

**AUSTRALIAN COMPETITION AND  
CONSUMER COMMISSION  
(The ACCC)**

**GeelongPort Pty Ltd**

**Notification N92776**

***Submission by Bruce Stevens Bulk  
Commodities Pty Ltd***

## **INTRODUCTION**

Bruce Stevens Bulk Commodities Pty Ltd (**BSBC**) is a family owned company that provides unloading services in 18 ports around Australia, and in particular at the Lascelles Wharf in GeelongPort. BSBC is concerned about the exclusive dealing Notification filed by GeelongPort Pty Ltd (**GeelongPort**) on 19 January 2007 (**the Application**) as the notified conduct has the potential to seriously undermine competition at the GeelongPort and damage the operations of BSBC.

BSBC was not notified by GeelongPort or the ACCC in relation to the Notification, and has not been identified as an interested party. As the only material competitor with GeelongPort in relation to the unloading services the omission is gravely concerning. The Notification came to the attention of BSBC when customers of BSBC contacted them and, shortly thereafter, provided BSBC with a copy of a letter from GeelongPort to them dated 21 February 2007 (a copy of which is **attached**).

BSBC is directly and materially affected by the conduct.

## **BACKGROUND**

BSBC has been supplying ship discharge equipment at Lascelles Wharf in Geelong long before Toll Transport Pty Ltd (**Toll**), entered the port of Geelong. Toll Transport is the owner of GeelongPort. BSBC have been supplying ship discharged equipment consistently for the last 17 years.

GeelongPort proposes to provide access to Lascelles Wharf in Geelong on the condition that potential port users use GeelongPort's figee cranes for the purpose of unloading fertiliser and other dry bulk cargoes. BSBC provides an identical service to customers at the port of Geelong (although not utilising the figee cranes). (Ref Pages 5 and 6 photographs 1 to 4 of BSBC Geelong – Lascelles Wharf ship discharge equipment).

GeelongPort currently utilises the services of BSBC when they have a problem with their figee cranes or more than one ship arrives at the same port at the same time. BSBC's equipment offers port

flexibility on all three of the Lascelles Births and offers competitive rates in relation to the use of such facilities.

## **PREVIOUS UNDERTAKINGS**

It is relevant to note that GeelongPort provided an undertaking to the ACCC on 21 May 1999 (a copy of the undertaking is annexure hereto) in the following terms.

*GeelongPort undertakes that it will not hinder or prevent the operation of any business which:*

- (a) uses or proposes to use the port of Geelong:*
  - (i) land transferred or freight forwarding operations;*
  - (ii) the movement by sea of goods or produce; or*
  - (iii) proposes to provide services at the port of Geelong for the purpose of its business, from having access to berths, cargo martialling areas, navigational control services, access runs within the port of Geelong and amenity services for workers at the port of Geelong for the purpose of its business.*

It is relevant that on 21 July 1999, Toll, the owner of GeelongPort provided a similar undertaking to the ACCC (a copy of also which is **attached**).

The conduct of GeelongPort appears to be in direct contravention of these undertakings in that the conduct will directly and significantly prevent competition and hinder the operation of BSBC, a business using the Port of Geelong. It will also have a larger impact on the business of BSBC in that BSBC has national agreements with many clients which require BSBC to provide services to those clients in the port of Geelong.

## **FIGEE CRANES**

BSBC accepts that GeelongPort services unload the majority of bulk product at Lascelles Wharf. In recent years there has been an increase in the need of unloading services at Geelong as a result of

many ships which would previously be unloaded at the port of Melbourne are now unloading at the port of Geelong. This activity is one clear reason why competition and alternate suppliers are necessary. Client's of BSBC utilise their service as a result of competitive rates being charged (we believe substantially less than GeelongPort's fees) and quick and efficient service provided. GeelongPorts also utilises BSBC services in times of heavy demand.

Fertiliser importers want to be able to choose between BSBC and Toll/GeelongPort

### **RESPONSE TO GEELONGPORT'S LETTER DATED 21 FEBRUARY 2007**

It is BSBC's submission that for Geelong Lascelles port to run efficiently, customers need to be able to choose which equipment best suits their ship discharge requirements on a ship by ship basis. Figeer cranes were installed at Geelong to replace the Unloader operated by the Port of Geelong Authority. Figeer cranes are a positive and necessary mechanism for the unloading of some ships.

