

**NOTICE OF LODGMENT**  
**AUSTRALIAN COMPETITION TRIBUNAL**

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL on 04/04/2016 4:13 pm AEST and has been accepted for lodgment under the Interim Practice Direction dated 21 August 2015. Filing details follow and important additional information about these are set out below.

**Lodgment and Details**

Document Lodged: APP - Second Statement of Paul Stephen Readdy – REDACTED

File Number: ACT 2 of 2016

File Title: Application by Sea Swift Pty Ltd under s 95AU of the *Competition and Consumer Act 2010* (Cth) for an authorisation under s 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person

Registry: NEW SOUTH WALES – AUSTRALIAN COMPETITION TRIBUNAL



Dated: 04/04/2016 4:13 pm AEST

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a '4'.

Deputy Registrar

**Important Information**

As required by the Interim Practice Direction dated 21 August 2015, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Tribunal. Under the Tribunal's Interim Practice Direction the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4:30 pm local time at that Registry) or otherwise the next working day for that Registry.

Confidential Restriction on Publication Claimed – PART ONLY

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No. ACT of 2016

Sea Swift Pty Limited (Applicant)



Proposed acquisition of certain assets of Toll Marine Logistics Australia's marine freight operations in the Northern Territory and Far North Queensland

SECOND STATEMENT OF PAUL STEPHEN READDY

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*PSR*

## STATEMENT OF PAUL STEPHEN READDY

I, Paul Stephen Readdy, Executive of CHAMP Ventures Pty Limited, of 33 Sixth Avenue, Windsor in the state of Queensland, say as follows:

- 1 I am an Executive at CHAMP Ventures (**CHAMP**) and a non-executive Director of Sea Swift Pty Ltd (**Sea Swift**).
- 2 I make this statement from my own knowledge as an Executive at CHAMP and as a non-executive Director of Sea Swift and from having consulted and made enquiries of relevant staff and the records of CHAMP and Sea Swift.
- 3 Unless otherwise defined in this statement, terms used in this statement have the same meaning as defined in the Form S to which this statement relates.

### BACKGROUND

- 4 I refer to Sea Swift's previous application to the Australian Competition Tribunal for authorisation in relation to the proposed acquisition of certain marine freight assets of Toll Marine Logistics (**TML**) in far North Queensland (**FNQ**) and the Northern Territory (**NT**) filed on 21 September 2015 (**Original Application**). Since 21 September 2015, the details of the proposed acquisition have been renegotiated, although the assets that Sea Swift proposes to acquire from TML have not altered.
- 5 I set out in paragraphs 23 to 28 below the details of the renegotiation of the proposed acquisition between the parties. In this statement, I refer to the transaction for which Sea Swift now seeks authorisation as the **Proposed Transaction**.
- 6 In support of the Original Application, I prepared and signed a witness statement dated 21 September 2015 that was filed with the Original Application to the Tribunal (**First Statement**).
- 7 Sea Swift is now filing a new application to the Tribunal seeking authorisation of the Proposed Transaction (**New Application**). I understand that both my First Statement and this statement are to be filed with the Tribunal in support of the New Application.

### SEA SWIFT'S FINANCIAL PERFORMANCE SINCE CHAMP'S ACQUISITION

- 8 I refer to paragraphs 53 to 69 of my First Statement, where I discussed Sea Swift's financial performance since it was acquired by CHAMP in 2012. In those paragraphs I relied on the audited accounts for FY2012 and FY2013, management accounts for FY2014 and FY2015, and management forecast accounts for FY2016 that I believed to be correct.

9 [REDACTED]

10

[Redacted]

11

[Redacted]

12

I understand that Mr White's second statement contains Sea Swift's accounts for FY2014 to FY2015.

[Redacted]

13

[Redacted]

(a) [Redacted]

(b) [Redacted]

(c) [Redacted]

(i) [Redacted]

(ii) [Redacted]

14

[Redacted]

15

At paragraphs 53 to 57 of my First Statement, I set out my views on why Sea Swift had struggled financially since its acquisition by CHAMP. My views on why Sea Swift's financial performance was poor have not altered since that time.

16

However, my views on the magnitude of Sea Swift's financial underperformance have altered significantly, especially in relation to FY2014. I now consider that the performance of Sea Swift's NT freight division in FY2014 was much worse than previously stated and that Sea Swift's charter business was much less profitable in both FY2014 and FY2015 than I had believed it to be.

