

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

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL on 04/04/2016 4:13 pm (AEDT) 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 PASQUALE "LINO"  
BRUNO - PUBLIC (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 (AEDT)



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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

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 PASQUALE "LINO" BRUNO**

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**SECOND STATEMENT OF PASQUALE "LINO" BRUNO**

I, Pasquale "Lino" Bruno, Chief Operating Officer at Sea Swift Pty Limited, of 41-45 Tingira Street, Portsmith, in the State of Queensland, say as follows:

- 1 I am the Chief Operating Officer of Sea Swift Pty Limited (**Sea Swift**).
- 2 I make this statement from my own knowledge as Chief Operating Officer 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**). In support of the Original Application, I prepared and signed a witness statement dated 17 September 2015, which was filed with the Original Application on 21 September 2015 (**First Statement**). I am aware that the Original Application was withdrawn on 16 November 2015. Since my First Statement, the details of the proposed acquisition have changed, but the assets being acquired by Sea Swift remain the same. I refer to the transaction for which Sea Swift now seeks authorisation as the **Proposed Transaction**.
- 5 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.

**UPDATED AND ADDITIONAL INFORMATION**

**General**

- 6 I refer to paragraph 54 of my First Statement, where I stated that Sea Swift acquired the *Temple Bay* in 1998. The reference to "1998" should be a reference to "1988".
- 7 I refer to paragraphs 52 to 56 of my First Statement, where I described the vessels employed by Sea Swift in the provision of freight services in FNQ and the NT. In addition to the vessels described at those paragraphs, Sea Swift previously owned two other landing craft vessels – the *Wadjemup* and the *Tiwi Trader*. Sea Swift held those vessels as support vessels, using them to provide freight services when active vessels were being docked, or there was a breakdown. Sea Swift has since sold those vessels. The *Wadjemup* was sold on 4 August 2015, and the *Tiwi Trader* was sold on 2 December 2015.
- 8 I refer to paragraph 57 of my First Statement, where I stated that Sea Swift was chartering two vessels – in FNQ, the *BBC Holland* under a two month time charter while the *Newcastle Bay* is



being docked and, in the NT, the *Biquele Bay* under a short term bareboat charter while the *Malu Explorer* is docked. Sea Swift's charter of each of those vessels has concluded. The charter of the *BBC Holland* concluded on 25 September 2015 and the charter of the *Biquele Bay* on 28 September 2015.

- 9 I refer to paragraph 143 of my First Statement, where I stated that Carpentaria Contracting had commenced a weekly scheduled service between the communities of Weipa and Aurukun during the wet season. I understand that this service commenced from about December 2014 and concluded at the end of the wet season in mid-May 2015, and as such, Carpentaria Contracting is no longer operating that weekly scheduled service.

#### **Sea Swift's NT operations**

- 10 I refer to paragraphs 27 to 32 of my First Statement, in which I outlined Sea Swift's NT operations, and paragraphs 53 and 55, where I set out details in relation to the vessels associated with Sea Swift's NT operations. On 17 October 2015, Sea Swift commenced operating a weekly service to Elcho Island, Ramingining and Milingimbi in the NT. Sea Swift commenced this service in order to support ongoing cyclone recovery works following recent cyclones in the NT which had affected those communities. Sea Swift is monitoring the volumes associated with that service closely and intends to continue operating the service for as long as it is able to cover its costs and make an acceptable return.
- 11 Sea Swift uses a landing craft vessel, the *Malu Warrior*, to operate its weekly service to Elcho Island, Ramingining and Milingimbi. As such, since 17 October 2015, Sea Swift has provided cargo services in the NT with a fleet of four vessels (no longer three vessels as outlined at paragraph 53 of my First Statement).
- 12 The *Malu Warrior* is a landing craft with a capacity of 12 TEU. TEU stands for "Twenty Foot Equivalent Unit" – it is a measure of how many shipping containers a vessel can nominally hold. The *Malu Warrior* was constructed by Sea Swift in 1997, using Sea Swift's internal engineering capability. Prior to May 2014, the *Malu Warrior* was used in Sea Swift's NT operations. Between May 2014 and 17 October 2015 it was stood down from use in the provision of scheduled services. During this period, the *Malu Warrior* was only used when active vessels were being dry docked or there was a breakdown, as well as for spot charter work from time to time.

#### **Discounting estimates**

- 13 In paragraphs 177 and 178 of my First Statement, I set out my general estimates of the discounts that Sea Swift had offered to customers during the period from late 2013 to present in response to competition with TML. Those estimates related to Sea Swift's operations in FNQ.
- 14 I did not rely on any underlying data in arriving at the estimates referred to in paragraphs 177 and 178 of my First Statement. The estimates were based on my interactions with Sea Swift's

sales team, including information from the team about customer requests for discounts and the extent to which discounted quotations were taken up by customers.

