

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 Fred White - 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



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.

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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 FRED WHITE

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A handwritten signature in blue ink, located in the bottom right corner of the page.

STATEMENT OF FRED WHITE

I, Fred White, Managing Director at Sea Swift Pty Limited, of 41-45 Tingira Street, Portsmith, in the State of Queensland, say as follows:

- 1 I am the Managing Director and CEO of Sea Swift Pty Ltd (ACN 010 889 040) (**Sea Swift**).
- 2 I make this statement from my own knowledge as Managing Director and CEO of Sea Swift and from having consulted and made enquiries of relevant staff and the records of 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. In this statement, I refer to the transaction for which Sea Swift now seeks authorisation as the **Proposed Transaction**.
- 5 In support of the Original Application I prepared and signed a witness statement dated 16 September 2015 that was filed with the Tribunal (**First Statement**). I am aware that Sea Swift's Original Application to the Tribunal for authorisation of the proposed acquisition was subsequently withdrawn on 16 November 2015.
- 6 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.
- 7 At paragraphs 73, 77, 202 and 207 of my First Statement I referred to information contained in a statement of Ms Nancy Ferguson that was filed with the Original Application. Ms Ferguson was previously the Chief Financial Officer of Sea Swift. Ms Ferguson is no longer a Sea Swift employee and Sea Swift does not rely on Ms Ferguson's statement in support of the New Application.

SEA SWIFT'S FINANCIAL STATEMENTS

Revised FY2014 to FY2016 financial statements

- 8 In my First Statement, I referred to various EBIT figures for Sea Swift (see, for example, paragraph 201 of my First Statement). Those figures were based on Sea Swift's financial statements that were current at the time of my First Statement. [REDACTED]
[REDACTED]
[REDACTED]

9 [REDACTED]
[REDACTED]

10 [REDACTED]
[REDACTED]
[REDACTED]

11 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Updated FY2012 to FY2016 profit and loss statements

- 12 Set out in Confidential Annexure "FW-33" are Sea Swift's consolidated and divisional profit and loss statements for FY2012 to FY2016.
- 13 In relation to the profit and loss statements set out in Confidential Annexure FW-33, I understand:
- (a) the FY2012 to FY2013 figures are based on the audited financial statements for these financial years;
 - (b) the FY2014 figures are based on the revised financial statements, referred to above at paragraph 11;
 - (c) the FY2015 figures are based on the revised financial statements, referred to above at paragraph 11; and
 - (d) the FY2016 figures are forecast figures, based on actual results up to January 2016.
- 14 For the purposes of the New Application, the Sea Swift profit and loss statements set out in Confidential Annexure FW-33 have been prepared with the following adjustments, which are explained in further detail below:
- (a) normalisation adjustments to account for any relevant non-recurring costs; and
 - (b) adjustments to account for a new overhead allocation methodology which was introduced in FY2015.

Normalisation adjustments

- 15 For the purposes of the New Application, Confidential Annexure FW-33 contains consolidated and divisional profit and loss statements which remove certain non-recurring cost items for FY 2014 and FY 2015. By deducting these non-recurring costs from the profitability measures in the profit and loss statements, a more accurate representation of the ongoing performance and actual earnings capacity of the business or business division is provided. The removal of these non-recurring costs is referred to as "normalisation adjustments".

16 I am informed by Mr Mark Hancock, Sea Swift's Chief Financial Officer, that normalisation adjustments have been made to the following cost categories for the FY2014 to FY2015 consolidated and divisional profit and loss statements contained in Confidential Annexure FW-33:

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18 Set out in Confidential Annexure "FW-34" are the details of the cost items referred to in paragraphs 16 and 17 above [REDACTED]

[REDACTED]
[REDACTED] To be clear, these are cost items that do not appear in the consolidated and divisional profit and loss statements set out at Confidential Annexure FW-33.

Overhead allocation methodology

19 Prior to FY2015, Sea Swift allocated the majority of overhead costs to its FNQ freight division (which is sometimes referred to as the general cargo division for Northern Queensland) and did not allocate those costs to its charter division or NT freight division.

20 [REDACTED]
[REDACTED]
[REDACTED]

21 For the purposes of the New Application, the profit and loss statements set out in Confidential Annexure FW-33 retrospectively apply this new overhead allocation methodology to the FY2012, FY2013 and FY2014 profit and loss statements. This has been done so that the FY2012 to

FY2014 profitability measures can be appropriately compared against the FY2015 and forecast FY2016 figures.

