

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL on 21/09/2015 4:15 pm AEST and has been accepted for lodgment under the Interim Practice Direction dated 8 May 2015. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Annexure B to Form S – Industry Overview
 NON-CONFIDENTIAL

File Number: ACT 9 of 2015

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: 21/09/2015 4:15 pm AEST

Deputy Registrar

Important Information

As required by the Interim Practice Direction dated 8 May 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.



ANNEXURE B INDUSTRY OVERVIEW

MARINE FREIGHT SERVICES IN FAR NORTH QUEENSLAND AND THE NORTHERN TERRITORY

1. This document contains a summary of the marine freight services industry in Far North Queensland (**FNQ**) and the Northern Territory (**NT**). That summary is set out by reference to the following headings:
 - (a) Types of marine freight services;
 - (b) The communities requiring marine freight services;
 - (c) Customers for marine freight services;
 - (d) Customer requirements in the marine freight services market;
 - (e) Suppliers of Scheduled Services – FNQ;
 - (f) Suppliers of Scheduled Services – NT;
 - (g) Other shipping operators – competitors;
 - (h) Requirements for the supply of marine freight services;
 - (i) The competition for customers in marine freight services;
 - (j) Operating a Regular Scheduled Service; and
 - (k) History of Scheduled Services in FNQ and the NT.

Types of marine freight services

2. A marine freight service is the carrying of cargo by ship. A large variety of cargo is shipped in FNQ and the NT, as described in further detail by reference to particular types of customers, below.
3. There are generally two ways in which a supplier provides marine freight services in FNQ and the NT.
4. The first method is by carriage of cargo on a **Scheduled Service**.
5. A Scheduled Service is where the supplier regularly carries cargo between two or more locations and does so according to a regular schedule. The supplier carries cargo for anyone who wishes to ship cargo between those locations.

6. An example of this is that Sea Swift currently operates a Scheduled Service from Cairns to Horn Island, Thursday Island, Seisia and Weipa, departing from Cairns on Tuesday and arriving at the other locations according to a schedule that is published by Sea Swift in advance.¹ Any customer who wishes to ship goods from Cairns to those locations can deliver goods to Sea Swift in Cairns prior to a particular cut off time on Monday for the shipment that departs on Tuesday. Regardless of whether it receives sufficient cargo to cover its costs for that journey, Sea Swift makes that voyage.
7. The second method of a supplier providing marine freight services is by the carriage of cargo through a **Charter or Project services**.
8. An example of this is a specific building project which requires a large volume of supplies to be shipped, including over-dimension items such as large machinery,² and requires those supplies to be shipped at the specific time that the customer wishes. This can involve use of a dedicated (spare or hired / chartered) vessel.³

The communities requiring marine freight services

9. The primary reason that communities in FNQ and the NT require marine freight services is that they are not accessible by road.⁴ This affects:
 - (a) island communities, where there is a significant body of water between the island and the mainland;
 - (b) remote mainland communities which do not have any significant road connecting that community with larger centres; and
 - (c) communities which have road access, but that road access is cut off during the wet season.⁵
10. If a community is accessible by road, marine freight services are unlikely to be required. This is because marine freight is usually slower and more expensive than road freight (which is carried on trucks, rather than ships).
11. Where a community is accessible by road, sea freight may still be required in the following circumstances:
 - (a) where the goods to be freighted are fragile and the road is not high quality, so that the freight “rattles”;

¹ Bruno [22].

² White [19(c)], Bruno [17]-[19].

³ Woodward [4.11], [5.19]-[5.21].

⁴ Woodward [5.5]-[5.6].

⁵ White [24]-[25].

- (b) where the road (including any bridges) can only support a particular maximum tonnage, and the cargo required is heavier than that tonnage; or
 - (c) where the size or unusual shape of the goods to be freighted require shipment on a ship rather than by road.
- 12. Some of these communities may also have air landing strip facilities, making them accessible by aircraft. However, this is not always the case.
- 13. In FNQ and the NT, there are a large number of communities which require marine freight services for one of the reasons set out above.⁶
- 14. Those communities usually fall into one of the following categories:
 - (a) a community which is predominantly (or totally) comprised of Aboriginal and Torres Strait Island peoples;
 - (b) a community based around a mining project, or a number of mining projects.⁷
- 15. In many of these communities, the wharf facilities are basic or non-existent. In many instances, deliveries of marine freight are made by suppliers onto a beach ramp or the side of a river.⁸
- 16. The following maps show many of the communities where TML and / or Sea Swift currently operate a Scheduled Service:

⁶ White [24]-[25].

