

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 Duncan Griffin

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 'D' followed by a 'G'.

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: Duncan Griffin

Address: Level 2, Mitchell Centre 55 Mitchell Street, Darwin

Occupation: Senior Manager, NT Power and Water Corporation

Date: 21/9/15

I, Duncan Griffin, Senior Manager, NT Power and Water Corporation, of Level 2, Mitchell Centre 55 Mitchell Street, Darwin, in the Northern Territory, say:

- 1. I am the Senior Manager for the Electricity Services (Remote Operations) division of the Northern Territory Power and Water Corporation (Power and Water). I have had that role since December 2014 and have worked at Power and Water since 2009.
2. The Remote Operations business division:
(a) provides electricity, water and sewerage services on behalf of Indigenous Essential Services Pty Ltd (a Power and Water subsidiary) to 72 remote communities and 66 outstations in the Northern Territory; and
(b) owns and operates generation services in five minor centres (smaller towns).
3. In my current role I am responsible for managing the life-cycle for power generation and distribution assets across remote power stations, including planning, acquisition, operations, maintenance and disposal of diesel, gas and renewable generation assets.
4. My previous roles in Power and Water were Manager, Program Delivery (Remote Operations) (July 2012 to December 2014) and Manager - Water (Remote Operations) (October 2009 to July 2012).

Table with 4 columns: Filed on behalf of, Prepared by, Law firm, Tel, Email, Address for service. Values include Sea Swift Pty Limited (the Applicant), Luke Woodward, Gilbert + Tobin, +61 2 9263 4014, fax +61 2 9263 4111, and email woodward@gtlaw.com.au.



Handwritten signature.

5. Prior to Power and Water I worked in various engineering and management roles, including roles with Mining One (Jan 2007 – October 2009), Xstrata Zinc (November 2003 – December 2006) and Baker Hughes (April 2003 – October 2003).

Northern Territory Power and Water Corporation

6. Power and Water is responsible for electricity transmission and distribution, and provides water and sewerage services across the Northern Territory.
7. Power and Water supplies services to 72 communities. Amongst those communities are a number of remote coastal and island communities in the Northern Territory which require the use of sea freight, because they are not accessible. These include the following:
 - (a) Wadeye (Port Keats);
 - (b) Galiwin'ku (Elcho Island);
 - (c) Maningrida;
 - (d) Milikapiti (Snake Bay);
 - (e) Milingimbi;
 - (f) Milyakburra (Bickerton Island);
 - (g) Minjilang (Croker Island);
 - (h) Nguiu / Wurrumiyanga (Bathurst Island);
 - (i) Numbulwar (Rose River);
 - (j) Pirlangimpi (Garden Point);
 - (k) Ramingining;
 - (l) Umbakumba;
 - (m) Yirrkala;
 - (n) Gunyangara (Ski Beach);
 - (o) Gapuwiyak (Lake Evella);
 - (p) Waruwi (Goulburn Island); and
 - (q) Ngukurr (when emergencies occur).
8. Each of the above locations is geographically isolated. Many of them do not have road access, either because they are on an island or because they are in remote coastal areas which either do not have road access or only have such access during the dry season.

9. The electricity provided to remote communities is predominantly generated by diesel-fired power stations.
10. Diesel is the primary source of fuel for power stations run in remote locations. Where communities are in close proximity to existing electricity services, Power and Water purchases power through agreements with third-party suppliers, for instance Angurugu (located on Groote Eylandt) receives power from the mine operation at Groote, while Yirrkala and Gunyangara each receive power from the mine operation at Nhulunbuy.
11. In relation to diesel supplies at the power stations, I generally try to ensure that the maximum amount of fuel is stored at each location. That amount varies between locations and depends on the time of the year. If this is not possible, I seek to ensure that a minimum of approximately six weeks of fuel is stored at each location. Usually, diesel fuel is shipped to the various power stations approximately every two weeks.

Power and Water's current arrangements – diesel

12. To supply diesel to remote communities, Power and Water contracts with a fuel company who is responsible for organising diesel deliveries, whether by road or sea. Power and Water typically seeks tenders from the market for that service. Currently, Power and Water has an agreement with PUMA Energy (**PUMA** – referred to in more detail below).
13. In 2014, PUMA entered into an agreement with Toll Marine Logistics (**Toll**) to carry diesel to the majority of communities serviced. Sea Swift also delivers to some locations for PUMA.
14. Under that contract, PUMA is responsible for arranging the freight of the fuel, and Power and Water is not involved in choosing which shipping company provides the service. I am aware that PUMA delivers diesel to some remote communities by sea during the wet season and to locations where road access is not available. Where road freight is possible, I understand that PUMA uses road freight.