*PR*

17 For convenience, I now set out the EBIT and EBITDA figures relating to Sea Swift's financial performance, which update the figures that were contained in my First Statement. I make the following comments on these figures:

- (a) the EBIT and EBITDA figures for FY2014 and FY2015 which are set out below are based upon the accounts I have referred to at paragraph 12, above;
- (b) I have been informed of these figures by Sea Swift's CFO and understand that they include the following adjustments:
  - (i) normalisation adjustments made by management to the statutory accounts in relation to certain non-recurring costs; and
  - (ii) adjustments to past year statements so as to account for a new overhead allocation methodology.

18 The following table contains Sea Swift's EBIT and EBITDA figures for each division of Sea Swift's business for FY2012.

**Table 1: FY2012 (000's AUD)**

Measure	FNQ Freight	NT Freight	Charter	Consolidated
EBIT				
EBITDA				

19 The following table contains Sea Swift's EBIT and EBITDA figures for each division of Sea Swift's business for FY2013.

**Table 2: FY2013 (000's AUD)**

Measure	FNQ Freight	NT Freight	Charter	Consolidated
EBIT				
EBITDA				

20 The following table contains Sea Swift's EBIT and EBITDA figures for each division of Sea Swift's business for FY2014.

**Table 3: FY2014 (000's AUD)**

Measure	FNQ Freight	NT Freight	Charter	Consolidated
EBIT				
EBITDA				

21 The following table contains Sea Swift's EBIT and EBITDA figures for each division of Sea Swift's business for FY2015.

**Table 4: FY2015 (000's AUD)**

Measure	FNQ Freight	NT Freight	Charter	Consolidated
EBIT				
EBITDA				

- 22 At paragraph 68 of my First Statement, I set out the management forecast results for FY2016, as at the date of my First Statement. The forecast results have since been updated, and are provided on a "business as usual" basis. That is, they are provided on the basis that the Proposed Transaction is not granted authorisation by the Tribunal. The forecast reflects the actual management accounts for the 7 months from July 2015 to January 2016, plus management's forecast for the 5 months from February 2016 to June 2016. The revised forecasts are as follows:

**Table 5: FY2016 (000's AUD)**

Measure	FNQ Freight	NT Freight	Charter	Consolidated
EBIT				
EBITDA				

#### REVISED PROPOSED TRANSACTION

- 23 [REDACTED], as well as the delay caused as a result of the withdrawal of the Original Application by Sea Swift, has resulted in Sea Swift and Toll Holdings Limited (**Toll**) (together referred to as the **Parties**) revisiting the terms of Sea Swift's proposed acquisition of TML assets.

#### Terms of the Proposed Transaction

- 24 On 4 February 2016, following a period of negotiations between the Parties and an assessment of the updated trading figures of each party, the Sea Swift Board determined to enter into the Proposed Transaction (although the final details of the contract documents had not then been finalised). The assets being acquired under the Proposed Transaction remain the same as those set out at paragraphs 84 to 91 of my First Statement. One class of assets being acquired is customer contracts currently held by TML, which will be novated to Sea Swift (subject to the customers' consent). Whilst there has been no change to the contracts that will be acquired by Sea Swift, the remaining periods of those contracts has decreased by reason of the passage of time since the Original Application.
- 25 The consideration payable under the Proposed Transaction (the **Revised Consideration**) has changed from the consideration previously payable for the proposed acquisition, and is as follows:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

26 [REDACTED]

27 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

28 On 17 March 2016, the Parties executed a Deed of Amendment (**Deed of Amendment**), which appends an Amended and Restated Asset and Share Sale Agreement (**Amended and Restated ASSA**). The Amended and Restated ASSA contains an Amended and Restated Shareholders' Deed. Set out in Confidential Annexure "PSR-24" is a copy of the Deed of Amendment containing the Amended and Restated ASSA.

**Reasons for altering the consideration for the Proposed Transaction**

29 The changes to the terms of the Proposed Transaction primarily relate to the amount and structure of consideration Sea Swift is required to pay Toll for the assets which it is acquiring.

30 [REDACTED]

**Table 6: Value to Toll (\$m)**

	November 2014 Transaction	June 2015 Revised Transaction	March 2016 Revised Transaction
<b>Total value of cash payments and equity received by Toll</b>			

31 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

32 [REDACTED]  
 [REDACTED]

**COMMERCIAL RATIONALE FOR THE PROPOSED TRANSACTION**

33 Had I been aware of the losses in NT freight division in FY2014 [REDACTED] my view is that this is likely to have strengthened the business case for the Proposed Transaction. This is because Sea Swift's financial position would have been significantly worse, and the uncertainty around the sustainability of Sea Swift's business is likely to have been greater.

