

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 Klaus Friedrich Helms

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: **Klaus Friedrich Helms**

Address: Lot 26, Guymal Amurra Road, Gunyangara

Occupation: Chief Executive Officer, Gumatj Corporation Limited / Gumatj Aboriginal Corporation

Date: 16 September 2015

I, Klaus Friedrich Helms, Chief Executive Officer, Gumatj Corporation Limited / Gumatj Aboriginal Corporation, of Lot 26, Guymal Amurra Road, Gunyangara in the Northern Territory, state that:

1. I have worked in Arnhem Land in the Northern Territory (NT) for almost 40 years. During that time, I have held a number of roles including government advisory roles, and management roles with mining company Alcan Gove and with Perkins Shipping.
2. I am currently Chief Executive Officer of Gumatj Corporation Limited and the Gumatj Aboriginal Corporation (together **Gumatj Corporation**), focused on developing opportunities for the economic benefit of the Gumatj clan of the Yolngu people of northeast Arnhem land. I have held that position since 2011. Prior to that, I was the Government Business Manager for the Commonwealth Intervention in Arnhem Land, with responsibility for Gunyugarra and Yirrkala.
3. During the course of my experience I have been responsible for managing and providing marine freight services to coastal communities, including Gove. This experience includes:



Filed on behalf of	Sea Swift Pty Limited (the Applicant)		
Prepared by	Luke Woodward		
Law firm	Gilbert + Tobin		
Tel	+61 2 9263 4014	Fax	+61 2 9263 4111
Email	lwoodward@gtlaw.com.au		
Address for service	Level 37, 2 Park Street, Sydney, NSW 2000 DX 10348 SSE		

(a) working for Perkins Shipping as general manager of the Nhulunbuy and Groote Eylandt depots and then as coastal manager for the Northern Territory. I worked for Perkins shipping for about ten years, during the 1990s.

(b) In my current role, I am (amongst other things) responsible for procuring sea freight on behalf of Gumatj Corporation.

4. My curriculum vitae is attached as Annexure "KFH-1".

Gumatj Corporation

5. Gumatj Corporation Limited is a registered Australian public company which is limited by Guarantee, with its head office in Darwin. The Gumatj Aboriginal Corporation is registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (the **CATSI Act**). Gumatj Corporation Limited is the trading entity through which the Gumatj Corporation undertakes its commercial operations.

6. The Gumatj Corporation is based in Gunyangara (also known as Ski Beach) which is located on the Drimmie Peninsula which forms part of Melville Bay on the Gove Peninsula. The Gove Peninsula is part of Arnhem Land in the NT. The Gumatj Corporation is a community centric business which aims to develop, promote and sustain economic opportunities for the benefit of Gumatj clan. One of the principal roles of the Gumatj Corporation is to support the commercial development of the region to provide a stronger economic base to support the local community.

7. The Gumatj Corporation has land holdings in and around Nhulunbuy in the Gove Peninsula and has an agreement with Rio Tinto in relation to the Gove bauxite mine, which provides a source of funds for the benefit of the Gumatj clan. There are two sources of royalties in relation to the Rio Tinto mine – there are the statutory royalties administered by the Northern Land Council (**NLC**) for the Gumatj clan, and separate mining agreement royalties which are received by the NLC and are distributed to various bodies, including the Gumatj Corporation.

8. The Gumatj Corporation also operates a number of businesses on behalf of the Gumatj clan, including a local shop and a school at Gunyangara and other business projects.

9. As CEO of the Gumatj Corporation, I am responsible for:

(a) administering the financial funding associated with Indigenous land holdings, including funding received from the agreement with Rio Tinto in relation to the Gove bauxite mine, to develop businesses and other activities to support the Gumatj clan;

(b) establishment and oversight of the running of the local shop and school, and developing and launching other projects of the Gumatj Corporation which will support



the economic base of the community. To date these projects have included farming, meat production, timber mills, and fishing operations; and

(c) leasing indigenous Gumatj land for commercial purposes. For example, the Gumatj Corporation leases land used for maritime purposes, including:

- i. land which is currently leased by the Gumatj Corporation to the Yacht Club at Gove; and
- ii. land which is leased to Toll for Toll's sea freight operations at the Gove barge landing wharf and ramp.

