

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) – Supplementary Statement of SCOTT WOODWARD - PUBLIC (REDACTED)

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 2016

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

SUPPLEMENTARY STATEMENT OF SCOTT WOODWARD

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Filed on behalf of (name & role of party)

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SUPPLEMENTARY STATEMENT OF SCOTT WOODWARD

I, Scott Woodward, of Level 3, 30 The Esplanade, Perth Western Australia (WA) 6000, General Manager, say as follows:

1. Introduction

- 1.1 I am the General Manager of Toll Energy, which incorporates Toll Marine Logistics Australia (TML) and Toll Marine Logistics Asia. These businesses are part of the Toll Group of Companies (Toll Group). Toll Holdings Ltd (Toll) is the ultimate Australian parent company for the Toll Group.
- 1.2 I provided a statement dated 16 September 2015 (First Statement) in relation to the proposed acquisition by Sea Swift of certain assets of the TML marine freight business in the Northern Territory (NT) and Far North Queensland (FNQ).
- 1.3 I understand that the proposed acquisition was the subject of the application for merger authorisation made by Sea Swift filed on 21 September 2015 (First Application), which was withdrawn on 16 November 2015.
- 1.4 I understand that Sea Swift is filing a new application for merger authorisation in respect of the proposed acquisition (New Application).
- 1.5 This statement is supplementary to my First Statement.
- 1.6 I am authorised to make this statement on behalf of Toll.
- 1.7 I make this statement from my own knowledge as General Manager of Toll Energy and TML and from having consulted and made enquiries of relevant staff and the records of TML and Toll.
- 1.8 Unless otherwise defined in this statement, terms used in this supplementary statement have the same meaning as defined in my First Statement, the First Application and / or the New Application.

2. Update in relation to vessels used by TML in the NT and FNQ

Biquele Bay

- 2.1 In paragraphs 6.5 and 14.2 of my First Statement, I stated that Sea Swift recently chartered the Biquele Bay on a temporary basis due to the docking of one of its vessels. This temporary arrangement ceased on 28 September 2015. Since that time, the

Biquele Bay has not been used by the TML business apart from undertaking some spot voyages for overflow freight.

Fourcroy and Coral Bay

- 2.2 In paragraph 6.4 of my First Statement, I explained that one of the vessels that TML uses to provide coastal and community shipping services on a scheduled basis in FNQ is the *Fourcroy*. The *Fourcroy* is a landing craft vessel owned by Toll and is proposed to be transferred to Sea Swift as part of the proposed transaction. It is the only vessel in FNQ proposed to be transferred.
- 2.3 During the period between late July and late November 2015, TML used the *Fourcroy* to temporarily replace the *Coral Bay* vessel (which provides coastal and community shipping services on a scheduled basis in the NT) while the latter vessel underwent docking. The *Coral Bay* is a landing craft vessel owned by Toll and is proposed to be transferred to Sea Swift as part of the proposed transaction. [REDACTED]
[REDACTED]
[REDACTED]
- 2.4 Once the *Coral Bay* returned to providing scheduled services in the NT, work then began on the *Fourcroy* because it required engine rebuilds [REDACTED]
[REDACTED] It is anticipated that the *Fourcroy* will re-commence providing scheduled services in FNQ shortly, after it completes its sea trials.
- 2.5 During the period in which the *Fourcroy* provided scheduled services in the NT as a replacement for the *Coral Bay* and while it undergoes its subsequent engine rebuilds, the freight that the *Fourcroy* would have otherwise carried in FNQ (specifically, in the Torres Strait) has been carried by Sea Swift.
- 2.6 Consent for this temporary subcontracting arrangement was obtained from the ACCC pursuant to the Interim Undertaking.

Territorian and Kestrel

- 2.7 In paragraph 6.4 of my First Statement, I explained that one of the vessels that TML uses to provide coastal and community shipping services in the NT is the *Territorian*. The *Territorian* is a landing craft vessel chartered by Toll and provides scheduled services in the NT. The vessel will not be transferred to Sea Swift as part of the proposed transaction.