⁷ White [24], Schedule "A" to the Statement of Pasquale Bruno.

⁸ Annexure "PB-44".

Map 1 – FNQ Communities



Map 2 – NT Communities



Customers for marine freight services

17. The following are the main types of customer for marine freight services which are located in the remote communities referred to above:

- (a) Mining projects: Various mining projects are located at remote locations in FNQ and the NT.⁹ Examples are Gove (where Rio Tinto has mined bauxite and alumina), Groote Eylandt (where GEMCO operates a manganese mine) and Weipa (where Rio Tinto operates a bauxite mine). These companies require the shipping of equipment and materials for mining operations as well as other supplies necessary to support their workforces.
- (b) Utilities: Many communities in both FNQ and the NT obtain their power from remote power stations which run on diesel fuel.¹⁰ Fuel is regularly shipped into the community for the purpose of keeping those power stations in operation. These power stations are run by Northern Territory Power and Water Corporation (in the NT) and Ergon Energy (in FNQ). Apart from the delivery of fuel, the utilities may also require the shipment of chemicals, electrical components and building products for the purpose of maintaining or building the power stations.
- (c) Councils and community enterprises: Councils and various community enterprises¹¹ in FNQ and the NT also rely on marine freight services for the supplies necessary for their operations. This includes items such as building supplies, vehicles, food and fuel.
- (d) Supermarkets: Various supermarkets and retail stores have operations in these communities.¹² Woolworths has stores in Weipa and Gove. The Arnhem Land Progress Association (**ALPA**) runs a number of supermarkets throughout the NT. The Islander Board of Industry and Service (**IBIS**) runs a number of supermarkets throughout FNQ. All of these stores require their stock (including dry goods, refrigerated goods and fresh fruit and vegetables) to be shipped.
- (e) Other Commercial Enterprises:¹³ There are other enterprises within the communities which also require goods to be shipped in for the purpose of their business. These include hotels, resorts and pubs.

⁹ Woodward [7.4(a)], White [34(a)], Bruno [161]-[163].

¹⁰ Woodward [7.4(d)], White [34(b)], Bruno [161]-[163].

¹¹ Woodward [7.4(c)], White [34(d)]-[34(e)].

¹² Woodward [7.4(b)], White [34(c)], Bruno [161]-[163].

¹³ Woodward [7.22] and Annexure SW-21.

- (f) Individuals: Individuals living in the communities may also require the shipment of goods. This might include items such as clothes, books, gifts, furniture or vehicles, as well as some food and groceries.
18. In respect of Charter or Project services, customers usually obtain marine freight services pursuant to a written contract which is specific to the particular project to which the Charter or Project relates.¹⁴
19. In respect of Scheduled Services, customers can be categorised as follows, by reference to their contractual arrangements with suppliers:
- (a) Ad-hoc/Uncontracted customers:¹⁵ The supplier ships freight for these customers in accordance with standard terms and on the basis of prices set out in a list of Scheduled Rates that apply to all such customers.¹⁶
- (b) Contracted Customers:¹⁷ The supplier ships freight for these customers on the basis of a contract between the supplier and the customer. Usually, the terms of that contract, including price, are specific to that customer and are negotiated between supplier and customer for a particular term (usually 3 or 5 years).¹⁸
- (c) Custom Rate Customers: The supplier ships freight for these customers at rates lower than the Scheduled Rates, either on the basis of a discount by reference to the Scheduled Rates (e.g. a 20% discount to the Scheduled Rates) or on the basis of some other agreed price (e.g. a set price per tonne of cargo). The terms of this arrangement are often not the subject of written agreement.¹⁹
20. Customers may also fall into more than one category. For example, a utility company may have a 3 or 5 year contract for the delivery of the diesel fuel to its power stations. However, for its other sea freight requirements it does not have a contract of that variety, but negotiates the price of that sea freight as and when it arises.
21. The largest marine freight customers have a regular need for the goods that are being delivered.²⁰ For example, supermarkets require regular delivery of food to replenish their supplies, and power stations require regular deliveries of diesel fuel to keep the power stations operating.
22. Customers with a regular need for marine freight are usually (although not always) Contracted Customers – they enter into a contract with the supplier for a particular term.