- 15 In respect of those estimates, I note that:
- (a) in some instances discounts were offered to customers, but the customer did not transact with Sea Swift. Sea Swift does not maintain a record of its success rate in relation to such quotations; and
  - (b) the range of discounting offered to customers was not offered to all customers, nor was it given on the entire volume of freight which Sea Swift carried to the relevant destinations. Rather, discounts applied only for particular customers who had requested quotations directly from Sea Swift.
- 16 In my First Statement, I did not provide any estimate of discounts in respect of the NT. Since its entry into the NT in 2013, Sea Swift's schedule rate pricing has been competitive with TML's pricing. Accordingly, Sea Swift has not engaged in discounting in the NT to the extent it has in FNQ.
- 17 However, Sea Swift has offered some discounting in the NT. I estimate that the range of discounts offered to customers during the period from late 2013 to present in response to competition from TML is:
- (a) in the order of ■% in Gove and Groote Eylandt; and
  - (b) in the order of ■% for the various other NT island and coastal communities.
- 18 I am not as familiar with conditions in the NT as I am with conditions in FNQ. Sea Swift's sales team in the NT did not report directly to me until mid-August 2015. The estimates set out above are based on my discussions with the NT sales team and with Sea Swift management. As is the case in respect of FNQ, this discounting has only been offered and taken up on a sub-set of the total volumes to these destinations.

#### **COSTS OF OPERATING THE SEA SWIFT BUSINESS**

- 19 I have been asked to provide certain cost information for the purposes of the New Application. In my role as COO, I am familiar with and understand the costs of operating Sea Swift's business. In my experience, costs can be categorised as fixed costs, variable costs and administration / overhead costs.
- 20 In referring to "fixed costs" I mean the ongoing costs of running a business that do not fluctuate with increases or decreases in the volume of goods or services supplied. For Sea Swift, various categories of costs are listed in its accounts system as "fixed costs". These fixed costs are largely the asset costs of owning assets and ensuring those assets are operationally ready.
- 21 In referring to "variable costs" I mean those costs of a business that do fluctuate with increases or decreases in the volume of goods or services supplied. For Sea Swift, various categories of



costs are listed in its accounts system as “variable costs”, including, for example, fuel bunker costs, labour costs and port charges.

- 22 It is my experience that given the nature of Sea Swift’s business of providing regular scheduled marine freight services, many costs which are classified as “variable costs” in its accounts system in effect operate like fixed costs. This is because many of the costs incurred by Sea Swift are essential to maintaining its full schedule of services. For so long as Sea Swift maintains its full schedule of services, many of the costs listed as being “variable” in its accounts system remain the same (or very similar), day-in and day-out, irrespective of the actual volume of freight carried on any particular voyage.

**Sea Swift’s costs**

- 23 The key “fixed” costs associated with operating Sea Swift’s business are:

- (a) vessel costs;
- (b) depot costs;
- (c) fuel bunker costs; and
- (d) labour costs.

- 24 I describe these categories in more detail below.

**Vessel costs**

- 25 Vessel costs include vessel maintenance, docking costs and vessel ownership costs, being:

- (a) Vessel maintenance: These costs are the ongoing day-to-day on-board vessel maintenance that is necessary for vessels in operation. This maintenance is necessary for all operational vessels irrespective of how much volume a vessel carries. It is the operation of a vessel that drives these maintenance costs and, as such, these costs remain fairly constant despite any increase or decrease in cargo volume. This maintenance also ensures vessels meet safety standards and other regulatory requirements. Vessel maintenance costs include the costs of maintaining electrical items, filters, pumps/hoses, main and auxiliary engines, refrigeration, disposal of waste oils and any environmental levies or charges and costs associated with safety requirements.
- (b) Dry docking costs: These are costs incurred in connection with Sea Swift’s vessel refit program, including internal engineering labour costs. Sea Swift’s vessel refit program involves periodic dry docking (every two and a half to three years) and refitting of Sea Swift’s vessels. Sea Swift employs approximately 30 in-house engineers, and has a dedicated vessel refit team that assist on all dry dockings. Refits ensure that any major work required to ensure a vessel’s integrity and to meet safety standards and regulatory requirements is undertaken on a periodic basis.

- (c) Vessel ownership: These costs include the costs of vessel insurance, costs of surveys which are required to ensure vessels are sea worthy and continue to meet regulatory requirements, costs of navigational equipment and registration costs.