Gumatj Community need for sea freight services

10. The Aboriginal community of Gunyangara is located 13 km west of Nhulunbuy, the commercial and service centre of the Gove Peninsula.
11. The region is remote and prone to flooding. Road access is usually cut off during the wet season, so sea freight is required. Even when the road is open, there is not a regular road freight service to Nhulunbuy, because of the long distance and poor quality of the road. The road from Darwin to Nhulunbuy is still about 680km of dirt road with unstable surface conditions.
12. The Gumatj Corporation sources a range of products necessary for its business activities from suppliers in Darwin. It requires sea freight services to deliver those products to the Gunyangara community and other remote communities.
13. The Gumatj Corporations pays about \$200,000 to \$250,000 for inbound freight to Nhulunbuy each year. Regularly required products include food products (freezer goods, chiller goods and dry stock), motor vehicles, boats and other general goods.
14. The two barge operators who currently provide a regular freight service to Nhulunbuy are Toll (formerly Perkins Shipping) and Sea Swift.
15. We do not currently have a contract with either Toll or Sea Swift, although we operate an account with both operators. To date, Sea Swift has serviced approximately half of the Corporation's requirements and half have been serviced by Toll.
16. The Gumatj Corporation has recently purchased a concrete batch plant that will require cement to be delivered by sea freight. This has prompted the Corporation to look to enter into a contract for sea freight and it is currently looking to enter into a contract with Sea Swift for sea freight services. The Gumatj Corporation anticipates it will also require deliveries of specialised containers for the cement which it proposes to acquire from Sea Swift.

17. The Gumatj Corporation is also developing a timber business and a seafood business which will require goods to be transported out of the communities, back to Darwin.
18. Given my history working in coastal shipping and history living in Arnhem Land, I am familiar with the requirements of the remote communities in relation to coastal shipping.
19. The communities depend on reliable regular sea freight services. Road services to the area are limited, and not all year round. Road transport is also not an alternative to sea freight for goods susceptible to damage, including fresh produce. During the dry season, road transport is only an option for items such as heavy machinery and vehicles.
20. The Gumatj Corporation requires weekly freight deliveries for its numerous operations and is highly reliant on timely and dependable weekly deliveries. Weekly deliveries are particularly important as the less time goods are displayed on the shelf, the less stock is required to be held at any particular time.
21. Specifically, the Gumatj Corporation requires deliveries of general groceries, convenience, freezer and refrigerated freight. It requires refrigerated freight, in particular, for its local community shop and the butcher store it owns in Nhulunbuy. The goods that the Gumatj Corporation purchases are delivered to either the Sea Swift or Toll depot in Darwin where they are then packed and shipped to Nhulunbuy. In Nhulunbuy, we do not require a depot to door delivery, and we generally collect our freight from the Sea Swift or Toll depot at Nhulunbuy.

History of services

22. Prior to Sea Swift's entry, for approximately 20 years, there was only a single operator (Perkins Shipping and then Toll), providing regular scheduled services with some exit and entry into the market by smaller operators.
23. Apart from Perkins Shipping (and then Toll following its acquisition), I recall other barge operators coming in (or trying to come in) to provide regular services into Nhulunbuy and to other communities. These included Barge Express in the late 1970's to early 1990's, Gulf Freight Services in the late 1990's, and I also recall another operator called John Burke Shipping. However, while occasionally another operator may start up and there might be two operators for a time, in my experience this has not lasted and one operator has generally exited reasonably quickly.
24. There are always a larger number of smaller barge operators who do project or contract freight work to Nhulunbuy (or to other locations) on a charter basis. These projects could be delivering a piece of machinery or collecting equipment, or for maintenance work on the wharfs. However, charter services are not sufficient to meet the community

requirements for regular freight deliveries. I also recall that Rio Tinto Alcan (formerly Alcan and, prior to that, Nabalco) regularly used ships that it used to transport lime used in its refining operations to also transport general cargo.

