

**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 Terry Dodd

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



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: **Terry Dodd**

Address: 11-15 Sandspit Drive, South Townsville, Queensland

Occupation: Managing Director of Pacific Marine Group

Date: 16 September 2015

I, Terry Dodd, Managing Director of Pacific Marine Group, of 11-15 Sandspit Drive, South Townsville, in the State of Queensland, say that:

- 1. I am the Managing Director and owner of Pacific Marine Group (**PMG**).
- 2. I am also a director of SeaLink, a tourist and transport operator headquartered in South Australia, with operations in South Australia, New South Wales, Queensland and Northern Territory.

**Pacific Marine Group**

- 3. PMG is a marine contracting company based in Townsville, North Queensland, specialising in marine contracting, commercial diving and vessel and barge hire. PMG offers services through New Zealand, Pacific, New Guinea and Australia, in particular Northern Queensland and Northern Territory.
- 4. I established PMG in 1991. PMG currently has approximately 100 staff. It operates out of Townsville and recently completed construction of a marine complex including vessel and barge loading, mooring berths, over 20,000m<sup>2</sup> of hardstand, 3000m<sup>2</sup> of office and workshop, 200T capacity wharf and a barge ramp. PMG also owns and operates a large range of equipment for all towing, berthing, salvage and other marine operation needs.

Filed on behalf of	Sea Swift Pty Limited (the Applicant)		
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5. PMG owns and operates approximately 10 tug boats and 10 barges used for transporting various cargo by sea. PMG's barges are "dumb barges", that is they are not motorised barges (motorised barges are also referred to as landing barges). Dumb barges have a higher cargo carrying capacity than landing barges, but require tug boats to move them. Dumb barges can also be used for marine work as well as for freight.

#### **Contract or project barge freight services**

6. Amongst the various marine services it provides, PMG contracts with customers to move cargo by sea, using its barges and tugboats. The type of work that PMG undertakes I refer to as "contract work" or "project work", whereby PMG will contract with a particular customer, usually for the purposes of a particular project, to move specified cargo by barge. Typically, the vessel or vessels (tug and barge) used for the particular contract job will typically only move the customer's cargo, and will not carry general freight for a range of customers.
7. Between 1991 to 1996, PMG mostly undertook commercial diving and some contract tug work. In 1996, PMG purchased its first barge and commenced doing contract freight work.
8. PMG undertakes contract freight work throughout the coastal areas across northern Queensland (including Far North Queensland (**FNQ**) which covers the area north of Cairns to the tip of Cape York, the Torres Strait Islands and communities along the Queensland coast of the Gulf of Carpentaria), and into the Northern Territory.
9. Contract work can be contrasted with "scheduled" sea freight services, where a company provides regular deliveries to particular ports and anyone can have their freight carried on that regular service. Scheduled sea freight services provide a regular scheduled shipping service for delivery of routine community requirements, such as groceries and fuel. PMG has not sought to carry out such services to date. I discuss scheduled sea freight services further below.
10. The types of cargo that PMG may move by barge include: bulk commodities, gravel, heavy machinery, container, fuel, general plant, commodities. The types of customers for this work are mainly mining companies, civil contractors, and government and logistics companies.
11. Most of the barge freight work which PMG does is project work to carry building and construction materials and tools and equipment, for companies or individuals for use in construction projects. Usually, the customer puts this work out to tender and a number of operators actively compete in the tender for contracts.

12. The type of barge freight work that PMG does can be done using either a landing barge or a dumb barge and tugboat. There are costs and advantages in using either approach. Tugboats and dumb barges are mainly used for carrying heavy or irregular loads and are more economic for freight travelling longer distances. Landing barges alternatively are easier to use over short distances but cannot carry as much in weight.
13. To operate a barge and tugboat service, as with a landing barge, the operator requires qualified crew and its vessels must meet the marine safety requirements.
14. For most contract work, my experience and observations based on who is bidding for work is that there are a large number of barge operators in Queensland and the Northern Territory (discussed further below) who compete for the same type of project or cargo work as PMG. These barge operators include the following:
  - (a) Carpentaria Contracting: This is a privately owned business offering electrical services, machine and labour hire, constructions and marine services. It primarily operates out of Cairns, and provides services to Weipa and locations in the Torres Strait and Gulf of Carpentaria. I understand that Carpentaria Contracting have two dumb barges and two tug boats.
  - (b) Transit Systems Australia: This is a company which primarily runs landing barges between the Brisbane Bay area, Gladstone, Moreton Island, other locations along the Queensland coast. I understand Transit Systems Australia has approximately 12 to 14 barges that operate along the Queensland Coast, and 16 to 17 ferry boats.
  - (c) MIPEC: This is a company based in Gladstone. I understand that MIPEC has three 49m motorised landing barges, some tug boats and two dumb barges.
  - (d) Fodico Marine Group: Fodico was established in the mid-80s and it is also based in Gladstone. I understand they have 2 motorised barges (one of which is brand new), 6 tug boats and 1 or 2 dumb barges.
  - (e) Bhagwan Marine: Bhagwan Marine is based in Western Australia but has offices in Gladstone and Darwin. I understand they have a fleet of approximately 170 vessels which are mainly in Australia, but which also do some work in the United Kingdom. I understand Bhagwan Marine has a range of tugs, dumb barges, crew barges and motorised barges.
  - (f) Sea Swift: I understand Sea Swift has mainly motorised barges as well as small ships or merchant vessels.
  - (g) Toll Marine: I understand that Toll Marine has mainly motorised barges and a few small ships or merchant vessels.