**Depot costs**

26 Depot costs include depot maintenance costs, equipment hire and property costs, being:

- (a) Depot maintenance: These costs represent the ongoing costs of maintaining depot infrastructure and buildings. These are fixed as ongoing maintenance is necessary irrespective of how often depots are utilised, and include costs associated with maintaining depot buildings, vehicles, mobile plant and refrigerated cold rooms.
- (b) Equipment hire: Sea Swift incurs the costs of hiring certain depot equipment, which is essential to consolidating cargo and maintaining Sea Swift's scheduled services. That equipment that is core to operations is hired on a yearly basis, and includes refrigerated containers, dry containers, generators and forklifts. Sea Swift pays the relevant charge for that equipment regardless of how much freight is shipped.
- (c) Property costs: The costs of owning or leasing land on which depots are located represents another cost that Sea Swift incurs irrespective of whether depots are processing cargo or not.

**Fuel bunker costs**

27 Fuel bunker costs represent the fuel burn of each vessel in operation. Sea Swift operates subject to a "posted" delivery schedule which the communities and other customers rely on for essential freight deliveries. As such, its schedules (and its litres of fuel consumed to undertake the schedule) are largely fixed. This is because its vessels are required to steam to all destinations irrespective of how much freight is to be delivered to each destination.

28 Although the price of fuel varies, the litres of fuel consumed year on year remain relatively consistent for the regular scheduled services provided by Sea Swift. To illustrate this, set out below in Table 1 is a record of the total litres of fuel burned per division from FY12 to FY16. I note:

- (a) for Sea Swift's FNQ freight division, fuel bunker consumption has remained relatively consistent, except for FY16. Fuel bunker consumption for FY16 includes a 400 kilolitre uplift due to the *BBC Holland*, a vessel Sea Swift chartered during the docking of the *Newcastle Bay*, consuming a higher amount of fuel than the *Newcastle Bay*,
- (b) for Sea Swift's NT freight division, fuel bunker consumption for FY15 includes fuel consumed in respect of vessels that Sea Swift chartered to facilitate the running of scheduled services in the NT. Variances in the fuel consumption over time reflect alterations to Sea Swift's NT scheduled services over time; and



- (c) for Sea Swift's charter division, fuel bunker consumption varies significantly from year to year because of the spot nature of this work.

Table 1: Summary of total litres of fuel consumed for FY12 to FY16

| Fuel Bunker Litres |      |      |      |      |      |
|--------------------|------|------|------|------|------|
| Operating Division | FY12 | FY13 | FY14 | FY15 | FY16 |
| FNQ Freight        | █    | █    | █    | █    | █    |
| NT Freight         | █    | █    | █    | █    | █    |
| Charter            | █    | █    | █    | █    | █    |
| Total              | █    | █    | █    | █    | █    |

### Labour costs

29 Labour costs include labour costs associated with operating Sea Swift's vessels and depots:

- (a) Vessel labour: These costs are the wage costs of the crew for each vessel in operation. As detailed at paragraph 104 of my First Statement, Sea Swift must meet minimum crew requirements set by the Australian Maritime Safety Authority (AMSA) under the National Standard for Commercial Vessels (NSCV). Sea Swift has always manned its vessels with at least the minimum number of crew required for safe operations. However, prior to the restructure in May 2014, Sea Swift's practice was generally to man its vessels with more than the minimum crew number required. This was to ensure safe operations and to maintain timely deliveries to the communities. Even now there are some vessels which are manned with more than the minimum number of crew because Sea Swift considers it necessary for either the safe operation of those vessels or considers that the nature of the operation demands additional crew. Whatever number of crew that Sea Swift has decided is appropriate for a particular route, this is not affected by how much volume is shipped. For that reason, there is a minimum fixed cost for crewing each vessel.
- (b) Depot labour: These costs are the wage costs associated with the operation of each depot in operation. As Sea Swift must be ready to receive and process cargo, and continue to service its posted schedule, weekly variations in volumes shipped do not enable Sea Swift to materially alter the number of depot employees. The wages of those employees and associated costs are incurred by Sea Swift irrespective of freight volumes moved. However, winning or losing a major contract does alter the number of depot employees required and, as such, winning or losing a major contract can result in an increase or decrease in depot labour costs.

### Other costs

30 Other costs incurred in the running of Sea Swift's services include:



- (a) Harbour and pilot fees: These are fees that can be charged by the relevant port authority if the vessel master does not hold the necessary exemption to pilot the vessel transiting the harbour.
  - (b) Port cargo fees / harbour dues / wharfage fees: These are fees charged by the relevant port authority according to the type and volume of cargo being shipped over the wharf or ramp.
  - (c) Tonnage dues / Berthage fees: These are fees charged by the relevant port authority in relation to the transiting and berthing of a vessel.
  - (d) Bareboat hire costs, crew and depot staff amenities, uniform costs and costs of other consumables.
- 31 Harbour pilot fees and Tonnage dues / berthage fees are generally charged per shipment. As Sea Swift's scheduled services do not vary in frequency, this is also a fixed cost of the scheduled service business.
- 32 Port cargo fees / harbour dues / wharfage fees fluctuate directly with the volumes of freight moved. They are, therefore, variable costs.
- 33 Sea Swift generally hires a bareboat vessel when another ship is in dry dock. The fees for that hire are based on the length of time the vessel is hired for. The fees do not depend on the volume of cargo that is shipped by Sea Swift during that period and so are costs that are fixed, but only for the hire period.
- 34 Costs associated with staff amenities and uniform costs are directly related to the number of employees and are therefore largely fixed as well.

