

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: INT (Toll) – Statement of IAN COPELAND – PUBLIC

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

ACT of 2015

RE PROPOSED ACQUISITION OF CERTAIN ASSETS OF THE TOLL MARINE LOGISTICS
BUSINESS IN THE NORTHERN TERRITORY AND FAR NORTH QUEENSLAND

STATEMENT OF IAN COPELAND

1. Background

- 1.1 I am the Chief Executive Officer of the Islanders Board of Industry and Service (IBIS).
- 1.2 IBIS is a statutory body governed by the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld).
- 1.3 I have been running IBIS since 2009. We are an unfunded, not-for-profit organisation.
- 1.4 We provide essential goods and services to the Torres Strait Islanders and the Northern Peninsula Area (NPA) communities. We are there to service the community. We try to provide all of the islands with essential goods and services, no matter the distance.
- 1.5 I believe we are the largest marine freight customer in the Far North Queensland market.

2. IBIS' current operations

- 2.1 We operate 17 stores, 1 Service Station and 5 fuel depots on 14 islands in the Torres Strait plus 1 store on Mainland Australia at the top of Cape York (NPA).
- 2.2 The stores are mostly similar in size to IGA Express stores with some being a little larger, similar to an IGA Everyday store. All stores have some hardware and variety goods available.
- 2.3 Through these stores we supply groceries, chilled goods, hardware and other essential everyday items. Our stores are essentially a one-stop shop. We offer other services such as arranging the delivery of vehicles and tinnies (small boats). We also offer a Western Union style electronic banking service.

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- 2.4 On certain inner islands (such as Moa Island and Thursday Island, which are close to the mainland) we have multiple stores. Stores at Bamaga, Horn Island and Thursday Island are visited by tourists. Thursday Island, which has a population of approximately 4,000 people, is the hub of the region.
- 2.5 On the outer islands we do not generally have the demand to support more than one store per island.
- 2.6 We have recently invested in a number of new stores and upgrades to existing stores. However, many of our outlets are unprofitable.
- 2.7 IBIS' sales volumes are growing. We had a turnover of approximately \$27 million in 2009 and last year we had a turnover of approximately \$45 million. We plan to open some more stores in the future and upgrade existing stores. We want to offer more to our communities. However, any increase in volumes will be limited as there are only so many people in the region.

3. Nature of our freight

- 3.1 The freight we need delivered to our stores can be broadly divided into dry and refrigerated. The refrigerated freight can be further divided into chilled, frozen and fresh produce.
- 3.2 We need good cold chain supply to ensure food security issues are managed.
- 3.3 The refrigeration of freight imposes significant costs. The equipment, maintenance and running costs are high. As a result, freight rates for refrigerated cargo are more expensive than those for other cargo.
- 3.4 With respect to dangerous goods, we do ship fuel but we do not ship explosives or guns. Fuel is shipped weekly. Fuel is not just used in vehicles but also tinnies.
- 3.5 Occasionally we need to ship vehicles. We also ship tinnies from time to time.

4. Accessing the islands

- 4.1 Councils generally do not maintain the barge landing structure on the islands properly. The damage done to vessels delivering freight to the islands is regular and significant. In addition, there are access charges levied by native title holders.
- 4.2 Ugar (Stephen Island) does not have good shipping access. It only receives delivery when the tide permits, which is around once a month. It is surrounded by approximately

300 metres of reef. The window for a safe landing is quite small, and I know of at least two incidents in recent times of vessels being 'hung up' on the reef. It only receives delivery when the tide permits, which is around once a month when there is a 'king tide'. Dauan and Boigu Islands also do not have good access, and safe landings depend on weather and tide. Access to Dauan Island involves navigating a narrow approach, and there are often strong winds of up to 40 knots. Boigu Island is surrounded by mud.

- 4.3 We are trying to procure our own small landing craft to facilitate the delivery of goods to some of the more remote islands that can be difficult to access. We have approached the federal government about this. We would be looking to load about four pallets on to the landing craft per week. The landing craft would be used to provide a 'feeder' service of sorts. The craft would also double as a small passenger service, ferrying up to eight passengers (this latter function would further our commitment to helping the community, as there have been some exorbitant rates charged for local water taxi services between some of the islands). We would employ two island masters on Ugar (Stephen Island) and Erub (Darnley Island) to oversee the operation of the craft.

5. Marine freight services

- 5.1 IBIS contracts for marine freight or shipping services to deliver goods to our stores. Generally, we need a twice weekly service for the major islands and a weekly service for the non-major islands.
- 5.2 We budget so that around 10% of our sales turnover is allocated to paying for freight.
- 5.3 We order goods approximately 18 days in advance of receipt. Essentially, we have a three week ordering cycle to make sure we have enough supplies.
- 5.4 Our contract for scheduled services is currently with Toll. It is a five-year contract in place until 2019. Now shown to me and attached as **IC-1** is a copy of the confidential contract currently in place between IBIS and Toll under which Toll supplies logistics services. Toll subcontracts the work under this contract to Sea Swift (and has done so from the beginning). A deed of assignment to Sea Swift had been drawn up, but that has been put on hold pending a final outcome in relation to the Toll/Sea Swift deal.
- 5.5 IBIS' contract with Toll covers two freight zones. Zone 1 covers the inner islands (centred around Thursday Island). Zone 2 covers the outer islands. The volumes of freight in Zone 2 are too small to make it a commercial proposition in itself. An operator needs to make enough revenue in Zone 1 to be able to service Zone 2.