Fuel and Oils

- 22 In the FNQ profit and loss statement for FY2015 (contained in FW-33), the cost for "fuel and oils" is \$ [REDACTED].
- 23 I have been informed by Mr Hancock, that this figure includes a reduction of \$ [REDACTED] attributable to the diesel fuel rebate that Sea Swift received from the Government for that financial year.
- 24 I am informed by Mr Hancock that it would have been more reflective of Sea Swift's actual operations in FNQ for that rebate to have been apportioned across the other fuel items as follows:
- (a) a decrease of \$ [REDACTED] to the Fuel Bunker line item; and
 - (b) an increase of \$ [REDACTED] to the Other Revenue line item (which incorporates the Cost of Fuel Sales).

[REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

SEA SWIFT'S FINANCIAL PERFORMANCE IN FY2012 to FY2014

- 28 At paragraphs 201 to 207 of my First Statement, I referred to Sea Swift's financial performance for FY2012 to FY2014 and set out my views on why Sea Swift was experiencing significant financial strain.
- 29 I relied on a summary table of Sea Swift's Earnings Before Income Tax (EBIT) figures for the NT and FNQ (entitled *Table 3: Summary of EBIT figures for NT and FNQ (A\$'000)*). Set out below is an updated version of this table which now includes the updated profit and loss figures for FY2012 to FY2016. The figures for FY2012 and FY2013 are different from those contained in my First Statement because they have been adjusted to allow for the allocation of overheads, as I describe in paragraphs 19 to 21, above.



Table 1: Summary of EBIT figures for NT and FNQ (A \$'000)

Division	FY12	FY13	FY14	FY15	FY16
FNQ Freight					
NT Freight					
Charter					

- 30 I have reviewed the updated financial information for FY2014 and FY2015. Although I now understand that the extent of Sea Swift's financial strain was considerably more significant than that set out in my First Statement, it remains my view that Sea Swift experienced this financial strain for the reasons given at paragraph 203 of my First Statement.

FURTHER INFORMATION ON NT AND FNQ OPERATIONS

- 31 At paragraphs 204 to 206 of my First Statement, I referred to the cost restructuring that occurred from May 2014. I provide the following further details in relation to that restructuring.
- 32 In May 2014, Sea Swift made a number of redundancies which reduced its employee headcount by 3 in the NT and 57 in FNQ. In both FNQ and the NT, these redundancies meant that crew sizes were lowered to the minimum required by regulations. It also meant that in FNQ there were fewer employees working in depots and in Sea Swift's central administration. As labour is a relatively large cost for Sea Swift, these reductions were significant.
- 33 At that time, Sea Swift also tightened company expenditure approvals in each area of the business and on major cost items.
- 34 As set out in paragraph 206 of my First Statement, following the loss of the Caltex contract in late 2014, Sea Swift was required to restructure its NT operations from a 6 vessel operation (as set out in paragraph 119 of my First Statement) to a 3 vessel operation (as set out in paragraph 28 of Pasquale "Lino" Bruno's First Statement). This restructure involved Sea Swift:
- (a) removing the bareboat *Torres Venture* from the fleet (returning it to Carpentaria Freight Services);
 - (b) removing the bareboat *Bima Sembilan* from the fleet (returning it to its owner, a Malaysian shipping company);
 - (c) removing the *Tiwi Trader* (owned by Sea Swift) from the active fleet (the *Tiwi Trader* was subsequently used as a backup vessel to cover dry docks and breakdowns before being sold in mid-2015);
 - (d) reconfiguring the fleet to replace the *Malu Warrior* (owned by Sea Swift) with the *Malu Trader* (owned by Sea Swift); and
 - (e) reconfiguring the NT schedule by ceasing services to Croker Island, Goulburn Island, Ramingining, Milingimbi, Lake Evella, Numbulwar and Bickerton Island.

CLARIFICATION REGARDING BAREBOAT CHARTER OF MDT TRADER VESSEL

35 In paragraph 117 of my First Statement, I incorrectly stated that the *MDT Trader* charter vessel was returned back to Barge Express in March 2014. The *MDT Trader* was returned to Marine Diesel Traders, the owner of the charter vessel, and not Barge Express.

GOVE YACHT CLUB BOAT RAMP ACCESS

36 I refer to paragraphs 133 to 137 of my First Statement where I discussed Sea Swift's use of the Gove Yacht Club's boat ramp to access Gove, and Sea Swift's agreement with the Gove Yacht Club and the Northern Land Council for use of the ramp. At paragraph 135, I explained that that agreement was on a non-exclusive basis for an initial period of six months and, at paragraph 137, that it was extended and granted on an exclusive basis. Sea Swift has now been granted a further extension of its agreement for use of the Gove Yacht Club until 30 June 2016, on a non-exclusive basis. At the time of filing, Sea Swift is currently awaiting formal documentation granting the extension.

