

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

With effect from 1 July 1997 TNT Australia Pty Limited (ACN 000 495 269) ("TNT") was appointed Port Operator responsible for the management of the port business conducted at the Port of Hastings, Victoria, pursuant to a Port Management Agreement executed by the State Government of Victoria, the Port of Melbourne Authority and TNT.

On 26 August 1997 TNT gave and the Commission accepted an undertaking under section 87B of the Act ("the TNT Undertaking") to address the Commission's concerns that the proposed management of the business of the port of Hastings by TNT may have the effect of substantially lessening competition in a relevant market, in contravention of section 50 of the Act.

In December 1998, Toll Transport Pty Ltd (ACN 006 604 191) acquired the interests of TNT in the Port of Hastings, including the port management business of TNT, and to replace TNT as Port Operator responsible for the management of the port business conducted at the port of Hastings, becoming a party to the Port Management Agreement, by way of a deed of novation ("the Deed of Novation").

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

The Commission has concerns that the management of the business of the port of Hastings by Toll Transport 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 undertaking from Toll Transport 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 Hastings 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 Hastings for the purposes of its business,

from having access to berths, cargo marshalling areas, navigational control services, access roads within the port of Hastings, amenity services for workers at the port of Hastings for the purposes of its business ("the port of Hastings 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 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 Toll Transport as Port Operator of the port of Hastings;
- (b) the public interest, including the public interest in having competitive markets;

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- (c) the costs to Toll Transport 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 Toll Transport of any additional investment that the person seeking access, or Toll Transport has agreed to undertake;
 - (e) the interests of all persons holding contracts for use of the port of Hastings facilities;
 - (f) contractual obligations of Toll Transport or other persons (or all of them) already using the port of Hastings facilities;
 - (g) the operational and technical requirements necessary for the safe and reliable operation of the port of Hastings facilities;
 - (h) the economically efficient operation of the port of Hastings 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 Hastings for the movement by sea of goods or produce produced by that business, or which provides services at the port of Hastings, 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 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 promptly notify the Commission in writing of the details of any proposal whereby:
 - (a) Toll Transport ceases to be the operator of the port of Hastings;
 - (b) 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 Hastings.
5. Toll Transport will:
 - (a) provide the Commission with an executed copy of the Deed of Novation as soon as reasonable possible; and
 - (b) promptly notify the Commission in writing of the details of any proposal to change the arrangements for the operation of the port of Hastings from those set out in the Port of Management Agreement as modified by the Deed of Novation.
6. Toll Transport will ensure that any related company controlled by Toll Transport will comply with the terms of clauses 1, 2, 3, 4 and 5 above as if that related company was expressly named.

- 7. 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

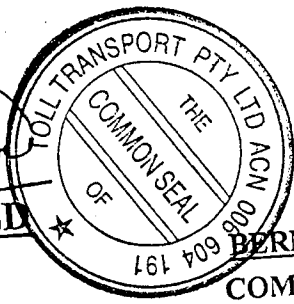
SIGNED by _____
as attorney for Toll Transport under
power of attorney dated _____

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

Signature of Witness

[Handwritten Signature]
NEIL CHATFIELD *
DIRECTOR

[Handwritten Signature] 22-6-99
BERNARD McINERNEY
COMPANY SECRETARY



Name of Witness

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

[Handwritten Signature]
Chairperson

Dated

[Handwritten Signature]
July 27 1999