
Competition and Consumer Act 2010

Variation to an Undertaking given to the
Australian Competition and Consumer
Commission under section 87B

Given by Toll Holdings Limited ACN 006 592 089

1 Persons giving this variation

- 1.1 This variation is given to the Australian Competition and Consumer Commission (ACCC) by Toll Holdings Limited ACN 006 592 089 (Toll).
-

2 Background

- 2.1 On 29 June 2015 the Australian Competition and Consumer Commission (ACCC) accepted an undertaking (the **Undertaking**) under section 87B of the *Competition and Consumer Act 2010* (the **Act**) from Toll in connection with the proposed acquisition by Sea Swift Pty Ltd ACN 010 889 040 (**Sea Swift**) to acquire the northern Australian marine freight business of Toll Marine Logistics Australia, a division of Toll (the **proposed acquisition**).
- 2.2 On 21 September 2015, Sea Swift filed an application with the Australian Competition Tribunal (**Tribunal**) for merger authorisation of the proposed acquisition.
- 2.3 On 16 November 2015, Sea Swift withdrew its application to the Tribunal and has announced that it intends to refile the application at a later date.
- 2.4 Toll has applied to the ACCC to vary the Undertaking to reflect the delay arising from the withdrawal of Sea Swift's application for merger authorisation of the proposed acquisition.
-

3 Commencement

- 3.1 This variation comes into effect when:
- (a) this variation is executed by Toll; and
 - (b) the Commission accepts this variation so executed.
-

4 Variation to clause 2.5 – Purpose of undertaking

- 4.1 Clause 2.5(a) of the Undertaking is amended by deleting the words struck-through below and adding the underlined words as follows:

- (a) The objective of this Undertaking is:
- (i) to maintain the TML Business, including maintaining the supply of services by the TML Business in a manner consistent with the supply of those services as at 11 June 2015, ~~until 30 November 2015 unless the matter is resolved earlier or in other agreed circumstances;~~ and
 - (ii) to prohibit Toll from entering into an Agreement pursuant to which any of the marine freight services provided by the TML Business as at 11 June 2015 will be provided by Sea Swift, except in limited circumstances where Toll is unable to meet ad hoc or short term customer service requirements itself,

~~while the Revised Proposed Transaction and Proposed Undertakings are being considered by the ACCC or the Tribunal~~ until the Tribunal has delivered a determination in relation to any transaction pursuant to which Sea Swift would acquire

all or a substantial part of Toll's FNQ and/or NT marine freight business or the Undertaking is terminated or withdrawn in accordance with clause 4.1 or clause 4.2.

4.2 The varied Clause 2.5(a) of the Undertaking will accordingly read as follows:

(a) The objective of this Undertaking is:

- (i) to maintain the TML Business, including maintaining the supply of services by the TML Business in a manner consistent with the supply of those services as at 11 June 2015; and
- (ii) to prohibit Toll from entering into an Agreement pursuant to which any of the marine freight services provided by the TML Business as at 11 June 2015 will be provided by Sea Swift, except in limited circumstances where Toll is unable to meet ad hoc or short term customer service requirements itself,

until the Tribunal has delivered a determination in relation to any transaction pursuant to which Sea Swift would acquire all or a substantial part of Toll's FNQ and/or NT marine freight business or the Undertaking is terminated or withdrawn in accordance with clause 4.1 or clause 4.2.

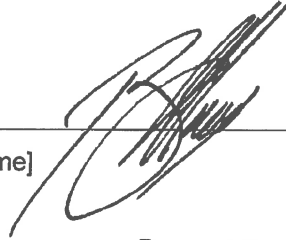
5 Defined terms and interpretation

5.1 Any term defined in the Undertaking and not defined in this variation has the meaning given in the Undertaking, unless the contrary intention appears.

Executed as a variation to the Undertaking

Signed by Toll Holdings Limited ACN 006 592
089 by its authorised signatory:

[Name]



[Position]

Bernard Basil MCINERNEY
Director

Toll Document No:

1STG007439

Date:

17/12/15

Date

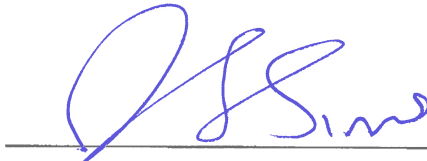
17 DECEMBER 2015

Accepted by **The Australian Competition and
Consumer Commission** pursuant to section 87B

Rodney Graham Sims

Chairman

Date:



23/12/15