If required, ships cranes (which BSBC supply) can discharge ships at a rate similar to the figeer cranes. This is achieved by using three or four stevedore gangs and working three or four grabs or hoppers which can discharge bulk products depending on the density of the product and availability of transport it is possible to discharge between 650 tons and 900 tons per hour. It is not true to say that ship cranes are inefficient or unnecessary (as implied by the terms of the Notification). Inefficiency will be experienced, however, if all alternatives to GeelongPorts figeer cranes are removed.

Only some fertiliser importers elect to use BSBC equipment at Geelong - Incitec Pivot Ltd, Huntergrain Pty Ltd, for example only use GeelongPorts – figeer cranes. Toll has only 2 figeer cranes which restrict the port discharge capacity. BSBC currently have two grabs / two hoppers and upon client's request can supply 4 hoppers / 4 grabs and can supply weight platform to weight trucks if required.

### **IMPACT OF TOLL'S EXCLUSIVE DEALING ON BSB AT GEELONG**

The Conduct will have a material impact upon the finances of BSBC and would certainly result in customer dissatisfaction at the inability to elect to use BSBC's services or GeelongPort's services.

BSBC is concerned that should Toll's action be accepted by the ACCC it will set a precedent for other ports.

Should BSBC effectively be barred from supplying unloading services at Geelong, this would have a major impact on the future viability of BSBC and many other small companies. It would set a precedent that could spread to other ports around Australia and create monopolies. This would clearly result in the lessening of competition at Australian ports which is not in the interest of small companies or customers.

## **CONCLUSIONS**

The conduct appears to be in direct contravention of the undertakings given by GeelongPort and Toll should be refused on that ground.

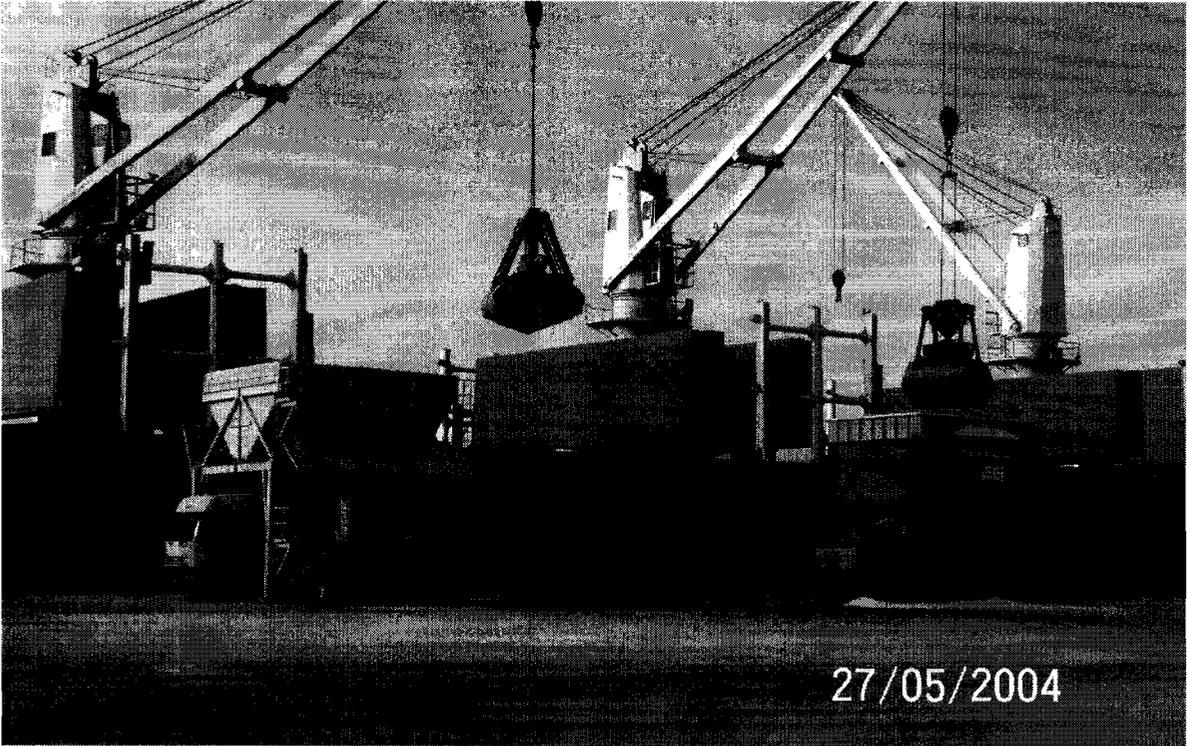
The conduct in the notification clearly constitutes exclusive dealing and should be prohibited on that basis.

