

COMMONWEALTH OF AUSTRALIA
Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 2 of 2016

Re: Application for merger authorisation of the proposed acquisition of certain assets of Toll Marine Logistics Australia's marine freight operations

Applicant: Sea Swift Pty Limited (ACN 010 889 040)

DETERMINATION

TRIBUNAL: Justice Farrell (Deputy President)
Mr R Davey (Member)
Prof D K Round (Member)

DATE OF DETERMINATION: 1 July 2016

THE TRIBUNAL DETERMINES THAT:

1. Subject to the conditions in the Annexure to this determination, Sea Swift Pty Limited (ACN 010 889 040) ("Sea Swift") is granted authorisation pursuant to ss 95AT and 95AZJ of the *Competition and Consumer Act 2010 (Cth)* to acquire:
 - (a) shares in:
 - (i) Perkins Maritime Pty Ltd (ACN 009 616 960); and
 - (ii) Perkins Lady Jan Pty Ltd (ACN 064 110 247); and
 - (b) assets from:
 - (i) Perkins Shipping Pty Ltd (ACN 009 597 835);
 - (ii) Perkins Properties Pty Ltd (ACN 009 592 885); and
 - (iii) Gulf Freight Services Pty Ltd (ACN 010 755 683)



as set out in a Deed of Amendment dated 17 March 2016 and the appended Amended and Restated Asset and Share Sale Agreement between the following parties:

Vendors:

Perkins Industries Pty Ltd (ACN 009 593 257)

Perkins Shipping Pty Ltd (ACN 009 597 835)

Perkins Properties Pty Ltd (ACN 009 592 885)

Gulf Freight Services Pty Ltd (ACN 010 755 683)

Vendor Guarantor:

Toll Holdings Limited (ACN 006 592 089)

Purchaser:

Sea Swift Pty Limited (ACN 010 889 040)

Purchaser Guarantor:

Sea Swift (Holdings) Pty Limited (ACN 159 387 390)

2. This determination includes the Annexure and all Schedules thereto.

Date entered: 1 July 2016



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Deputy Registrar
Australian Competition Tribunal

ANNEXURE TO THE DETERMINATION DATED 1 JULY 2016

CONDITIONS OF THE TRIBUNAL'S AUTHORISATION

TRANSFERRED CONTRACTS CONDITION

1 Transferred Contracts Condition

- (a) The authorisation is subject to the condition that Sea Swift will not give effect to, or rely on, any provision in the Transferred Contracts which requires the Customer to:
- (i) exclusively use the marine freight services of Sea Swift; or
 - (ii) allow Sea Swift a Right of First Refusal; or
 - (iii) ship a minimum volume of freight with Sea Swift,
(together the Transferred Contracts Condition).
- (b) For the purposes of the Transferred Contracts Condition:
- (i) Transferred Contracts means the contracts listed in Schedule 2; and
 - (ii) Sea Swift must ensure that its obligations under the Transferred Contracts Condition are published on Sea Swift's website and communicated to Customers within 30 days of the Completion Date.

REMOTE COMMUNITY SERVICES CONDITION

2 Remote Community Service Condition

- (a) The authorisation is subject to the condition that Sea Swift will:
- (i) maintain a minimum level of scheduled services to the locations and at the frequencies set out in the Remote Community Service Schedule contained in Schedule 3; and
 - (ii) maintain an up-to-date shipping schedule of services on its website,
(together the Remote Community Service Condition).
- (b) Sea Swift's obligations under the Remote Community Service Condition are suspended to the extent that it is prevented from carrying out those obligations by an event or circumstance, or combination of events or circumstances, that are beyond the reasonable control of Sea Swift, including but not limited to:



- (i) fire, lightning, explosion, flood, earthquake, storm or any other act of God or force of nature;
- (ii) damage to vessel(s) or port facilities;
- (iii) civil commotion, sabotage, war, revolution, radioactive contamination, or toxic or dangerous chemical contamination;
- (iv) strikes, lock-outs, industrial disputes, labour disputes, industrial difficulties, labour difficulties, work bans, blockades or picketing;
- (v) the impact of public holidays or necessary vessel maintenance or refit; or
- (vi) any event or circumstance that prevents or jeopardises the safe operation of any scheduled service.

