

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

6 September 2006

The Registrar
Market Structure Group
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to section 66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

PART I: TRANSACTION DETAILS

1 The Business Acquisition

1.1 The business acquisition for which clearance is sought is the acquisition by Toll Owens Limited ("**Toll Owens**") of the log marshalling assets of John Ray Limited ("**JRL**") ("**the proposed acquisition**").

2 The Person giving notice

2.1 This notice is given by:

Toll Owens Limited
10 Rata Street
Mount Maunganui
Tauranga

Telephone: +64 7 572 8972
Facsimile: +64 7 574 8933
Attention: Sean Bolt, Chief Executive

2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Chapman Tripp
1-13 Grey Street
PO Box 993
Wellington

Telephone: +64 4 499 5999
Facsimile: +64 7 472 7111
Email: neil.anderson@chapmantripp.com
Attention: Neil Anderson

3 Confidentiality

The fact of the proposed acquisition?

- 3.1 Confidentiality is not required for the fact of the proposed acquisition.

Specific information contained or attached to the notice

- 3.2 Confidentiality is requested for all the information deleted on the public version of this notice on the grounds that the information is commercially sensitive and its release will be prejudicial to Toll Owens and/or JRL (together the "**participants**"). In this respect, the participants rely on section 9(2)(b) of the Official Information Act 1982.

4 Details of participants

The Acquirer

- 4.1 The acquirer is Toll Owens, a joint venture company owned 50% by Port of Tauranga Limited ("**POTL**") and 50% by Toll Limited ("**Toll**"). Toll Owens' services include marshalling, stevedoring, warehousing, ships agency, transport and cruise line services at a number of the ports in New Zealand. The corporate structure for Toll Owens is set out at Appendix A, and contact details are included at paragraph 2.1 above.
- 4.2 The Commission will be familiar with the operations of Toll Owens, POTL and Toll, and many of the features of the markets connected with ports in New Zealand, having granted clearance for POTL and Toll to form Toll Owens in 2004 ("**Decision 533**").

Target

- 4.3 The target company is JRL, which among its contracting activities undertakes log marshalling services at the ports of Centreport (Wellington) and Westgate (New Plymouth).
- 4.4 The contact details for JRL are:

John Ray Limited
c/- Stratagem Limited
28 Vivian Street
New Plymouth

Telephone: 027 443 4442
Facsimile: 06 758 1182
Email: johnray@johnray.co.nz
Attention: John Ray

5 **Persons interconnected to or associated with the participants**

Toll Owens' subsidiaries

5.1 The following companies are wholly-owned subsidiaries of Toll Owens:

- (a) The Owens Cargo Company Limited ("**Owens Cargo**")

Owens Cargo (formerly known as Owens Services BOP Limited) carries out log and general cargo marshalling, inventory management, storage, consolidation and container handling.

- (b) TLNZ Limited ("**TLNZ**")

TLNZ's (formerly known as Toll Logistics (NZ) Limited) services include stevedoring and marshalling services in the ports of Whangarei, Tauranga, New Plymouth, Gisborne, Napier, Wellington and Lyttelton.

- (c) TLNZ Auckland Limited ("**TLNZ Auckland**")

TLNZ Auckland (formerly known as Leonard and Dingley Limited) specialises in stevedoring services at the Port of Auckland.

Owens Cargo's subsidiaries and major shareholdings

5.2 Owens Cargo holds shares in the following companies:

- (a) Forestry Services N.Z. Limited ("**FSNZL**")

FSNZL is a wholly-owned subsidiary of Owens Cargo and operates inland scaling (measuring) activities at log yards in Kawerau and Kaingaroa.

- (b) The Cargo Company Limited ("**TCCL**")

TCCL was previously a subsidiary jointly owned by Owens Cargo and POTL. Following the acquisition of Owens Cargo by POTL, TCCL fully merged with Owens Cargo and became a dormant company.

- (c) Scaling Research International Limited ("**SRIL**")

SRIL is an external consulting business offering specialist forest mensuration services to the forest industry in Australasia. It employs one specialist employee and is owned 100% by Owens Cargo.

- (d) Forestry Services (Tapanui) Limited ("**FSTL**")

Owens Cargo owns 75% of the shares in FSTL which undertakes materials handling and is based inland at Blue Mountain lumber mill, Tapanui, Southland. The other shareholder is Matthew Wyllie.

- (e) Kinleith Log Stackers Limited ("**KLSL**")

Owens Cargo also has a 40.3% share in KLSL, a company that operates at Kinleith Mill near Tokoroa. Operations include materials handling within the mill yard. The other shareholders are Mike Lambert Limited (a logging transport contractor) as to 40.3% with the balance of the shareholding made up by 10 other individuals.

TLNZ Auckland's subsidiaries

- 5.3 TLNZ Auckland has three subsidiaries:

- (a) Cruise Line Services Limited ("**CLS**") and Allied Personnel Services Limited ("**APSL**") (both 100% owned by TLNZ Auckland); and
- (b) Auckland Stevedoring Company Limited ("**ASC**"), of which TLNZ Auckland owns 50%, the other 50% being owned by Maritime Union Stevedores Limited.

Toll Owens' shareholders

- 5.4 Toll Owens is owned 50% by POTL and 50% by Toll. The corporate structures for POTL and Toll are set out at Appendices A and B respectively.