The notification should also be refused on the basis it would result in the substantial lessening of competition at Geelong Port and is not in the public interest or in the interest of efficiency or good practice.

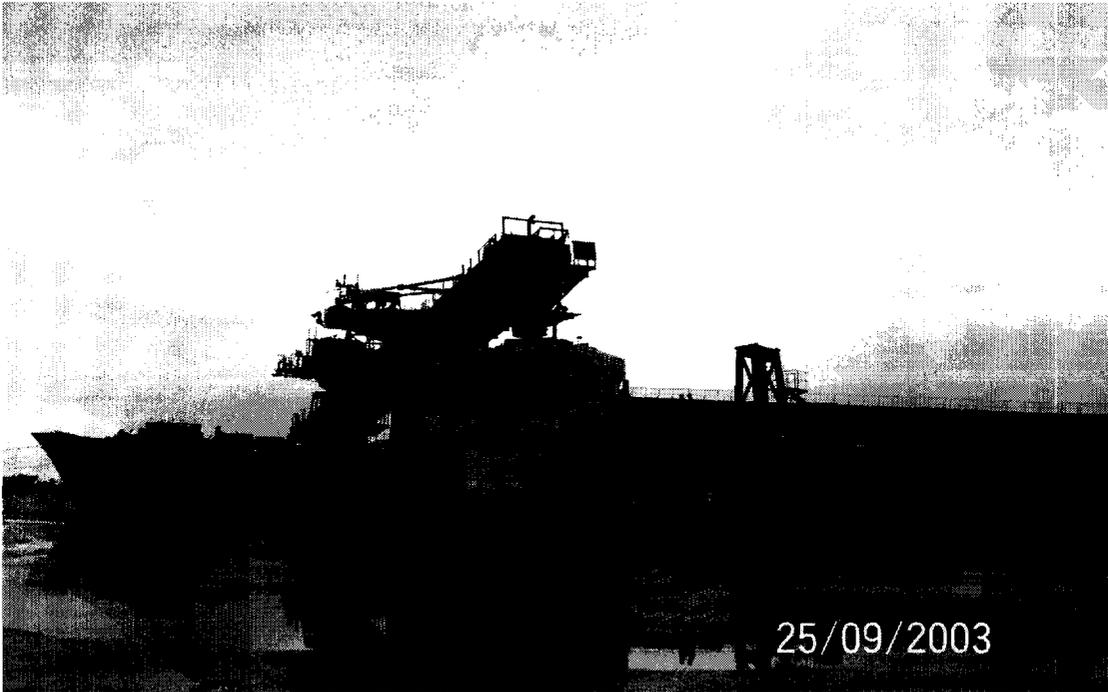
Bruce Stevens  
Managing Director

Dated: Tuesday 5<sup>th</sup> March 2007

**Photographs 1 & 2** Ships Cranes / BSBC Grabs and Hoppers discharging bulk Fertiliser at Lascelles Wharf Geelong 26/05/2004



**Photographs 3 & 4 Hopper used to discharge bulk Calcite from the self unloading vessel M/V CSL Pacific at Lascelles Wharf Geelong on 25.09.2003**





**GeelongPort Pty. Limited**  
A.B.N. 50 003 996 594  
Corio Quay Road  
North Shore VIC 3214  
PO Box 344  
Geelong, VIC 3220  
Telephone: (03) 5247 0200  
Facsimile: (03) 5272 1560

21 February 2007

**Re: Application to the ACCC for Exclusive Dealing – Figeo Crane Use Lascelles Wharf**

Dear Customer

Toll GeelongPort recently approached the ACCC seeking a ruling on exclusive dealing in regards to our decision to have customers use the Figeo shore based cranes instead of ships gear when unloading bulk products at Lascelles wharf. Please note that self discharge vessels are excluded from this decision.

This decision was not taken lightly and in our opinion is in the best long term interests of port customers as a whole. It is our responsibility to ensure that the Port of Geelong runs as efficiently as possible and that any short term decisions made by any one particular customer do not disadvantage other port customers. Toll GeelongPort will always adopt a whole of port position where it is practical to do so, as this will ensure that overall port costs are kept as low as possible for the long term.

