

**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 Joseph Elu

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: **Joseph Elu**

Address: 46 Victoria Parade, Thursday Island, Queensland

Occupation: Chairman, Torres Strait Regional Authority

Date: 30 September 2015

### Contents

I, Joseph Elu, Chairman, Torres Strait Regional Authority, of 46 Victoria Parade, Thursday Island, in the State of Queensland, say that:

1. I currently hold the following positions:
  - (a) Chairman of the board of the Torres Strait Regional Authority (the **TSRA**);
  - (b) Councillor on the Northern Peninsula Area Regional Council (member for Seisia);  
and
  - (c) Chairperson of Seisia Enterprises and Seisia Community Torres Strait Islander Corporation.
2. I was born on Thursday Island and lived my childhood in Seisia. In the mid-1980s, I returned to Thursday Island and started working at the Seisia Council (as it was then known). Between 1987 to 2008, I was Chairman of Seisia Council.
3. Between 1996 and 2008, I was Chairperson of Indigenous Business Australia (formerly known as the Aboriginal and Torres Strait Islander Commercial Development Corporation).

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4. I have been the chairperson on a number of other organisations and committees, including the Cape York National Resource Management Board. I have also held the position of Mayor of the Northern Peninsula Area Regional Council.
5. In 2001, I was awarded the Centenary Medal and in 2002 was presented with an Honorary Doctorate from the Queensland University of Technology for my lifelong work in fostering the economic development of Indigenous people throughout Australia.
6. During 2008, I was made an Officer of the Order of Australia and was also awarded the NAIDOC Lifetime Achievement Award.

### **Torres Strait Regional Authority**

7. TSRA is an Australian Government Statutory Authority which acts as the leading Commonwealth representative body for Torres Strait Islander and Aboriginal people living in the Torres Strait and Northern Peninsula Area communities of Bamaga and Seisia.
8. The TSRA's functions include administering programs to support individuals, councils and community organisations within the Torres Strait region in six key development areas – an economic development program, fisheries program, healthy communities program, safe community program, culture, art and heritage program, environmental management program, and a governance and leadership program.
9. The TSRA Board consists of 20 elected members who are all Torres Strait Islander or Aboriginal people living in the region. Members are elected every four years by their individual communities.
10. The TSRA does not itself have the responsibility for providing goods and services or contracting for sea freight. Rather, the authority has appointed private contractors which carry out these functions.
11. In my role in the TSRA, I supervise programs at Thursday Island, Seisia, Bamaga and the outer Torres Strait islands.

### **Seisia Enterprises**

12. I oversee as chairperson a company operating in Seisia called Seisia Enterprises. This is a private company registered with ASIC and is a wholly owned subsidiary of the incorporated Corporation of Seisia Community Torres Strait Islander Corporation.
13. The Corporation is owned by the Seisia Community and is registered under ORIC (The Office of the Registrar of Indigenous Corporations). The income generated by Seisia Island Enterprises funds programs and developments that aim to reduce welfare

dependence, create employment opportunities and accelerate community development in Seisia.

14. Seisia Enterprises operates a supermarket, kiosk, meatworks (including an abattoir for locally grown cattle), service station, fishing club, campground and various tradesmen.
15. Seisia Enterprises has a contract with Sea Swift for delivery of a variety of products.

#### **Northern Peninsula Area Regional Council**

16. Northern Peninsula Area Regional Council (**NPARC**) makes up one of three local government Councils in the Torres Strait and Northern Peninsula Area of Queensland. The NPARC was formed in 2008 by the amalgamation of the shire and island councils of Bamaga, Injinoo, New Mapoon, Seisia and Umagico.
17. The Council consists of five divisions, one for each of the former entities. Each division elects one councillor and the Mayor is elected across the entire Council area. NPARC operates community services, enterprise and commercial activities, engineering services and economic and employment development programs.