POTL

- 5.5 POTL is a Tauranga based port company listed on the New Zealand Stock Exchange. POTL's principal activities are the ownership and operation of the wharf infrastructure and marine services at the Port of Tauranga. It also operates an inland port operation in South Auckland that is linked by rail to the Port of Tauranga container terminal. In addition POTL has a 50% shareholding in Northport Limited ("**Northport**"), a joint venture company established for the operation of port infrastructure at Marsden Point, Whangarei.
- 5.6 The majority shareholder in POTL (with 55.03%) is Quayside Securities Limited which is a subsidiary trading enterprise of the Bay of Plenty Regional Council. The remainder of the shares are in public ownership.

Toll

- 5.7 Toll is a wholly owned subsidiary of Toll Holdings, an Australian-based transport and distribution company. Toll Holdings has subsidiaries and other investments in Australia, Thailand, Malaysia and New Zealand.
- 5.8 Toll Holdings has an 84% share (via Toll Group (NZ) Limited) in Toll NZ Limited ("**Toll NZ**"). Toll NZ is the rail freight forwarding and linehaul, and distribution arm of Toll Holdings' operations in New Zealand. It is made up of former Tranz Rail entities, and provides integrated road, rail and sea networks for freight transportation, distribution and logistics management services, and interisland and urban passenger services.

JRL

- 5.9 JRL is owned 0.004% by John Richardson Ray, and 99.996% by John Richardson Ray and Stratagem Trustee Services Limited.
- 5.10 JRL does not hold shares in any other company.

6 Beneficial interests/entitlements between participants

There are no beneficial interests, entitlements or other pecuniary interests between the participants.

7 Formal links between participants

There are no formal or informal links between the participants.

8 The business activities of each participant (and interconnected or associated parties)

Toll Owens

- 8.1 The principal activities of Toll Owens (whether undertaken by Toll Owens or any of its subsidiaries) are set out in this section.

Log Marshalling

- 8.2 Log marshalling accounts for approximately []% of the total revenue of the Toll Owens.
- 8.3 Log marshalling involves primarily the scaling (measurement), assembling and stockpiling of logs on the wharf hinterland, selection of logs in accordance with the shippers instructions as to type of cargo into ship loads, and arranging those ship loads near the berth face so that they can be loaded on to the vessel by stevedores. This activity is supported by information systems that collect and process relevant data and prepare shipping summaries of logs loaded to each vessel.
- 8.4 Log marshalling falls into 2 broad categories:

- (a) Inland or on site forest log scaling and marshalling; and
- (b) Port or wharf log marshalling.

- 8.5 Approximately []% of Toll Owens' log marshalling revenue is derived from inland log scaling at forest sites at Kaingaroa, Murupara and Kawerau where logs are assembled ready for transportation to various ports but primarily Port of Tauranga. This activity is undertaken through FSNZL.
- 8.6 Inland log marshalling activities are also undertaken through related companies such as KLSL at Kinleith and FSTL in Tapanui, Southland. These account less than []% of Toll Owens' total log marshalling operations.
- 8.7 Toll Owens is the largest at-port log marshalling operator in New Zealand with a market share of approximately []% nationwide. It is the sole operator at 10 of the ports at which it provides services. The only exception is the Port of Tauranga at which Quality Marshalling (Mount Maunganui) Limited ("**Quality Marshalling**") is the only competitor. Quality Marshalling currently marshals log volumes for Pacific Forest Products and Carter Holt Harvey.

Log Stevedoring

- 8.8 Log stevedoring involves the loading and discharging of logs between the ship's side and the ship. Toll Owens carries out log stevedoring operations at the ports of Whangarei, Tauranga, Westgate, Napier, Centreport and Lyttelton.

General Cargo Marshalling

- 8.9 Toll Owens operates as a marshaller of general cargo in various ports. In particular, it currently marshals containers at Tauranga, Auckland and Lyttelton; steel products at Tauranga, Auckland and Lyttelton; cars at Auckland and Lyttelton; exported forestry products at Tauranga, Marsden Point and Auckland; produce at Lyttelton; fertilisers at Marsden Point, and large break bulk items at Tauranga.

General Cargo Stevedoring

- 8.10 Toll Owens carries out stevedoring services for general cargo at Marsden Point, Auckland, Tauranga, Napier and Lyttelton. Products stevedored include containers at Auckland, Tauranga, Napier and Lyttelton; reefers (refrigerated containers), steel products at Auckland, Tauranga and Lyttelton; coal at Tauranga; cars at Auckland and Lyttelton; forestry products at Marsden Point, Auckland and Tauranga; produce at Lyttelton; non-hazardous chemicals at Lyttelton; fertilisers at Marsden Point; cruise ships in Auckland; and large break-bulk items.

- 8.11 At Auckland, part of these services (operating under ASC) are run under independent management as a separate entity to Toll Owens.

On-wharf logistics

- 8.12 Toll Owens provides logistical services throughout New Zealand including receipt and delivery, devanning and packing of containers/bases, inventory management and information systems tailored to customer requirements.

