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Wednesday, 5 April 2006

**Patrick Corporation Limited 03 – Panel Decision**

The Takeovers Panel advises that, in relation to the application by Patrick Corporation Limited dated 25 March 2006 (see [TP06/29](#)), it has declined the part of the application relating to the acceptability of the “Institutional Acceptance Facility” which Toll Holding Limited has established (**Acceptance Facility**).

The Acceptance Facility is a facility put in place by Toll, but managed by an investment bank, for professional investors which hold at least 100,000 Patrick shares. The Acceptance Facility allows them to indicate their intention to accept the Toll Offer if Toll reaches 50.1% of Patrick (calculated by acceptances under the Toll Offer and indications of intention to accept through the Acceptance Facility, which will be disclosed by Toll to the market).

Patrick had asked the Panel to revoke the Acceptance Facility, make it available for all Patrick shareholders, or, instead, offer all Patrick shareholders a withdrawal right.

Patrick submitted that the Acceptance Facility contravenes the principle in section 602(c) of the Corporations Act, namely, that all target company shareholders must have a reasonable and equal opportunity to participate in any benefits under a takeover bid.

The Panel considered that the Acceptance Facility might influence when and how a Patrick shareholder might accept the Toll Offer, but it did not consider that the Acceptance Facility was a benefit which would influence a Patrick shareholder’s decision whether or not to accept the Toll Offer. The Panel considered that the disclosure arrangements for the Acceptance Facility will ensure that the market remains properly informed. The Panel also considered that the terms of the Corporations Act and the Acceptance Facility will ensure that other Patrick shareholders will have adequate time to consider their acceptance decision if the 50.1% condition for the Acceptance Facility is triggered and the eligible shareholders’ shares are accepted into the Toll Offer.

The Panel notes that Patrick’s application also related to various disclosure issues (see [TP06/29](#)). The Panel requested the parties to use their best endeavours to resolve between them any of the disclosure issues. The parties advised the Panel that they have conducted negotiations on the disclosure issues. Toll has undertaken to Patrick to issue a Supplementary Bidder’s Statement No. 8 shortly.

Accordingly, the Panel concluded the proceedings and will publish its reasons for its decision on its website in due course.

The sitting Panel is Graham Bradley, Carol Buys and Nerolie Withnall (sitting President).

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