REMOTE COMMUNITY PRICE CONDITION

3 Remote Community Price Condition

- (a) The authorisation is subject to the condition that Sea Swift will:
 - (i) charge no greater than the Maximum Charge for the destinations and services listed in the Remote Community Service Schedule, except as allowed by Condition 4 or in accordance with the Independent Price Review Process set out in Schedule 5;
 - (ii) publish on its website the Maximum Base Price for the Services, as well as the applicable rate of GST, Consignment Note Fee, Dangerous Goods Surcharge and Minimum Freight Charge, for each Financial Year,

(the Remote Community Price Condition).
- (b) For the purposes of the Remote Community Price Condition:
 - (i) Subject to clause 3(b)(ii) below, Maximum Charge means:
 - (A) for Vehicle Freight Services, the Maximum Base Price multiplied by the number of units carried; and
 - (B) for all other Services, the Maximum Base Price multiplied by total tonnes or total cubic metres carried (whichever is greater);

(the Maximum Base Freight Charge),

plus additional charges that may include:



- (C) the Fuel Surcharge Fee;
 - (D) applicable GST;
 - (E) the Consignment Note Fee;
 - (F) the Port, Council and Royalty Charges;
 - (G) the Dangerous Goods Surcharge (if applicable); and
 - (H) Other Charges (if applicable).
- (ii) If, for a particular service, the sum of:
- (A) the Maximum Base Freight Charge;
 - (B) the Fuel Surcharge Fee;
 - (C) the Consignment Note Fee;
 - (D) the Port, Council and Royalty Charges; and
 - (E) the Dangerous Goods Surcharge (if applicable);
- is less than the Minimum Freight Charge, then the Maximum Charge is the total of:
- (F) the Minimum Freight Charge;
 - (G) applicable GST; and
 - (H) Other Charges (if applicable).
- (iii) Maximum Base Price is to be determined in accordance with the following formula:

$$\text{Maximum Base Price} = \text{Base Price} \times (1 + \text{CI})$$

where:

$$\text{CI} = \text{CPI} + \text{LRI}$$

Base Price is determined as follows:

For the Financial Year commencing 1 July 2015 the rates set out for the services listed in Schedule 4.

For each subsequent Financial Year, the Base Price is the accumulated Maximum Base Price as calculated for the previous Financial Year.

CPI is determined in accordance with the following formula:

$$\text{CPI} = [(\text{CPI}^n - \text{CPI}^b) / \text{CPI}^b] \times \text{WF}^{\text{CPI}}$$

where:



CPI^a = the quarterly *Consumer Price Index: All groups, Australia* for the quarter that was most recently published as at the date on which Sea Swift proposes to complete an Annual Price Review.

CPI^b = the quarterly *Consumer Price Index: All groups, Australia* for the quarter ending June of the previous Financial Year.

WF^{CPI} = the cost component weighting of general costs to provide the Service (31%).

And CPI is subject to a minimum of zero. CPI cannot be a negative number.

LRI is determined in accordance with the following formula:

$$\mathbf{LRI = LRI^a \times WF^{WPI}}$$

where:

LRI^a = the annual labour rate percentage increases as set out in the Sea Swift Collective Agreement.

WF^{WPI} = the cost component weighting of labour costs to provide the Service (52%).

And LRI is subject to a minimum of zero. LRI cannot be a negative number.

(iv) Consignment Note Fee is a per-consignment fee to cover the cost of documenting a consignment from receipt through to delivery. The Consignment Note Fee is as follows:

(A) for destinations listed in the Remote Community Service Schedule in the Northern Territory: \$15.00 plus GST.

(B) for destinations listed in the Remote Community Service Schedule in Far North Queensland: \$15.00 plus GST.

(v) Port, Council & Royalty Charges means any charges or statutory fees levied by the applicable port, government or council bodies on the cargo that is imported and exported to/from a wharf, barge ramp or any other landing site in respect of the Service being provided to the customer.



- (vi) Fuel Surcharge Fee is calculated as a percentage of the Maximum Base Freight Charge for a Service. The percentage surcharge and fee are calculated (on a monthly basis) as follows:

$$\text{Fuel Surcharge percentage} = [(F^n - F^b) / F^b] \times WF^F$$

$$\text{Fuel Surcharge Fee} = \text{Fuel Surcharge percentage} \times \text{Maximum Base Freight Charge}$$

where:

F^b = the average fuel price as at 2 February 2016 obtained from *AIP Terminal Gate Pricing – Diesel – National Average* (exclusive of GST and any applicable rebates).

F^n = the average fuel price on the first Business Day of the month prior to the Monthly Fuel Surcharge Review obtained from *AIP Terminal Gate Pricing – Diesel - National Average* (exclusive of GST and any applicable rebates).