I hope that the points outlined below give customers a clear understanding of the position we have adopted and that you can support Toll GeelongPort's decision should the ACCC choose to contact you.

**ACCC Application / Figeo Crane Use**

- The Figeo cranes were originally installed at Lascelles Wharf at the request of customers and represent a significant capital investment in Port infrastructure that needs to realise an appropriate return on assets. It has been standard practice for many years for all bulk discharge customers to use the Figeo cranes except for self discharge vessels.
- Figeo cranes provide the opportunity to discharge ships, on average at a much higher rate than ships gear. This allows ships to be turned around quicker thereby reducing Port congestion. This is particularly important during the fertiliser season when berth occupancy at Lascelles is at its highest. Berth occupancy will become increasing more difficult to manage as the Port continues to grow and diversifies its trade base as has been recently demonstrated by the importation of soy meal and palm kernel.
- If all Port customers discharged their vessels using ships gear, Toll GeelongPort would, for the first time ever, have significant ship queuing issues thus reducing the overall efficiency of the Port. There would then be a need to prematurely look at constructing a new berth at Lascelles 4 at a cost of approximately \$20 million - excluding dredging. This would result in increased costs to customers in terms of berth and facility hire, due to the poor utilisation of available assets.



**A SafetyMAP Certified Organisation**



- The income generated from the Figeer cranes assists in ensuring the economic viability of the Port and allows ongoing maintenance of Ports assets. This ensures that assets are maintained to a standard that meets our customer's expectations.
- The costs associated with making the Figeer cranes available for customers use are predominantly fixed as they are maintained for maximum capability and reliability. Therefore unit rates to customers using the cranes will increase as usage decreases. Current Figeer crane users are subsidising the cost of providing the cranes for the occasional and smaller user.
- The Port is coming under closer scrutiny from an environmental perspective than ever before, which was demonstrated by the recent appointment of a EPA liaison officer to the Port for the first time. The Figeer crane grabs are superior to those used by ships gear from both a dust suppression and overall environmental perspective. The Figeer cranes have an enclosed grab and whilst grabs used on ships cranes are open at the top allowing cargo leakage. To support our commitment to a more environmentally friendly Port, a capital investment program has commenced that will see all the existing Figeer grab shells either upgraded or replaced over the next three years.

I trust that the reasons outlined above provide a clear justification for the Ports decision to move to the compulsory use of the Figeer cranes for all bulk handling operations at Lascelles Wharf (excluding self discharge vessels) and that the attached procedure ensures a smooth transition to this new operating regime at Toll GeelongPort.

Please feel free to contact me personally to discuss how Toll GeelongPort's decision will improve the service we offer your business and the handling of bulk cargoes in the port as a whole.

Yours faithfully



For  
Lindsay Ward  
General Manager  
Toll Ports

## **Attachment 1**

### **Proposed Procedure for Future Figeer Crane Use at Lascelles Wharf**

- Any variation to this procedure will be subject to discussion between Toll GeelongPort and the Port User with the prevailing objective being fairness to all Port Users within the long term objectives of the Port.
- The primary operating condition is that a Figeer crane must be used when available and when two vessels are along side each vessel will be entitled to the use of one Figeer crane.
- When a vessel arrives and a Figeer crane is available it will be required to be used.
- When two vessels are along side one Figeer crane will be allocated to each vessel.
- If two holds are to be worked requiring the use of more than one crane and the second Figeer crane is available, it will be required to be used, unless a second vessel is due along side to commence within the first shift of discharge of the first vessel.
- If two holds are to be worked and only one Figeer crane is available then ships gear may be worked on the second hatch, subject to demonstration that a substantial productivity improvement can be achieved.
- If after discharge commences using ships gear, and on account of the unavailability of the Figeer crane (for whatever reason), the use of ships gear may continue for the balance of the shift.
- If the Figeer crane becomes available it must be used from the next available shift change.
- If two vessels are alongside at the same time and one customer wishes to use both Figeer cranes that customer must seek approval from the other customer. If approval is given then the second customer is free to use ships gear whilst the two Figeer cranes are in use.

**TRADE PRACTICES ACT 1974 - SECTION 87B****UNDERTAKING****PERSON GIVING UNDERTAKING**

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Toll Transport Pty Ltd (ACN 006 604 191) ("Toll Transport") under section 87B of the *Trade Practices Act 1974* ("the Act").