**Administration / overhead costs**

- 35 Administration and overhead costs are Sea Swift's costs which are not attributable to its vessels and depots, such as the cost of Sea Swift's central office located in Cairns.
- 36 These costs are predominantly driven by the number of employees. Significant cost and restructuring has occurred in this area over the past 3 years as Sea Swift has sought to achieve cost cutting whilst continuing to provide service to its customers.

**Cost information**

- 37 I understand that certain cost information is required for the New Application. I have asked Mark Hancock, the current Chief Financial Officer (CFO), to prepare and verify the information set out in Confidential Annexure "PB-78", which I believe to be accurate. That Annexure contains Sea Swift's consolidated costs and divisional costs as a percentage of gross marginal revenue (GMR), and as a proportion of total costs, for FY2015.
- 38 The categorisation of costs at PB-78 is a reflection of Sea Swift's internal accounts system which labels costs as either "fixed" or "variable". In my view, those labels are not reflective of



the true fixed cost nature of many of the costs involved in operating scheduled services. For the reasons set out above, in my experience, many of the costs recorded as variable costs in Sea Swift's accounts system also operate like fixed costs. It is my view that the majority of Sea Swift's costs in operating a scheduled marine freight service are fixed.

#### **REMOTE COMMUNITY PRICE CONDITION**

- 39 I understand that as part of the New Application, Sea Swift has requested that the Tribunal grant authorisation on the conditions set out in Annexure A to the Form S (the **Conditions**).
- 40 I am aware that the Conditions include the Remote Community Price Condition. Under the Remote Community Price Condition, Sea Swift makes commitments to charge customers for certain types of freight at no more than:
- (a) Sea Swift's scheduled rates as at 1 August 2015 in FNQ; and
  - (b) TML's scheduled rates as at 1 September 2015 in the NT, or Sea Swift's rates as at 1 August 2015 in relation to those destinations in the NT that are not currently serviced by TML.
- 41 The Remote Community Price Condition will apply for a period of five years from the date on which the Proposed Transaction is completed, subject to annual price increases in accordance with publicly available price indexes.

#### **Services covered by the Remote Community Price Condition**

- 42 The Remote Community Price Condition relates to the transport of the following types of freight:
- (a) Dry freight: being goods which do not require a temperature controlled environment and which are not otherwise vehicle freight or dangerous goods freight;
  - (b) Refrigerated freight: being goods which require a temperature controlled environment and which are not otherwise vehicle freight or dangerous goods freight;
  - (c) Vehicle freight: being motor vehicles, specifically domestic vehicles under 6m in length;
- 43 Sea Swift carries various other types of freight which do not fall within the above categories. For example:
- (a) liquid commodities, including bulk fuel and other bulk liquids, in containers such as 200L drums and TankTainers (ISOs);
  - (b) other bulk goods, in various containers across a range of sizes including 5ft, 7ft, 8ft, 10ft and 20ft equivalent containers, Integrated Bulk Containers (IBCs) and bulka-bags; and
  - (c) other items, such as boats and trailers, gas bottles and machinery.
- 44 The Remote Community Price Condition only applies to dry, refrigerated and vehicle freight, and does not apply to the types of freight referred to in the preceding paragraph. This is



because, in my experience, the carriage of dry, refrigerated and vehicle freight are the types of services most commonly purchased by uncontracted customers.

- 45 Uncontracted customers are customers who do not hold a contract with Sea Swift and who have not negotiated a custom rate with Sea Swift. Uncontracted customers tend to be the smaller ad hoc customers, and are charged for services in accordance with Sea Swift's scheduled rates. In my First Statement, I referred to these uncontracted customers as "customers on scheduled rates". By contrast, contracted and custom rate customers are likely to have negotiated some form of discount off Sea Swift's scheduled rates for some or all of the services they acquire.