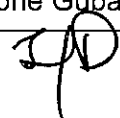
- (h) Silent World: I understand Silent World has a range of motorised barges, contracted merchant ships as well as a few crew boats. Silent World no longer operate in the Australian region, rather they are involved in freight in the Solomon Islands. I understand Silent World stopped operating in Australia around 18 months ago.
- (i) Riverside Marine: I understand Riverside Marine has a range of tugs, barges and motorised barges. Riverside Marine operate in Western Australia and in Queensland.
- (j) Pacific Tugs: Pacific Tugs started operating approximately 5 years ago and have operated out of Brisbane but have taken on contracted work for dredge support Australia-wide, most recently, operating in Geelong, Victoria and Western Australia. They appear to be an up and coming company competing aggressively for contracted tug and barge work.
- (k) Barge Express: Barge Express are a Darwin-based company which has a few tugs and barges.
15. Any scheduled barge freight operator would also potentially tender for project work where cargo was to be delivered to one of their scheduled destinations, as they commonly have spare capacity.
16. A customer who wants cargo moved by barge will usually contact PMG and ask for a price for the work. It is common for customers to go to tender in respect of their contract cargo requirements. In my experience, the main criteria for customers are price and availability of vessels.
17. PMG also tries to win clients from other operators, outside of normal tender processes. For example, I recall approaching BHP, who I was aware had a supply contract to Groote Eylandt from Darwin with Sea Swift, and offered to "do it better" (in terms of price). I will call clients of other shipping companies quite often to see if they may be interested in using PMG.
18. From time to time, barge operators will sub-contract work to another operator, for example, if one of their boats breaks down or if they have other work on which means they cannot meet all of their commitments, but this does not happen often. For example, Sea Swift once subcontracted to PMG to take a barge on charter for a particular gas project. Also, Sea Swift once chartered a tug from PMG approximately 5 years ago for use in gas project work in Gladstone.
19. PMG monitors closely developments in the Queensland and NT sea freight industry through our business development team. That team's activities include the following:

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IPD

- (a) Tracking the location and movements of boats and barges of other companies. All boats and barges are required to have Automatic Identification System (AIS) trackers, and there are websites which allow one to track boats and barges identified by their AIS trackers. The business development team monitors competitors' movements around the region.
  - (b) If PMG notices (for example) that a Sea Swift boat is in a location outside of its usual scheduled destinations, a representative may call a customer or other person in the industry at that location to find out (if possible) what job they are delivering for and which customers are involved.
  - (c) From time to time, the PMG business development team visit Cairns and the different locations in Far North Queensland and the NT. When they do this, I instruct them to record what they observe in respect of sea freight, such as whether other operators are busy and whether their boats are full, speak to people at the wharves about who the deliveries are for, take photos and generally observe on the ground which competitor is delivering what and to whom.
20. PMG has an electronic tender search which monitors what tenders have been announced in the area. Generally, if a tender is brought to our attention and we consider that PMG could carry out the work, PMG will tender for the work. PMG has approximately 4 full time engineers and additional Business Development managers whose role is to monitor, manage and submit tenders.
21. Tender lists released by clients will often include the details of the other operators who have contracted for the same work.
22. I consider that conditions in the industry at the moment make it very difficult to get contract or project barge work, as demand for this work has declined significantly over the past 18 months due to reduced government investment in projects, lower oil and gas prices, lower minerals prices and the consequential reduction of mining work.
23. Examples of recent contracts that PMG has tendered for include:
- (a) The South of Embley Project, which is a new Rio Tinto Aluminium bauxite mining operation located 40km south of Weipa, in Queensland. PMG has spent approximately \$600,000 over the past 12 months in tendering for this work which comprised mainly wages for engineers and business development people. I consider our major competitors for this project will be Bhagwan Marine and Sea Swift, but there could be others such as Carpentaria Contracting.
  - (b) The supply of paving material to Daru in Papua New Guinea for the rebuilding of bridges in the Oro Province of PNG following their destruction by Cyclone Guba in

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2007. PMG tendered for this in the late 2000s. I am not aware who else tendered for this contract.