¹⁴ Woodward [5.19]-[5.21].

¹⁵ Woodward [7.19]-[7.20] and Annexure SW-21.

¹⁶ White [50]-[51], Bruno [181].

¹⁷ Woodward [7.13]-[7.14] Annexures SW-20 and SW-21.

¹⁸ White [190], Bruno [169]-[170].

¹⁹ Bruno [176].

²⁰ White [38].

23. Some customers are referred to as multi-destination customers.²¹ These customers require cargo to be delivered to more than one destination and, usually, have a contract that covers delivery to the various destinations. The utilities referred to above (Ergon Energy and Northern Territory Power and Water Corporation) are multi-destination customers because they require the delivery of diesel fuel to multiple locations.
24. Some customers are referred to as single-destination customers, as they only require delivery to a single destination.²² Woolworths in both Weipa and Gove, as well as Rio Tinto in both Weipa and Gove are effectively single-destination customers as they negotiate separate contracts – often with separate suppliers – for each destination.
25. The demand for marine freight services by mining customers can vary significantly. For example, Rio Tinto has currently suspended alumina production at its Gove mine,²³ so that the amount of cargo it requires has dropped dramatically.²⁴
26. For most other larger customers, the volume of sea freight demanded is relatively constant. This is because the cargo being delivered (diesel for power stations, supermarket stock for remote communities) consists of goods that are basic essentials.²⁵ Neither the demand for such goods or the population of the areas serviced is growing significantly.²⁶
27. In the last two years, two particular influences have led to an overall decrease in the volume of marine freight services required by customers in remote communities in the NT and FNQ:
- (a) there has been a decrease in mining work being carried out in FNQ and the NT.²⁷ This, in turn, has led to decreased demand for both Scheduled Services and Charter work to mining communities,²⁸ and
 - (b) there have been changes to the federal and state government funding of remote communities. This has meant less funding for those communities and a decrease in projects (particularly development and infrastructure projects) carried out in those communities.²⁹

²¹ White [35], Woodward [7.7] and [7.9].

²² White [35], Woodward [7.8] and [7.10].

²³ White [76].

²⁴ Woodward [11.5] and Annexure SW-35.

²⁵ Woodward [5.7].

²⁶ White [76].

²⁷ White [203].

²⁸ Woodward [11.5], Bruno [192].

²⁹ White [203], [195]-[196].

Customer requirements in the marine freight services market

28. For customers who use Scheduled Services, the frequency and reliability of deliveries are a significant factor in choosing which sea freight provider the customer will use.³⁰
29. This is important for both large and small customers. For example, it is beneficial for a supermarket to have two deliveries of stock per week rather than one because this will allow it to stock fresher food, which is more attractive to the supermarket's customers. For that reason, the supermarket may be willing to pay a higher price per unit of cargo in order to receive two deliveries from its supplier per week.
30. Reliability is also important to customers in remote communities, as many of the communities' needs (including business needs) are heavily dependent on the deliveries for their essential living requirements such as food and fuel.³¹
31. Certain customers may have other specific requirements. Some common examples are:³²
 - (a) Refrigerated or frozen transport: supermarket customers often require the transport of foods which require refrigeration.³³ Some examples of this are fresh dairy and meat products. This requires the operator to provide refrigerated containers.
 - (b) Dangerous cargo: customers may require the transport of hazardous or potentially hazardous material. One example is diesel fuel for service stations or for community use. Another example is chemicals required for the upkeep of power stations. In these instances, the shipping operator is required to have the appropriate certification for the carriage of hazardous material.³⁴
 - (c) Modified cargo arrangements: in some instances, specific equipment for the carriage of specific freight is required. For example, the transport of whole pig and beef carcasses (for use in an abattoir) required modified containers so that those carcasses could be hung.

Suppliers of Scheduled Services – FNQ

32. Sea Swift: Sea Swift has provided a Scheduled Service to remote communities in FNQ for more than 30 years. Sea Swift's main depot is in Cairns, and from there it ships to the remote communities.³⁵

³⁰ Woodward [7.11].

³¹ White [30], Woodward [5.7].

³² Woodward [5.8]-[5.9].

³³ White [40].

³⁴ White [40]-[41].

³⁵ Bruno [82].

