

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 KEN CONLON – 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 KEN CONLON

1. The Barge Express business

1.1 I own and run a freight and logistics company called Conlon Murphy Pty Ltd trading as Barge Express. This company was previously called Sealink.

1.2 I commenced operating in this sector when I started a freight company in 1998. This company serviced approximately 32 communities in the Northern Territory (NT), mainly by road at that time. The company was called QAL Transport, and I later sold the company.

1.3 In around 2005, some of the communities in the NT that my company serviced by road were cut off during the wet season. My customers in these communities had to get another company to deliver goods to them by sea. In this context, these customers approached me and asked me to consider buying a barge vessel to service them when road access was not possible. So I bought a vessel and started delivering freight to these communities by sea.

1.4 Since that time, we have acquired more vessels and have serviced a number of communities in the NT. We are not currently servicing these communities as a general freight service on a scheduled basis but more as a kind of 'charter' business, taking freight, building equipment and all sorts of other bits and pieces to these communities.

Filed on behalf of (name & role of party)	Toll Holdings Limited
Prepared by (name of person/lawyer)	Geoff Carter
Law firm (if applicable)	Minter Ellison
Tel (03) 8608 2000	Fax (03) 8608 1000
Email geoff.carter@minterellison.com	
Address for service	Level 23, Rialto Towers, 525 Collins Street, Melbourne VIC 3000



- 1.5 Now shown to me and marked **KC-1** is a page from the Barge Express website showing the locations and routes ex-Darwin that we service.
- 1.6 Today we have a fleet of four vessels. All of our vessels are landing craft. Three of the vessels are 500 tonne in capacity, which is regarded as the biggest capacity that can be put into the communities. The other is a smaller vessel which we use to service the Gulf. I believe that our vessels are maintained to a very high standard and we have the best fleet of vessels in the NT.
- 1.7 Now shown to me and marked **KC-2** is a document with pictures showing our existing fleet of vessels.
- 1.8 We have a \$4 million facility in Darwin with a very large yard. It has around 30,000 square metres of hard stand with two 700-metre sheds.
- 1.9 We have berthing facilities in Darwin. We have two fifty metre quay-facing berths at which vessels can be loaded over the side using a crane. The crane is an 80-tonne crane that we bring in from close by as needed. It can load a container vessel in about two hours. We also have a barge landing where we put the door of the vessels down and load them from the front. We load most of our gear through the ramp.
- 1.10 We currently have an offer submitted for a purpose-built, 2,000 square metre cold storage facility about a half kilometre away from our existing Darwin facilities. The facility is completely under roof and completely refrigerated, and could be used to load/unload cargo without breaking the cold chain. It was built about three years ago with the intention of being used in a fruit and vegetable import/export business. The business fell through and so the facility is on the market. The facility has never been occupied for any substantial period of time. We plan to use this to consolidate and pack chilled and frozen goods.
- 1.11 My company employs engineering managers and various other staff. We also have an office in the city with administrative staff. At one point when servicing these communities we were doing approximately 1,000 customer invoices per week.

2. Arrangements with Toll Marine Logistics

- 2.1 Toll Marine Logistics (**TML**) approached my company a couple of years ago and asked whether they could charter one of our vessels under a long-term arrangement. Under this arrangement, which is still on foot today, we began doing a general freight run to the communities on Toll's behalf. Although it is done in Toll's name (ie. our vessels carry Toll branding), the arrangement involves the use of our boat and our staff. The vessel we have historically used for the bulk of this charter is the *Bimah Tujuh*. However, recently we used the *MDT Trader* for a period. We are currently

using the Bimah Tujuh. We also perform charter services on Toll's behalf from time to time.