34 Prior to executing the Deed of Amendment on 17 March 2016, Sea Swift's Board considered whether to proceed with the Proposed Transaction against the alternative scenario of waiting to see Toll's response in the market. The Board considered that the best approach was to enter into the Proposed Transaction, and I supported this view.

35 I supported this view as I consider the Proposed Transaction is the most prudent course of action for Sea Swift, its shareholders and its stakeholders considering the following:

- (a) [REDACTED]  
 [REDACTED]  
 [REDACTED] The Proposed Transaction will provide Sea Swift with the opportunity to secure additional freight volume to ensure its sustainability, without the need for continued shareholder funding injections.



- (b) [REDACTED]
- (c) [REDACTED]
- (d) In the absence of the Proposed Transaction, there is still some risk that given Toll's size (and that of its parent company, Japan Post), it may continue to subsidise TML and incur losses for an extended period while it seeks to maximise value for the asset on sale.
- (e) The Proposed Transaction provides Sea Swift with the operating assets that are currently in use to service TML's customers. The operating metrics of these vessels are known and the costs of operating these vessels are understood by Sea Swift through its due diligence. Although equivalent vessels could be acquired by Sea Swift on the open market, acquiring TML's vessels through the Proposed Transaction is convenient and low-risk for the company.
- (f) The Proposed Transaction provides Sea Swift with a higher level of certainty over the continuity of TML's revenues, which underpin the costs of providing the additional services, with minimal disruption to TML's existing customers and Sea Swift's existing services.

36 In relation to the matter referred to in paragraph 35(d) above, TML sent a letter to customers dated 21 October 2015, which referred to its plans to exit the market. That letter is at Annexure "PSR-25". While the letter provides me with some confidence that if the Proposed Transaction is not authorised, TML will exit the market, I still do not have certainty that TML will exit the market. Even if I did, for the reasons set out at paragraph 35 above and at paragraphs 121, 122, 123 and 134 of my First Statement, I still consider that the Proposed Transaction provides significant value for Sea Swift.

**CORRECTION TO PARAGRAPH 78 OF MY FIRST STATEMENT**

37 At paragraph 78 of my First Statement, I incorrectly stated that a purchase price of \$75 million was agreed between Sea Swift and Toll for the purchase of the TML business at the time Sea Swift entered into the original transaction for the proposed acquisition on 24 November 2014. The \$75.0m referred to an earlier version of the deal where Toll was to receive 15.0% equity share. The correct purchase price under the final transaction was \$85 million, in circumstances where Toll was to receive a 20% equity share.

**OTHER MATTERS**

38 In paragraph 35(a) of my First Statement, I referred to various monthly written reports I receive, including reports from Sea Swift's CFO. In respect of this:

- (a) Ms Nancy Ferguson, who had been CFO of Sea Swift, entered into a new employment contract (for a position with the title "Financial Director") on 29 September 2015;
- (b) since approximately 16 October 2015 (for the September month end report), reports from Sea Swift's finance department have been provided by Mr Hancock rather than Ms Ferguson; and
- (c) Mr Hancock was appointed as CFO of Sea Swift on 9 November 2015.

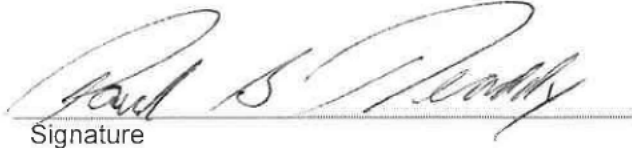
39 At paragraphs 58, 62, 63 and 65 of my First Statement, I referred to information contained in the statement of Ms Ferguson that was filed with the Original Application. Ms Ferguson is no longer employed by Sea Swift and Sea Swift does not rely on Ms Ferguson's statement.

40 [REDACTED]

41 [REDACTED]

## ANNEXURES

42 Set out in Schedule "A" of my statement is a table of annexures that I refer to in my statement, and the confidentiality claims made in respect of each.



Signature

Paul Stephen Readdy, Executive, CHAMP Ventures  
and Non-Executive Director, Sea Swift Pty Ltd

Date: 4 April 2016

SCHEDULE A

TABLE OF ANNEXURES REFERRED TO IN MY SUPPLEMENTARY STATEMENT

Annexure	Description	Confidentiality claim
PSR-23	[REDACTED]	Whole
PSR-24	Deed of Amendment dated 17 March 2016	Whole
PSR-25	Letter from Toll to its customers dated 21 October 2015	