

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

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

Lodgment and Details

Document Lodged: APP –Statement of Christopher Foord

File Number: ACT 2 of 2016

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

Registry: NEW SOUTH WALES – AUSTRALIAN COMPETITION TRIBUNAL

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



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

Deputy Registrar

Important Information

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

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



IN THE AUSTRALIAN COMPETITION TRIBUNAL

Statement

No. ACT of 2015

Sea Swift Pty Limited

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

Statement of: Christopher Foord

Address: Rural Transaction Centre, Adidi Street, Bamaga

Occupation: General Manager, Bamaga Enterprises

Date: 18th September 2015

I, Christopher Foord, General Manager, Bamaga Enterprises, of Rural Transaction Centre, Adidi Street, Bamaga, in the State of Queensland, say that:

- 1. I set up Bamaga Enterprises in approximately 2002. I have been running the company since September 2007. Prior to that I was Company Secretary.
2. From 1996 to 2003, I was CEO of Bamaga Island Council for 7 years, and was directly involved in contracting for cargo activities for sea freight.
3. Bamaga Enterprises is a public company limited by guarantee whose members comprise residents of the Bamaga community. Profits from Bamaga Enterprises are used for community development and support purposes and so it is a non-profit entity.
4. Bamaga Enterprises' business operations include the Resort Bamaga, Bamaga Tavern, Bamaga Bakehaus and Snack Bar and the Bamaga BP Service Station. Bamaga Enterprises, through Cape York Peninsula Lodge, also trades as Bamaga Hire Cars.
5. Bamaga is located approximately 40 km from the northern tip of Cape York and is one of the northern-most settlements in Continental Australia.
6. Bamaga's population is comprised of approximately 75% islander and 20% Aboriginal peoples. It has an estimated population of approximately 800 people with 300

Table with 2 columns: Field (Filed on behalf of, Prepared by, Law firm, Tel, Email, Address for service) and Value (Sea Swift Pty Limited (the Applicant), Luke Woodward, Gilbert + Tobin, +61 2 9263 4014, lwoodward@gtlaw.com.au, Level 37, 2 Park Street, Sydney, NSW 2000 DX 10348 SSE)



temporary non-islander residents. The Northern Peninsula Area has a population of approximately 2,600 people.

7. Bamaga is not located on the coast line however marine freight delivery is still the main avenue for access to products. Shipments arrive at Seisia and are then trucked from Seisia to Bamaga.

Goods required to be sea freighted

8. Bamaga Enterprises sources products which are necessary for its various business activities. The goods regularly required include the following:
 - (a) Building materials, for example, for building cabins, renovating etc.
 - (b) Alcohol as Bamaga Enterprises operates the Bamaga Tavern, the only Tavern in town which services the whole of the Northern Peninsula Area.
 - (c) Groceries including fresh food and vegetables for Cape York Peninsula Lodge and the BP Bamaga service station which incorporates a significant mini-mart. The service station mini-mart is an after-hours and weekend alternative to IBIS supermarket in the centre of Bamaga, which is the largest supermarket for the region. There are only two other supermarkets in the region – in Seisia and Umagico.
 - (d) General merchandise which is also used to stock the mini-mart. General merchandise is also required more generally by the community, such as hardware, furniture, appliances to stock the two general merchandise stores in Bamaga – Dreamtime and Cape York Traders.
9. The demand for these goods is particularly high across May to September each year during the tourist season.

Requirements for Sea Freight

10. Bamaga Enterprises' key requirement is to have a shipping company operating which is reliable, regular and has the correct infrastructure.
11. The shipping company needs to operate from Bamaga twice per week. This is crucial in particular for the Bamaga BP Service Station fuel deliveries as fuel sales can outstrip one delivery a week especially during the tourist season. It is also better to have two deliveries of alcohol for the Tavern given storage restrictions. Additionally, this is important for ensuring Bamaga Enterprises continues to have fresh food available.
12. Bamaga Enterprises also requires depot to door deliveries once the freight has arrived because it is 4 km from the wharf and does not have any transport infrastructure to

collect the freight. There are no haulage companies in the Northern Peninsula Area which would offer this service.