- 2.8 For a period between mid to late October and early December 2015, Toll replaced the *Territorian* chartered vessel with the *Kestrel*, a large landing craft vessel which is owned by Toll and used predominantly for oil and gas work in the broader TML business. The *Kestrel* is not part of the proposed transaction with Sea Swift.
- 2.9 The change in vessels arose because the *Kestrel* finished an oil and gas charter in Gladstone in October 2015 and became idle. Toll decided to temporarily replace the *Territorian* chartered vessel with the *Kestrel* because it was economically more efficient for Toll to deploy the (otherwise idle) Toll-owned *Kestrel* rather than the chartered *Territorian*. There was no change to the scheduled services being provided to customers as a result of the change in vessels. Toll had initially planned to use the *Kestrel* until the Tribunal makes a decision in relation to the proposed transaction, and return the *Territorian* to her owner. However, Toll recently entered into arrangements to charter the *Kestrel* for [REDACTED] in Saudi Arabia, and accordingly has re-instated the *Territorian* until the Tribunal makes a decision.

Hobart and Osborne

- 2.10 The TML business used a tug and barge set, the *Hobart and Osborne*, for some spot voyages for overflow freight in the NT in the latter half of 2015 after the tug and barge set came off an oil and gas charter and became idle. The *Hobart and Osborne* set is owned by Toll and used predominantly for oil and gas work in the broader TML business. The *Hobart and Osborne* set is not part of the proposed transaction with Sea Swift.
- 2.11 The temporary use of the *Hobart and Osborne*, and the *Kestrel*, is reflected in the updated profit and loss information for the TML business in the NT and FNQ that I provide later in this supplementary statement. These vessels however ordinarily sit within, and are budgeted for as part of, the oil and gas part of the TML business. They are not intended for use in the provision of scheduled services. They will not be sold to Sea Swift or as part of a wind up of the TML business in the NT and FNQ, but will be used in Toll's future marine logistics business which will be focused on time charters and oil and gas logistics (as discussed in paragraph 13.3 to 13.5 of my First Statement).

3. Update in relation to Frances Bay

- 3.1 In paragraph 6.21 of my First Statement, I explained that the proposed transaction does not involve the transfer of the Frances Bay facility or land to Sea Swift (which will remain with Toll) [REDACTED]
[REDACTED]

3.2 Following a decision by the Tribunal, and irrespective of whether or not the proposed transaction proceeds, the Frances Bay terminal facility will close and will no longer be used for marine freight services. (This is subject to a short period, if the proposed transaction proceeds, during which Sea Swift will be able to access the facility to ensure a smooth transition and continuity of service for customers).

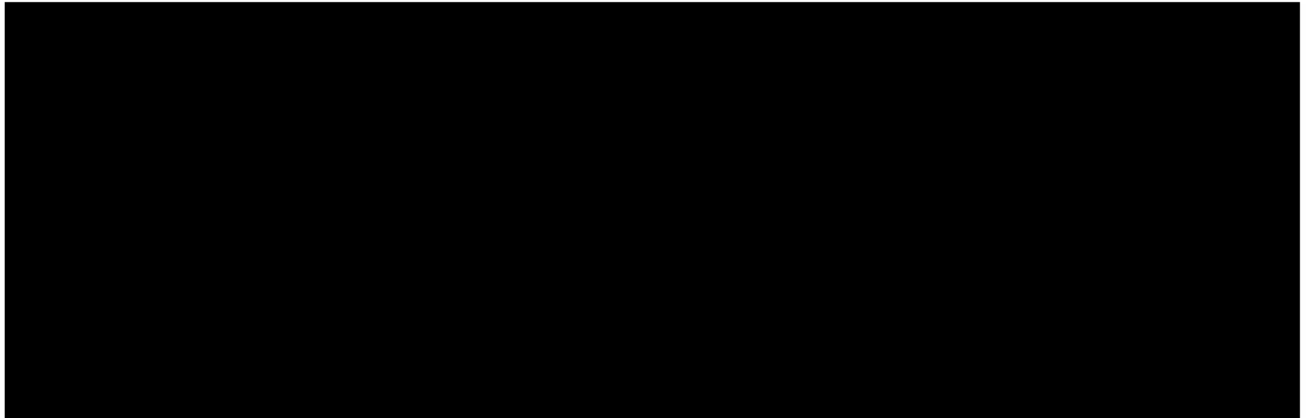
3.3

[REDACTED]

This is

Toll's intention irrespective of whether or not the proposed transaction proceeds.