**Fees and charges under the Remote Community Price Condition**

- 46 Schedule 4 of the Conditions sets out the "Base Rates", which are the initial rates that are to apply under the Remote Community Price Condition. The Base Rates contained in Schedule 4 are based on the scheduled rates of:
- (a) Sea Swift as at 1 August 2015 (in both FNQ and the NT); and
  - (b) TML as at 1 September 2015 (in the NT).
- 47 The rates for Sea Swift can be found at Confidential Annexure "PB-73" to my First Statement. The rates for TML can be found at Annexure "SW-22" to the Statement of Scott Woodward dated 16 September 2015.
- 48 The other fees set out in Schedule 4 of the Conditions, including the fuel surcharge, consignment note fee and port charges, are based on Sea Swift's existing pricing structure to customers and have been included in Schedule 4 to provide clarity on precisely what pricing will apply.
- 49 I am directly involved in setting Sea Swift's scheduled rates and other fees. Sea Swift generally reviews its scheduled rates and other fees annually, except for the fuel surcharge, which is usually reviewed monthly. Further information on the basis for each of these fees and charges is set out below.

*Scheduled rates*

- 50 Sea Swift sets its scheduled rates by reference to the type of freight to be delivered and the delivery destination.
- 51 Sea Swift's schedule of rates is not published. In my experience, not publishing a schedule of rates is the usual practice in the marine freight services industry. Customers seeking to have freight delivered to a destination generally request quotes directly from Sea Swift, which Sea Swift then calculates based on the relevant type and measure of freight and end destination. From time to time, Sea Swift provides its schedule of rates to customers where those customers have sought the rates directly from Sea Swift.

52 Sea Swift and TML typically adopt different terminology in categorising their respective scheduled rates, however Sea Swift's standard terminology has been adopted in Schedule 4. I consider that:

- (a) Sea Swift's "Dry m<sup>3</sup>/t" category is the equivalent of TML's "General Cargo m<sup>3</sup>/t" category;
- (b) Sea Swift's "Refrigerated m<sup>3</sup>/t" category is the equivalent of TML's "Freezer / Chiller kg" category; and
- (c) Sea Swift's "Passenger vehicles (each)" category is the equivalent of TML's "Vehicles up to 5.3 mtrs each" category.

53 Within each of these categories, customers may ship goods which are defined as dangerous or hazardous materials as classified under the *Australian Dangerous Goods Code* or the *International Maritime Dangerous Goods Code*, in which case an additional fee applies. Further information on the dangerous goods surcharge is set out below.

*Other fees*

54 As outlined in paragraphs 184 and 185 of my First Statement, in charging customers for freight, Sea Swift adds a number of additional fees and charges to its schedule of rates which relate to additional costs incurred by Sea Swift for supplying the service, being:

(a) Fuel Surcharge Fee:

- (i) Given that fuel is a major cost in Sea Swift's business and can be subject to significant variation on a month-to-month basis, Sea Swift applies a fuel surcharge to its scheduled rate to reflect the current market price of this input.
- (ii) Each month, Sea Swift monitors the current national average fuel price (using the *Australian Institute of Petroleum Terminal Gate Pricing for Diesel – National Average*) and, at its discretion, applies an increase or decrease as applicable to the current fuel surcharge. That surcharge is calculated as a percentage of the base freight charge.
- (iii) The fuel surcharge is currently set at 2.50%.

(b) Consignment note fee:

- (i) Sea Swift applies a consignment note fee per-consignment to cover the cost of documenting a consignment from receipt through to delivery. The fee also covers the costs associated with Sea Swift's "track and trace" process. That fee is currently \$15 per consignment.

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(c) Port charges

(i) As outlined in paragraph 127 of my First Statement (and referred to above), port charges comprise:

(A) port cargo fees / harbour dues / wharfage fees (charged in relation to the type and volume of cargo being shipped); and

(B) tonnage dues / berthage fees (charged in relation to the transiting and berthing of a vessel).

(ii) Sea Swift currently only passes on to customers any applicable volume based fees. That is, Sea Swift passes on the port cargo fees / harbour dues / wharfage fees but does not pass on the tonnage dues / berthage fees.

(iii) When charging a customer for carrying a particular consignment, Sea Swift enters information about the type of freight and destination into its freight management system. That system contains information about relevant port charges. The relevant charge is added to the consignment based on the relevant type of freight and destination.

(d) Dangerous goods surcharge

(i) A dangerous goods surcharge is applied as a percentage of the base freight charge to cover the additional costs of freighting goods that are classified as dangerous goods under the *Australian Dangerous Goods Code* or the *International Maritime Dangerous Goods Code*. The percentage that is currently applied by Sea Swift is 25%.

(ii) As outlined at paragraph 38 of my First Statement, dangerous goods include for example chemicals (including household chemicals), unleaded petrol and fertilisers. The additional costs of this type of freight include costs associated with chain of control documentation, including material safety data sheets, as well as costs involved in storing this freight in depots, consolidating it in containers and segregating it on board vessels.