13. Bamaga Enterprises requires its shipping company to be able to ship refrigerated cargo in order to maintain its frozen grocery lines and dairy products, such as basic staple items like milk. These goods are used to stock the service station mini-mart and also to provide fresh food at the Cape York Peninsula Lodge.
14. I do not consider there are any real alternatives to the regular scheduled marine freight delivery to Bamaga:
 - (a) Road freight delivery is not an alternative at present. For example, in 2014, a large semi (either a fuel tanker or a large truck) was put on the barge ferry to cross the Jardine River. It fell off the back of the ferry and blocked the road for 3 days until it was cleared. Without a bridge across the Jardine River, marine freight delivery is the only alternative. The road can also be closed for several months during the wet season. Therefore, even if there were a bridge across the Jardine River for the duration of the wet season, the roads would not be usable for a period of time.
 - (b) It may be possible to charter a boat to bring up specific loads. I have never looked into this. However, this may not work as well as regular scheduled freight because the company would not have the infrastructure already set up in Seisia in order to deliver goods from Seisia Wharf to Bamaga.
15. The products that Bamaga Enterprises ships are both dry or delivered as cooler/freezer goods. A walk-in freezer and cooler is presently being installed in the service station. This would extend the range of goods that are required.
16. ULP fuel is delivered to Bamaga by tanktainers (ISOs) which are unloaded at the wharf, loaded onto the back of the truck and are delivered to the service station and pumped into the tanks.
17. Bamaga Enterprises require 2 tanktainers per week. One tanktainer owned by Sea Swift is delivered by BP to Sea Swift in Cairns and Sea Swift brings the tanktainer on its boat. Bamaga Enterprises has also had to lease another tanktainer as one is not enough and has resulted in non-delivery of fuel because of the lack of availability.

Current arrangements for freight delivery

18. Bamaga Enterprises has a 3 year contract with Sea Swift. Bamaga Enterprises has been contracted with Sea Swift for the last 6 years. The current contract runs through to 2017.
19. In FY2014, Bamaga Enterprises had approximately \$500,000 worth of freight delivered.

20. Sea Swift has a twice weekly service into Bamaga operated by the Trinity Bay and Newcastle Bay. The Trinity Bay is the major vessel that delivers into Bamaga and takes larger items. The Newcastle Bay gets trans-shipped at Horn Island.
21. I consider the Trinity Bay is the most reliable service, as the Newcastle Bay is not a direct service and may have capacity problems. Also, the Newcastle Bay can't carry bigger shipments, for example, Bamaga Enterprises had some long lengths of veranda decking delivered recently and it was too big to fit on the Newcastle Bay service. I prefer deliveries like that not to be trans-shipped through Horn Island because I do not want the large loads to be double handled in that manner.
22. Toll currently delivers to Seisia/Bamaga once per week.
23. The last time Bamaga Enterprises' contract with Sea Swift came up for renewal, Bamaga Enterprises did not go to tender. This was at a time when Toll had just commenced their scheduled services.
24. At that time, I spoke to Toll regarding their rates, and the rates I was offered were lower than the rates Bamaga Enterprises paid to Sea Swift at the time. I understood from our discussions that Sea Swift were keen to retain the Bamaga Enterprises business at that time. In this way, the competition allowed Bamaga Enterprises to negotiate a good deal with Sea Swift. Seaswift agreed to match Toll's prices so Bamaga Enterprises Ltd would not be disadvantaged

History of sea freight service delivery

25. I recall two other companies which previously ran scheduled services to Bamaga: Jardine Shipping and Endeavour Shipping.
26. My time in Bamaga started in approximately 1996 when I was appointed CEO of Bamaga Island Council.
27. At that time, a company called Jardine Shipping had commenced freight delivery services, after which another company called Endeavour Shipping took over from Jardine Shipping.
28. While Endeavour was still operating, Sea Swift commenced providing freight services to Seisia. I cannot recall exactly when this was.
29. While both Endeavour and Sea Swift were operating, I recall that Bamaga Council were loyal to Endeavour, as the company they were using, as Sea Swift were still new to the region and proving themselves.
30. Endeavour Shipping was taken over by Sea Swift after that and stopped providing freight services to Bamaga I cannot recall exactly when this happened.