#### **Community's need for marine freight services**

18. Because of my various roles in the community, I have had various involvement with sea freight. For example, as the Chairperson of Seisia Enterprises I have been involved in managing and signing off all decisions of the Board including in relation to Seisia Enterprises' contracts for sea freight. I am not involved directly in any negotiation of or day to day management of sea freight services for Seisia Enterprises, however I am kept informed on these matters by Arthur Wong, the CEO of Seisia Enterprises.
19. My comments about sea freight below are based on this experience and my general experience with sea freight from living within communities.
20. Thursday Island is located 39km north of Cape York Peninsula. It has an area of about 3.5 square km and an estimated population of 2,610.
21. Seisia has a permanent population of approximately 150 people and is situated at the most northerly deep-water port on Cape York Peninsula. The Seisia community is predominantly reliant on sea freight for the access of products which they cannot source from the local community.
22. The Seisia and Thursday Island communities have requirements for normal grocery items (dry goods, fresh goods, chiller and frozen goods) as well as other products like building materials and general merchandise.

23. Seisia Enterprises has a requirement for groceries and meat and other small goods products which are sold in the supermarket and butcher, cleaning products for the camping ground and fuel, diesel and oil for the petrol station.
24. The main requirements for deliveries to Thursday Island and Seisia are reliability in terms of arrival time, regularity in service and the price of the service.
25. Seisia Enterprises requires deliveries twice weekly at least, particularly in the tourist season. In around the late 1970s / early 1980s, Seisia Enterprises only received its sea freight delivery once a week, which meant we had to have a larger deliver of goods and more storage space at our premises to stock up. Additionally, this meant that we would not be able to restock items readily once they sold out, and would frequently run out of fresh fruit and vegetables before the next shipment came.
26. Seisia Enterprises historically arranged for transport of its goods from the depot at Seisia wharf, but since approximately the late 1980s / early 1990s, Sea Swift has delivered depot to door, which made it easier for Seisia Enterprises as they did not need to have forklifts and trucks to transport their own goods.
27. Even if a community customer only uses the service infrequently, a regular service at particular times is important, for example, for freight around Christmas time or to ship house products and bigger items which are not sold on the islands.
28. Most islands in the area have air strips, and so they are able to get supply of products that way. However, I understand that this is only sporadic. Air freight is very costly. It is approximately 5 or 6 times more expensive than sea freight.
29. Road transport exists to Seisia and Bamaga (about 5km inland from Seisia), but this can only be done in the dry season. There are approximately 3-4 months per year where no deliveries can be made. Also, the quality of the road is not very good.
30. It is important to the TSRA and for the programs that the TSRA delivers to ensure that there are continued sea freight services to the community generally, particularly in relation to community wellbeing (health, kids nutrition, school supplies etc). Having regular sea freight servicing the islands every week in the last 20 years has really lifted the standard of living. In particular, the delivery of fresh fruit and vegetables has been a big improvement.
31. Price of sea freight is important but more important is the regularity and reliability of the service.

## **Current sea freight arrangements**

32. Seisia Enterprises has a contract for the delivery of sea freight with Sea Swift. I recall that at the time of the last negotiation of Seisia Enterprises' contract with Sea Swift, Toll offered a cheaper price. Seisia Enterprises did not take this price but recontracted with Sea Swift. This is because Seisia Enterprises had a bad experience a number of years ago around the late 1980s or early 1990s with having reliable deliveries when it started to use the services of a new operator at the time, Jardine Shipping, which then closed a very short time later. This meant that Seisia Enterprises struggled to meet its customers' needs for a fortnight.
33. I believe that Seisia Enterprises was able to negotiate a better deal out of Sea Swift on their freezer / chiller goods because of the fact that Toll was operating and providing an alternative service. In the next round of contract negotiation, if Toll was not present, I think that Seisia Enterprises' negotiation ace would be that Seisia Enterprises had been loyal to Sea Swift over the period where Toll was undercutting them, so we would expect Sea Swift to be loyal to Seisia Enterprises.
34. If Sea Swift were not loyal to Seisia Enterprises (by providing competitive prices), Seisia Enterprises might look around to see if there was anyone else who could operate.
35. I do not think that the pricing offered by Toll has been sustainable. I have seen this level of discounting in the past, and I learnt my lesson about taking price over reliability from the experience with Jardine Shipping.
36. Apart from the level of the price, it is also important that the price is stable; it cannot go up and down for customers.
37. All Thursday Island cargo is delivered out of Cairns. Apart from Thursday Island, there are 17 other islands in the region north of Cape York. This includes the Outer Torres Strait Islands.
38. Sea Swift is currently the only operator which delivers regularly to Thursday Island and the other 17 Islands in the region. Sea Swift services all the islands at least weekly (dependant on weather and tides). Sea Swift runs about 5 barges in order to service those outer islands.
39. Sea Swift also provides two services a week to Seisia.
40. Approximately a year or two ago, I recall that Carpentaria Contracting, a company from Darwin, approached a few businesses in the Thursday Island region to see whether there were any opportunities to deliver freight to Thursday Island. I am not sure whether anyone has contracted with this company but I have not seen any of their boats in or