(c) The supply of rock for sea walls to some of the Torres Strait Islands for the Torres Strait Council. I understand that PMG was competing against Carpentaria Contacting and Sea Swift in respect of that contract, but I do not know which company won the contract.

24. From my experience contracting for barge freight, PMG regularly competes with Sea Swift when a customer wants to move cargo from Cairns into Far North Queensland and has sometimes competed with Sea Swift for customers wanting to move cargo from Darwin into the Northern Territory. For example:

(a) PMG provided a quote to the Northern Territory Government for a contract to deliver goods to and from Aboriginal missions on coastal islands when a cyclone went through the Northern Territory in 2014. I understand that Sea Swift won some of the work and believe that Barge Express also won a part of the work.

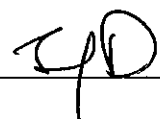
(b) Approximately two years ago, PMG won a Department of Transport contract for supply of gravel for 3 months to Mornington Island. I was also told by Meyric Slimming, the owner of Silent World that Silent World and Sea Swift also tendered for this contract.

25. I recall that Toll commenced providing marine freight services in the North Queensland market at some point in the last 5 years. The entry of Toll as a barge operator into FNQ in recent years has not had a significant effect on tenders for the contract work that I have described. Toll has not, to date, carried out a large amount of contracting work. Rather, from my observations, Toll might seek to compete for work in carrying cargo between locations that Toll is scheduled to travel to on its regular scheduled service to the various communities. One reason that Toll may not compete for other contract work is that the motorised barges which Toll owns are more restricted in capacity than the dumb barges which PMG operates.

#### **Scheduled Sea Freight Services in FNQ**

26. PMG does not, and has not sought to, provide scheduled barge freight services to communities in FNQ. The reason PMG hasn't sought to provide scheduled barge freight services to communities in FNQ to date are discussed below.

27. In my time, the main scheduled sea freight service operator to communities in FNQ has been Sea Swift. Sea Swift trans-ships freight to Horne Island and delivers to Thursday Island, Bamaga, Weipa and other destinations in FNQ.



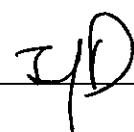
28. As part of PMG's general monitoring of other barge operators, and because it is part of our business to keep a close eye on what these operators are doing, I have monitored Sea Swift's scheduled community freight service operations over many years, including the volumes and types of freight going to these communities.
29. PMG has never run sea freight services which compete with Sea Swift's scheduled services to communities in Queensland and Northern Territory. I refer to those services as Sea Swift's "bread run".
30. From my observation, there has been a variety of other barge operators who have commenced scheduled services to the remote communities in FNQ, competing against Sea Swift.
31. I recall the following barge operators who have also operated a scheduled community service in FNQ:
  - (a) Jardine Shipping, which operated for around 20 to 30 years. I recall that Jardine was bought out by Brambles and then Brambles closed it down and sold off its assets approximately 7 or 8 years ago. When they were operating, Jardine ran services to all the main destinations in FNQ.
  - (b) Ian Perrett, who owned Endeavour Shipping, which operated for about 20 to 30 years, closed down and sold off the assets approximately 5 to 6 years ago. Endeavour Shipping used to operate services from Cairns to the Torres Strait Islands and around to Weipa. Endeavour Shipping also used to occasionally operate services in the NT on a contract basis.
  - (c) Silent World, which started operating about 5 years ago but stopped around 18 months ago, and are now focussed on operations in the Solomon Islands. When Silent World operated in FNQ, they ran scheduled services from Cairns to the Torres Strait and around to Weipa. Silent World also used to take charter work in Queensland and sometimes in the Northern Territory.
  - (d) Gulf Freight Services, which was owned by Riverside Marine, operated for many years in FNQ. I cannot recall when they commenced. Gulf Freight Services used to operate trucks from Cairns to Karumba, and connected on to barges to Weipa. I understand Gulf Freight Services had a contract with Rio Tinto Weipa for many years. I also recall that Gulf Freight Services ran some services to Gove in direct competition with Perkins, who then bought them out approximately 8 years ago.
32. In each case, my recollection is that the other barge operator eventually stopped providing scheduled services or did not establish a significant scheduled service in the first place. My observation, from basic business experience in this industry is that these



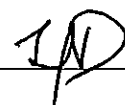
other operators probably could not make sufficient money in operating the scheduled service in competition with Sea Swift.

