

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 Bruce Donnan

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 'U'.

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: **Bruce Donnan**

Address: 5 Wishart Road, Berrimah, Northern Territory

Occupation: Key Account Manager – Northern Territory / South Australia / Kimberley, Puma Energy Australia

Date: 17 September 2015

I, Bruce Donnan, Key Account Manager – Northern Territory / South Australia / Kimberley, for Puma Energy Australia, of 5 Wishart Road, Berrimah, in the Northern Territory, say:

1 I am the Key Account Manager for the Northern Territory, South Australia and Kimberley for Puma Energy Australia (**PUMA**). I have held that role since 2013 and have worked for PUMA (and previously Ausfuel before PUMA acquired Ausfuel in 2013) for almost 10 years. PUMA is a wholesale and retail supplier and distributor of fuel and petroleum based products (such as lubricants).

PUMA's NT operations and requirements for Coastal and Community Sea Freight Services in the Northern Territory

- 2 The PUMA business in Australia involves the import, distribution, and retail of fuel and other petroleum based products (such as lubricants). PUMA owns and operates over 270 retail sites, 20 depots and 3 bulk seaboard terminals across Australia, as well as fuel cartage fleet delivering over 1 billion litres of fuel every year.
- 3 Because PUMA has an in-house cartage division, it delivers freight by road where this is possible.

Filed on behalf of (name & role of party)	Sea Swift Pty Limited		
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- 4 However, a number of PUMA's customers are based in, or require delivery to, coastal and island communities across the Top End of the Northern Territory, including Port Keats in the West, Tiwi Islands to the North of Darwin, and across Arnhem Land and in the Gulf of Carpentaria.
- 5 Island communities require sea delivery year round. However, some coastal communities also require sea delivery because of the length and quality of the road. For example, Nhulunbuy is approximately 1,000kms from Darwin, so that it may be more cost effective to supply fuel by sea freight.
- 6 In addition, during the wet season (November to May), roads may be cut or unreliable due to flooding. If PUMA can access a community via road for some of the year, for example, during the dry season and it is efficient to do so, it generally does. PUMA does not attempt to access a community by road, however, if that would be more costly than sea freight.
- 7 I am aware of the following barge operators which provide a scheduled service to remote communities in the Northern Territory:
 - (a) Toll Marine Logistics (**Toll**)
 - (b) SeaSwift; and
 - (c) Ezion Holdings Limited (**Ezion**).
- 8 I am also aware that other barge operators operate in the Northern Territory, including Bhagwan Marine and Barge Express.
- 9 To supply coastal and island communities with fuel, PUMA delivers fuel to the scheduled barge operator in Darwin. The fuel is delivered in one of the following ways:
 - (a) in bulk, by pumping the fuel onto the barge where it is carried below deck; or
 - (b) stored in 1500 litre intermediate bulk containers (**IBCs**) which are stored above deck on the barge. 200 litre drums of fuel and other products such as lubricants, are also transported on pallets.
- 10 The sea freight arrangements for a customer can be made in one of two ways:
 - (a) The customer may make arrangements with the barge operator. The customer chooses the barge operator and arranges and pays for the freight. PUMA delivers

the fuel to the operator. The customer pays PUMA for the fuel and the barge operator for the freight.

- (b) PUMA can arrange and pay for the transport and arrange delivery to the coastal or island community. In that case, PUMA is the customer of the barge operator and PUMA's customer pays it for both the fuel and the freight costs.

Northern Territory Power and Water Corporation

- 11 PUMA won a contract with the Northern Territory Power and Water Corporation (**Power and Water**) through a tender qualification, bid and negotiation process for the supply of diesel fuel to Power and Water (which operates diesel generators, which provide the electricity supply for the remote communities in the Northern Territory (discussed further below)). I was part of a team that was responsible for PUMA's tender and the ultimate negotiation of the successful contract. A critical issue for PUMA to win that contract was to ensure delivery to those coastal and island communities referred to above. It was critical for PUMA to have arrangements in place to be able to deliver to those locations and to have a known cost for delivery.

Other customers

- 12 Where PUMA is arranging for delivery of fuel to customers other than Power and Water, PUMA uses various barge operators, including Sea Swift.
- 13 Barge transport for customers other than Power and Water is organised in a more ad-hoc manner. In most instances, the customer chooses the carrier and negotiates a freight rate with the provider. For example, a customer recently engaged Ezion to carry a bulk fuel delivery to the Tiwi Islands. In that case, PUMA was not involved in the shipping and the customer paid the shipping company directly for the shipping.
- 14 When delivering fuel in IBCs, it is typical that the customer has arranged the sea freight, so PUMA is not a party to the commercial arrangements between the customer and the barge operator.