Power and Water's current arrangements – other freight

15. In this section, I refer to Power and Water's arrangements for sea freight services. Where Power and Water requires sea freight services, it is often one of the co-ordinators in the Remote Operations team who makes the enquiries with operators and arranges the freight. I am usually involved in the project for which the sea-freight services are required and have an understanding of the process for arranging sea-freight based on my discussions with team members.

16. Apart from diesel fuel (which is dealt with by PUMA), Power and Water also requires the transport of other goods from time to time. These include the following:
 - (a) chemicals, oils and sodium hypochlorite which is used to disinfect water supplies; and
 - (b) materials required for capital projects, including building materials, machinery, trucks, bulk materials (for example, sand) and pumps.
17. Most cargo is delivered out of Darwin. Some goods are back freighted from the communities.
18. Power and Water uses road, air or sea freight depending on the time of year and the nature of the goods being transported:
 - (a) Where possible, Power and Water uses road freight because it is generally cheaper than sea freight. At Maningrida, for instance, which can only be accessed by road during the dry season, Power and Water transports as many goods as possible during the dry season (in October/November) in an attempt to minimise the amount of sea freight necessary during the wet season.
 - (b) Air freight is used in cases where time is the most important factor, for example where critical electrical components are required at a particular site.
 - (c) Sea freight is generally required when Power and Water is carrying out a large capital project. Examples of the types of goods transported for such a project are machinery, bulk materials, pumps and chemicals.
 - (d) Throughout the year, Power and Water also uses sea freight when there is some small item to be transported which can be taken on one of the scheduled services offered by Toll or Sea Swift.
19. For a large project, Power and Water might either hire a whole barge or book space on a scheduled service to the relevant community, depending on the volume of materials required.
20. For example, Power and Water is currently building a power station in Wadeye for which large critical components of the power station are required. Some of those components are being delivered by sea because they are too fragile to come by road. Although Power and Water would always seek to transport sturdy items to Wadeye by road during the dry season, the items being transported by sea, including electrical equipment, are subject to rattling and dust on the road and are too large to be transported by air.

21. Where Power and Water requires sea freight services for a project, Power and Water seeks quotes from the industry. We do not operate under a particular contract with a specific operator.
22. In determining which barge operator to use to transport goods to a particular location, I would usually ask employees of Power and Water located in the relevant community to find out which operators provide services to the location. The relevant Power and Water employee then seeks quotes from their contacts at the relevant operators. We seek competitive pricing that is available in the market.
23. Where Power and Water hires a whole barge, we choose the most cost-effective option for the appropriate barge that would fit into the particular port, and generally negotiate with operators to obtain the best price possible.
24. Apart from Sea Swift and Toll, there are some other operators carrying out localised work in particular locations, from which we might seek quotes for this type of work. Examples are Shorebarge and Sealink (now called Barge Express).
25. Toll, Sea Swift and Barge Express generally obtain the bulk of Power and Water's business. Mainly this is because these barges operate regularly in the relevant communities and have economies of scale.
26. For the Wadeye power station project (referred to above), I cannot recall precisely but I think we would have obtained quotes from Sea Swift, Toll and Barge Express for the sea freight component of the shipping. I believe Barge Express won the business.
27. In situations where Power and Water requires the transport of smaller items (for instance pumps), we find out when the different companies are able to deliver the item and choose whichever one will deliver the item first. We estimate that we do this about once per week. For this type of item, we would usually engage Toll, Sea Swift or Barge Express and the item would normally be shipped on the regular scheduled service that attends the relevant community.
28. For this smaller type of item, we do not seek to negotiate rates. Power and Water pays the rate that is quoted (which I understand to be the regular standard rates of those operators). My choice in these instances is based on which operator provides the service within the required timeframe.
29. The main requirements for sea freight services to the various remote communities is reliability of arrival times and that the service is cost-effective.