Other Toll Owens activities

- 8.13 Toll Owens' other activities are:

- (a) *Short-haul road transport* – Toll Owens' transport division carts bulk, containers and break bulk cargo on-wharf using a range of truck and trailer units (e.g. tipping skeletal trailers and curtain-sided semi-trailers). Cargo includes coal, fertilisers, MDF and paper. Product transport only occurs within the Tauranga port area.
- (b) *Materials handling and warehousing* – Toll Owens operates a fleet of forklifts for general cargo marshalling the Port of Tauranga. At Tauranga, Toll Owens also provides:
 - (i) secure warehousing space for the transit of dried goods (predominantly paper/wood products) and steel, and a coal facility for Genesis Energy;
 - (ii) materials handling; and
 - (iii) distribution services (such as container loading).
- (c) *Mechanical services workshops* – Toll Owens operates workshops to service and repair forklifts, log stackers, straddles and other vehicles at the Port of Tauranga.
- (d) *Allied Wagner agency* – Toll Owens is the sole distributor and servicing agent of Allied Wagner heavy logging and marshalling equipment (including parts) for New Zealand and Australia.
- (e) *Ships agency* – Toll Owens acts nationwide as a port agent for ship owners and charters. This activity is incidental and ancillary to supporting the major operations relating to port services.
- (f) *Cruise line services* - Toll Owens provides services in the exchange of ship stores and passenger baggage to and from cruise vessels calling at the Port of Auckland;

POTL

- 8.14 The principal activities of POTL are the ownership and operation of the wharf infrastructure and marine services at the Port of Tauranga. This involves the provision of wharf facilities, land for storage and transit of cargoes, berthage, cranes, tug and pilotage services; leasing of land and buildings, and container terminal ownership. Outside Tauranga, POTL has a rail link to Metroport in South Auckland, and a 50% interest in Northport, operating port infrastructure at Marsden Point, Whangarei.

Toll

- 8.15 Toll's main business in New Zealand other than its interest in Toll Owens is conducted through its two wholly-owned subsidiaries (both run separately from Toll Owens):
- (a) Toll Networks (NZ) Limited carries out courier services (Toll Priority) and international freight forwarding services (Toll International); and
 - (b) Toll Logistics (NZ) Limited, formerly known as Toll Logistics (CL) Limited, is a contract logistics business running primarily warehousing and distribution operations out of Christchurch.

JRL

- 8.16 JRL has a large general contracting business, log harvesting business and operates log marshalling services. It is the sole provider of log marshalling services at Centreport and Westgate. JRL accounts for approximately []% of the total market share by volume for log marshalling in New Zealand.
- 8.17 In addition to log marshalling, [].
- 8.18 JRL's customers are [].

9 The reasons for the proposal and the intentions in respect of the acquired or merged business

- 9.1 Toll Owens currently has log marshalling operations at 10 ports throughout New Zealand, but no presence in log marshalling at the ports at which JRL operates, namely Centreport and Westgate.
- 9.2 The proposed acquisition represents an opportunity to grow Toll Owens' business by extending its operations into ports at which it currently does not operate. Toll Owens believes it can service customers intending to

export logs from these two ports in a manner which enhances Toll Owens' overall business.

- 9.3 The proposed acquisition also enables the current owner-manager of JRL, John Ray, to downsize JRL's business.

PART II: IDENTIFICATION OF MARKETS AFFECTED

10 Market definition

- 10.1 The Commission is familiar with many of the features of markets relevant to this application, having previously considered Decisions 533 and 453¹.
- 10.2 The relevant product market directly affected by the proposed acquisition is the provision of log marshalling services at Centreport and Westgate. There is also arguably an indirect impact on log marshalling markets at other ports (such as Tauranga) in that JRL will no longer be in a position to expand its operations into other ports (for example, see Decision 533 at paragraph 219).
- 10.3 Marshalling involves identifying cargo, measuring (scaling) the cargo in the case of logs, unloading it from land transport at the port, aggregating it for ship loads, dividing it into types for different types of customers, delivery to the ship side and the reverse operation for imports. Marshalling generally involves heavy machinery and comparatively sophisticated tracking systems.
- 10.4 The Commission has found separate markets for marshalling of logs as compared with general cargoes, such as sawn timber, iron and steel, cement and woodchips. In particular, the Commission found in Decision 453 (at paragraph 56) that "given that log marshalling machinery is not suited to the movement of other product types, the Commission accepts that the appropriate product level is in relation to logs". This was reaffirmed by the Commission in Decision 533 (at paragraph 104):

"...the machinery and software for log marshalling continues to be specialised, and there is little demand-side and supply-side substitutability for other types of product."

- 10.5 In Decision 453 (at paragraph 57) the Commission also recognised that marshalling "inland" is distinct in terms of function from marshalling at-port. Toll Owens supports this finding, although notes that the entry barriers are low in log marshalling whether undertaken at-port or inland.

¹ Decision No. 453: Port of Tauranga Limited and Owens Services BOP Limited, 8 February 2002.

- 10.6 In terms of the geographic dimension of the log marshalling market, Toll Owens agrees with the findings of the Commission in Decision 533 (at paragraph 119) that the market for log marshalling is port-specific, and as such log marshalling should be considered on a port-by-port basis.

11 Horizontal aggregation

No aggregation

- 11.1 Given the Commission's findings that each market for log marshalling is port-specific, the proposed acquisition does not result in any aggregation in the log marshalling market at any port in New Zealand. As Toll Owens does not presently provide log marshalling services at either Centreport or Westgate, the proposed acquisition should be viewed as a "bare transfer" of an existing market position.

Modest scale

- 11.2 Were log marshalling at ports to be considered as a wider New Zealand market, by volume JRL holds approximately []%, and Toll Owens approximately []% of market share. Quality Marshalling, which competes with Toll Owens at the Port of Tauranga, holds the remaining []% nationwide, and this share is not under threat in the context of the proposed acquisition. In addition to the bare transfer of market position at two ports, there will be only a minimal effect on the overall competitive dynamics of log marshalling on a national scale.

- 11.3 Toll Owens does not consider the proposed acquisition to have any effect on inland log marshalling.

