceedings commenced by any one or more Patrick shareholders in a court or the Takeovers Panel in which orders (whether on an interim, interlocutory or permanent basis) are sought restraining any of Toll, Patrick, Pacific National or any of their respective controlled entities from doing (or, as the case may be, refraining from doing) any act which is required (or, as the case may be, prohibited) by or under these Undertakings.

South Dynon Access is defined in clause 8.8(b).

Start Up Period means a period of 3 years, to commence on a day within 12 months after the Trigger Date at the election of the Operator.

Terminal Access means the rights of terminal access referred to in clause 8.8.

Third Party Consents is defined in clause 4.4.

Toll means Toll Holdings Limited ACN 006 592 089 and (where relevant) its Related Bodies Corporate from time to time.

Transfer Notice is defined in clause 5.1(a).

Trigger Date means the date by which both of the following have occurred:

- (a) Toll achieves the receipt of Controlling Acceptances; and
- (b) Toll declares the Offer free from the conditions in section 16.12 of the Offer or gives a notice under section 630 of the Corporations Act that the conditions in section 16.12 of the Offer have been satisfied.

Uncompleted Transaction is defined in clause 10.

Unsold Divestment Businesses means the Divestment Businesses that remain unsold after the Initial Sale Period as defined in clause 4.6(a).

Vehicle Transport Business means, at Toll's election (which must be notified to the Commission prior to the Trigger Date), either Patrick's or Toll's vehicle transport and logistics business in Australia for domestically manufactured and imported vehicles. For the avoidance of doubt, Patrick's or Toll's vehicle transport and logistics business in Australia for domestically manufactured and imported vehicles includes all assets used by those businesses on the Trigger Date, including but not limited to car carrying vehicles, depots, contracts and personnel, but which, in the case of Toll's business, for the avoidance of doubt, does not include the Autotrans Business.

Vessels mean the interest held by Patrick in each of the MV "Mersey" and the MV "Tamar".

Victorian Rail Access Regime means the rail access regime contained in Part 2A of the *Rail Corporations Act 1996* (Vic).

Wagons means general container standard gauge high speed train wagons which have been accredited on the East-West Corridor under the relevant rail safety regime.

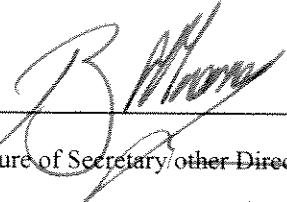
Webb Dock East Berthing Rights means the leasehold interests of Holyman Shipping Pty Limited ACN 009 540 032 (now known as Patrick Shipping Pty Limited ACN 009 540 032) to the berth face and land adjacent to the berth face at Webb Dock East as specified in Annexure A together with all leasehold improvements and any licences and other rights associated with the leasehold interests.

19.2 Interpretation

In these Undertakings:

- (a) a reference to "**these Undertakings**" is a reference to all the provisions of this document, including Annexures A, B, C and D.
- (b) headings and explanation notes to clauses are for convenience only and do not affect interpretation;
- (c) a reference to a document (including these Undertakings) is to that document as varied, novated, ratified or replaced from time to time;
- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender; and
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

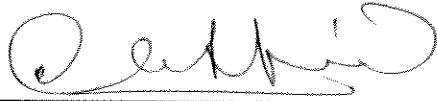
Executed by Toll Holdings Limited ACN 008 660 124 in accordance with section 127 of the Corporations Act by or in the presence of:



(Signature of Secretary/other Director)

BERNARD MYNERNEY.

(Name of Secretary/other Director in full)




(Signature of Director or Sole Director and Secretary)

NEIL CHATFIELD

(Name of Director or Sole Director and Secretary in full)

Accepted by the **Australian Competition and Consumer Commission** pursuant to Section 87B of the *Trade Practices Act 1974*.



Graeme Julian Samuel
Chairman

11th March 2006








Date

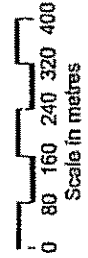
Annexure A — Webb Dock East Berthing Rights

The leasehold interests of Holyman Shipping Pty Limited ACN 009 540 032 (now known as Patrick Shipping Pty Limited ACN 009 540 032) to the berth face and land adjacent to the berth face at Webb Dock East is indicated in the attached drawing as the area occupied by Patrick Shipping, and is marked by the red border on the attached photograph.

