

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 –Statement of Arthur Wong

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 'A' followed by a 'U'.

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.

IN THE AUSTRALIAN COMPETITION TRIBUNAL

Statement



No. ACT of 2015

Sea Swift Pty Limited

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

Statement of: **Arthur Wong**
Address: 5 Mugai St, Seisia, Queensland
Occupation: General Manager, CEO and Director of Seisia Enterprises Pty Ltd
Date: 16 September 2015

I, Arthur Wong, General Manager, CEO and Director of Seisia Enterprises Pty Ltd, of 5 Mugai St, Seisia in the State of Queensland, say that:

1. I am the General Manager of Seisia Enterprises Pty Ltd (**Seisia Enterprises**).
2. Seisia Enterprises is wholly owned by the Seisia Community and is registered under ORIC (The Office of the Registrar of Indigenous Corporations). The income generated by Seisia Enterprises funds programs and developments that aim to reduce welfare dependence, create employment opportunities and accelerate community development in Seisia.
3. Seisia Enterprises operates a supermarket, a kiosk, meatworks (including an abattoir for locally grown cattle), a service station, a campground and rental properties, called Tradesman Way.
4. I have lived in the Thursday Island / Cape York area since 1978.
5. I recall that Sea Swift started delivering sea freight to Seisia in around 1984. At that time, I worked for the Queensland Government, on Thursday Island. At that time, I did not have any professional involvement with sea freight.
6. In 1989, I moved to Bamaga, and I was still working for the Queensland Government.

Filed on behalf of Sea Swift Pty Limited (the Applicant)
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7. From 1994, I was the administration officer with Seisia Council. From 1994-1999, I had various Local Government administration duties (including administering grants) and was responsible for management of the enterprises. At that time, those services were operated by the Council.
8. In 1999, Seisia Council appointed an Enterprise Manager who was responsible for purchasing sea freight and I continued to be responsible for various Local Government administration duties.
9. In 2008, the Seisia Council was amalgamated with the Northern Peninsula Area Regional Council. At this time, I became the enterprise manager for all enterprise operations for the Northern Peninsular Area Regional Council.
10. In 2010, Seisia Enterprises was separated out of the Council. Since this time, I have been employed by Seisia Enterprises as General Manager, CEO and Director, and have been responsible for Seisia Enterprises' sea freight requirements.

Seisia community

11. Seisia is on the coast of far north Queensland about 40km from the tip of the Cape York Peninsula. Bamaga is nearby – approximately 5km inland.
12. This area, known as the Northern Peninsula Area, is home to three Aboriginal and two Torres Strait Islander communities and has a total population of approximately 2500-3000 residents. The Seisia community has a population of 200-240 residents including non-indigenous residents.

Freight options for Seisia

13. The Seisia community is heavily reliant on sea freight for access to products which we cannot source from the local community.
14. Some goods can be trucked in from Cairns and the Atherton Tablelands Region. However, this is not possible during the wet season, and it is often not efficient during the dry season. This is because the condition of the roads is not very good and the route requires crossing the Jardine River by ferry. The ferry only takes a maximum of 40 tonnes, which makes it hard to transport products like fuel, goods for the supermarket or other goods that Seisia Enterprises requires.
15. The only good that is regularly brought to Seisia by truck is cattle feed (i.e. hay) from the Atherton Tablelands.
16. The trucking service is not a regular scheduled road freight service and is based on a single hire basis. If this is required, the truck must be hired for the journey to Seisia and back. A load of hay costs around \$3,500 to transport.

17. In around 1994, the Seisia Council brought in fuel by road. This service was provided to by a company called Meisenhalter. For a time, Meisenhalter provided a regular service during the dry season, and Seisia Council used that service. However Meisenhalter later withdrew that service, which I understand was due to the condition of the road. Since then, Seisia has obtained its fuel through Sea Swift, since there has been no regular road service.
18. When Meisenhalter was operating, I compared the cost of shipping fuel by road as compared against using Sea Swift. I recall that the Sea Swift prices were comparable.
19. If there were improvements to the roads and better infrastructure across the Jardine River, I may then consider whether road freight would be cheaper than sea freight.