**BACKGROUND**

By an asset sale agreement ("Asset Sale Agreement") dated 14 May 1996 the Port of Geelong Authority and the State of Victoria sold to Ports Pty Ltd (ACN 073 772 077) as the trustee of the Port of Geelong Unit Trust certain port businesses conducted at the port of Geelong. The shares in Ports Pty Ltd and the units in the Port of Geelong Unit Trust were held as 70% by Infrastructure Investment Corporation Limited (ACN 064 567 086) ("Infrastructure Investment") and as to 30% by Primera Pty Ltd (ACN 000 932 276), a wholly owned subsidiary of TNT limited (ACN 008 427 021).

Pursuant to an operating agreement ("Operating Agreement") between Ports Pty Ltd and Metvale Pty Ltd (ACN 003 996 594) dated 10 May 1996, Metvale was appointed by Ports Pty Ltd to operate the port of Geelong and was granted a lease by Ports Pty Ltd of the land and assets purchased by Ports Pty Ltd pursuant to the Asset Sale Agreement. On 29 May 1996 Metvale changed its name to GeelongPort Pty Ltd (ACN 003 996 594) ("GeelongPort").

On 25 June 1996 Ports Pty Ltd, Primera Pty Ltd, Infrastructure Investment and GeelongPort gave undertakings to the Commission under section 87B of the Act in connection with the ownership and operation of the port of Geelong.

On 7 August 1998 Toll Transport acquired all of the shares which Primera owned in Ports Pty Ltd and acquired from TNT Australia Pty Ltd (ACN 000 495 269) all of the shares which it owned in GeelongPort.

Toll Transport is a wholly owned subsidiary of Toll Holdings Limited.

GeelongPort is a wholly owned subsidiary of Toll Transport.

The Commission has expressed concerns that the acquisition by Toll Transport of the interests in the port of Geelong may have the effect of substantially lessening competition in a relevant market, in contravention of section 50 of the Act.

In order to address the Commission's concerns, Toll Transport has agreed to give the undertaking contained herein to the Commission under section 87B of the Act.

The Commission has agreed to accept the Toll Transport undertaking under section 87B of the Act.

### **COMMENCEMENT OF UNDERTAKING**

This undertaking comes into effect when:

- (a) the undertaking is executed by Toll Transport; and
- (b) the undertaking so executed is accepted by the Commission.

### **OBLIGATIONS UNDER UNDERTAKING**

1. Toll Transport will not hinder or prevent the operator of any business which:

- (a) uses or proposes to use the port of Geelong for:
  - (i) land transport or freight forwarding operations;
  - (ii) the movement by sea of goods or produce; or
- (b) provides or proposes to provide services at the port of Geelong for the purposes of its business,

from having access to berths, cargo marshalling areas, navigational control services, access roads within the port of Geelong, amenity services for workers at the port of Geelong for the purposes of its business ("the port of Geelong facilities"), and if requested to do so, and where it is reasonably able to do so, to the extent that it has power to do so, Toll Transport will give such access to any such operator, for the purpose of the operator's business, on terms which shall be non-discriminatory and which shall be reasonable commercial terms having regard to, *inter alia*, the following matters:

- (a) the legitimate business interests of Ports Pty Ltd and GeelongPort and their investment in the port of Geelong;
  - (b) the public interest, including the public interest in having competitive markets;
  - (c) the costs to Ports Pty Ltd and GeelongPort of providing access, including any costs of any extension or additional structures which may be required but not costs associated with losses arising from increased competition in upstream or downstream markets;
  - (d) the economic value to Ports Pty Ltd and GeelongPort of any additional investment that the person seeking access, Ports Pty Ltd or Toll Transport has agreed to undertake;
  - (e) the interests of all persons holding contracts for use of the port of Geelong facilities;
  - (f) contractual obligations of Ports Pty Ltd, GeelongPort or other persons (or all of them) already using the port of Geelong facilities;
  - (g) the operational and technical requirements necessary for the safe and reliable operation of the port of Geelong facilities;
  - (h) the economically efficient operation of the port of Geelong facilities; and
  - (i) the legitimate business interests of the person seeking access.
2. Toll Transport will not conduct any business which uses the port of Geelong for the movement by sea of goods or produce produced by that business, or which provides services at the port of Geelong, for the purposes of its business, (other than the shipping transport, land transport, transport logistics and freight forwarding businesses currently conducted by any of the companies in the Toll group of companies and the stevedoring operations to be carried on by the Toll group of companies at the ports of Geelong and Newcastle) where, in the case of Toll Transport acquiring an existing business, the actual turnover of that business in the year immediately preceding such acquisition was greater than \$500,000 and, in the case of Toll Transport commencing a new business, the projected turnover of that business for its first year of operation is greater than \$500,000, and Toll Transport will not acquire an interest in any such

business which gives it control of that business or entitles it to participate in more than 10% of the capital or profits of that business, unless Toll Transport first gives the Commission reasonable advance notice in writing of its intention to conduct that business or acquire that interest.