33. Sea Swift also competes to provide Charter or Project services in FNQ. Sometimes, Sea Swift competes on the basis that the freight for which the charter is required could be carried on its Scheduled Service. At other times, Sea Swift competes on the basis that it would provide a separate vessel (or vessels) for the purpose of the Charter or Project services.
34. TML and its predecessors:³⁶ Prior to 2003, Gulf Freight Services provided a Scheduled Service from Cairns to Weipa in FNQ. Perkins Shipping acquired Gulf Freight Services in 2003 and continued operating that service.³⁷ Toll acquired Perkins Shipping in 2009 and (through TML) also continued operating a Cairns to Weipa service.
35. In 2014, TML started to provide a Scheduled Service from Cairns to the various remote communities in FNQ and continues to do so. TML also competes to provide Charter or Project services in FNQ.
36. Carpentaria Contracting:³⁸ Carpentaria Contracting recently started providing a Scheduled Service to Weipa and Aurukun, during the wet season.³⁹
37. Other operators: No other operator in FNQ currently operates a Scheduled Service to the remote communities in FNQ. Further detail of other operators who have previously provided (or sought to provide) Scheduled Services in the FNQ market from time to time is set out below.

Suppliers of Scheduled Services – NT

38. TML and its predecessors: Perkins Shipping provided Scheduled Services to remote communities in the NT for over 40 years. In approximately 2002, Gulf Freight Services operated a Scheduled Service in competition with Perkins Shipping and was acquired by Perkins Shipping in 2003. In 2009, Perkins Shipping was acquired by Toll. Since that time, Toll (through TML) has operated a Scheduled Service in the NT.⁴⁰ TML's main depot is in Darwin and from there it ships to the remote communities.⁴¹
39. TML also competes to provide Charter Cargo services in the NT.
40. Sea Swift: Sea Swift has provided a Scheduled Service to remote communities in the NT since 2014, when it acquired a previous operator, Tiwi Barge.⁴² Between 2013 and October 2014, Sea Swift serviced each of the NT communities referred to in the map at paragraph 16. Since approximately October 2014 it has ceased some of those services.

³⁶ Woodward [4.1] and [4.5].

³⁷ Perkins [36], White [86].

³⁸ Woodward [8.6(b)].

³⁹ White [144], Bruno [143(a)].

⁴⁰ Woodward [4.1]-[4.2].

⁴¹ Woodward [5.13].

⁴² White [102], Bruno [29].

41. Sea Swift also competes to provide charter or project services in the NT.
42. Ezion (Teras):⁴³ Ezion (Teras) provides a Scheduled Service between Darwin and Port Melville (in the Tiwi Islands) and to Port Keats. Teras has established a port in the Tiwi Islands and its barge service was set up in 2013 to support that development.⁴⁴ It now also ships freight for others.
43. Other operators: No other operator in the NT currently operates a Scheduled Service to the remote communities in the NT. Further detail of other operators who have provided (or sought to provide) Scheduled Services in the NT market from time to time is set out below.

Other shipping operators – competitors

44. A number of other operators regularly compete with Sea Swift and Toll for Charter or Project work in the NT and FNQ.⁴⁵ These include the following:
 - (a) Ezion (Teras);
 - (b) Carpentaria Contracting;⁴⁶
 - (c) Barge Express (previously called Sealink);⁴⁷
 - (d) Bhagwan Marine;⁴⁸
 - (e) Shorebarge;
 - (f) Pacific Marine Group; and
 - (g) Silentworld (exited in 2012 but still operating in the Solomon Islands).
45. These operators are currently focused on charter operations and limited scheduled services. However, they have the potential to expand their services to provide a scheduled service (and in some instances, have already done so). This can be seen from the following:⁴⁹
 - (a) Ezion (Teras) provides a Scheduled Service between Darwin and the Tiwi Islands, and between Darwin and Port Keats;⁵⁰
 - (b) Carpentaria Contracting provides a Scheduled Service between Cairns and Weipa/Aurukun, during the wet season;⁵¹

⁴³ Woodward [8.6(e)].

⁴⁴ White [171], Bruno [143(d)].

⁴⁵ Woodward [8.6].

⁴⁶ White [144].

⁴⁷ White [164].

⁴⁸ White [174]-[175].

⁴⁹ Woodward [8.6].

⁵⁰ White [171], Woodward [8.6(e)], Bruno [143(d)].