WF^F = the cost component weighting of the fuel costs to provide the Service (17%).

And the Fuel Surcharge Fee is subject to a minimum of zero. The Fuel Surcharge Fee cannot be less than zero.

- (vii) Other Charges means any charges for voluntary additional services that a customer requests to be provided in conjunction with the service. These charges are notified to and accepted by the customer prior to the service being provided.
- (viii) Dangerous Goods Surcharge is applied as a percentage of the Maximum Base Freight Charge for all goods that are classified as dangerous goods under the Australian Dangerous Goods Code or the International Maritime Dangerous Goods Code. During the term of this Condition, the Dangerous Goods Surcharge percentage will be no higher than 25%.
- (ix) Minimum Freight Charge means a specified minimum charge to consolidate and transport a single consignment of freight. The Minimum Freight Charge is as follows:



(A) for destinations listed in the Remote Community Service Schedule in the Northern Territory: \$50.00.

(B) for destinations listed in the Remote Community Service Schedule in Far North Queensland: \$50.00.

4 Price Reviews

(a) Sea Swift may increase the Maximum Base Price for the Services from or on 1 July each Financial Year in accordance with the formulas set out in Clause 3(b)(iii) above (Annual Price Review).

(b) Sea Swift may increase the Fuel Surcharge Fee on a monthly basis in accordance with the formula set out in Clause 3(b)(vi) above (Monthly Fuel Surcharge Review).

(c) Sea Swift may increase the applicable GST at any time but only in accordance with changes legislated by the Australian Federal Government.

(d) Sea Swift may only:

(i) increase its Base Price above the Maximum Base Price determined using the formula in Clause 3(b)(iii); or

(ii) increase the Additional Fees above the amounts set out in or determined according to Clause 3(b)(iv)-3(b)(viii);

in accordance with the Independent Price Review Process set out in Schedule 5 (Additional Proposed Price Increase).

5 Period for Which Sea Swift Must Comply With the Conditions

(a) Subject to paragraphs (b), (c) and (d) below, Sea Swift must comply with the Conditions until the earliest of:

(i) five years from the Completion Date;

(ii) a determination is made by the Tribunal that it is no longer necessary for Sea Swift to comply with the Conditions (including in circumstances where the ACCC has accepted an undertaking under section 87B of the Act in substantially the same terms as the Conditions); and



- (iii) if the parties do not complete the Proposed Acquisition, when Sea Swift notifies the Tribunal of the non-completion of the Proposed Acquisition (and provides a copy of the notice to the ACCC).
- (b) Sea Swift will be relieved of its obligation to comply with the Transferred Contracts Condition in respect of each of the Transferred Contracts on the date that the Current Term of that Transferred Contract expires.
- (c) Subject to sub-clause 5(d) below, Sea Swift will be suspended of its obligation to comply with the Remote Community Service Condition if another operator commences operating a weekly (or more frequent than weekly) Scheduled Service, and operates that Scheduled Service for a period of 12 consecutive weeks or more:
 - (i) along one of the following routes, in which case the suspension applies to that route and any destination transhipped through that route:
 - (A) Cairns – Weipa;
 - (B) Cairns – Thursday Island/Horn Island;
 - (C) Darwin – Gove; or
 - (D) Darwin – Groote Eylandt,or
 - (ii) to any specific destination set out in the Remote Community Service Schedule contained in Schedule 3, in which case the suspension applies in respect of that destination.
- (d) If Sea Swift is suspended of its obligations to comply with the Remote Community Service Condition under sub-clause 5(c) above, because another operator commences operating a weekly (or more frequent than weekly) Scheduled Service along one of the routes listed in sub-clause 5(c)(i) or a specific destination under sub-clause 5(c)(ii), and that operator subsequently ceases to provide that Scheduled Service, Sea Swift must re-commence that Scheduled Service in accordance with the Remote Community Service Condition as soon as practicably possible, but no later than 28 days after that operator ceases to provide the Scheduled Service.
- (e) Sea Swift may subcontract any or all of its obligations under the Remote Community Service Condition to another qualified supplier, but will remain



responsible for satisfying the Remote Community Service Condition, subject to clause 5(c) above, at prices that comply with the Remote Community Price Condition.