(e) Minimum freight charge

(i) For small parcels, Sea Swift applies a minimum freight charge of \$50 to consolidate and transport a single consignment of freight where the overall cost of freight delivery is less than \$50.

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(f) Other charges

- (i) Where customers request additional services from Sea Swift, including pallet wrapping or transport by road to the receiving depot, Sea Swift applies charges for those additional services.

*Calculating the freight rate*

- 55 Typically, when freight is presented at the receiving depot, a consignment note is completed. The consignment note contains details about the type of freight (e.g. whether it is dry or refrigerated), the quantity of freight, the sender, the receiver, the origin, the destination, the person being charged for the freight and the total charge.
- 56 In relation to dry and refrigerated freight, once presented, the freight is both weighed (in tonnes) and measured in cubic metres (m<sup>3</sup>) (by multiplying the length, breadth and height of the particular consignment). Dry and refrigerated freight can either be charged per cubic metre or per tonne.
- 57 Sea Swift generally charges according to whichever measure is the greater for a given consignment. From my experience in the logistics industry, I understand that this is a common method for charging freight among logistics businesses as it most accurately takes into account variations in the type, weight and volume of the freight. A consignment that is light but voluminous, for instance, will consume a large amount of room on a vessel. As such, Sea Swift will charge for that consignment by volume to ensure the amount charged is most reflective of the costs likely to be incurred from freighting that good. By contrast, a small but heavy consignment will be charged in accordance with its weight, as although it may not utilise much space, the heavy weight of the consignment is likely to involve increased handling costs.
- 58 The unit that is ultimately used as the basis for the charge on a particular consignment is referred to by Sea Swift as the "revenue tonne" and, as outlined above, will be whichever unit is greatest for a given consignment.
- 59 In relation to the transport of passenger vehicles, Sea Swift generally charges for transporting those vehicles at a rate per individual vehicle. For vehicles over 6 metres, Sea Swift provides a bespoke quote.

*Worked example*

- 60 To understand how all of the above costs are worked into a total freight charge, I have set out below a worked example of how Sea Swift calculates the relevant freight charge for a consignment.
- 61 Assume a dry pallet containing eskies is presented at Cairns to be carried to Thursday Island and that it weighs 0.05 tonnes and measures 0.567 cubic metres (i.e. 0.7m in length x 0.9m in breadth x 0.9m in height). In this example:

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- (a) if the consignment was charged by weight (tonnes), the charge would be \$ [REDACTED] (being 0.05 tonnes x the scheduled rate for dry freight of \$ [REDACTED]); and
- (b) if the consignment was charged by volume (cubic metres), the charge would be \$ [REDACTED] (i.e. 0.567 x the scheduled rate for dry freight rate of \$ [REDACTED]).

62 In this example, Sea Swift would set the revenue tonne based on the volume of the cargo, and would therefore charge a freight charge of \$ [REDACTED], plus the additional fees and charges, to ship this consignment.

63 Set out below in Table 2 is an example of how Sea Swift calculates the full cost to uncontracted customers of providing its services (i.e. using the rates set out in its schedule of rates), including how additional fees are added to the freight charge. I note that in this example:

- (a) a pallet of eskies would not be a dangerous good under the *Australian Dangerous Goods Code* or the *International Maritime Dangerous Goods Code*, and therefore the dangerous goods surcharge would not apply;
- (b) the fuel surcharge (\$ [REDACTED]) is 2.5% of the freight charge; and
- (c) the Port & Council Fees (\$14.01) are those applicable for the Cairns and Thursday Island port authorities.

**Table 2: Calculation of full cost of freight services to uncontracted customer**

| Origin | Destination     | Freight type             | Weight (tonne) | Volume     |             |           |             | Revenue tonne | Freight rate              | Freight charge |
|--------|-----------------|--------------------------|----------------|------------|-------------|-----------|-------------|---------------|---------------------------|----------------|
|        |                 |                          |                | Length (m) | Breadth (m) | Width (m) | Volume (m3) |               |                           |                |
| Cairns | Thursday Island | Dry – 1 pallet of eskies | 0.050          | 0.7        | 0.9         | 0.9       | 0.567       | 0.567         | [REDACTED]                | [REDACTED]     |
|        |                 |                          |                |            |             |           |             |               | Consignment Fee           | 15.00          |
|        |                 |                          |                |            |             |           |             |               | Fuel surcharge            | [REDACTED]     |
|        |                 |                          |                |            |             |           |             |               | Dangerous Goods Surcharge | 0.00           |
|        |                 |                          |                |            |             |           |             |               | Port & Council Fees       | 14.01          |
|        |                 |                          |                |            |             |           |             |               | <b>Sub Total</b>          | [REDACTED]     |
|        |                 |                          |                |            |             |           |             |               | Minimum Freight Charge    | 0.00           |
|        |                 |                          |                |            |             |           |             |               | <b>Total (ex GST)</b>     | [REDACTED]     |
|        |                 |                          |                |            |             |           |             |               | GST                       | [REDACTED]     |
|        |                 |                          |                |            |             |           |             |               | <b>Total (inc GST)</b>    | [REDACTED]     |



## COMPANY INFORMATION AND DATA

64 I understand that certain company information is required for the New Application.

### Contract information

65 Annexure "PB-79" is a copy of contract, revenue and volume information for FY15 for a sample of customers in FNQ and the NT. I have reviewed this information against company records and verify that it is accurate.