33. If I considered that PMG could make money in operating a scheduled barge service to the FNQ communities, I would do it right away. In the past, I have considered whether there is an opportunity for PMG to provide scheduled barge services in Far North Queensland and the Northern Territory.
34. In general terms, operating a community barge service could be an attractive business proposition for PMG. The main thing that is needed to start such services is the right equipment. The equipment required is tugs, barges, unloading equipment, sheds for containers and a break-bulk system (that is a system of transporting cargo as separate pieces rather than in containers). PMG has sufficient vessels and unloading equipment for a small scheduled service, but does not currently have the full logistics supply chain requirements for such work although this could easily be obtained. It is relatively easy to establish a full logistics supply chain. The essential requirements would be to get some containers, a few forklifts and a depot at a required location. This can all easily be leased.
35. If PMG were carrying on a regular scheduled barge service, I would expect that it would be possible to pick up further contract work in respect of the locations covered by the scheduled service.
36. However, when I have considered starting such a service in the past, I have come to the view that it would not be profitable. This is due to the level of demand in the relevant locations. My conclusion has been that the FNQ area does not have sufficient demand for scheduled services for more than 1 operator. This conclusion has been based on my observations of the industry in the past (referred to above), where there has been a second scheduled operator for short periods, one or other operator has then left. Also, based on PMG's own market intelligence about the volumes of cargo that Sea Swift ships to the various communities, I do not think there is a scenario in which two parties can operate and both of them be profitable. The cost of running a freight business is very expensive, as there are very high fixed costs, the routes that need to be serviced are very long and vessels are not cheap to run.
37. I have looked at this possibility a number of times, but have always come to the same conclusion.
38. I consider that the only way that PMG would consider commencing regular services in FNQ is if it obtained a contract of sufficient size to underpin the service.

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39. The type of contract that would be required is a contract with a mining company or a supermarket located in a sufficiently populous location (or in multiple locations) or a mining camp in a centre like Weipa. If PMG had the guaranteed volume that such a contract would provide, then a regular service to Thursday Island and other locations in the region may be viable.
40. For example, if PMG was able to contract with a mining company who required 20-30 containers shipped to a particular location or to multiple locations in one route say every second week, this may provide sufficient volume for PMG to almost break even on that route. PMG may then consider starting regular services on that route on the basis that it would then be possible to pick up some additional work by reason of the fact that it would be running the regular service. Rio Tinto Weipa and BHP Groote are examples of customers who may require a contract for such a volume of freight to be delivered. I would probably service Rio Tinto Weipa out of Cairns and BHP Groote out of Darwin, however this would depend on the requirements under the contract. A contract with Rio Tinto Weipa, for example, may be sufficient to underpin a barge service however it may be in the terms of the contract that a back-up vessel is required, in which case whether the service becomes viable will depend on whether an operator has spare, unutilised vessels or whether they would need to hire / purchase another vessel.
41. I do not consider a contract with Ergon or a grocery goods contract for IBIS would be sufficient volume to break even on that route. In relation to Torres Strait Island services in particular, you would need fuel delivery, groceries as well as deliveries to Weipa to make the service viable.
42. Representatives of PMG have, in the past, been asked informally by customers such as the Torres Strait Council, IBIS and Rio Tinto Weipa whether PMG plans to provide regular barge services into North Queensland, including for example the Torres Strait. I have been informed of these enquiries by employees in PMG's Business Development team, who regularly visit the Torres Strait region and speak to customers and industry participants in order to determine whether there are any business opportunities for PMG. In relation to those approaches, PMG has at that time decided that they were not in a position to commence a service, for example, because PMG was committed elsewhere, or made the decision that the route was non-core to its business.
43. I recall that around 3 to 5 years ago, IBIS on Thursday Island asked PMG to provide a quote on providing a regular service for their cargo needs. At that time, PMG did not provide a quote for those services as we considered that the cargo that would be covered under the contract was of insufficient volume to make the service viable.



Marine freight services to the Thursday Island area are expensive services to run because of the distance from Cairns.

44. Without such a contract, I would consider that the best case scenario when starting a scheduled service would be to obtain 50% of the trade on the particular route. Based on the volume of freight that I have observed in the region to date, this would not be sufficient to make the operation sustainable.
45. I have some idea of the prices that Toll and Sea Swift are currently offering to customers for scheduled services based on my experience in the business and knowledge of the cost of operating tugs. My view is that prices of both providers are very low so that it is unlikely that either provider is making significant profits on those routes. This is another reason that PMG has not, to date, considered providing these services.
46. If Toll were to exit the market either because of the proposed transaction or because they went out of business the main effect on PMG would be that it would pay closer attention to Sea Swift's operations. This is because one less operator means that there is a higher chance of opportunities for profitable work in the area arising, which PMG may be able to take advantage of.