25. However, in order to service the community's day to day needs, a regular scheduled service is required.
26. As roads to the area improve, road transport may also become a more viable as an alternative to sea freight. I am aware of road improvement programs taking place currently, but those are dependent on State and Federal government budgetary assistance.
27. Goods can also be brought in on a plane. However, this is a very expensive means of transporting cargo that lacks the capacity to transport all cargo types, and the Gumatj Corporation does not do this.
28. My experience over this time, prior to Sea Swift starting up its services, is that there was generally only one regular barge operator into Nhulunbuy. This is not surprising, because based on my experience at Perkins Shipping and as a customer, I consider that to make shipping to the remote communities viable, an operator requires a weekly service. I do not think that there is enough demand from customers to sustainably support two operators.
29. In particular, one weekly vessel is sufficient to meet the community requirements of Gunyangara, even if, over time the size of the vessel might need to increase or be supplemented by an additional small vessel. However, with two operators, both vessels will not be full and I believe neither operator will make a profit. I think this would be similar to the situation we face with air transport into Nhulunbuy. We have only one airline servicing the area (Air North), because there is not the demand in the area to sustain two air operators.
30. Based on my experience, without commercial development of Nhulunbuy, I do not think two sea freight operators can be supported. Further, with the ongoing improvement of road services and a population that is not growing, there will not be sufficient cargo to guarantee a regular weekly service for two operators in the long term.
31. I think that one reason that other operators have occasionally started up a regular scheduled service at different times is because there has been an opportunity where the existing operator became inflexible and not responsive to the community needs or unwilling to negotiate or consider any provision of a discount. Over time, I believe Toll became inflexible in this way and I believe that it was that inflexibility and disengagement

that created an opportunity for Sea Swift to enter the NT from its operations in North Queensland.

32. Also, to my observation, Toll has not sought to support the development of Nhulunbuy. As I discuss below, I consider that there are opportunities to develop Nhulunbuy's marine business operations. I do not believe that Toll was interested in investing in and developing Nhulunbuy and that it was principally interested in just continuing to provide its coastal freight service.

Entry of Sea Swift

33. The Gumatj Corporation was very supportive of Sea Swift's entry into Nhulunbuy in approximately late 2013. Before Sea Swift started, Lino Bruno, the Chief Operating Officer of Sea Swift, approached me to assist in finding a landing site for their barge. The Gumatj Corporation was keen to assist Sea Swift, because we saw that as supporting the development of the area. I suggested they should contact the Yacht Club as well as Toll. At the time these were the two available sites convenient to the township of Nhulunbuy (about 10kms away) that could service a landing barge without requiring further infrastructure and approvals.
34. I view Sea Swift as willing to engage with the local community and be responsive to community needs. To my observation, in the relatively short time that Sea Swift has operated in Nhulunbuy, it has shown an interest in engaging and working with the community. For example, Sea Swift has shown an interest to establish a fuel storage facility in Nhulunbuy for transition fuel for the prawn fleets and other vessels. Sea Swift has also been open to the development of Nhulunbuy as a transition hub, for an east west coastal freight service between Cairns and Darwin, which could also support Arnhem Land and Gulf communities. In my view, Sea Swift has generally shown itself to be flexible in improving service and open to working with the Gumatj Corporation to explore new ideas.