### Customer information

66 Annexure "PB-80" is information from Sea Swift's sales system relating to actual volumes, revenue and average price per revenue tonne by type of customer for each of FNQ and the NT for FY15. I have reviewed this information against company records and verify that it is accurate.

67 Whilst I have reviewed and verified the accuracy of the information in Annexure "PB-80", I consider that the average price figures set out do not provide any meaningful indication of actual pricing. This is because the average price per revenue tonne data does not:

- (a) take account of variances in the type of freight being carried (for example, as between dry, refrigerated or vehicle freight, for which there are substantial differences in cost);
- (b) take into account differences between the relevant port of origin and end destination;
- (c) demonstrate the range of discounts that the customer may have received (for example, a customer would be classified as a "custom rate customer" if that customer received a discount on one of a number of shipments, but paid scheduled rates for all other shipments); or
- (d) indicate whether the discount was due to an existing arrangement with the customer (such as a negotiated volume discount) or as a result of competitive price matching during FY15).

68 I do not rely on average price per revenue tonne data in my everyday decision making at Sea Swift. However, I understand that it is a metric used within Sea Swift's business to understand at a basic level the amount of revenue that is being generated for each revenue tonne. In my view, for the reasons set out above, it is not a useful measure of actual pricing.

## MARKET CONCENTRATION INFORMATION

69 I understand that certain information relating to market concentration is required for the New Application. Based on my knowledge of certain routes, I have provided estimates for the proportion of general freight volumes carried by Sea Swift's scheduled services, TML's or a third party operator, for the previous five years. I am unable to provide an estimate for charter / project services.

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70 Set out in Tables 3 and 4 below are my estimates, and the basis on which I arrived at those estimates.

Table 3: FNQ volume estimates

| Operator | Area | FY2011 | FY2012 | FY2013 | FY2014 | FY2015 |
|----------|------|--------|--------|--------|--------|--------|
|          |      |        |        |        |        |        |

Table 4: NT volume estimates

| Operator           | Area | FY2011 | FY2012 | FY2013 | FY2014 | FY2015 |
|--------------------|------|--------|--------|--------|--------|--------|
| [Redacted Content] |      |        |        |        |        |        |

**INFORMATION PROVIDED TO RBB**

71 I have been asked to review and verify certain information and assumptions that I understand are required by RBB for the purposes of preparing a scenario study analysis. The information and assumptions relate to:

- (a) Sea Swift's profit and loss information for FY15;
- (b) cost information;



- (c) an estimate of the likely “knock-on” effect that results from the loss of a large contract;
- (d) estimates of revenue attributable to key customers;
- (e) revenue by destination; and
- (f) information in relation to a pre-tax weighted average cost of capital (**WACC**) calculation and Sea Swift’s realisable asset values.

72 The assumptions I have reviewed and verified are set out in:

- (a) Confidential Annexure “**PB-81**”, which relates to FNQ;
- (b) Confidential Annexure “**PB-82**”, which relates to the NT; and
- (c) Confidential Annexure “**PB-83**”, which relates to WACC and realisable asset value information.

73 Set out below is a brief explanation of the information and assumptions.

**Profit and loss information**

74 I understand that a profit and loss statement for each of the FNQ freight division and the NT freight division for FY15 is annexed to the Second Statement of Mr Fred White at Confidential Annexure FW-33.

75 I have reviewed this profit and loss statement for FY15 and confirm that the profit and loss information contained on the first pages of each of PB-81 and PB-82 is an accurate record of the information set out in FW-33.

76 In relation to page one of PB-81 headed “NQLD Freight P&L – FY15 (A’000)” and page one of PB-82 headed “NT Freight P&L – FY15 (A’000)”, I note the following:

- (a) the line item for “Cargo Freight Revenue” includes revenue derived from Sea Swift’s general cargo business in FNQ and NT, respectively;
- (b) the “Fuel Revenue” line items include revenue derived from Sea Swift’s retail fuel sales to the communities serviced and cargo fuel sold to Ergon (in FNQ); and
- (c) the “Other Revenue” line items include revenue derived from Sea Swift’s passenger cruise and mothershiping business divisions.