SELF-COMPLIANCE REPORTING

6 Annual Reporting

Within 30 days of the end of each Financial Year comprising the Term of these Conditions, Sea Swift is to provide the ACCC with a report containing the following information:

- (a) in relation to each of the Services to destinations listed in the Remote Community Service Schedule:
 - (i) the Base Prices that it charged for the previous Financial Year;
 - (ii) the Base Prices that it is charging in the current Financial Year, including details of all inputs and calculations underlying any increase to the Base Prices from the previous Financial Year that have been made in accordance with Clause 3(b)(iii);
 - (iii) the Fuel Surcharge Fee for each calendar month of the past Financial Year, including all underlying calculations;
 - (iv) the result of any Independent Price Review process during the previous Financial Year, including all documents prepared for the purpose of, or resulting from, the Independent Price Review; and
 - (v) details of any instances of non-compliance by Sea Swift with the Remote Community Price Condition during the relevant Financial Year, or confirmation that there has been no instance of non-compliance.
- (b) the current schedule of Services and the frequency of those Services to each of the destinations set out in the Remote Community Service Schedule.
- (c) details of any instances of non-compliance by Sea Swift with the Remote Community Service Condition (including failure to provide services in accordance with Schedule 3) during the relevant Financial Year.



Sea Swift must provide the ACCC with any information or documents that the ACCC reasonably requests to verify the accuracy of the report.

7 Event Reporting

Within 30 days of the occurrence of an event listed below which occurs during the Term of these Conditions, Sea Swift is to provide the ACCC with a report containing the following information:

- (a) for any suspension of Sea Swift's obligation to comply with the Remote Community Service Condition under clause 2(b):
 - (i) the nature and duration of these circumstances; and
 - (ii) the resulting changes that Sea Swift has made to its Scheduled Service schedule and the expected duration of those changes.
- (b) for any suspension of Sea Swift's obligation to comply with the Remote Community Service Condition under clause 5(c):
 - (i) details of the Scheduled Service route(s) and destination(s) that Sea Swift has ceased or intends to cease servicing; and
 - (ii) details of the other operator who has commenced operating a Scheduled Service in relation to the relevant routes(s) or destinations(s) including the frequency and continuous duration of the Scheduled Service provided by that operator.
- (c) for any obligations under the Remote Community Service Condition that are subcontracted by Sea Swift to another qualified supplier under clause 5(e):
 - (i) the details of the Scheduled Service route(s) and destination(s) that Sea Swift has subcontracted; and
 - (ii) a copy of the subcontract agreement between Sea Swift and the qualified supplier.

8 Review Event

- (a) If a Review Event occurs, Sea Swift may apply to the Tribunal to vary or suspend (for a period of time) one or more of the Conditions to the extent the variation or suspension is necessary to deal with the effect of the Review Event on Sea Swift.
- (b) Review Event means an event or circumstance that has the result that Sea Swift:



- (i) is unlikely to be able to comply with its obligations under the Conditions; or
- (ii) believes that it is necessary to seek some variation due to changed circumstances (including any relevant market change, such as the loss of major contracts to competing coastal and community marine freight suppliers, or overall market contraction, or changes within the relevant regulatory environment, any of which that has a material impact on service viability).

GOVE LEASE UNDERTAKING

9 Gove Lease Undertaking

The authorisation is subject to the condition that Sea Swift:

- (a) by the Completion Date has executed and given to the ACCC in respect of the Gove Lease an undertaking pursuant to section 87B of the Act in the same form as Annexure E to Sea Swift's Application for Authorisation filed on 4 April 2016;
- (b) complies with the Gove Lease Undertaking in all material respects unless and until released from it by the ACCC; and
- (c) does not transfer the Gove Lease without the approval of the ACCC.

TOLL COMMITMENTS

10 Toll Commitments

The authorisation is subject to the condition that Toll:

- (a) releases back to their owners two vessels it currently uses in the Northern Territory, being the *Toll Territorian* and the *Bimah Tujuh* as soon as reasonably practicable after the Completion Date;
- (b) sells the *Warrender* as soon as reasonably practicable after the Completion Date; and
- (c) does not sell the *Warrender* to Sea Swift, any Officer of Sea Swift, any Related Entity of Sea Swift or any Officer of such Related Entities, or any person acting under the direction or for the benefit of any of those persons or Related Entities.



11 Time limit on Proposed Acquisition

The authorisation is subject to the condition that the Proposed Acquisition is completed by 30 September 2016.

12 Defined Terms and Interpretation

A term or expression starting with a capital letter in the conditions:

- (a) which is defined in the Dictionary in Schedule 1 of the Annexure (Dictionary), has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.



SCHEDULE 1

DICTIONARY

Act means the *Competition and Consumer Act 2010* (Cth)

ACCC means the Australian Competition and Consumer Commission.