- 11.4 []

12 Vertical integration

- 12.1 The proposed acquisition will result in a certain degree of vertical integration at both Centreport and Westgate due to Toll Owens' existing log stevedoring operations at these ports. In particular:

(a) At Centreport, Toll Owens has a [] share of the log stevedoring market, while International Stevedoring Operations Limited ("**ISO**") has the remaining []; and

(b) At Westgate, Toll Owens has [] of the log stevedoring market.

- 12.2 In Decision 533, the Commission considered vertical linkages arising from the integration of Toll NZ's rail transport services with Toll Owens' marshalling and stevedoring and POTL's provision of port services at the

Port of Tauranga. This impact is of minimal significance in the context of this application.

- 12.3 Obviously, Toll Owens will continue to have no links into the provision of port services at Centreport or Westgate. And, currently there are no logs transported into either port by rail. Logs have previously been transported into Centreport by rail, but that practice ceased when Toll's option to receive ATR funding² lapsed in 2004, and prices for rail transport were undercut by providers of road transport.

Countervailing market power

- 12.4 The relative ease of entry into the market of log marshalling was noted by the Commission in Decision 453 (at paragraph 107):

Most parties spoken to conclude that entry barriers to this market are not significant, although this is based on there being two large log exporters at Tauranga.

- 12.5 Quality Marshalling's entry into log marshalling at the Port of Tauranga, as discussed in Decision 453, is an example of the combined effects of low barriers and the strong countervailing market power of exporters. This entry was funded by CHH as a major log exporter, demonstrating the countervailing power of customer demands in the market. Should a large customer such as a major forestry exporter wish to change providers of a marshalling or stevedoring service, it is feasible simply to establish an entity precisely for that purpose. In Decision 533, the Commission acknowledged (at paragraph 217) such "fostering" of new entry into the log marshalling market.
- 12.6 It is also relevant that many key log exporting customers also export processed wood products such as sawn timber, wood pulp, paper products, wood panels and wood chips.
- 12.7 In the event Toll Owens raises its prices for log marshalling services, exporters are able to switch to other providers of both log stevedoring; and marshalling and stevedoring of processed wood products at any of the ports at which Toll Owens operates. At Centreport and Westgate, for instance, the providers of these services are as follows:

² "Alternatives To Roothing", a project set up by the New Zealand Government in 1995 to fund outputs that consider or develop efficient alternatives to the provision and maintenance of roading.

Port	Log stevedoring	General Cargo	
		Marshalling	Stevedoring
Centreport	<ul style="list-style-type: none"> • Toll Owens • TLC • International Stevedoring 	<ul style="list-style-type: none"> • Southern Cross Stevedoring • Centreport Co 	<ul style="list-style-type: none"> • The Loading Company • ISO • Southern Cross Stevedoring • Centreport Co • P&O Ports
Westgate	<ul style="list-style-type: none"> • Toll Owens 	<ul style="list-style-type: none"> • Southern Cross Stevedoring • Westgate Transport Co 	<ul style="list-style-type: none"> • Southern Cross Stevedoring

Previous notifications to the Commission or acquisitions

- 12.8 In respect of the markets identified above in the last three years, POTL and Toll sought and obtained clearance from the Commission in respect of the formation of Toll Owens (Decision 533) in September 2004. Toll also engaged in discussions with the Commission in respect of its acquisition of TLNZ Auckland (previously Leonard & Dingley) in January 2004.
- 12.9 Neither participant has undertaken any other acquisition of assets or shares relevant to this application.
- 12.10 Decisions 453 and 533 are clearly the most relevant and useful decisions for reference in the context of the proposed acquisition.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

13 Existing competitors

13.1 *Log marshalling*

The existing competitors in log marshalling markets for each of the ports in New Zealand, and Toll Owens' estimates for total volumes (in tonnes) for the year ended 31 July 2006 are as follows:

Port	Toll Owens	JRL	Quality Marshalling	Total (tonnes)
Northport	[]	[]	[]	[]
Tauranga	[]	[]	[]	[]
Gisborne	[]	[]	[]	[]
Napier	[]	[]	[]	[]
New Plymouth	[]	[]	[]	[]
Wellington	[]	[]	[]	[]
Nelson	[]	[]	[]	[]
Picton	[]	[]	[]	[]
Lyttelton	[]	[]	[]	[]
Timaru	[]	[]	[]	[]
Port Chalmers	[]	[]	[]	[]
Bluff	[]	[]	[]	[]
Total	[]	[]	[]	[]

All Market Shares are 100% unless otherwise stated

13.2 **Log Stevedoring**

The existing competitors in the log stevedoring markets for each of the ports in New Zealand, and Toll Owens' estimates for total volumes (in tonnes) for the year ended 31 July 2006 are as follows:

Port	Toll Owens	ISO	Tasman Bay Stevedoring	Southern Cross Stevedoring	Total (tonnes)
Northport	[]	[]	[]	[]	[]
Tauranga	[]	[]	[]	[]	[]
Gisborne	[]	[]	[]	[]	[]
Napier	[]	[]	[]	[]	[]
New Plymouth	[]	[]	[]	[]	[]
Wellington	[]	[]	[]	[]	[]
Nelson	[]	[]	[]	[]	[]
Picton	[]	[]	[]	[]	[]
Lyttelton	[]	[]	[]	[]	[]
Timaru	[]	[]	[]	[]	[]
Port Chalmers	[]	[]	[]	[]	[]
Bluff	[]	[]	[]	[]	[]
Total	[]	[]	[]	[]	[]

14 Conditions of expansion by existing competitors

14.1 There are no existing competitors at either Centreport or Westgate. There is the potential for Quality Marshalling to expand from Tauranga into other ports. The only constraints on such expansion appear to be:

- (a) the ability to secure additional volumes from suppliers/exporters; and
- (b) the cost of any additional capital equipment such as heavy machinery and appropriate technology systems to appropriately track and monitor movements. Toll Owens does not consider this cost to be material.