History of service delivery

30. I have been told by others in Power and Water that prior to Toll's acquisition of Perkins Shipping in 2009, Perkins shipping was a disorganised company and its prices were inconsistent.
31. Prior to Sea Swift's entry into the market, my experience with Toll was similar. For example, we might receive a quote one week and then a very different quote for a similar service the following week. It was also the opinion of my staff that in carrying out its Scheduled Services, Toll's planning lacked and they paid little attention to customer service.
32. Toll's service offering, reliability and consistency in pricing improved when Sea Swift entered the market. For example, I remember that the service that Toll provided became more reliable – there were less instances of, for example, cargo that had been shipped not arriving at its destination.
33. Once Sea Swift entered the market, we started using Sea Swift for some of Power and Water's sea freight requirements. We consider Sea Swift to provide a reasonable service and to be more transparent and consistent in its pricing week-to-week.

Potential impact if Toll exits

34. I have heard from others at Power and Water and other people in the Northern Territory that Toll may soon exit the market.
35. I am also aware that one way which Toll may exit the market is if Sea Swift purchases the business.
36. I can see some short term advantages for Power and Water if Sea Swift purchases Toll's business rather than Toll exiting and selling its business to others. Provided Sea Swift honoured Toll's contract with PUMA, continuity of service in the short term would be ensured (discussed further below).
37. If Toll was to exit without the proposed transaction, I think that other operators given time could provide competition. The main issue, however, is whether the demand for sea freight services across the NT communities is large enough to support too many large operators.
38. My main concern, upon Toll exiting the market (either by Sea Swift purchasing Toll or otherwise) is that Sea Swift's pricing may become more irregular and be set higher, and that its service standards may decrease. This is based on my observations about Toll's service prior to Sea Swift's entry.

39. The main item of freight for Power and Water is the delivery of diesel. In respect of those deliveries, the risk of higher prices is one for which PUMA would be responsible as the price that Power and Water pays for that service is set under the Power and Water/PUMA contract.
40. If Toll's exit led to a significant delay in the delivery of diesel, this may cause problems due to lack of diesel at the power stations. It would be up to PUMA to arrange a different method of delivery of the diesel under the contract. If Toll exits, PUMA may have to pay a higher price to Sea Swift for delivery under that contract. I have not discussed this possibility with PUMA, but they may seek to pass that on to Power and Water (subject to contract terms)
41. In respect of delivery of diesel under the contract with PUMA, I expect that it would be better for Sea Swift to take over this contract from Toll. If Sea Swift was to honour Toll's contract with PUMA, this would be of advantage to PUMA and Power and Water because:
- (a) PUMA would continue to pay the same price to Sea Swift as they have to Toll. This would reduce the risk of PUMA seeking to pass on any price increase to Power and Water
 - (b) There would be less risk of services being disrupted – the deliveries would continue to be provided continuously. If Toll's assets and business were sold to other parties, I do not know whether the purchasers would maintain the same type of business as Toll sufficient to service Power and Water's needs. In any case, it may take some time for new contractual arrangements to be put in place between PUMA, Power and Water and a different operator. It could cause a disruption to the diesel deliveries in the short term while the new operator settles in, however we have full confidence in PUMA to undertake necessary precautions.
42. In respect of Power and Water's requirements for other projects requiring the hire of a barge, Toll not being in the market may lead to Sea Swift charging higher prices for these services. Other operators such as Barge Express would provide competition; it is unknown at this stage how the pricing would play out.
43. An undertaking to maintain scheduled prices would benefit Power and Water's smaller transport requirements (where Power and Water is subject to Sea Swift/Toll's standard rates for regular scheduled services).
44. I do not think that such an undertaking would affect the larger deliveries I have described above. This is because those deliveries are subject to negotiation about the price with the relevant operator, rather than any schedule of rates. I note, however, as outlined

above, that with less competition, larger deliveries may become more expensive and large vessels more limited.

45. I consider that demand for sea freight across the NT coastal communities is likely to have decreased in recent times because:
- (a) there has been a downturn in the resources industry;
 - (b) the demands of remote communities for their everyday living needs is unlikely to increase substantially in the short term; and
 - (c) there has recently been a decrease in the number of construction projects being carried out in the remote communities.
46. Given these matters, I do not know whether there is sufficient demand for sea freight services to support too many large scale operators.



Signature of witness

Duncan Griffin, Senior Manager, NT Power and Water Corporation

Date: 21/9/15