- (c) Barge Express provides a scheduled service from Darwin to various remote locations in the NT on behalf of Toll, under a time charter arrangement;⁵² and
- (d) Shorebarge expanded into providing general freight services in the NT, including previously providing a scheduled service from Darwin to various remote locations in the NT.⁵³

Requirements for the supply of marine freight services

46. A supplier of marine freight services requires the following equipment and infrastructure:
- (a) vessels;
 - (b) shore side equipment and assets (i.e. located onshore);
 - (c) staff; and
 - (d) access to the relevant wharves/landing sites.⁵⁴
47. Each of these topics is dealt with below.

(a) Vessels

48. There are three primary types of vessels which can be used for the provision of marine freight services in FNQ and the NT.
49. The first type of vessel is a line-haul / general cargo vessel. This is a vessel which is used to ship high volumes of freight across long distances. It has the ability to transit open ocean gulfs and bays at a good speed. Loading and unloading from a line haul vessel is by way of a crane that is attached to the vessel or on the wharf.⁵⁵
50. The second and third types of vessels are both types of barge – a landing craft (or motorised barge) and a dumb barge.
51. A landing craft is smaller than a line haul vessel. It has a “shallow draft”, which means that the bottom of the boat is less deep in the water than a line haul vessel. This means that it is more mobile and is able to operate in shallower waters than a line haul vessel, and can be used to deliver cargo to more remote locations. Cargo is taken on and off a landing craft by way of a ramp being lowered from the bow of the boat onto the landing area. Because of this, the landing craft is versatile – it can unload cargo on beaches, boat ramps and wharves.⁵⁶

⁵¹ White [144], Woodward [8.6(b)], Bruno [143(a)].

⁵² Woodward [8.6(d)], Bruno [143(c)].

⁵³ Woodward [8.6(f)], Bruno [143(b)].

⁵⁴ Bruno [54]-[59], [80]-[87], [86]-[96].

⁵⁵ Bruno [37].

⁵⁶ Bruno [37].

52. A dumb barge is similar to a landing craft, but it does not have its own motor. For that reason, it is pulled by a tow boat. A dumb barge and a tow boat together is often referred to as a “tug and barge set”.⁵⁷
53. TML and Swift each use a combination of line haul / general cargo vessels and landing craft in providing Scheduled Services to remote communities in FNQ and NT:
- (a) For its Scheduled Services, Sea Swift currently uses two line haul vessels and two landing craft in FNQ and three landing craft in the NT,⁵⁸ and
 - (b) For its Scheduled Services, TML uses 3 landing craft in the NT and one landing craft and one general / multipurpose cargo vessel in FNQ.⁵⁹
54. For Charter Contract work, Sea Swift has additional landing craft and tug and barge sets available for this type of work.⁶⁰ Toll currently has one vessel, which was previously used for Scheduled Services, available for this type of work.
55. To operate either a line haul vessel, a landing craft or a tug and barge set, an operator is required to hold appropriate licenses, and to ensure that the vessels are subject to certain mandatory maintenance and inspections.⁶¹ To comply with those regulations, different types of inspection occur every year, every three years and every five years.⁶²
56. The regulations which apply to shipping in Australia are set down by the Australian Maritime Safety Authority (AMSA) and include matters such as minimum crew requirements for different types of vessel. For example, the regulations require a landing craft like those used by TML and Sea Swift to have a minimum crew of four persons.⁶³
57. The approximate value of the vessels used for marine freight services in FNQ and the NT are:
- (a) a line haul / general cargo vessel: up to approximately \$8,000,000;
 - (b) a landing craft: up to approximately \$4,000,000; and
 - (c) a tug and barge set: up to approximately \$3,000,000.⁶⁴
58. It is also possible for an operator to charter or lease any of these vessels, either from Australian operators or internationally. There are two ways that this can be done:

⁵⁷ Bruno [34].

⁵⁸ White [82], Bruno [53]-[54].

⁵⁹ Woodward [6.4], Bruno [53]-[54].

⁶⁰ Bruno [34]-[36].

⁶¹ Woodward [6.12], [10.1(d)].

⁶² Bruno [40].

⁶³ Bruno [40]-[44].

⁶⁴ See for example Bruno Annexure PB-20 and Bruno Annexure PB-34.