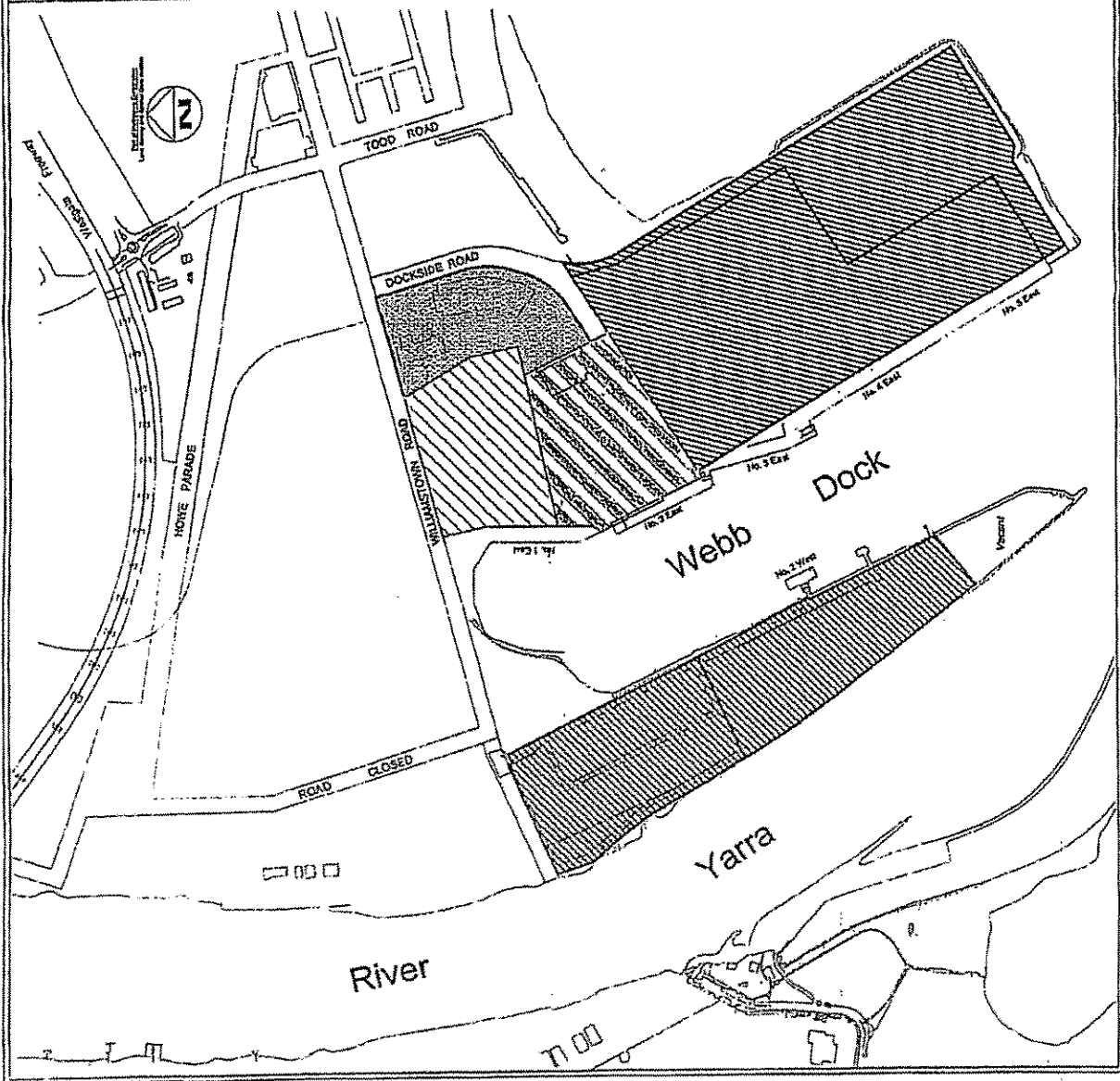
Webb Dock Existing Usage - 2005

Legend

-  Rail
-  Road
-  Cars & General Cargo
-  Bass Strait / Coastal Terminal
-  Cars
-  Distribution
-  Retruck Shipping



Scale 1:7500 at A3 29035-1A



Webb Dock East
Patrick lease area marked in red



Annexure B - Devonport Berthing Rights

The leasehold interests of Patrick to the berth face and land adjacent to the berth face at the port of Devonport is indicated as the area bordered in red and broadly aligns with areas noted by 46,633 and 1,862 on the attached diagram.

The numbers on the attached diagram refer to the appropriate square metreage for the bordered areas as identified at the port.

Port of Devonport
Patrick lease area marked in red



THE DEVONPORT TERMINAL AREA
15/11/2011

Annexure C — Terms and conditions of PN Shareholders Agreement

The PN Shareholders Agreement will contain terms and conditions having the following effect:

Control of the Board

1. Each shareholder in Pacific National will be able to appoint and dismiss as of right an equal number of directors to the Board. Additional appointments and dismissal of those additional appointments will require the consent of both shareholders.
2. The chairperson of the Board will alternate on a regular basis between a director appointed by Toll and a director appointed by the other shareholder.
3. Each director will be entitled to one vote at a Board meeting. The chairperson will not have a casting vote.
4. A unanimous vote of directors will be required in relation to matters including the appointment of the chief executive officer, business plan and budget, capital expenditure in excess of specified limits, and the disposal of any material asset.
5. Toll will not participate in the appointment or supervision of the executive management of Pacific National other than through its representation on the Board of Pacific National.