[REDACTED]



4. Employees

4.1 In paragraphs 6.45 and 6.46 of my First Statement, I provided an overview of the labour arrangements relating to the TML business in the NT and FNQ. I also explained in paragraph 6.47 of my First Statement that no employees are being transferred to Sea Swift as part of the proposed transaction.

4.2 I have set out below further information relating to employees of the TML business in the NT and FNQ, and the circumstances of those employees if the proposed transaction proceeds compared to if it does not proceed:

- (a) Toll employs approximately 8 sea staff to work on the *Coral Bay* and 10 sea staff to work on the *Fourcroy* (which are two of the three vessels which are proposed to be transferred to Sea Swift). I refer below to paragraph 6.3 and to paragraph 13.8 of my First Statement in relation to Toll's plans for these vessels if the proposed transaction does not proceed;
- (b) Toll does not employ any sea staff to work on the *Biquele Bay* (which is the third vessel proposed to be transferred to Sea Swift) because the vessel is not currently used to provide scheduled services. I refer below to paragraph 6.3 and to paragraph 13.8 of my First Statement in relation to Toll's plans for this vessel if the proposed transaction does not proceed;
- (c) Toll employs approximately 14 sea staff to work on the *Warrender*. This vessel is not proposed to be transferred to Sea Swift and will be sold irrespective of whether or not the proposed transaction proceeds;
- (d) Toll employs approximately 16 sea staff to work on the *Territorian* (which Toll charts under bare boat arrangements). The vessel is not proposed to be transferred to Sea Swift [REDACTED]
[REDACTED];

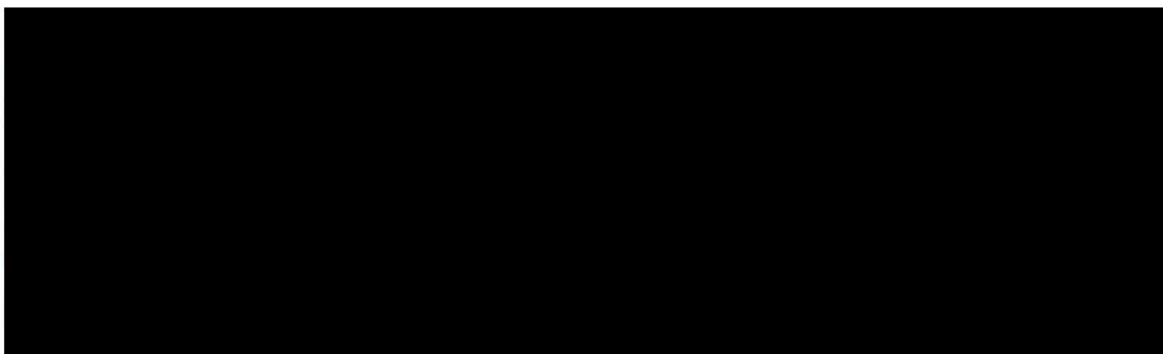
- (e) Toll does not employ sea staff to work on the *Bimah Tujuh* vessel, which Toll charters from Barge Express. This vessel is crewed by staff employed by Barge Express, not Toll. This vessel is not proposed to be transferred to Sea Swift [REDACTED]
[REDACTED]
[REDACTED]
- (f) It is my understanding that none of our sea staff (ie employees working on vessels) live in any of the remote communities in the NT or FNQ, ie they are 'fly in, fly out' and live in Darwin, Cairns or other locations;
- (g) In relation to TML's main terminal at Frances Bay in Darwin, Toll has approximately 24 staff employed at the facility, including 2 crewing officers. As I explained above, the Frances Bay terminal is not part of the proposed transaction and irrespective of whether or not the transaction proceeds, Toll will close this terminal [REDACTED]
[REDACTED]
- (h) All employees of the TML business in the NT and FNQ have been informed that they will be either made redundant or be redeployed irrespective of whether or not the proposed transaction proceeds.

5. Update relating to Customers

Contracts

- 5.1 In annexure SW-24 of my First Statement, I provided a table of the customer contracts proposed to be transferred to Sea Swift. This annexure includes details of the expiry dates of such contracts.

5.2




Rates

- 5.3 In annexure SW-22 of my First Statement, I provided a table of TML's current base rates in respect of scheduled services acquired on a spot basis in the NT and FNQ. This table contains the base rates for scheduled services and does not reflect rates for charter

services. This table was current as at 1 September 2015. I confirm that the base rates have not changed since that time.