3. Toll Transport will not acquire an ownership interest in any other port in any of the States of South Australia, Victoria and New South Wales, or acquire an interest in any of the facilities at any such port or acquire, or engage in, any business which provides services at any such port (other than the operation of the shipping transport, land transport, transport logistics and freight forwarding businesses currently conducted by Toll group of companies and the stevedoring operations proposed to be carried on by the Toll Group of companies at the ports of Geelong and Newcastle) where, in the case of Toll Transport acquiring an existing business, the actual turnover of that business in the year immediately preceding such acquisition was greater than \$500,000 and, in the case of Toll Transport commencing a new business, the projected turnover of that business for its first year of operation is greater than \$500,000, without first giving the Commission reasonable advance notice in writing of its intention to acquire any such interest or engage in any such business in such other port, as the case may be.
4. Toll Transport will not hinder or prevent any person who proposes to install one or more dry bulk unloaders from so installing such dry bulk unloaders at the Port of Geelong and if requested to do so, and where it is reasonably able to do so, Toll Transport will permit such installation on reasonable commercial terms having regard to, *inter alia*, the following matters:
  - (a) the legitimate business interests of Ports Pty Ltd and GeelongPort and their investment in the port of Geelong;
  - (b) the public interest, including the public interest in having competitive markets;
  - (c) the costs to Ports Pty Ltd and GeelongPort of providing access, including any costs of any extension or additional structures which may be required but not costs associated with losses arising from increased competition in upstream or downstream markets;

- (d) the economic value to Ports Pty Ltd and GeelongPort of any additional investment that the person seeking access, Ports Pty Ltd or Toll Transport has agreed to undertake;
  - (e) the interests of all persons holding contracts for use of the port of Geelong facilities;
  - (f) contractual obligations of Ports Pty Ltd, GeelongPort or other persons (or all of them) already using the port of Geelong facilities;
  - (g) the operational and technical requirements necessary for the safe and reliable operation of the port of Geelong facilities;
  - (h) the economically efficient operation of the port of Geelong facilities; and
  - (i) the legitimate business interests of the person seeking access.
5. Toll Transport will promptly notify the Commission in writing of the details of any proposal that another person acquire an ownership interest in the port of Geelong together with or in place of one or more of the members of the acquiring consortium which currently comprises the following persons:
- Toll Transport Pty Limited
  - Infrastructure Investment.
6. Toll Transport will promptly notify the Commission in writing of the details of any proposal to change the proportion of equity interest held by any member of the consortium which, through Ports Pty Ltd, holds the ownership interest in the port of Geelong.
7. Toll Transport will promptly notify the Commission in writing of the details of any proposal whereby:
- (a) GeelongPort ceases to be the operator of the port of Geelong;
  - (b) any other person or person is or are to acquire a shareholding in GeelongPort; or

(c) any other person or persons is or are to be appointed either solely or jointly with any other person or persons as port operator of the port of Geelong.

8. Toll Transport will ensure that any related company controlled by Toll Transport will comply with the terms of clauses 1, 2, 3, 4, 5, 6 and 7 above as if that related company was expressly named.

9. Toll Transport notes that the Commission may make public the terms of this undertaking, provided that the Commission will provide to Toll Transport a copy of any proposed announcement no less than 2 business days before the release of that announcement.

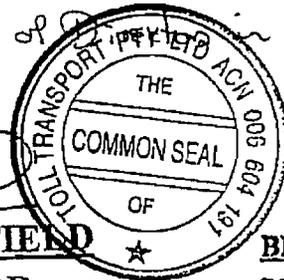
EXECUTED ON THE

DAY OF

1999

SIGNED by \_\_\_\_\_  
as attorney for Toll Transport under  
power of attorney dated \_\_\_\_\_

The Common Seal of Toll Transport Pty Ltd  
was hereunto affixed by authority of B  
Board of Directors in the presence of:



*Neil Chatfield*  
\_\_\_\_\_  
**NEIL CHATFIELD**

**DIRECTOR**

*Bernard McInerney*  
\_\_\_\_\_  
**BERNARD McINERNEY**

**COMPANY SECRETARY**

22-6-99

Signature of Witness

*BN*  
\_\_\_\_\_  
Name of Witness

*BN*  
\_\_\_\_\_  
By executing this undertaking the  
attorney states that the attorney has  
received no notice of revocation  
of the power of attorney

\_\_\_\_\_  
Address of Witness

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION

\_\_\_\_\_  
Chairperson



Dated

July 21 1999



**TRADE PRACTICES ACT 1974 - SECTION 87B**  
**UNDERTAKING**

**PERSON GIVING UNDERTAKING**

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by GeelongPort Pty Limited (ACN 003 996 594) ("GeelongPort") under section 87B of the *Trade Practices Act 1974* ("the Act").

**BACKGROUND**

By an asset sale agreement ("Asset Sale Agreement") dated 14 May 1996 the Port of Geelong Authority and the State of Victoria sold to Ports Pty Ltd (ACN 073 772 077) as the trustee of the Port of Geelong Unit Trust certain port businesses conducted at the port of Geelong. The shares in Ports Pty Ltd and the units in the Port of Geelong Unit Trust were held as 70% by Infrastructure Investment Corporation Limited (ACN 064 567 086) ("Infrastructure Investment") and as to 30% by Primera Pty Ltd (ACN 000 932 276), a wholly owned subsidiary of TNT limited (ACN 008 427 021).

Pursuant to an operating agreement ("Operating Agreement") between Ports Pty Ltd and Metvale Pty Ltd (ACN 003 996 594) dated 10 May 1996, Metvale was appointed by Ports Pty Ltd to operate the port of Geelong and was granted a lease by Ports Pty Ltd of the land and assets purchased by Ports Pty Ltd pursuant to the Asset Sale Agreement. On 29 May 1996 Metvale changed its name to GeelongPort.

On 25 June 1996 Ports Pty Ltd, Primera Pty Ltd, Infrastructure Investment and GeelongPort gave undertakings to the Commission under section 87B of the Act in connection with the ownership and operation of the port of Geelong.

On 7 August 1998 Toll Transport Limited (ACN 006 604 191) ("Toll Transport") acquired all of the shares which Primera owned in Ports Pty Ltd and acquired from TNT Australia Pty Ltd (ACN 000 495 269) all of the shares which it owned in GeelongPort.

Toll Transport is a wholly owned subsidiary of Toll Holdings Limited (ACN 006 592 089).

GeelongPort is a wholly owned subsidiary of Toll Transport.

The Commission has expressed concerns that the acquisition by Toll Transport of the interests in the port of Geelong may have the effect of substantially lessening competition in a relevant market, in contravention of section 50 of the Act.

In order to address the Commission's concerns, GeelongPort has agreed to give the undertaking contained herein to the Commission under section 87B of the Act. The undertaking given to the Commission by GeelongPort on 25 June 1996 has been withdrawn with the consent of the Commission.

The Commission has agreed to accept the GeelongPort undertaking contained herein under section 87B of the Act.

### **COMMENCEMENT OF UNDERTAKING**

This undertaking comes into effect when:

- (a) the undertaking is executed by GeelongPort; and
- (b) the undertaking so executed is accepted by the Commission.

### **OBLIGATIONS UNDER UNDERTAKING**

1. GeelongPort will not hinder or prevent the operator of any business which:
  - (a) uses or proposes to use the port of Geelong for:
    - (i) land transport or freight forwarding operations;
    - (ii) the movement by sea of goods or produce; or
  - (b) provides or proposes to provide services at the port of Geelong for the purposes of its business,

from having access to berths, cargo marshalling areas, navigational control services, access roads within the port of Geelong, and amenity services for workers at the port of Geelong for the purposes of its business ("the port of Geelong facilities"), and if requested to do so, and where it is reasonably able to do so, to the extent that it has power to do so, Toll Transport will give such access to any such operator, for the

*BM*

purpose of the operator's business, on terms which shall be non-discriminatory and which shall be reasonable commercial terms having regard to, *inter alia*, the following matters