14.2 In Decision 533 (at paragraph 219) the Commission emphasised the ability of Quality Marshalling or JRL to be “fostered” by exporters into providing services at ports at which they did not operate. Toll Owens submits that

the competitive significance of JRL entering the log marshalling markets at other ports (such as Tauranga) should not be overstated. In particular:

- (a) Quality Marshalling – which actually already operates at Tauranga – and handles significantly greater volumes than JRL – remains to constrain Toll Owens in the manner described by the Commission; and
- (b) a number of other operators with substantially greater financial resource than JRL remain well positioned to enter the market, most likely in partnership with particular exporters. Details relevant to these operators are listed in Appendix D.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

15 Conditions of Entry

15.1 The ability of new firms to enter the log marshalling market will be constrained by:

- (a) the cost of any capital equipment such as heavy machinery and appropriate technology systems to appropriately track and monitor movements;
- (b) the ability to secure sustainable contracts from suppliers/exporters; and
- (c) a switch from the relevant port by shippers and exporters to other forms of transport or to another port.

15.2 In addition, there are no operational or regulatory barriers to entry.

15.3 Potential entrants to the markets would include the following:

Inland log marshalling companies and forestry operations

15.4 Various inland marshalling companies and forestry operations can enter into the market for at-port log marshalling. For instance, Rotorua Forest Haulage Limited ("**RFH**") is a large forestry contractor based in Rotorua, which owns over 130 logging trucks and 65 loaders and its revenue is estimated to be []. A more detailed list of other potential entrants conducting forestry operations inland is attached as Appendix D.

Marshalling companies and stevedoring companies

- 15.5 All marshalling companies and stevedoring companies could enter into the “other” field. In particular, given ISO’s presence at eight other ports, ISO may consider entering log marshalling. ISO presently marshal 43 million trays of kiwifruit per annum and have recently started marshalling pulp at Tauranga and veneer at Northport.
- 15.6 In Decision 533, the Commission considered the “bundling” of Toll’s log stevedoring and Owens Cargo’s log marshalling services at ports other than the Port of Tauranga. The Commission noted (at paragraph 214) that:

[e]ntry into log marshalling for stevedores could be difficult given the required investment in information systems and machinery.

- 15.7 However, Toll Owens submits that entry conditions in the market are somewhat benign, with both information systems and machinery being relatively inexpensive.
- 15.8 A workable software system can now be purchased “off the shelf” for approximately \$100,000. In addition, since Decision 533, the state-of-the-art software and information systems developed for Toll Owens by Jade in 2004 (costing Toll Owens [] is now widely available in the industry, and Toll Owens’ exclusive rights to the software expired in 2005.
- 15.9 In Decision 533, the Commission recognised (at paragraph 202) that the machinery that is required will not be a sunk cost as there is a second-hand market for such machinery both in New Zealand and overseas. However, log loading machinery can be purchased in New Zealand for as little as \$130,000 for an 8 to 9 tonne lift machine.

Log exporters

- 15.10 As explained above, log exporters could be an entrant into either or both of log marshalling and log stevedoring. They control the supply of the majority of logs and may wish to participate in marshalling and/or stevedoring. CHH has already done this in respect of the Northport joint venture and, as discussed above, to some extent was responsible for the entry of Quality Marshalling at the Port of Tauranga. Other major log exporters could also group together to provide competing services.

Likelihood sufficiency and timeliness of entry

- 15.11 A casual entry into the log marshalling market is unlikely unless a contract had been secured with a major log exporter. If such a contract were secured, entry into each market could occur in a reasonably short timeframe depending on the ability to obtain a service agreement and the

availability of equipment. In Decision 453, the Commission noted (at paragraphs 112 and 113) that:

The Commission understands that a new log marshalling operation could be quickly established. [Quality Marshalling] commenced marshalling operations at Mount Maunganui in 1991, and was set up within a couple of months. As [Quality Marshalling] was able to initially use some existing machinery from its inland marshalling, this reduced the lead-in time. New log loaders were ordered from the USA, with a delivery time of four to five months.

It therefore appears that new entry into this market is likely to be sufficiently timely to constrain the combined entity.

15.12 It is submitted that the major constraint on Toll Owens would be the ability of the major log exporters, if they did not believe they were getting a cost effective or efficient service in relation to either logs or other bulk supplies, to change service providers or undertake the service themselves.

Toll Owens is vulnerable to a change in the business decisions of suppliers. An additional risk for Toll Owens is that a supplier is able to alter the product supply in relation to bulk commodities as well as logs, which acts as a significant restraint.

15.13 As explained at paragraph 15.2(b), forestry operators (listed at Appendix D) have significant experience and resources available to them, and are more likely to enter the log marshalling market at a given port than JRL in the event that Toll Owens raised its prices. These operators handle and aggregate logs, run harvesting machinery and inventory systems, and operate large trucking fleets. The estimated timeframes and costs for setting up a log marshalling operations at-port are set out at Appendix E.

15.14 It is submitted that the countervailing power of the suppliers of logs and bulk products as well as the shipping companies will act as a considerable constraint on Toll Owens.