- (a) Bareboat charter: This is where the customer pays for the supplier to provide its ship, but the supplier does not provide any crew for the ship.
 - (b) Time charter: This is where the supplier provides its ship along with crew and other equipment (e.g. forklifts) for the customer's purposes.⁶⁵
59. These vessels are readily available (either in Australia or internationally) to purchase or to lease.⁶⁶ The time needed to arrange for the purchase or lease of any of these vessels is between a few weeks and a few months, depending on where the boat is located.⁶⁷
- (b) *Shore side equipment and assets***
60. The shore side equipment and assets that are required to provide marine freight services are as follows:
- (a) access to land for the purpose of receiving and storing cargo prior to it being shipped to remote communities; and
 - (b) mobile equipment such as forklifts and containers.⁶⁸
61. In FNQ:
- (a) Each of TML and Sea Swift has a large depot in Cairns;⁶⁹
 - (b) Sea Swift also has smaller depots in Thursday Island, Horn Island, Seisia and Weipa;⁷⁰ and
 - (c) TML has smaller depots on Thursday Island, Horn Island, Seisia and Weipa.⁷¹
62. In the NT:
- (a) Each of TML and Sea Swift has a large depot in Darwin;⁷²
 - (b) Sea Swift has a smaller depot in Gove;⁷³ and
 - (c) TML also has a smaller depot in Gove.⁷⁴
63. The land that is required for an operator's depots does not need to be located waterside. It is possible to transport cargo between depot and ship by truck.⁷⁵

⁶⁵ Woodward [5.21].

⁶⁶ Woodward [6.9]-[6.10] and Annexure SW-6, Bruno [57].

⁶⁷ Bruno [65], [66] and [68], Perkins [72]-[73].

⁶⁸ Bruno [97].

⁶⁹ Woodward [6.41], Bruno [82]-[83].

⁷⁰ Bruno [84]-[87].

⁷¹ Woodward [6.41].

⁷² Woodward [6.40], Bruno [88]-[89].

⁷³ Bruno [90].

⁷⁴ Woodward [6.40].

⁷⁵ Bruno [97(a)].

64. The other shore-side equipment that is necessary (such as forklifts and containers) are all readily obtainable.⁷⁶

(c) Staffing requirements

65. An operator of either Scheduled Services or Charter Contract services must comply with various regulatory requirements, such as:

- (a) Appropriate qualifications for those who operate the vessels; and
- (b) Minimum levels of staff on each vessel, depending on the type of vessel.⁷⁷

66. In the past 3–4 years, staff have been readily available to marine freight operators, particularly as demand for mining services has decreased.⁷⁸

(d) Ports and wharf arrangements

67. In FNQ, access to ports in the remote communities is arranged through Ports North. An operator who wishes to deliver to a Port must obtain the appropriate permit by filling out a form and paying the required fee. None of the ports are owned by a private entity.⁷⁹

68. There are no specific fees to access most of the ports and wharves in the NT, however there is a royalty fee payable to the Northern Land Council.⁸⁰

69. The exceptions to this are:

- (a) the Port of Darwin charges an access fee;⁸¹
- (b) for the wharf at Gove that is operated by TML, TML charges a fee to other users to access the heavy lift wharf or landing ramp;⁸² and
- (c) to use the Gove yacht club boat ramp, the yacht club has charged Sea Swift a flat fee per use.⁸³

The competition for customers in marine freight services

70. The fixed costs of operating a Scheduled Service are significant relative to the revenue that an operator receives.⁸⁴ The following costs are generally fixed, based on the routes for which an operator is providing a Scheduled Service:

- (a) the cost of leasing the vessel (or the depreciation cost of owning the vessel);

⁷⁶ Woodward [6.44], Bruno [98].

⁷⁷ Bruno [103]-[106].

⁷⁸ Bruno [112].

⁷⁹ Bruno [116]-[118].

⁸⁰ Bruno [119].

⁸¹ Bruno [119].

⁸² Woodward [6.31]-[6.33].

⁸³ White [135], Bruno [121].

⁸⁴ Woodward [7.1] and [10.1].