FURTHER INFORMATION REGARDING EMPLOYEES AND THE PROPOSED TRANSACTION

TML Employees

- 37 Sea Swift does not intend to transfer any TML employees in the event that the Proposed Transaction is granted authorisation. It has not made any commitments to do so.
- 38 If the Proposed Transaction is authorised by the Tribunal, Sea Swift will require increased manpower to run the additional services in the NT, and to handle the additional volume across both the NT and FNQ. To do this, my intention is that Sea Swift will, in the short term:
- (a) rely on its current fulltime employees;
 - (b) offer its staff that are employed on a casual basis additional hours of work; and
 - (c) engage contracted labour in the first instance to service the additional volume.
- 39 After the initial transition period I intend for Sea Swift to make some of its casual employees offers of fulltime employment.

FURTHER INFORMATION REGARDING OTHER MARINE AND FREIGHT OPERATORS IN FNQ AND THE NT

Other operators in FNQ

Marine Industrial Port Engineering Contracting (MIPEC) (2015 to present)

40 MIPEC is a privately owned company that was founded in Gladstone in 2004. Over time, MIPEC has grown substantially and now has over 150 employees. Currently it provides a variety of engineering, contract and project services. Its marine services include vessel construction, marine and cargo logistics, vessel salvage, tug and barge operations and line running services. It has a number of landing craft, which it currently uses for project work, which would be suitable for a scheduled service operation in FNQ.

- 41 Given MIPEC's size and recent activity in the region, I view MIPEC as a potential competitor in FNQ for scheduled services. MIPEC have recently relocated two landing craft from Gladstone to Cairns. I know this because between late January 2016 and mid-February 2016 Sea Swift bareboat chartered one of these vessels to replace the Malu Trojan to allow this vessel to be re-fitted. In early 2015 MIPEC employed an ex-Sea Swift employee who had been employed by Sea Swift as the Horn Island Depot Manager for a few years in the mid-2000's and then as Sea Swift's Darwin Depot Manager from around 2014. When he left Sea Swift he informed us he was going to Gladstone to work for MIPEC in a management role.
- 42 MIPEC have recently been approaching potential customers offering scheduled services. One of the potential customers they have approached is the Torres Strait Island Regional Council (TSIRC). I have obtained a copy of the minutes of a TSIRC meeting held on 15 December 2015, which record that MIPEC are proposing to run barge services for food and fuel for TSIRC under a 5 year contract, with the ability to commence services at the end of March 2016. Set out in Annexure "FW-35" are the December 2015 TSIRC minutes. Those minutes refer to a presentation by Mr Chandler of MIPEC and include the following statement:

Mr Chandler has lived and worked in the Torres Strait for many years and understands the environment and the importance of the barge service in terms of food, fuel, etc. MIPEC are looking for a five- year contract, and if so, could operate their service from the end of March 2016.

- 43 Set out in Annexure "FW-36" is a print out of various pages of the MIPEC website.

SEA SWIFT'S POSITION IN THE ABSENCE OF THE PROPOSED TRANSACTION

- 44 At paragraphs 224 to 226 of my First Statement, I set out my views on Sea Swift's position in the absence of the proposed acquisition, as the transaction stood at that time. The costs associated with the proposed acquisition (including the costs of the Original Application and the New Application) have resulted in a significant and sustained drain on Sea Swift financially. This provides a further reason that if the Proposed Transaction does not proceed, Sea Swift would need to consider reducing the schedules for its services, as I described in paragraphs 225 and 226 of my First Statement. Alternatively, if it is unfeasible for Sea Swift to reduce its services, it would need to consider whether a price increase is required.

ANNEXURES

- 45 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



Fred White, Managing Director, Sea Swift Pty Limited

Date: 4 April 2016



SCHEDULE A

TABLE OF ANNEXURES REFERRED TO IN MY SUPPLEMENTARY STATEMENT

Annexure	Description	Confidentiality claim
FW-33	Consolidated and divisional profit and loss statements for FY2012 to FY2016	Whole
FW-34	Normalised cost items allocated by business division	Whole
FW-35	Extracts from MIPEC website	
FW-36	Minutes of ordinary meeting of TSIRC held on 15 December 2015	