Dealings with Toll

6. Any dealings between Toll and Pacific National Intermodal Business are to be conducted on an arms-length commercial basis.
7. The Board is to unanimously approve any material contract between the Intermodal Business and Toll or any contract between Toll and Pacific National that materially affects the Intermodal Business and will only approve the contracts if in the best interests of Pacific National.
8. Directors are to be provided with sufficient information to assess whether the terms and conditions of any such material contract with Toll are reasonable and fair taking into account similar contracts with third parties.

Operations of Pacific National

9. Toll will not seek to involve itself or interfere with the commercial activities and operations of Pacific National other than:
 - (a) by appointing Board members which are, at all times, obliged in that capacity to act in the best interests of Pacific National; and
 - (b) in Toll's capacity as a counterparty to a transaction or proposed transaction in which all dealings are to be on an arms length basis.
10. The PN Shareholders Agreement will make provision for the adoption and compliance with a confidentiality regime which prohibits Toll and any Toll secondees from having access to confidential customer information about the Pacific National Intermodal Business. For the avoidance of doubt, the confidentiality regime will not preclude Toll from having access to aggregate information reasonably necessary for reporting purposes or to exercise its rights under the PN Shareholders Agreement.
11. The Shareholders will ensure that Pacific National does not discriminate in the operation of the Intermodal Business in favour of Toll's freight forwarding or logistics operations on the price and service quality of Pacific National's service offerings on a like for like basis, provided that this does not apply to discrimination which:

- (a) makes only reasonable allowance for differences in the cost or likely cost of providing services resulting from difference in the volume or nature of the services supplied; or
- (b) results from doing an act in good faith to meet a price or benefit offered by a rail line haul competitor of Pacific National.

12. The Shareholders will procure that Pacific National will:

- (a) include, if requested by any customer of the Intermodal Business, in the contract for that customer, KPIs relating to:
 - (i) proportion of requested slot allocations versus slot allocations actually received;
 - (ii) number of containers left behind;
 - (iii) turnaround times at relevant terminals;
 - (iv) freight availability at relevant terminals; and
 - (v) damage to goods in transit;
- (b) collect, retain and provide to the Auditor appointed under clause 9.4 of the Undertakings a report every 12 months which sets out:
 - (i) the average price per TEU actually charged to Toll during the previous 12 month period;
 - (ii) proportion of Toll's requested slots versus slot allocations received compared with the average proportion of requested slots versus slot allocations for all freight forwarding customers excluding Toll;
 - (iii) actual numbers of Toll containers left behind on a terminal by terminal basis compared with the average number of containers left behind on a terminal by terminal basis for all freight forwarding customers excluding Toll;
 - (iv) turnaround times for Toll's freight forwarding operations at relevant terminals compared with turnaround times at relevant terminals for all freight forwarding customers excluding Toll;
 - (v) freight availability for Toll's freight forwarding operations at relevant terminals compared with freight availability at relevant terminals for all freight forwarding customers excluding Toll; and
 - (vi) level of damage to goods in transit for goods transported on behalf of Toll's freight forwarding operations compared with the average level of damage to goods in transit for goods transported on behalf of all freight forwarding customers excluding Toll; and
- (c) have the report referred to in (ii) above subject to audit in accordance with clause 9.4.

13. The Shareholders will procure that Pacific National fully and effectively implements all actions required of Pacific National, as referred to or contemplated by clauses 8 and 9 (other than clause 9.8) of the Undertakings.

Annexure D — Letter of Agreement between Toll and SCT

[confidential]

Annexure E — Map of Selected Tracks



East of Dynon

- Legend**
- Vicinity
 - Rail Tracks & Features
 - VicTrack Boundary
 - VicTrack Lease Red/Disp
 - Rail Operator Infrs. Lease (c)
 - Statutory Line by status
 - Victoria
 - VicMap Property (DSE Data)

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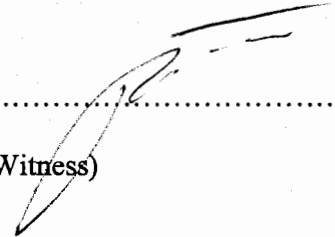
TRADE PRACTICES ACT
CORRIGENDUM TO UNDERTAKING GIVEN UNDER SECTION 87B
BY
TOLL HOLDINGS LIMITED
(A.C.N. 006 592 089)
DATED 11 MARCH 2006

On page 33 of the Undertaking given under section 87B by Toll Holdings Limited dated 11 March 2006, the A.C.N number should be 006 592 089.

Signed on the *15th* day of March 2006
By A.C.N. 006 592 089 (Toll Holdings Limited)



.....
(Signature of proper officer)

BERNARD McINERNEY
COMPANY SECRETARY
.....
(Name of proper officer in full)


.....
(Witness)

Brigitte Warus Carstensen
.....
(Name of witness in full)

Signed on behalf of the Australian Competition and Consumer Commission by:


.....
Graeme Samuel
Chairman

27 March 2006
.....
Date