Power and Water tender process

- 15 As I referred to above, in order to win the Power and Water contract, PUMA went through a tender process with Power and Water.
- 16 At that time, Sea Swift and Toll were operating scheduled services to the communities that PUMA would be required to deliver fuel to. We considered that other barge operators

could also potentially meet some or all of PUMA's requirements. For example, Ezion was operating a scheduled barge service which had the capacity to take bulk fuel (ie it had substructure fuel tanks below deck) from its Hudson Creek depot in Darwin to the Tiwi Islands along with a scheduled service to Port Keats.

- 17 After pre-qualifying a number of barge operators, we then ran a tender and negotiation process for fuel cartage in order to meet the requirements under the upcoming Power and Water Contract.
- 18 Toll was the successful bidder.
- 19 The barge service tender process took over 18 months. In choosing a carrier, we considered the following criteria to be essential:
 - (a) that the carrier operated a sizeable transport business with a sufficient volume of business to competitively tender;
 - (b) that the carrier had the capacity to provide regular (generally at least fortnightly) efficient deliveries to the various remote coastal locations; and
 - (c) that the carrier was capable of providing a safe delivery service.
- 20 We considered that any of SeaSwift, Toll, Ezion and Barge Express operating out of Darwin could have satisfied some or all of PUMA's requirements. We did not consider it necessary that a particular operator already have been servicing the relevant communities in order to satisfy PUMA's requirements.
- 21 Following PUMA's successful bid for the Power and Water Contract, from 1 October 2014, Toll has been providing freight services for PUMA under an exclusive contract between Toll and PUMA.

Requirements of remote communities

- 22 In my experience in providing fuel to coastal and island communities, those communities require regular and reliable sea freight deliveries. This is because there is limited storage capacity available in many of these locations, so that they require regular deliveries. Regular supply of fuel is essential for these communities, for use in vehicles and generators. Accordingly, it is also important that the service is reliable.
- 23 For example, under the Power and Water Contract, PUMA requires a regular and reliable service to the communities so that it can make deliveries at least fortnightly.

- 24 Also, because PUMA has only a relatively fixed supply of IBC's, it is important for PUMA that it can ensure that the IBC's it delivers to communities are returned as quickly and reliably as possible.
- 25 While there are a number of barge operators currently in Darwin who can provide a scheduled barge service to coastal and island communities across the Top End, I note that for long periods, many of these communities have only had one barge operator providing a scheduled service.
- 26 At various times other barge operators have commenced schedule barge services to different communities in competition with the existing operator.
- 27 I do not consider the Northern Territory to be a large market. There is only limited demand for sea freight services. By way of contrast, there are far more providers of road freight services. I have observed that there are always barge operators who can take on new routes and services, and there is always someone who is prepared to have a go.
- 28 From PUMA's perspective, I would prefer the scheduled barge operations that are currently carried out by Sea Swift and Toll to be continued. PUMA is concerned if Toll ceases its operations, as it has an existing contract with Toll and it relies on that contract to support its commercial offer for the Power and Water Contract. If Toll exits, the transfer of its freight contract with Toll to Sea Swift would be important for PUMA, firstly to ensure maintenance of services and also because PUMA's commitments (and freight rates) to Power and Water under the Power and Water Contract are dependent on the contract with Toll.
- 29 If, in the future, there was only one scheduled barge service operator, I consider that there would still be competition for PUMA's freight business through a tender process. There are other barge operators who can provide the necessary services.
- 30 By way of example, in light of the uncertainty around Toll's position and talk of Toll exiting the market, I am aware that PUMA has recently been approached by other barge operators to see if there is an opportunity for them to provide barge services for PUMA. If Toll exits, I think that other freight providers would enter if they thought there was an opportunity to make the operation economic.
- 31 I am aware that Sea Swift has offered to maintain its current scheduled rates (subject to CPI increases) and frequency of services. In respect of those undertakings I consider that it is important for PUMA that its community customers have reliable barge services and that a price commitment would support those communities generally, including in relation

to fuel purchases. As fuel is essential for these communities, I consider there would be a benefit to these communities from Sea Swift providing a commitment to the ACCC to maintain scheduled services and prices.

- 32 Although I have read various pieces of communication that Toll has sent to its customers about the proposed transaction by which Sea Swift purchases Toll, those have not made it clear to me what action Toll will take if the transaction is not approved. In the event it is not approved, Toll exited the Northern Territory and the PUMA / Toll contract was not honoured, that would cause significant disruption for PUMA. On that basis, I would prefer the transaction to proceed and for Sea Swift to honour the contract that PUMA currently holds with Toll.



17/9/15

Signature of witness

Bruce Donnan
Key Account Manager – Northern Territory / South Australia / Kimberley, Puma Energy Australia