around Thursday Island. Toll commenced operating a scheduled service to the islands around 2009 when they took over Perkins. However Toll only has 1 barge and so does not deliver to each of the islands every week. Rather, Toll will only deliver to the islands when there is cargo that needs to be delivered there. This is particularly the case for smaller islands where there is less frequent demand and where they are harder to access, for example, Stephens Island. Additionally, one of the Sea Swift workers at the depot on Thursday Island told me that Toll also try to get cargo on to Sea Swift boats in order to supply to the Thursday Island, as they cannot do it themselves.

41. I understand from Arthur Wong that in 2014 Toll won a contract for IBIS, the biggest supermarket group in the region, from Sea Swift by offering what I consider to be a ridiculously low price. Some of the things I have seen or heard about make me believe Toll may be offering prices which it can't support. For example:
- (a) Toll does not have a service to some of the outer islands, and even though it has won the IBIS contract to service those Islands. I understand that Toll asked Sea Swift to deliver the cargo under the IBIS contract to those communities.
  - (b) I understand that Toll's prices have been increasing lately. For example, I was told by someone in the Thursday Island community last year that it cost \$400-\$500 to ship a car from Cairns with Toll, but when I priced out how much it would cost to ship a car this year with Toll, I was informed that it would cost approximately \$600-\$700.
42. There are generally three types of customer arrangements for freight services:
- (a) Larger customers like IBIS, Seisia Enterprises or Bamaga Enterprises might have a contract with Sea Swift or Toll.
  - (b) Alternatively, community members may require shipping of goods on an ad hoc basis, in which case they either have an account with Sea Swift or they pay upfront. Both of these types of customers generally rely on the published price, however people who ship regularly might be able to ask for a discount.
43. The impact of marine freight services is more significant for a destination like Thursday Island which is more remote. If we were not able to get sea freight to Thursday Island, there would be dire consequences because we rely on sea freight for our food, fuel and general cargo requirements. The only alternative would be to get these goods delivered by air freight, but that is very expensive.
44. For Seisia Enterprises, if Sea Swift stopped delivering regularly to Seisia, then there would also be dire consequences, as we would not be able to get enough goods to run the businesses. Seisia Enterprises does not itself have enough volume to charter its own regular service, and so would need to get a few businesses in the region together in

order for that to be viable. We would in particular look to band together with IBIS because they have large requirements and are also government owned therefore I consider the government would be able to negotiate a good contract with another company.