31. At that time, Bamaga Council switched to Sea Swift as its freight provider and used Sea Swift until Toll entered the region, at which time I understand Bamaga Council switched to Toll.
32. When Toll started to provide regular freight services in around 2013, they were offering a price I considered to be commercially unsustainable. I was not prepared to have Bamaga Enterprises change providers and take the lower price(although I did later negotiate a lower price with Sea Swift, as I have described above). This was because I thought that Toll's prices were unsustainable and were just to grab market share.
33. I based this view on my observation that other sea freight operators had started services to Bamaga (Seisia) and then pulled out. I had seen this before in the sea freight industry with Endeavour Shipping and Sea Swift. When Sea Swift commenced services, they offered low rates and it was obvious to me that both companies could not keep operating, and only one would be viable. I thought that Endeavour Shipping wouldn't survive and the community would go back to the single operator and rates would normalise. I based that conclusion on the fact that Sea Swift was a bigger company and because Sea Swift had a contract with Seisia Council for access to the wharf at Seisia.
34. For my part, I thought it was obvious that Toll could not sustain their price structure and that Sea Swift would survive longer and hence Toll would pull out at some point. I wanted to stay with the reliability I knew and with the company that had the proven depot and delivery infrastructure (Sea Swift).At the time, I thought that Toll's actions were retaliation for Sea Swift taking on Toll in the Darwin region – I was aware that Toll had a reputation for playing "hardball".
35. Sea Swift has been operating in Far North Queensland for longer than any other operator that I can recall. I do not recall Sea Swift operating in Far North Queensland before Endeavour came in. However, it is possible that Sea Swift was providing other services but were not calling into Bamaga.
36. At the time Toll entered, Sea Swift had an agreement to use the Seisia Wharf. Toll commenced operations so quickly that they did not initially have a depot in place to have the infrastructure to support their service. I understand Toll may also have had problems finding accommodation for their staff at the time and securing a depot.This was due to the scarcity of rental accommodation in the NPA and the fact that Seisia Enterprises claimed they owned the site Toll were seeking to lease and there was a dispute which was common knowledge..
37. One reason for this is it is not straightforward to quickly obtain a depot in Seisia. There is very little land which does not have native title issues and any land is contested. For

example, I understand that the Northern Peninsula Area Regional Council granted access to a block of land to Toll, which Seisia Enterprises had said was theirs.

Sea Swift Proposed Acquisition of Toll / Toll exit

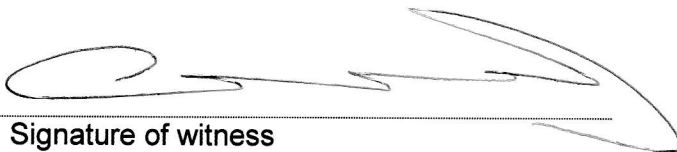
38. I am not concerned with Seaswift's acquisition of Toll as it was inevitable that only one company would be left standing. I am concerned about there being a monopoly but its basically unavoidable.
39. There would be little impact on me or Bamaga Enterprises if Toll exited the market. This is because Bamaga Enterprises has always operated with one shipping company. Sea Swift were handling the capacity before Toll came in, and so I would assume they have capacity to handle the whole trade if Toll pulled out. Our freight rates will however revert to normal contract rates as Seaswift will not have to match Toll's lower prices.
40. I do not think there is enough capacity for 2 shipping companies, rather at most, 1.5 shipping companies. It is the same with the airline services into Bamaga. My reasons for this conclusion are by observations of operators coming and going in the market in the way described above. There is not enough volume for two companies to sustain themselves, so when there are two companies, people start cutting rates and both end up limping along by the end of it.
41. If Sea Swift takes over Toll's assets, Bamaga Enterprises might not be able to negotiate such a good deal next time the contract is up for negotiation.
42. There is a potential for part of a nearby road (the Jardine River Bridge) to be replaced in the future. If this occurred, the possibility of road freight might give some alternative to use in any commercial negotiations with Sea Swift.
43. However, this is not a complete answer, because the alternative of bringing in freight by road during the dry season always exists and I have concerns that if I used more road freight, then Sea Swift may not provide the favourable contractual conditions which Bamaga Enterprises currently enjoys.

Proposed undertakings

44. There is a significant benefit to Bamaga Enterprises from Sea Swift maintaining regular services. Without those regular services, Bamaga Enterprises would face problems in getting sufficient goods delivered.
45. As an example of how service reliability is important to us, 3-4 weeks ago, there was a breakdown on one of the ships and Sea Swift did not ship any fuel. The whole town was out of fuel for 4 days. Only 20,000 L of fuel gets delivered in a week, but Bamaga Enterprises sells approximately 23,000 - 24,000 L per week. Despite having the

capacity to hold 50,000 L in the ground, it is therefore hard for Bamaga Enterprises to stock up enough to get a buffer, and with the breakdown, it was a touch and go situation.

46. It is very important for there to be regular shipping services to the Northern Peninsula Area. If marine freight services were disrupted or ceased in general, it would be an unmitigated disaster. There would be no food, fuel and alcohol. Building and construction would cease, so there would be no employment for local residents and expatriates alike. The Northern Peninsula Area is totally dependent on a regular shipping service.



Signature of witness

Christopher Foord, General Manager, Bamaga Enterprises