

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 The undertaking given to the Commission by GeelongPort on 25 June 1996 has been withdrawn with the consent of the Commission.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

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. 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
 - (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. GeelongPort 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. GeelongPort 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 GeelongPort, holds the ownership interest in the port of Geelong.

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.

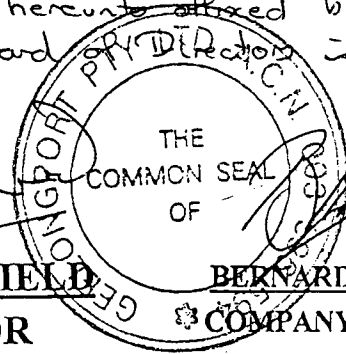
- 8. GeelongPort will ensure that any related company controlled by GeelongPort will comply with the terms of clauses 1, 2, 3, 4, 5, 6 and 7 above as if that related company was expressly named.
- 9. GeelongPort notes that the Commission may make public the terms of this undertaking, provided that the 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 herewith affixed by authority of
 its Board of Directors in the presence
 of:

[Handwritten Signature]



[Handwritten Signature]

22-6-99

Signature of Witness

NEIL CHATFIELD
DIRECTOR

BERNARD McINERNEY
COMPANY SECRETARY

[Handwritten Initials]

Name of Witness

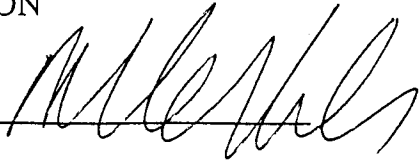
By executing this undertaking the
 attorney states that the attorney has
 received no notice of revocation
 of the power of attorney

[Handwritten Initials]

Address of Witness

[Handwritten Initials]

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION



Chairperson

Dated 21  1999