PART V: OTHER POTENTIAL CONSTRAINTS

16 Constraints on market power by the conduct of suppliers

16.1 The major requirement for log marshalling is equipment sufficient to handle the logs. Equipment is generally owned by the marshaller or hired, and suppliers of equipment are predominantly offshore but with New Zealand agencies. The estimated costs for log handling machines are set out at Appendix E.

- 16.2 Toll Owens has an agency for the provision of large Wagner log handling machines in Australasia. As Wagner machines are more suited to the marshalling of long logs, the current trend of shorter logs being marshalled has seen a shift in the types of machines being supplied in the past 5 years.
- 16.3 Toll Owens itself has sourced equipment from other suppliers. Other makes such as Komatsu, Caterpillar, Hyundai, Kawasaki, Leibherr and Hitachi are all available in New Zealand. As far as machinery is concerned, suppliers of log handling equipment are worldwide and considerable.
- 16.4 The only other key suppliers to the markets specified are software providers for inventory management systems and bar-code ticket suppliers. Both these areas have a number of suppliers.

THIS NOTICE is given by Sean Bolt on behalf of Toll Owens Limited.

We hereby confirm that:

- All information specified by the Commission has been supplied;
- All information known to the applicant/s which is relevant to the consideration of this application/notice has been supplied;
- All information supplied is correct as at the date of this application/notice.

We undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 6th day of September 2006.

Signed by

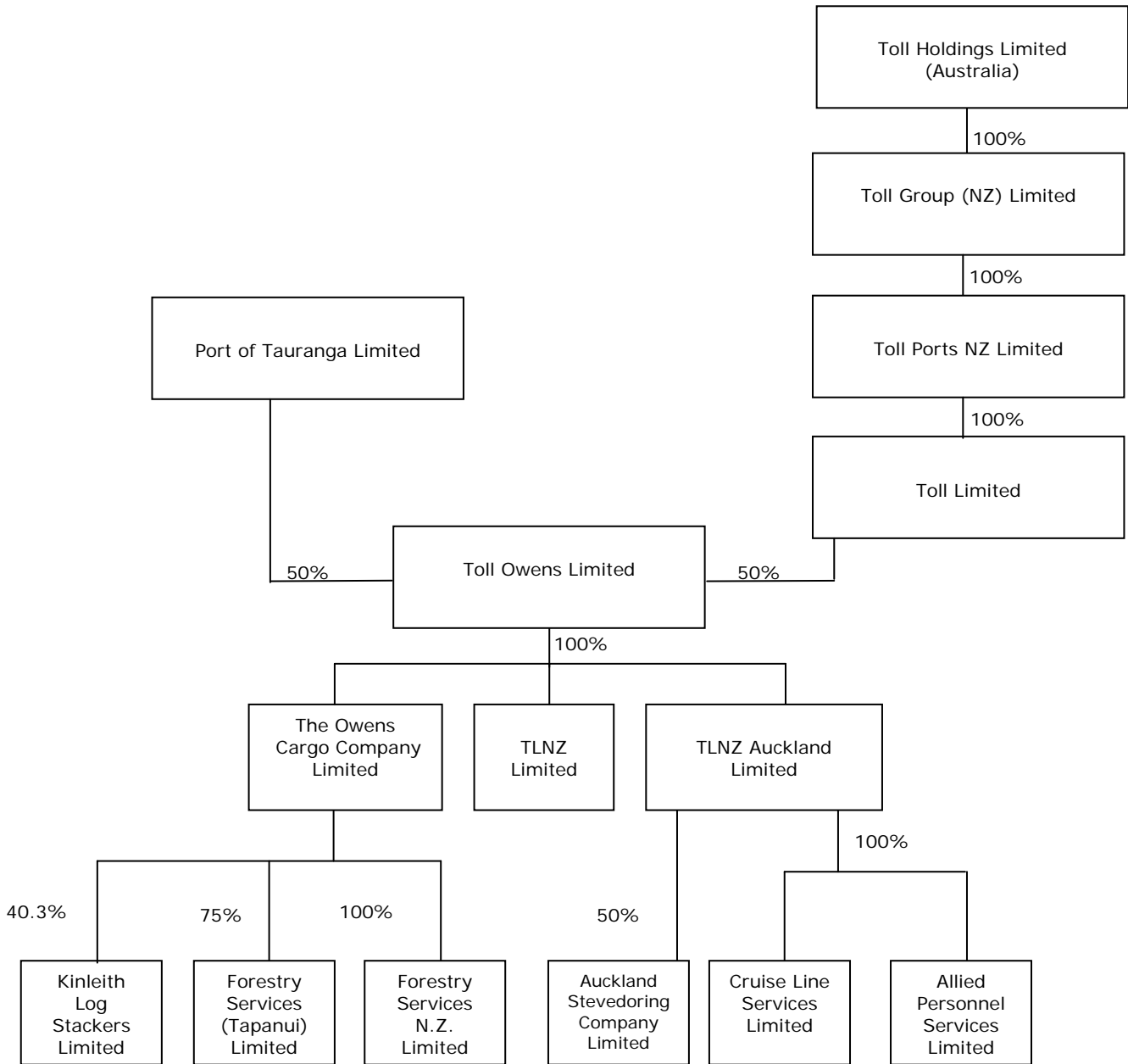
Toll Owens Limited

A handwritten signature in black ink, appearing to read 'Sean Bolt', with a stylized flourish at the end.