77 The line items above do not generally include revenue derived from Sea Swift’s charter / project business unit. However, I note that they do include some charter revenue, for example, the line item for “Cargo Freight Revenue” in PB-81 and PB-82 includes some revenue accrued through spot charter work that is able to be carried out by cargo freight vessels from time to time. In addition, the line item in PB-81, which relates to FNQ “Cargo Freight Revenue” also includes some revenue accrued through some elements of Sea Swift’s mothershiping business. Given the integrated nature of how this work is undertaken in each region, it is not possible to identify and “strip out” the costs that relate to this charter and mothershiping work.



**Cost information**

78 The cost assumptions set out at page two of PB-81 and PB-82 (headed "Cost Information") that I have reviewed and verified relate to the costs associated with servicing major customers in FNQ and NT, respectively, and the reduction (or increase) in costs that would result if Sea Swift lost (or won) one or all of those customers in each region.

79 Specifically, this "Cost Information" relates to the following costs categories:

- (a) vessel costs, including variable costs (fuel bunker, harbour / pilot fees and labour costs) and fixed costs (vessel maintenance, ownership costs, capital labour) and vessel depreciation; and
- (b) shore side costs, including variable costs (fuel and oils, hire equipment and labour costs) and fixed costs (depot maintenance and property costs).

80 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

81 [REDACTED]

82 [REDACTED]

83 PB-81 and PB-82 contain notes comprising information about the assumptions that I made for the purposes of the calculating the figures contained in those documents.

**Knock-on effect**

84 I was asked to provide RBB with an estimate of the likely "knock-on" effect that results from the loss of a large contract. In my experience, each time a large contract is lost, the operator that

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gains that contract is incentivised to compete more aggressively than previously for smaller customers to assist in covering the costs associated with servicing the large contract. As such, in my experience, when a large contract is lost, a proportion of general cargo freight revenue is also likely to be lost. In relation to FNQ, I consider that losing one large contract would likely lead to a loss of revenue of between [REDACTED] % of general cargo freight revenue.

**Major customers revenue**

85 The customer revenue information contained on page three of PB-81 and PB-82 (headed "Major Customers Revenue") that I have reviewed and verified relates to the revenue derived by Sea Swift under its contracts with major customers in FNQ, and estimates of the likely revenue derived from major customers in the NT. I confirm that the revenue amounts for FNQ contained in PB-81 are accurate, and I consider the estimates for the NT set out in PB-82 are appropriate.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

86 I was also asked to provide RBB with an estimate of the percentage of revenue derived from non-contracted customers in FNQ. I estimate that non-contracted customers would account for approximately [REDACTED] % of FNQ cargo freight revenue.

**Revenue by destination**

87 Information from Sea Swift's sales system relating to revenue by destination for FNQ in FY15 is set out on page four of PB-81. I confirm that the revenue amounts are accurate.

**WACC / realisable asset value / cost of capital information**


88 I have also instructed others to review and verify information contained in PB-83:

- (a) WACC rate: I instructed Mr Mark Hancock, Sea Swift's CFO, to verify the appropriate pre-tax weighted average cost of capital (**WACC**). I have been informed by Mr Hancock that he has reviewed the company records and believes the appropriate pre-tax WACC rate to apply is [REDACTED] % as set out at page one of PB-83; and
- (b) Realisable asset values / cost of capital: I instructed Mr Hancock to verify relevant asset values and to calculate the cost of capital of those assets using the appropriate WACC rate. I have been informed by Mr Hancock that he has reviewed the company records and believes the realisable asset values and calculations set out on page two of PB-83 to be accurate.

**OTHER MATTERS**

89 At paragraphs 168, 182 and 188 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 is


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no longer employed by Sea Swift and Sea Swift does not rely on Ms Ferguson's statement in support of the New Application.

**ANNEXURES**

90 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

Pasquale "Lino" Bruno, Chief Operating Officer, Sea Swift Pty Limited

Date: 4 April 2016



SCHEDULE A

TABLE OF ANNEXURES REFERRED TO IN MY STATEMENT

| Annexure | Description  | Confidentiality claim |
|----------|--|-----------------------|
| PB-78    | Sea Swift's costs as a percentage of gross marginal revenue and as a percentage of total costs | Whole document        |
| PB-79    | Contract information: Sample of FY15 customer revenues and volumes                             | Whole document        |
| PB-80    | Customer information: Volume, revenue and average price by type of customer for FY15           | Whole document        |
| PB-81    | NQLD Freight – Information and assumptions provided to RBB                                     | Whole document        |
| PB-82    | NT Freight – Information and assumptions provided to RBB                                       | Whole document        |
| PB-83    | WACC Estimate and Realisable Asset Value Data – Information provided to RBB                    | Whole document        |