Sea Swift Proposal to Acquire Toll/Exit of Toll

35. I am aware of the proposal for Sea Swift to take over the Toll coastal freight operations in the NT and North Queensland. Based on my experience, once a company decides to sell its business, that company is likely to do so and unlikely to invest further in that business. As such, irrespective of whether the proposal goes ahead, having made the decision to sell its business, I consider that Toll is likely to exit in any event.
36. I am not concerned about the proposal for Sea Swift to take over Toll's operations in the NT. As explained above, I view Sea Swift as willing to engage with the local community and be responsive to community needs.

37. With the entry of Sea Swift, I did not consider that Toll was viable in the long term, especially since Rio Tinto has closed its alumina refinery which Toll relied upon and because of my view that there is only likely to be room for one regulator service operator.
38. Recently up to about 2000 people have left from Nhulunbuy following the closure of Rio Tinto's alumina refinery in 2014. With the loss of this population, the region has experienced (and continues to experience) unstable commercial conditions, and which also reduces the demand for sea freight. In that environment it is important to have a strong and sustainable freight operator, to maintain economic stability. Nhulunbuy and the surrounding region is dependent on economic stability to maintain its function as a service base and to support the local community.
39. My main concern in respect of sea freight deliveries is that whoever the freight operator is focuses on the community. My concern is for the community's long term sustainability and, for that reason, I would prefer to deal with an operator who will work with the community including to develop the infrastructure and Nhulunbuy as a base for commercial operations.
40. Investment into the community is more important than the price of sea freight services. I look to engage an operator willing to develop opportunities not just in relation to freight, but also port infrastructure to attract business into Gove. This is especially important since the closure of Rio Tinto's alumina refinery in 2014.
41. If Toll exits operations, while there is nothing stopping another operator from having a go to start up in the future, I think that any other operator is likely to want to have a large freight contract to support it. If another operator did start, however, there is unlikely to be room for two operators in view of current conditions in Nhulunbuy. Another operator could only operate sustainably if levels of demand substantially increased, for instance, if another significant mining operation was established.
42. Because the Gumatj Corporation seeks to promote the development of the area, we would support another barge operator who wanted to operate regular services to Nhulunbuy. The operator would require a landing site. The Gumatj Corporation would support them in finding such a site, provided they were interested in operating a regular scheduled service and investing in the community. At the moment, the Gove wharf and ramp leased to Toll would be the most appropriate location. However, if there was not capacity or availability there, then the Gumatj Corporation would support the operator in locating another site.

43. At the moment, Sea Swift is operating into the Yacht Club, but I understand that this is causing some issues for the Yacht Club and it is only seen as a temporary solution. There would be other sites in and around the Nhulunbuy area for another operator to establish a landing facility and depot, if they could not get access to either the Yacht Club or the Gove wharf and ramp. Other sites where landing facilities could be established include areas of land along the Drimmie Head shorefront and an area of land next to the main Gove wharf and ramp, past the water intake. I understand that the Aboriginal community that currently occupies that area of land proposes to relocate to a new housing site.
44. Another option for operators is to enter via the Rio Tinto Cargo Wharf – although that wharf is not a roll-on-roll-off facility and would require the use of cranes to lift cargo off vessels. I consider that a new barge landing could also be fabricated at that site on the inbound channel, although that would require land fill and Rio Tinto giving its permission for use of part of the existing hard stand.
45. Gumatj Corporation is large enough to take care of its own interests in dealings with sea freight providers. However, I do believe that smaller customers and the community generally would benefit from Sea Swift providing a commitment to the ACCC to maintain a schedule of services and to maintain scheduled prices subject to annual inflation.

Annexures

46. Set out in Schedule "A" of my statement is a table of annexures that I refer to in my statement.



Signature of witness

Klaus Helms, Chief Executive Officer, Gumatj Corporation Limited / Gumatj Aboriginal Corporation

SCHEDULE A
TABLE OF ANNEXURES REFERRED TO IN MY STATEMENT

Annexure	Description
KFH-1	Klaus Helms curriculum vitae