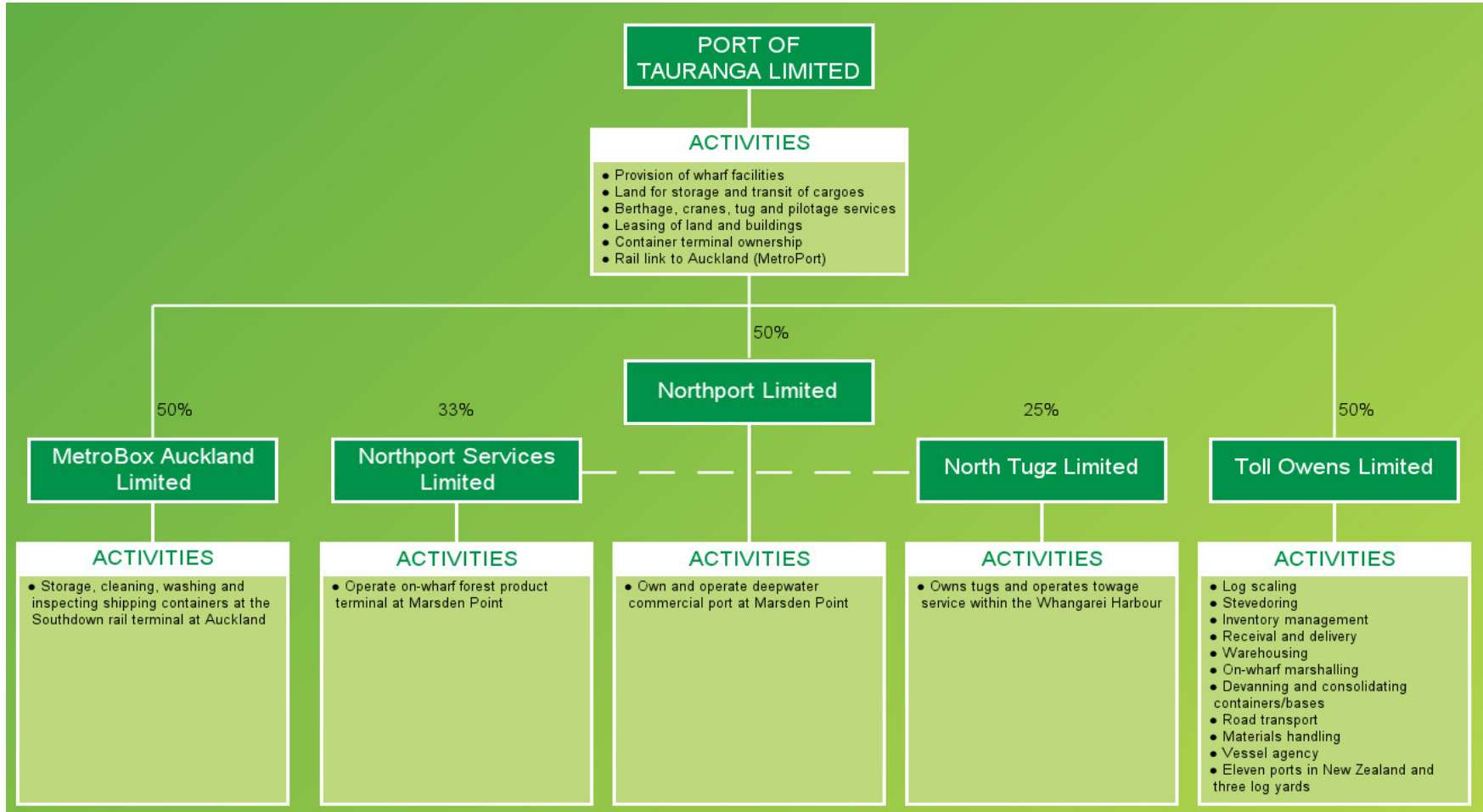
Sean Bolt
Chief Executive

I am an officer of Toll Owens Limited and am duly authorised to make this notice.