- (b) the cost of holding and maintaining onshore facilities, such as the depots in Darwin, Cairns and various remote communities;
- (c) the cost of holding and maintaining equipment such as forklifts which are necessary to deliver and load and unload cargo;
- (d) the staffing cost to run that voyage. Generally, the vessels are staffed by reference to the minimum number of staff allowed by regulation – it is not possible for an operator to choose to use fewer staff; and
- (e) the fuel cost. The fuel cost for running a vessel between two locations does not differ greatly depending on whether the vessel is full or not. For so long as the vessel travels the route, it will use the fuel.⁸⁵

71. In light of this, suppliers of Scheduled Services generally wish to maximise the utilisation of their vessels by carrying as much cargo on any particular trip as they can. This is because this will increase their revenue from that voyage, without significantly increasing their costs.⁸⁶

72. In both the NT and FNQ, certain routes are more profitable to service because they include larger communities and therefore generate greater volume of freight demand.⁸⁷ These routes are:

- (a) Cairns – Weipa;
- (b) Cairns – Horn Island/Thursday Island;
- (c) Darwin – Gove; and
- (d) Darwin – Groote.⁸⁸

73. Some large customers have single-destination contracts on these routes. An example is Woolworths in each of Gove and Weipa.⁸⁹

74. For those contracts, it may be viable for suppliers to seek to win the customer's business either:

- (a) on a Charter or Project basis, because the volume of cargo that the customer needs to ship may be sufficient for a smaller operator to dedicate a whole vessel to that service, despite that operator not operating any other Scheduled Service; or
- (b) by the use of a Scheduled Service.

⁸⁵ Ferguson [40].

⁸⁶ Woodward [7.6].

⁸⁷ White [182].

⁸⁸ White [183].

⁸⁹ White [188], Woodward [7.8] and [7.10].

75. Other large customers have multi-destination contracts⁹⁰ which may include the above routes as well as more remote communities.⁹¹ Those customers also have choice about how to structure their freight purchases. For example, if the customer requires deliveries to ports A, B and C, it might choose to have a smaller operator provide deliveries to port A, but choose a larger operator to provide the deliveries to ports B and C on the larger operator's Scheduled Service.
76. Ad-hoc and uncontracted customers generally rely on Scheduled Services for their needs.⁹² The amount of cargo they require to be shipped is not sufficient to justify a separate vessel to be chartered.
77. Contracts with large customers (in either FNQ or the NT) are highly sought after by suppliers.⁹³ This is because those contracts provide an operator with a predictable "base load"⁹⁴ of cargo for the Scheduled Service to transport between locations. For this reason, large customers have a significant degree of power in their negotiations with marine freight service providers.⁹⁵
78. Customers regularly require suppliers to tender for an upcoming contract.⁹⁶ In the past, the companies who have tendered for large customers' work have included companies who did not then provide or do not currently provide a Scheduled Service (i.e. companies other than TML and Sea Swift).

Operating a Regular Scheduled Service

79. A supplier (or potential supplier) of a Scheduled Service must consider a number of matters in determining if and how it wishes to run its Scheduled Service.
80. First, the destinations at which the service will call.⁹⁷ This includes taking into account the following:
- (a) the destinations which the supplier is contractually required to deliver to (for example, by a utility company);
 - (b) the volume of cargo which is expected from regular customers at the various destinations; and

⁹⁰ White [188].

⁹¹ Woodward [7.7] and [7.9].

⁹² Woodward [7.3(b)].

⁹³ White [188].

⁹⁴ White [78].

⁹⁵ White [196].

⁹⁶ White [188].

⁹⁷ Woodward [7.11].

- (c) any specific difficulty (and increased cost) arising from the conditions specific to the destination. This might include difficult tidal conditions or poor landing facilities at particular destinations.
81. Secondly, the frequency at which the operator will visit the different ports. This is largely driven by any contractual requirements, plus the operator's expectation about the volume of cargo being delivered to the destination. The higher that volume, the more likely that the operator will schedule more than one visit per week.
82. Thirdly, the vessels by which the destinations will be serviced.⁹⁸ This largely depends on:
- (a) the condition at the particular port. For example, if the water is deep, a line haul vessel may be appropriate. However, if the water is shallower or there are no wharf facilities, a landing craft or tug and barge set is likely to be required; and
 - (b) the distance required to be travelled on the route. A longer distance (such as between Cairns and Weipa) is more likely to require a line haul vessel, because a line haul vessel is able to move more quickly than a landing craft.
83. The operator takes each of these matters into account and determines the best vessel, route and frequency combination which allows the operator to meet a particular weekly schedule (including meeting any contractual requirements) as well as make a profit.⁹⁹