- 5.4 In annexure SW-23 of my First Statement, I provided confidential tables which show TML's general rates over the past five years. These tables showed TML's base rates in the NT for various destinations between 1 April 2011 and 1 July 2015 and TML's base rates in FNQ between late 2013 and 1 September 2015. These tables show the base rates for general cargo / dry freight (excluding GST) and do not reflect the base rates for other types of freight or charter services.
- 5.5 Now shown to me and attached as **SW-41** are updated versions of these confidential tables which show the base rates in the NT from 1 April 2011 to 1 January 2016 and the base rates in FNQ from 1 November 2013 to 1 January 2016. This confidential annexure **SW-41** updates confidential annexure SW-23 of my First Statement.
- 5.6 I note that these tables showing TML's rates over time show that the base rates for FNQ for general freight increased from 1 September 2015. Now shown to me and marked **SW-42** is a letter I sent to customers in FNQ on 19 August 2015 regarding this rate increase and the reasons for the increase. TML's base rates in FNQ have not changed since 1 September 2015.

Discounts

- 5.7 In paragraph 7.23 of my First Statement, I discussed the pricing that applies to customers. 
- 5.8 I understand that in the First Application the Tribunal (at the request of the ACCC) requested that Toll provide information in relation to the extent of discounts applied to uncontracted customers. In response, Toll conducted an analysis to assess the proportion of active uncontracted customers in the NT and FNQ who receive TML's general (or scheduled) rates and who receive a discounted rate, and the extent of any discount offered. Now shown to me and attached as **SW-43** is a confidential table setting out this analysis, along with some explanatory comments. This table covers TML's active uncontracted customers in FY2015 which had a valid credit account, and does not cover uncontracted customers who paid in cash or by credit card.

6. **Update as to customer communications regarding proposed transaction and Toll shut down**
- 6.1 In paragraph 13.2 of my First Statement, I explained that I communicated with customers in February 2015 regarding the proposed transaction and that Toll's alternative was to wind up the TML business in the NT and FNQ.
- 6.2 Following the filing of the First Application, I sent a letter on or around 21 October 2015 to TML's customers in the NT and FNQ to provide an update on the proposed transaction, the First Application and what Toll intended to do if the proposed transaction did not proceed. Now shown to me and marked **SW-44** is a true copy of the letter that I sent to customers dated 21 October 2015 (**October Customer Letter**). I subsequently sent a letter to customers on or around 17 November 2015 informing them that the First Application had been withdrawn. Now shown to me and marked **SW-45** is a true copy of the letter that I sent to customers dated 17 November 2015.
- 6.3 In my October Customer Letter, I outlined Toll's plans in relation to exit. The letter explains that, if the proposed transaction does not proceed:
- (a) Toll will commence winding up the business in the NT and FNQ and anticipates this would be completed in approximately 60 days (of the Tribunal's decision);
 - (b) Toll will meet with contracted customers to discuss options and to assist them to find alternative arrangements;
 - (c) Toll will communicate a date for final services. Uncontracted customers and Communities will need to make alternative shipping arrangements;
 - (d) Toll will advertise its vessels for sale in Australian and International markets to achieve the maximum sale price, and that there is no guarantee Toll's vessels will remain in the NT/FNQ market; and
 - (e) Toll's terminals will be closed following the last sailing.
- 6.4 This letter communicates our intention to take immediate steps to effect a timely and complete shut down of the TML business in the NT and FNQ if the proposed transaction does not proceed.
- 6.5 As I explained in my First Statement, the TML business in the NT and FNQ has incurred and continues to incur heavy losses. This includes losses over the period, since December 2014, in which ACCC clearance was first sought and through the processes

relating to the First Application and New Application. If authorisation is not granted by the Tribunal, Toll will be focused on quickly shutting down the relevant business, and ceasing scheduled services, as soon as possible to forestall and minimise further operational / trading losses being incurred. If we are not able to proceed with the proposed transaction, Toll has no interest in conducting a long or drawn out exit – it is my intention that we will 'shut up shop' as quickly as we can and move on.