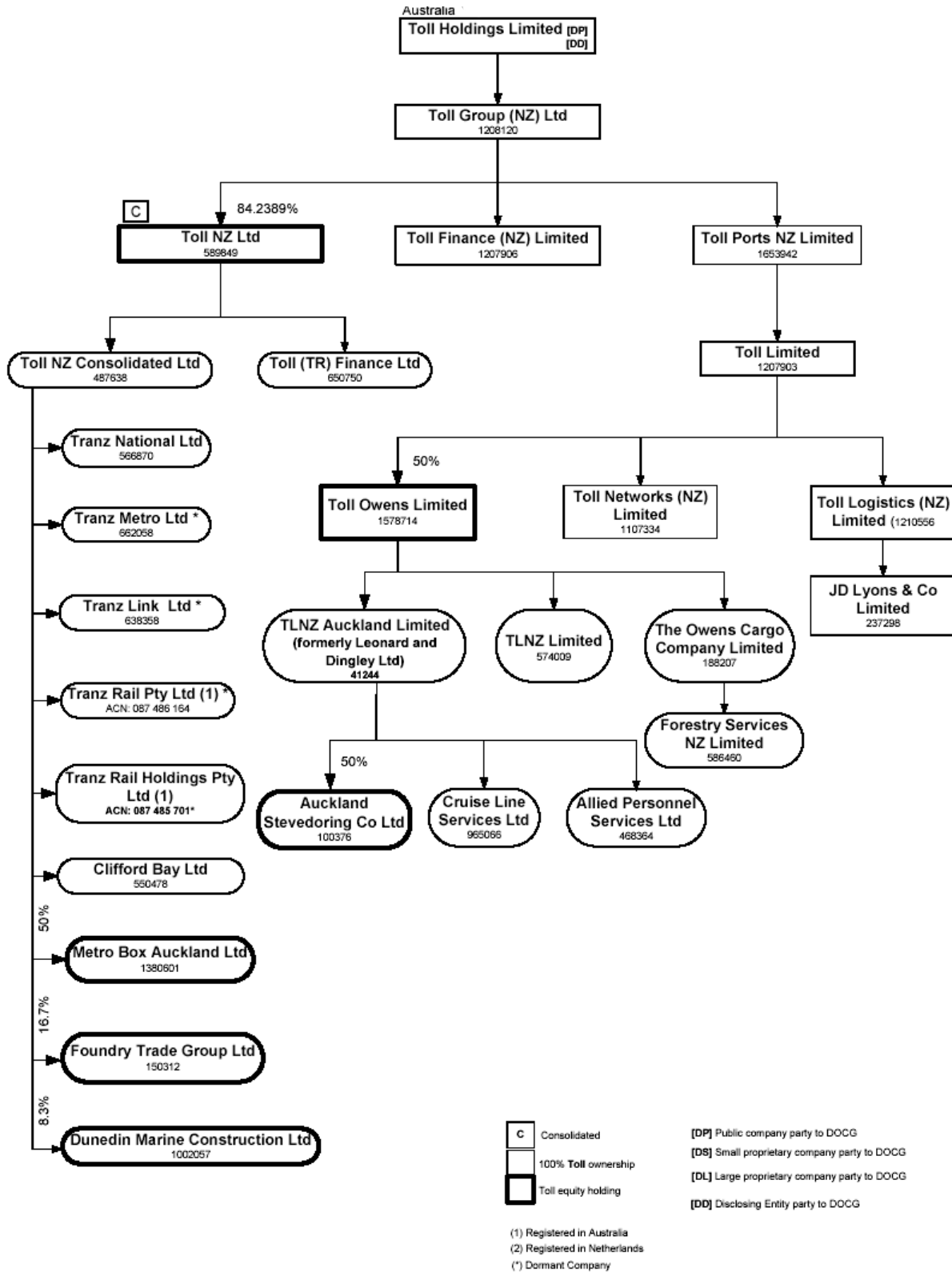
APPENDIX A – TOLL OWENS CORPORATE STRUCTURE



APPENDIX B – POTL CORPORATE STRUCTURE



APPENDIX C – TOLL NEW ZEALAND CORPORATE STRUCTURE



APPENDIX D – FORESTRY OPERATORS

Company	Base Location	Operations	Machinery and Resources	Locations	Estimated revenue value p.a.
Rotorua Forest Haulage Limited	Rotorua	Loading/unloading at mill sites All plant related activities at Kaingaroa Processing Plant	Owens and operates 130+ logging trucks and 65+ loaders	Bay of Plenty Taupo Hawkes Bay Marlborough	[]
Pedersen Timber Company Limited	Eastern Bay of Plenty	Owens and/or operates sawmills Forestry Harvesting Large contracts with CHH and Norske		Bay of Plenty Taupo Waikato	[]
Ribbonwood Forest Holdings Limited	Eastern Bay of Plenty	Harvesting		Eastern Bay of Plenty	[]
McCarthys Transport	Central North Island	Log loading and cartage	Approx 80 logging trucks and loaders	Central North Island, including into Wellington	[]
Waimea Forest Distribution Limited	Nelson	Log loading and cartage	Approx 35 logging trucks and 2-3 loaders	Nelson and Marlborough	[]
Steve Murphy Limited	Rangiora	Log loading and cartage Logistics/ despatch system co-ordinating forestry cargo movements	Approx 30 logging trucks and 3 loaders	Canterbury	[]

Company	Base Location	Operations	Machinery and Resources	Locations	Estimated revenue value p.a.
Dynes Transport Tapanui Limited Group of companies comprised of: West Otago Transport Limited, Icon Logistics Limited, Mother Earth 2000 Limited, Dunedin Carrying Co Limited, Tuapeka Transport 2003 Limited, Herberts Transport Limited and Clinton Waipahi Holdings Limited.	Dunedin and Tapanui	General and log cartage Container transport Bark and firewood processing Main provider to two largest forestry companies in Otago, Wenita Forest Products Limited and City Forests Limited	38+ trucks general cartage, at least 20 logging trucks	Otago	[]
D.T. King and Company Limited	Tuatapere, Southland	General, stock and log cartage Harvesting	20 logging trucks	Southland	[]

APPENDIX E – ESTIMATED SET UP COSTS AND TIMEFRAMES FOR AT-PORT LOG MARSHALLING

Operation	Requirements	Cost	Time frame
Small <100,000 JASm ³	IT System	[]	Off the shelf
	2 Small Loaders 8-9mt lift capacity	[]	3 – 6 Months
	2 handheld scanners / PC	[]	1 – 3 months
	2 FTE's	[]	1 – 2 Months
Medium 100,000 to 300,000 JASm ³	IT System	[]	Off the shelf
	4 Medium Loaders 15mt lift capacity	[]	6 – 12 Months
	4 - 5 handheld scanners / 2 * PC	[]	1 – 3 months
	5 – 9 FTE's	[]	1 – 3 Months
	Branch Manager	[]	
Large >300,000 JASm ³	IT System	[]	Off the shelf
	1 - 5 Large Loaders 30mt lift capacity	[]	6 – 12 Months
	2 – 6 Medium Loaders 15mt lift capacity	[]	3 – 12 months
	5 - 10 handheld scanners / 6 * PC	[]	1 – 3 Months
	10 – 30 FTE's	[]	3 – 6 Months
	Branch Manager	[]	

JASm³ = Japanese Agricultural Standard metres cubed