History of Scheduled Services in FNQ and the NT

84. Sea Swift has provided a Scheduled Service to remote communities in FNQ (including the Outer Torres Strait Islands) for over 30 years.¹⁰⁰
85. During that period, the following companies have sought to establish a competing Scheduled Service:¹⁰¹
- (a) In the 1990s, a company called Jardines provided a Scheduled Service between Cairns and Thursday Island, Horn Island, Seisia and the Outer Torres Strait Islands. In the late 1990s, Jardines was acquired by Brambles Shipping. In 2002, Brambles Shipping exited the market, and various of its assets were acquired by Sea Swift.¹⁰²
 - (b) In 2002, some assets of Brambles Shipping were acquired by Endeavour Shipping, a company whose primary business was salvage vessels and tug and

⁹⁸ Woodward [7.11].

⁹⁹ Bruno [198]-[199].

¹⁰⁰ White [14]-[15].

¹⁰¹ Woodward, Annexure SW-25.

¹⁰² Bruno [149]-[152].

barge charter. Endeavour Shipping then established a Scheduled Service to Weipa, Thursday Island, Seisia and Horn Island, as well as chartering ships to the Outer Torres Strait Islands. That business continued until 2008 when Endeavour Shipping exited the market and Sea Swift acquired its assets.¹⁰³

(c) Gulf Freight Services (later acquired by Perkins) provided a Scheduled Service between Cairns and Weipa. Since acquiring Perkins, Toll (through TML) has provided Scheduled Service between Cairns and Weipa.

(d) In early 2014, TML started to provide a Scheduled Service to communities in the OTSI in FNQ.¹⁰⁴ It has continued to do so to date.

86. In 2009, Toll acquired Perkins Shipping Group, a company which provided Scheduled Services in the NT for over 40 years. Toll (through TML) continued to carry out those services from 2009.¹⁰⁵

87. During the period that Perkins and then Toll provided that Scheduled Service, the following companies sought to establish a competing Scheduled Service:¹⁰⁶

(a) In the late 1980s a company called Barge Express provided a Scheduled Service to various locations which Perkins Shipping did not service. In the early 1990s, Perkins Shipping extended its Scheduled Service so that both companies serviced the same communities. Perkins Shipping then acquired Barge Express in around 1994.¹⁰⁷

(b) Gulf Freight Services was a company which, prior to 2002, provided a Scheduled Service in FNQ. In approximately 2002, Gulf Freight services sought to extend its Scheduled Service to provide services from Darwin to various remote NT communities. Gulf Freight Services continued until 2003 when it exited the market and Perkins acquired the business.¹⁰⁸

(c) Tiwi Barge was a company that provided a Scheduled Service between Darwin and the Tiwi Islands (Nguuu, Pirlangimpi and Milikapiti) for over 30 years prior to 2014. During Tiwi Barge's existence, TML and Perkins Shipping did not provide a service to those destinations. In 2013, Sea Swift acquired Tiwi Barge.¹⁰⁹

(d) Shorebarge is a company that, traditionally, provided services to Troughton Island and Truscott Air Base in north east Western Australia. In 2011 it began providing

¹⁰³ Bruno [154]-[157].

¹⁰⁴ White [89].

¹⁰⁵ Perkins [12].

¹⁰⁶ Woodward, Annexure SW-25.

¹⁰⁷ Perkins [42]-[46].

¹⁰⁸ Perkins [50]-[54].

¹⁰⁹ Perkins [48]-[49].

a Scheduled Service to various remote locations in East Arnhem and West Arnhem in the NT. In 2013, Shore Barge stopped providing those Scheduled Services and focused instead on Truscott Air Base, Trouten Island and Kulumbaru (in north east Western Australia).¹¹⁰

- (e) Sea Swift provided a Scheduled Service to the various remote NT communities in 2013 and 2014. In approximately May 2014, Sea Swift reduced the number of locations which it services in the NT.¹¹¹
- (f) Ezion (Teras) has, since 2013, provided a Scheduled Service between Darwin and the Tiwi Islands and now also provides a service between Darwin and Port Keats.¹¹²

88. At the times in which Sea Swift and TML have both been providing a full scheduled service to many or most of the remote communities in either FNQ or NT, neither company has been able to make that service profitable.

¹¹⁰ White [166], Woodward [8.6], Perkins [47].

¹¹¹ White [206], Readdy [63].

¹¹² White [171].