Sea Freight in Seisia

20. When Sea Swift started services to Seisia around 1984, it operated one boat per week.
21. In the late 1990s, another operator, Perrotts (also called Endeavour Shipping) also operated and delivered freight to Seisia. When that company entered the market they offered me a very attractive price for sea freight. I do not recall now what the price was.
22. Having received that offer, I approached Sea Swift and asked if they would match the price. Sea Swift said that they could not. This made me think that if the price was so low, Endeavour Shipping was either going to take over Sea Swift or they were going to withdraw their services. For that reason, I decided to stay with Sea Swift and see what eventuated.
23. In approximately 1998, Endeavour Shipping was acquired by Sea Swift. From around that time, Sea Swift has operated two services per week. At these times I was not professionally involved with organising sea freight services, but I was aware of these matters because the frequency and times of delivery of goods was at that time something which was commonly discussed and known in the community.
24. Having two services per week has helped the Seisia community get access to fresh products. Prior to that, it was not possible to have fresh products delivered because deliveries were not regular enough – all fruit and vegetables delivered were frozen.
25. After that time, I recall the following companies entering the market:
 - (a) Jardines sought to run a scheduled service to Seisia in around the late 1990s. The owners of Jardines sold the business to Brambles and shortly after that, the sea freight business was withdrawn.
 - (b) Silent World Shipping was another company which came and went very quickly. I do not recall when Silent World were operating because they were only operating for a

very short period. I recall that Silent World offered me attractive freight rates, but I decided not to use them unless there was an emergency which required some urgent piece of cargo where the Silent World timetable would get the cargo to Seisia earlier than Sea Swift. I think that because Silent World did not have Seisia Enterprises' account, and also did not have the Ergon Energy account, the cost of delivering goods to Seisia and Bamaga and this area generally was not viable, and so they exited quickly.

26. More recently, Toll has operated one service per week.

Seisia Enterprises sea freight requirements

27. Seisia Enterprises ships in products which are necessary for its various business activities. The goods which are regularly required are:
- (a) goods for the supermarket (groceries and food products). This includes dry groceries, freezer products, chiller products (such as milk, butter, deli goods and other meat), fruit and vegetables;
 - (b) fuel for the service station; and
 - (c) meat products for the Seisia Meat processing plant (including whole carcasses).
28. Seisia Enterprises buys fuel direct from Sea Swift, which carries the fuel in tanktainers plus diesel on board. Seisia Enterprises previously sourced fuel from BP and Reliance Petroleum, but those companies did not provide good service, for example there were breakdowns in their supplied bowsers continuously due to the age of equipment, so Seisia Enterprises started purchasing fuel from Sea Swift after purchasing new bowsers.

Current arrangements

29. Sea Swift delivers freight on a Friday and then either Monday or Tuesday (depending on tides), by lunchtime. The Monday/Tuesday ship is a barge and the Friday ship is a larger ship with a crane on it.
30. Prior to the amalgamation of Seisia Council with the Northern Peninsular Area Regional Council, Sea Swift was more like a family business and so had a personal relationship with Seisia Enterprises, and would contract for their sea freight requirements. Following the amalgamation, there was a period of uncertainty in operations and Seisia Enterprises did not have any contract with Sea Swift, rather we used them on an uncontracted basis. However, in 2012, after Seisia Enterprises became independent from the Council, Seisia Enterprises entered into a 3 year contract. Seisia Enterprises currently has a 3 year contract with Sea Swift which was entered into in 2015. This contract is due to expire in 2018.



31. In the 2014 financial year, Seisia Enterprises had approximately 1,500 tonnes of freight delivered by sea freight, which cost approximately \$870,000 to have delivered.
32. Seisia Enterprise's products are sourced mostly from Metcash in Brisbane. They are then transported by rail to Cairns and transported from the railway depot to Sea Swift's depot in Cairns. Seisia Enterprises pays Metcash for the transport to Sea Swift's depot. Seisia Enterprises pays Sea Swift directly for its freight services.
33. As noted above, prior to being amalgamated and since 2012 following the separation from the Northern Peninsula Area Regional Council, Seisia Enterprises has contracted with Sea Swift. At each time a contract is renewed or entered into, there is a meeting with Sea Swift where the prices are negotiated.
34. If a community member in Seisia wants to ship a product they would separately organise with Sea Swift to ship it in. They would either have their own account or pay Sea Swift cash themselves. I understand that this would be based on the general public rates which Sea Swift offers.
35. Toll provides one delivery per week. Seisia Enterprises has only used Toll once. That was because a supplier delivered cargo to the wrong address and it was easier to pay Toll to ship it rather than arrange for the goods to be moved to Sea Swift. I can't now recall what products were involved or the supplier.

Considerations for purchasing sea freight

36. The most important requirements for Seisia Enterprises when considering its sea freight requirements are frequency of the service, reliability and cost.
37. A large part of Seisia Enterprises' freight needs are groceries and food which are purchased from Metcash in Brisbane. Metcash provides those goods to Sea Swift's Cairns depot and they are then shipped to Seisia. A large number of these goods (in particular, meat and fresh fruit and vegetables) are required to be shipped in refrigerated containers.
38. As I noted above, Sea Swift delivers to Seisia each Monday/Tuesday and Friday. Regular and reliable twice weekly delivery is very important because many of the food products for the supermarket and kiosk have a use by date so cannot stay sitting at a depot for too long. For example, the supermarket takes delivery of fresh milk which has a relatively short "use by" date. If the milk is due to be delivered on Friday, but can't come until the next shipment (on Monday), there may be no point in it being delivered – the use by date may have already expired. The same principle applies in respect of fresh fruit and vegetables. This is why the reliability of the service is so important.