5.6 IBIS also contracts for charter or project marine services – for example, to bring in building materials for a new store. In addition to Toll and Sea Swift, IBIS also uses Vance Wallin (of Carpentaria Contracting and Weipa Hire), who has a barge, to do charter work from time to time. Other locally based options are currently non-existent, though suppliers based in the Northern Territory could potentially be used, such as Barge Express.

6. The proposed merger of Toll and Sea Swift

6.1 I am not opposed to the merger of Toll and Sea Swift. It is critical to IBIS for there to be a financially viable, regular supplier of scheduled marine freight services to the Torres Strait Islands.

6.2 Continuity of supply to the islands is essential to us and our customers. The impact of a disruption to the shipping services would be catastrophic. Most of the goods that we have shipped are essential, such as food and fuel. If there is no continuity of supply, the indigenous people on the islands will be forced to go without.

6.3 Regularity of supply is also essential to IBIS' cost control. For example, we struggle with the supply of fresh produce to the islands. We are forced to write off a lot of the fresh produce stock at our cost. Regularity of supply is critical to our ability to reduce the costs of write offs.

6.4 I understand that Toll will not continue to operate in the market if the transaction does not go ahead. I also understand that Toll and Sea Swift are offering commitments as part of the proposed transaction that (amongst other things):

- (a) Sea Swift will not enforce any exclusivity provisions in the customer contracts to be transferred to Sea Swift (and will not enforce any minimum volumes to be shipped, to the extent that these contracts contain any such minimum volume requirements);
- (b) Sea Swift will continue to provide scheduled services to all communities that are currently serviced on a scheduled basis by either Sea Swift or Toll. The frequency at which Sea Swift will provide scheduled services to these communities will be no less than the frequency at which Sea Swift currently services those communities (or, for any communities to which only Toll currently provides scheduled services, the frequency will be no less than the frequency at which Toll provides those services);

- (c) Sea Swift will make a commitment in respect of customers who (unlike IBIS) are subject to scheduled rates. That commitment will be to honour, subject to inflation, Toll's scheduled rates as at 1 July 2014 for the NT and Sea Swift's scheduled rates as at 1 August 2015 for FNQ. Those rates will in effect be maximum rates, and actual rates charged to customers will be subject to negotiation;
 - (d) Sea Swift will provide access to services at the Gove wharf and landing ramp to third parties on an enhanced open, non-discriminatory basis, including through transparent and clear pricing; and
 - (e) Toll will release two charter vessels back to their owners and implement a process to sell the *Toll Warrender*, so that these vessels will be available to other parties who may wish to purchase or charter them in order to provide coastal and community shipping services.
- 6.5 If the transaction goes ahead, Sea Swift will take over our contract with Toll and I would expect there to be a smooth and orderly transition of IBIS's services under contract from Toll to Sea Swift. I am concerned to ensure that the terms of our contract are adhered to for the whole of the remaining term of the contract.
- 6.6 If the Tribunal authorises the transaction and Sea Swift makes the commitment not to enforce exclusivity in any contracts transferred to it by Toll, if IBIS is not happy with any aspect of Sea Swift's provision of the services under the contract, then I would have no hesitation in speaking with other providers or potential providers of sea freight services with a view to obtaining some or all of IBIS's service requirements from another provider. IBIS's volumes are very significant and I believe they would provide a sufficient basis on which another provider could operate in the market and look to supplement its operations with other volumes.
- 6.7 If Toll shuts down its marine logistics business in the NT and FNQ, and Toll was therefore unable to fulfil its obligations under its contract with IBIS, we would need to urgently seek to make other arrangements. In that event, I would be extremely concerned about the risk of disruption to the services to our communities. I would also be extremely concerned that any new provider (whether this would be Sea Swift or someone else) may not agree to take over the performance of our contract on its current terms. Any changes to our contracted services or pricing could have a significant adverse effect on IBIS and our communities. As such, my strong preference is for the transaction to go ahead as it will enable a transition of our contract across to Sea Swift

and will ensure that Sea Swift is bound by our current contract terms and will not enforce exclusivity.

- 6.8 I am also supportive of the other commitments proposed to be made by Toll and Sea Swift. In my view, they will be of real benefit to the local communities and especially 'mum and dad' customers for sea freight services. Any initiatives that might facilitate entry into the sea freight market in FNQ and the NT, or expansion by an existing provider, are favourable from my perspective because ultimately that could mean IBIS and other customers have more options open to them in securing supply.

I verify that I have read the contents of this statement and the documents referred to in it and that I am satisfied that to the best of my knowledge, information and belief, it is true and correct in every particular.

24TH SEPTEMBER
DATED **2015**



Ian Copeland

7. INDEX OF ANNEXURES TO STATEMENT OF IAN COPELAND

Annexure	Title	Confidentiality
IC-1	Logistics Services Agreement between The Islanders Board of Industry & Service and Perkins Shipping Pty Limited and Perkins Shipping Pty Limited dated September 2014	Restriction of publication of whole document claimed