- 6.6 In my October Customer Letter, I explained that if the proposed transaction proceeds:
- (a) completion will occur within 30 days;
 - (b) Toll's customer contracts will be novated to Sea Swift on existing terms;
 - (c) Toll will work with Sea Swift on a detailed integration and handover plan for all communities to ensure a smooth transition;
 - (d) Toll's vessels will be deployed by Sea Swift to continue to deliver freight and ensure continuity of supply;
 - (e) Sea Swift will have access to Toll's terminals in Darwin and Cairns for a period of time to ensure continuity of service whilst their own facilities are upgraded to cope with the additional freight volumes.
- 6.7 This reflects my view that, having regard to the speed with which we plan to exit and the uncertainty this will create in relation to supply arrangements and the provision of scheduled services, the proposed transaction will ensure a smoother transition for customers and guaranteed continuity of scheduled services.

7. Updated financial forecast

- 7.1 In paragraph 10.8 of my First Statement, I explained that Toll had not prepared a full year forecast for the TML business in the NT and FNQ for the current FY2016 financial year, but had prepared a confidential forecast through until 30 November 2015, ie for approximately so long as the TML business continued to operate while the First Application was considered by the Tribunal and the Toll Interim Undertaking was in place. I provided this partial forecast as confidential annexure SW-32 of my First Statement.
- 7.2 Toll has prepared an analysis through until 30 June 2016 showing actual and forecast profit and loss for the TML business. Now shown to me and marked **SW-46** is a true copy of a confidential profit and loss spreadsheet showing this analysis. This covers both

scheduled services and charter services. This updates annexure SW-32 of my First Statement.

- 7.3 I explained in paragraph 11.9 of my First Statement that the losses, with respect to the TML business in the NT and FNQ, were forecast to continue in FY2016 for so long as the TML business continued to operate and that the partial FY2016 forecast prepared at that time showed a forecast EBITDA, until 30 November 2015, of [REDACTED]. The updated forecast for FY2016 in annexure SW-46 to this statement shows a forecast EBITDA, until 30 June 2016, of [REDACTED].

8. Updated information relating to coastal shipping reforms

- 8.1 In paragraph 8.14 of my First Statement, I explained that, on 20 May 2015, the Government formally announced reforms to coastal shipping and stated that legislation was currently being prepared to implement the reforms.


- 8.2 I understand that legislation relating to these reforms was introduced into the House of Representatives through the *Shipping Legislation Amendment Bill 2015* in June 2015. I also understand that the bill was passed by the House in mid October 2015 but was defeated on 26 November 2015 by the Senate. Now shown to me and marked **SW-47** is an extract from the website of Federal Parliament, as at 7 January 2016, relating to the introduction and status of this reform bill through parliament.

9. Update regarding interim undertaking

- 9.1 I have read the statement of David Jackson dated 11 September 2015 which was filed in relation to the First Application. I refer to section 7 in which he discusses the Toll Interim Undertaking.
- 9.2 Given the withdrawal of the First Application and the timing of the New Application, Toll and the ACCC agreed to vary the Toll Interim Undertaking to make it clear that it would remain in effect until the Tribunal has delivered a determination in relation to any transaction pursuant to which Sea Swift would acquire all or a substantial part of Toll's FNQ and/or NT marine freight business (or until the undertaking is terminated or withdrawn in accordance with the termination provisions). The variation became effective on 23 December 2015. Now shown to me and marked **SW-48** is a true copy of the variation to the Toll Interim Undertaking.

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 02/03/2016



Scott Woodward

10. INDEX OF ANNEXURES TO SUPPLEMENTARY STATEMENT OF SCOTT
WOODWARD

Annexure	Title	Confidentiality
SW-41	Updated historical general rates table <i>*Updates annexure SW-23 of First Statement</i>	Restriction of publication of whole document claimed
SW-42	Customer letter regarding FNQ rate increase	Not confidential
SW-43	Uncontracted customers discount analysis	Restriction of publication of whole document claimed
SW-44	Customer letter regarding filing of First Application	Not confidential
SW-45	Customer letter regarding withdrawal of First Application	Not confidential
SW-46	Updated FY2016 forecast <i>*Updates annexure SW-32 of First Statement</i>	Restriction of publication of whole document claimed
SW-47	Extract of Parliamentary Bills Digest for <i>Shipping Legislation Amendment Bill 2015</i> (as at 7 January 2016)	Not confidential
SW-48	Variation to Toll Interim Undertaking	Not confidential