

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 ALASTAIR KING – 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 'A' 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 ALASTAIR KING

1. Background

- 1.1 I am the CEO of the Arnhem Land Progress Aboriginal Corporation (**ALPA**). I have been with ALPA since 6 January 1994. I started managing a store at Milingimbi. I had a short break starting in early 1998 for about 18 months, and then came back to ALPA as an operations manager. I later became a group operations manager. In 2001, I was made CEO.
- 1.2 ALPA was established in 1972. ALPA was incorporated under the *Northern Territory of Australia Association Incorporation Ordinance 1963* of 20 June 1972. Today it falls under the *Corporation (Aboriginal and Torres Strait Islander) Act*.
- 1.3 ALPA operates community retail stores in over 25 remote locations across the Northern Territory (**NT**) and Far North Queensland (**FNQ**). ALPA owns and operates five stores in Arnhem Land, and one in each of our member communities, being Galiwin'ku, Gapuwiyak, Minjilang, Milingimbi and Ramingining. A further eight stores are owned by ALPA in FNQ where ALPA trades as 'Island and Cape'. ALPA also operates 11 other community stores in the NT on behalf of Indigenous Corporations and Regional Councils.
- 1.4 Our retail stores stock a wide range of goods including groceries, dairy, meat, fruit and vegetables, general merchandise, and clothing. We have a focus on supplying fresh fruit and vegetables and promoting healthy eating in our communities.

Filed on behalf of (name & role of party)

Toll Holdings Limited

Prepared by (name of person/lawyer)

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- 1.5 In addition to community stores, ALPA runs a range of commercial activities, including:
- (a) ALPA is a Registered Training Organisation (RTO) offering nationally accredited certificate-level qualifications in retail operations.
 - (b) ALPA provides a retail consultancy service which provides retail expertise to support businesses in remote communities.
 - (c) ALPA runs a technology consultancy service which provides its retail outlets with a range of products, services, installation and training.
 - (d) ALPA is part of the Remote Jobs and Community Programs (RJCP), a program funded by the Commonwealth government to assist individuals to find and maintain employment.

2. Nature of the sea freight we ship

- 2.1 ALPA has a substantial demand for sea freight services in the NT and FNQ. Our annual demand, in dollar terms, is probably somewhere between [REDACTED] in the NT and [REDACTED] in FNQ (for Island and Cape). Approximately 90% of our demand for sea freight comes from our retail operations. The stores along the coast and on the islands use sea freight for everything.
- 2.2 We require sea freight services for groceries, chiller and freezer, general merchandise and clothing, as well as non-retail items such as vehicles and equipment for repairs and maintenance. Grocery would account for about half our business, freezer would be about 15%, chiller would be about 5%, and the balance would be made up of clothing, hardware, and all the other bits and pieces.
- 2.3 Our non-retail operations also require sea freight. We move a range of non-retail items including vehicles, materials for building, aggregate concrete, hardware, electrical and IT equipment. This is principally moved from Darwin right around the coast (the coastal run). We also ship some gas bottles and fuel to certain communities, but it is a minority of our total business. This non-retail cargo is moved on regular, scheduled services, not charter services.

3. Importance of regularity of service

- 3.1 Regularity of supply of sea freight is very important for ALPA. Our stores usually carry approximately three weeks' stock. The vast majority of ALPA's community stores receive only one delivery a week by barge. If the barge services are not regular, we can have a

problem with running out of stock, particularly fresh fruit and vegetables, or having too much stock.

- 3.2 Now shown to me and marked as **AK-1** is a true copy of the contract currently in place between ALPA and Toll under which Toll supplies logistics services. This contract covers sea freight services (we have a separate contract with Toll in relation to land freight services). It is an exclusive contract and expires in December 2016. We are given a schedule a week in advance by Toll. The schedule generally does not change much, in terms of days being missed. But the time of day can fluctuate based on tidal movements.

4. Observations on the market

- 4.1 In my experience in the market (21 years), it has mostly been the case that there has been just the one full service sea freight operator in the NT. I have seen others come in from time to time – for example, Arthur Hamilton with his Shorebarge company. There have been others from time to time. But the market has never been large enough to sustain two full service operators over a sustained period.

- 4.2 In my experience, when a second full service operator enters the market, there is often a short term 'price war'. This occurred when Sea Swift entered the market. Gulf Freight previously tried similar undercutting tactics. Sea Swift pricing over the last few years has been the most aggressive I have seen. An example of Sea Swift's aggressive pricing strategy concerns the fuel contract for the diesel generators across the top end. Toll had the contract before Shorebarge came in and undercut Toll and took the contract from them. But then Sea Swift came in and undercut Shorebarge. This aggressive undercutting pricing does not appeal to ALPA as I consider it to be unsustainable in the long term.

5. Views on the proposed acquisition

- 5.1 When this proposed transaction first became public, we were unsupportive of it. Our opposition was driven by the fact that we are happy with Toll and did not want to change operator. It is my view that Toll runs a good business and is reliable and is meeting our KPIs under the contract.
- 5.2 I have subsequently come to understand that Toll will not be continuing in the market if the transaction does not go ahead. I have also come to understand that Toll and Sea Swift are offering commitments, as part of the 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 ALPA) 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 (although we understand those rates have not changed in 2015), 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; and
- (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 dispute resolution procedures;
- (e) Toll will release two charter vessels back to their owners and implement a process to sell the *Toll Warrender*, so that these vessels are available to other parties who may wish to purchase or charter them in order to provide coastal and community shipping services.

5.3 I am now supportive of the proposed acquisition. In my view, the proposed transaction will provide for an orderly transition of ALPA's requirements to Sea Swift and will be a better outcome for ALPA than if Toll shut down business and exited the market. If Toll were unable to fulfil its obligations under its contract with ALPA, we would obviously need to look at alternatives. Any new provider may not agree to take over the contract on its current terms, so the outcome would be uncertain. Any disruption to services would be difficult and potentially threaten essential food supply, or have the potential to see food prices rise if freight prices could not be contained at current levels. As I said, our communities suffer if services are not regular.

5.4 For ALPA, the transaction will give us the chance to 'try before you buy' with Sea Swift. It will allow us to transition to Sea Swift with our prices, schedules, routes and KPIs in the Toll contract being honoured except that we will no longer be bound by our exclusivity clause. It will enable us to see whether Sea Swift can provide the same reliable services provided by Toll. If they do not, I believe that ALPA has sufficient volumes to attract another supplier into the market. ALPA's volumes could pay for a new supplier's barge operations and any additional volumes that the supplier picked up would make the service more profitable and sustainable.

5.5 I have started looking around at other options. I have met with [REDACTED]

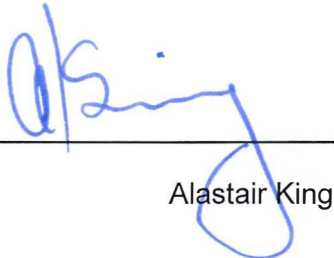
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5.6 I have also met with [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 15TH SEPT 2015



Alastair King

6. INDEX OF ANNEXURES TO STATEMENT OF ALASTAIR KING

Annexure	Title	Confidential
AK-1	Logistics Services Agreement between The Arnhem Land Progress Aboriginal Corporation and Perkins Shipping Pty Limited dated January 2012	Restriction of publication of whole document claimed