39. Seisia Enterprises' goods are unloaded at the Seisia port and then delivered to Seisia Enterprises' premises.
40. Seisia Enterprises has always used Sea Swift. Mainly, this is because they are reliable.
41. Other companies which have entered the market in the past have sought to obtain Seisia Enterprises' business (as I have referred to above). However, I have chosen to continue to use Sea Swift. Mainly, this is because Sea Swift has provided a reliable service over the years.
42. I would not choose to use a smaller service because I would not want to use a company that has the potential to fail in providing its deliveries to Seisia. As I have noted above, the service must be reliable.
43. This is also one of the reasons why I have not used Toll for sea freight – the chance that they will exit the market. The other more important reason is that Sea Swift provides two deliveries to Seisia per week and Toll only provides one.

Service delivery by Sea Swift

44. Years ago, Seisia Enterprises asked Sea Swift for modified containers to hang up pork and beef carcasses. Sea Swift was able to provide these containers.
45. In 1999, Seisia Council started a program with the Department of Agriculture involving 14 head of cattle being delivered to Seisia from Cairns. For that purpose, Sea Swift prepared special crates for live cattle delivery, and this occurred between 1999 and 2000-2001, when live cattle started to be brought in from Wolverton Station (by road).
46. In approximately 2012, an early cyclone cut off road access from Weipa, which prevented the delivery of live cattle. Sea Swift was able to promptly arrange the appropriate storage and again deliver the live cattle by sea that year.
47. From time to time, Sea Swift has gone out of its way to assist the community. The transport of cattle from Weipa after the cyclone is one example. Another was a Variety Club (charity) event being held in Seisia in about 2012. Sea Swift shipped all the necessary items (chairs, tables, portaloos and other things) for the event without charge. Sea Swift has provided similar assistance for the Bamaga Show.

The entry of Toll

48. When Toll started its operations in Seisia, I did not get quotes from Toll or try to negotiate a better price with Sea Swift. Seisia Enterprises already had a contract with Sea Swift. In any case, I considered it in Seisia Enterprises' interest to be loyal to Sea Swift.



49. I am aware from discussions with other people in the community that a number of customers used Toll when they started operations. For example, I have been told by Rod, the manager of Punsand Bay Resort that his company saved approximately \$80,000 by using the services of Toll. This did not cause me to change providers, for the reasons set out above. I understand Pusand Bay Resort is still using Toll.
50. More recently, I heard other people in the community saying that Toll would not open any new accounts, but they would honour the contracts they already had. At around this time, some people told me that they were taking their business back to Sea Swift.

Sea Swift Proposed Acquisition of Toll / The potential exit of Toll

51. I am not concerned if Sea Swift acquires Toll. If Toll were to leave the market, this would not have any real impact on Seisia Enterprises. It would continue to operate under the current contract with Sea Swift.
52. As set out above, I have been offered prices from other companies (including Toll) in the past. I did not use those rates in negotiations with Sea Swift. So far as I am concerned reliability and frequency are what matters and this is what Sea Swift provides.
53. I have heard from others in the community that in the past when companies have come in and then exited, Sea Swift prices have increased after the new company's exit. I have not experienced this. Seisia Enterprises has always operated under a contract with Sea Swift, and I have not noticed any significant increases or decreases in the contract rates depending on whether other companies were operating or not.
54. If the market changed so that there were two companies and each provided one delivery per week, I would probably use both companies. Seisia Enterprises' main requirement is to have two reliable deliveries per week.
55. My opinion, based on what I have observed in the sea freight market in the past is that having three deliveries per week from two providers is unsustainable.

Proposed commitments as to scheduled services and prices

56. I don't think that undertakings by Sea Swift in respect of public rates would affect Seisia Enterprises significantly. This is because the price of sea freight is dealt with under the contractual arrangements with Sea Swift. Those prices are better than the public schedule of rates. I don't think that Sea Swift would increase their public schedule of rates because they are a community-minded operator, but I think that a promise from them not to put up their rates, subject to any cost changes, would be a good thing for the community.



57. An undertaking by Sea Swift to continue operating to Seisia twice per week is potentially of value to Seisia Enterprises – that is our prime requirement, and it is what Sea Swift has been doing since the late 1980s.



Signature of witness

Arthur Wong, General Manager, CEO and Director of Seisia Enterprises Pty Ltd