3. Proposed merger of Toll and Sea Swift

- 3.1 I am aware of the proposed transaction between Toll and Sea Swift. I believe that the transaction gives Barge Express the opportunity to expand its operations in the NT. My company is 'waiting in the wings' for the merger to be completed. Once it does, I believe that my company will become a serious competitor to Sea Swift in the market. I suspect that many people do not realise the extent to which we already operate in the market, because we carry freight on behalf of Toll. This creates the impression that our boats and staff belong to Toll, when in fact it is Barge Express providing the service.
- 3.2 I am aware of the scheduled services currently being provided by TML in the NT. I believe that my company could cover approximately 60-80% of these services and still maintain its current services provided to existing customers. For example, I believe we could do the 'fuel run' that Toll provides under its contract with Puma Energy and have sufficient deck space available for general cargo to service all the communities. Indeed, I believe that I am in a good position to win the Puma Energy contract when it goes to tender. I believe that I have good relationships in with key customers and a good reputation in the NT for being able to provide quality and reliable shipping services.
- 3.3 I do not need, and do not wish to purchase, any of TML's assets, other than perhaps the *Toll Warrender*. I am not otherwise interested in any of Toll's vessels. In my experience, similar vessels are frequently on the market. Right now, for example, I am aware of a 600-tonne vessel up for sale, another landing craft close to my company's headquarters with a 'for sale' sign on it, and there are three landing craft available from Bhagwan Marine, which is bringing in some new landing craft vessels from China.
- 3.4 My understanding is that some of the key people at TML have been told that their services will not be required in the event that the merger goes ahead. I may employ some of those people in the future.
- 3.5 Toll is the operator of a landing facility in Gove. I understand that Sea Swift would take over that facility if the transaction goes ahead. I do not consider that access to the Toll Gove facility is necessary to enable Barge Express to compete in the market. Gove is a shrinking market. It is tied to the Rio Tinto operations in Gove. Gove does not feature as a key part of my company's plans. There are also potential alternative

landing facilities in Gove such as the old World War II landing ramp on the other side of the Rio Tinto facility. Recently, there has also been talk of building a small side road to connect the public barge landing that anyone can use to the main road. The road would need to go around the gate at the top of the public barge landing that is closed off by the Toll facility. This is a possibility that I could explore with Rio Tinto and the NT Government if necessary.

4. Potential entry into FNQ

- 4.1 I have been invited to and have gone to Cairns twice in the last month. There are several potential customers in Far North Queensland who appear to be very interested in Barge Express commencing operating in the region. I have also spoken with the port authority in Cairns and there does not appear to be any difficulty in getting access to landing facilities.

5. Proposed commitments

- 5.1 I have recently been informed that Sea Swift has proposed to provide commitments that it will not enforce exclusivity and minimum volume provisions in contracts assigned to it by Toll and will maintain the scheduled services at the scheduled rates currently being offered by Toll subject to CPI and labour costs. I know from my discussions with the communities in the NT that there was a concern that if the transaction proceeded, people would be locked in to using Sea Swift and that, once locked in, prices would escalate. In my view, the proposed commitments will alleviate those concerns.
- 5.2 The proposed commitment not to enforce exclusivity and minimum volume provisions would not just alleviate community fears but would also assist my plans to become a competitor to Sea Swift. The commitment would remove any 'paper' barrier to my company being an alternative supplier. Having said that, I do not consider the existence of contracts to be a barrier to offering services. In my extensive experience in the region, even if a particular community were on paper locked in to a contract with Sea Swift, if the indigenous leadership of the community took an unfavourable view of Sea Swift, they could nonetheless be ejected as a supplier to the community and there would be an opportunity for a new supplier, such as my own company, to come in.
- 5.3 I have also been informed that another commitment is being proposed the effect of which would be to improve pricing with respect to accessing the Toll facility in Gove. Whilst this may be helpful to my ability to compete, I do not think that access to this facility is essential or that the proposed commitment will make a material difference to

my ability to compete with Sea Swift for the reasons outlined above. I think that the freight rates that Rio Tinto is currently willing to pay are too low for their contract at Gove to be of real interest to me at the moment.

- 5.4 In addition, I have been informed that another proposed commitment is that chartered vessels would be released to their owners and that the *Toll Warrender* would be put up for sale. The release back to charterers does not change anything, but my company may be interested in purchasing the *Toll Warrender* if it was available on acceptable terms.

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.

DATED 16/9/2015

A handwritten signature in black ink, appearing to read 'Ken Conlon', is written over a horizontal line.

Ken Conlon

6. INDEX OF ANNEXURES TO STATEMENT OF KEN CONLON

Annexure	Title	Confidentiality
KC-1	Barge Express locations and routes ex-Darwin	-
KC-2	Barge Express Vessels	-