### **History of service delivery**

45. Up until the mid-80s, Masons had government-sponsored State Stores Contract and so was delivering subsidised government freight. I was at the time working for the government so was aware of this contract. During this time, unless a sea freight provider had a government contract, it was very hard to compete. Masons was the government's preferred supplier, so most government contracts were fulfilled by them.
46. When Masons first commenced, Seisia Wharf just had a landing ramp for barges. Shipping companies could run things on and off the boats via the ramp or there was a boat which could lift items onto the wharf.
47. Seisia Council owns the wharf at Seisia and it is managed by the Ports Corporation, but each shipping company handles their own cargo. Getting access to the wharf is not expensive or hard to do.
48. Once the State Stores Contract stopped in the late 1980s, the Seisia Council retail store went private. At around that time, Sea Swift commenced operating one boat to Thursday Island and Seisia.
49. At first, Sea Swift competed with Masons. Sea Swift had a different structure to Masons, which was a highly unionised company. Sea Swift could offer a better deal than Masons and recalls being told that Masons were not able to compete on costs.
50. Seisia Council started its own retail store at Seisia around the mid-1990s. At this time, even though the state stores contracts had ceased, Masons Shipping was still operating because they had the IBIS contract. Masons discontinued its freight services in the 1990s.
51. Another company that entered was Jardine Shipping, run by Frank Market, who originally was involved in prawning in the region, but given the decline in that business, thought he could start running a regular service to provide freight to whichever of the Outer Torres Strait Islands required cargo to be shipped to them.
52. In around the mid to late 1990s, Brambles bought out Frank Market. Very soon after they took over, Brambles shut down this service. This was a sudden change and I was told that the London office of Brambles overnight told Jardine/Brambles to close down.



53. In the mid 1990s, I also remember a company named Endeavour Shipping who were trying to trump up business by charging a lower price than Sea Swift, but not as low as Toll was charging. Endeavour Shipping came to Thursday Island every week, but the problem was that they were not at the same time every week. They were sometimes a day or two off schedule and would arrive at different times of the day. Endeavour Shipping only had one boat, so if it was held back at any location, this would delay the schedule.
54. When I was at Seisia Council, around the mid-1990s, we used Endeavour Shipping as well as Sea Swift, which both operated a single service per week, so that we could get twice weekly deliveries. However, Endeavour Shipping were not reliable and did not turn up when they said they would turn up. For example, they were meant to deliver on a Wednesday but instead turned up on a Saturday when I was running a skeleton crew. It was important that Seisia Council receive supply at particular times so we stopped using Endeavour Shipping after a couple of months.
55. Endeavour stopped servicing Thursday Island around 2005-2006.
56. I recall a company called Silent World that operated more recently. I did not have much to do with that company, although I recall that they initially charged ridiculously low prices and then ramped up their prices as they could not sustain the low prices.
57. Silent World operated a couple of times to Seisia, but I did not use them. I do not recall Silent World having a set schedule. Rather, they delivered to Seisia if they had cargo to deliver.
58. I am aware of the following companies which carry out shipping on an ad hoc basis (although I have not used them):
- (a) Palm Island Barge, which has fairly small boats but does deliver a weekly cargo up to Weipa and back; and
  - (b) Carpentaria Contracting, which has previously come up to Thursday Island to deliver project work.

#### **Potential impact if Toll exits**

59. It appears inevitable that Toll will stop operating. I think this because I was told by a contact at IBIS that Toll won the contract from Sea Swift for IBIS deliveries by undercutting Sea Swift by \$600,000. For that reason, I think it is likely that Toll are losing a significant amount of money per year. Toll's other problem is that it does not have capacity to deliver to the outer islands. It relies on Sea Swift for this, but Sea Swift

cannot deliver these services for the same price that Toll has offered to IBIS, so Toll is having to absorb the loss that it makes on the IBIS contract.

60. I hope that Sea Swift can continue the service it provides now. If Sea Swift agrees with the ACCC to maintain scheduled services and scheduled prices at current levels (subject to inflation increases), this would be very beneficial to the community.
61. Toll's exit is unlikely to affect Seisia Enterprises: it currently uses Sea Swift and will continue to do so.
62. Once Toll exits, if Sea Swift started to put their prices up, then the large customers (including Seisia Enterprises) might start grumbling, and if there were enough people grumbling than they might look for another company to do their shipping. As I previously stated, Seisia Enterprises would look to a business like IBIS to facilitate a new company operating. I understand that this was how Toll started; through a State government building contract in around 2008 or 2009 to build 46 houses in the Torres Strait Islands, Seisia and Bamaga. I think that Toll took this contract, thinking that they could make some money, but once the housing contract was fulfilled, Toll had to find other work and couldn't, which is why they then undercut Sea Swift for the IBIS contract.

*Esmaid*

Signature of witness

Joseph Elu, Chairman, Torres Strait Regional Authority