- (a) the legitimate business interests of Ports Pty Ltd and GeelongPort and their investment in the port of Geelong;
  - (b) the public interest, including the public interest in having competitive markets;
  - (c) the costs to Ports Pty Ltd and GeelongPort of providing access, including any costs of any extension or additional structures which may be required but not costs associated with losses arising from increased competition in upstream or downstream markets;
  - (d) the economic value to Ports Pty Ltd and GeelongPort of any additional investment that the person seeking access, Ports Pty Ltd or Toll Transport has agreed to undertake;
  - (e) the interests of all persons holding contracts for use of the port of Geelong facilities;
  - (f) contractual obligations of Ports Pty Ltd, GeelongPort or other persons (or all of them) already using the port of Geelong facilities;
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  - (i) the legitimate business interests of the person seeking access.
2. GeelongPort will not conduct any business which uses the port of Geelong for the movement by sea of goods or produce produced by that business, or which provides services at the port of Geelong, for the purposes of its business, (other than the shipping transport, land transport, transport logistics and freight forwarding businesses currently conducted by any of the companies in the Toll group of companies and the stevedoring operations proposed to be carried on by the Toll group of companies at the ports of Geelong and Newcastle) where, in the case of GeelongPort acquiring an

existing business, the actual turnover of that business in the year immediately preceding such acquisition was greater than \$500,000 and, in the case of GeelongPort commencing a new business, the projected turnover of that business for its first year of operation is greater than \$500,000, and will not acquire an interest in any such business which gives it control of that business or entitles it to participate in more than 10% of the capital or profits of that business, unless GeelongPort first gives the Commission reasonable advance notice in writing of its intention to conduct that business or acquire that interest.

3. GeelongPort will not acquire an ownership interest in any other port in any of the States of South Australia, Victoria and New South Wales, or acquire an interest in any of the facilities at any such port or acquire, or engage in, any business which provides services at any such port (other than the operation of the shipping transport, land transport, transport logistics and freight forwarding businesses currently conducted by Toll group of companies and the stevedoring operations proposed to be carried on by the Toll group of companies at the ports of Geelong and Newcastle) where, in the case of GeelongPort acquiring an existing business, the actual turnover of that business in the year immediately preceding such acquisition was greater than \$500,000 and, in the case of GeelongPort commencing a new business, the projected turnover of that business for its first year of operation is greater than \$500,000, without first giving the Commission reasonable advance notice in writing of its intention to acquire any such interest or engage in any such business in such other port, as the case may be.
  
4. GeelongPort will not hinder or prevent any person who proposes to install one or more dry bulk unloaders from so installing such dry bulk unloaders at the Port of Geelong and if requested to do so, and where it is reasonable able to do so, Toll Transport will permit such installation on reasonable commercial terms having regard to, *inter alia*, the following matters
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7. GeelongPort will promptly notify the Commission in writing of the details of any proposal whereby:
- (a) GeelongPort ceases to be the operator of the port of Geelong;

- (b) any other person or person is or are to acquire a shareholding in GeelongPort; or
- (c) any other person or persons is or are to be appointed either solely or jointly with any other person or persons as port operator of the port of Geelong.

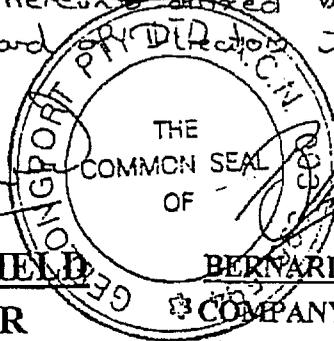
- 8. GeelongPort will ensure that any related company controlled by GeelongPort will comply with the terms of clauses 1, 2, 3, 4, 5, 6 and 7 above as if that related company was expressly named.
- 9. GeelongPort notes that the Commission may make public the terms of this undertaking, provided that the Commission will provide to GeelongPort a copy of any proposed announcement no less than 2 business days before the release of that announcement.

EXECUTED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 1999

SIGNED by  
as attorney for GeelongPort under  
power of attorney dated \_\_\_\_\_

The Common Seal of GeelongPort Pty Ltd  
was hereto affixed by authority of  
its Board of Directors in the presence  
of:

*[Handwritten Signature]*



22-6-99

Signature of Witness

**NEIL CHATFIELD**  
DIRECTOR

**BERNARD McINERNEY**  
COMPANY SECRETARY

*[Handwritten initials]*

Name of Witness

By executing this undertaking the  
attorney states that the attorney has  
received no notice of revocation  
of the power of attorney

*[Handwritten initials]*

Address of Witness

*[Handwritten initials]*

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION

\_\_\_\_\_ 

Chairperson

Dated 21  1999