#### **Requirements if PMG was to provide Scheduled Freight Services in FNQ**

##### *Base in the region*

47. I do not consider that PMG would need to establish a base in the region, for example in Seisia or on Thursday Island, prior to commencing a regular service. I would operate out of Cairns, rather than Townsville, which I consider would be sufficient to at least commence a regular service. If the service started and volume increased, then it may become necessary to establish a base elsewhere to trans-ship the goods.

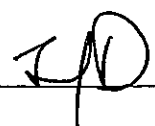
##### *Vessels*

48. I consider that PMG could use its current barges and tug-boats to carry out a regular scheduled service in North Queensland, including to the various communities to which Toll and Sea Swift currently deliver.
49. If the business was successful and more barges were required, it is not difficult to obtain those vessels, subject to obtaining the finance to buy them.

##### *Access to wharves and landing facilities*

50. I do not consider that it would be difficult to get access to the necessary wharves or landing facilities in the FNQ area.

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51. In relation to wharves, I am aware of the condition of many of the wharves in the area because one of PMG's business areas is to carry out repairs to wharves and a number of these wharves have been repaired by PMG at different times.
52. There is also no real difficulty in getting access to the wharves because they are not heavily used. It is just a matter of booking the wharf when it is required.
53. The wharf at Weipa is controlled by Rio Tinto. However, PMG has carried out a lot of work in Weipa for marine contracts and I do not recall ever having difficulty obtaining access to the wharf. Although Rio Tinto Weipa's contracted shipper has priority, other operators are able to get advanced notice of the schedule and it is relatively easy to work around this.
54. The wharf at Seisia is more technically challenging because the water is shallow. However, I consider that PMG's vessels would be able to deal with this.
55. There are other destinations which do not have a wharf, rather they just have a landing ramp or beach landing. There is no difficulty for PMG in getting access to the landing ramps or beaches and PMG's vessels are able to deal with this. For example, PMG has delivered freight to Cape Flattery and Lizard Island where there was only a landing ramp or beach landing.

*Specialist shipping containers*

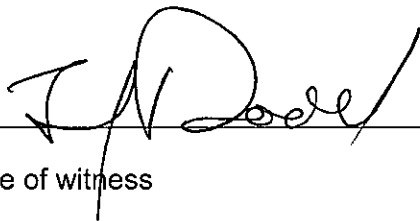
56. Customers in remote locations require shipment of chilled or frozen material. PMG can provide these services. Generally, this is just a matter of installing a generator on one of the barges to provide the power for frozen and chilled shipping containers.
57. If the carriage of dangerous goods such as fuel or chemicals were required, PMG would also be equipped for this. PMG has carried these types of goods in the past and has the appropriate certification to do so.

*Conclusion*

58. For all these reasons, I do not consider that it would be difficult for PMG to start providing scheduled services to FNQ communities if it were profitable to do so.
59. As matters stand, I consider that Sea Swift is held accountable in respect of its prices by reason of the potential entry of other competitors. If Sea Swift starts to raise their prices and was to upset its customers, this would provide an opportunity for others and PMG is one of those competitors who could start up services.
60. My experience is that customers are always looking to reduce cost. If Sea Swift's services were to become too expensive, customers in the area are likely to look to another operator to provide the scheduled services. I have referred above to the

example of the IBIS supermarket on Thursday Island approaching PMG. Additionally, Rio Tinto in Weipa has previously approached PMG when contracts come up to seek PMG's quote for tendering on major products in FNQ. Most recently, PMG has been tendering for Rio Tinto in relation the South of Embley project. These tenders have been for work directly with Rio Tinto Weipa, as well as work that has been subcontracted to other companies, like Bechtel.

61. I am not concerned about Sea Swift acquiring Toll and I do not think this will change anything. Toll's assets are just barges and there are many assets like this up for sale at the moment at very cheap prices. All the vessels that were brought in for the Gladstone project works and Barrow Island project works are now on the market, given those works have closed down, and the only large contract work coming up is the South of Embley project. In fact, I consider that Sea Swift would be paying too much for Toll's assets, given all the other assets on sale.

A handwritten signature in black ink, appearing to read 'Terry Dodd', is written over a horizontal line. The signature is fluid and cursive.

Signature of witness

Terry Dodd, Managing Director of Pacific Marine Group