Additional Fees means the Fuel Surcharge Fee, the Consignment Note Fee, the Port, Council and Royalty Charges, the Dangerous Goods Surcharge and Other Charges.

Additional Proposed Price Increase has the meaning given in clause 4.

Annexure means the Annexure to the Tribunal's determination dated 1 July 2016 including all Schedules to the Annexure.

Annual Price Review has the meaning given in clause 4.

Base Price has the meaning given in clause 3(b)(iii).

Completion Date means the date on which the Proposed Acquisition is completed.

Conditions means each of the conditions set out in this Annexure.

Consignment Note Fee has the meaning given in clause 3(b)(iv).

Customer means a counterparty to the Transferred Contracts identified in Schedule 2.

Current Term of a Transferred Contract includes any option to renew or extend the term of the Transferred Contract.

Dangerous Goods means dangerous or hazardous materials classified under the Australian Dangerous Goods Code or the International Maritime Dangerous Goods Code.

Dangerous Goods Surcharge has the meaning given in clause 3(b)(viii).

Dry Freight Services means scheduled services for the transport of cargo by sea (including the transport of Dangerous Goods) which does not require a temperature controlled environment and does not include Vehicle Freight Services.

Financial Year refers to the period from 1 July to 30 June in each year.

Fuel Surcharge has the meaning given in clause 3(b)(vi).



Gove Lease means the lease between Perkins Properties Pty Ltd and the Arnhem Land Aboriginal Council in relation to the Gove Wharf at Melville Bay Rd, Foreshore Drive, Nhulunbuy, to be acquired by Sea Swift as part of the Proposed Acquisition.

Gove Lease Undertaking has the meaning given in clause 9(a).

GST means the Goods and Services Tax.

Independent Price Expert means the person appointed under Schedule 5.

Independent Price Review Process means the process set out in Schedule 5.

Maximum Base Price has the meaning given in clause 3(b)(iii).

Maximum Charge has the meaning given in clause 3(b)(i).

Minimum Freight Charge has the meaning given in clause 3(b)(ix).

Monthly Fuel Surcharge Review has the meaning given in clause 4(b).

Other Charges has the meaning given in clause 3(b)(vii).

Port, Council & Royalty Charges has the meaning given in clause 3(b)(v).

Price Increase Notice has the meaning given in clause 3(a) of Schedule 5.

Proposed Acquisition means the proposed acquisition by Sea Swift of:

- (a) shares in:
 - (i) Perkins Maritime Pty Ltd (ACN 009 616 960); and
 - (ii) Perkins Lady Jan Pty Ltd (ACN 064 110 247); and
- (b) assets from:
 - (i) Perkins Shipping Pty Ltd (ACN 009 597 835);
 - (ii) Perkins Properties Pty Ltd (ACN 009 592 885); and
 - (iii) Gulf Freight Services Pty Ltd (ACN 010 755 683)

as set out in a Deed of Amendment dated 17 March 2016 and the appended Amended and Restated Asset and Share Sale Agreement.

Refrigerated Freight Services means scheduled services for the transport of cargo by sea (including the transport of Dangerous Goods) which requires a temperature controlled environment and does not include Vehicle Freight Services.



Remote Communities Independent Price Expert means the person appointed in accordance with clause 1(a) of Schedule 5.

Remote Community Price Condition has the meaning given in clause 3.

Remote Community Service Condition has the meaning given in clause 2.

Remote Community Service Schedule means the schedule identified in Schedule 3.

Review Event has the meaning given in clause 8.

Right of First Refusal means a clause in any of the Transferred Contracts that may have the purpose or effect of requiring a Customer to allow Sea Swift to match any price proposed by a competitor.

Scheduled Service means a service by which an operator offers to the public to carry freight between two or more destinations at predetermined dates or days of the week.

Sea Swift means the entity Sea Swift Pty Ltd ACN 010 889 040.

Sea Swift Collective Agreement means the collective agreement between Sea Swift and employees of Sea Swift lodged with the Fair Work Commission in 2009 in relation to employees' terms and conditions of employment, and includes any replacement of that agreement in the future.

Services means the scheduled general cargo services set out in Schedule 4, being:

- (a) Dry Freight Services;
- (b) Refrigerated Freight Services; and
- (c) Vehicle Freight Services,

but excluding charter services.

Term means the period between the Completion Date and that date that is five years after the Completion Date.

TML means the entity trading as Toll Marine Logistics Australia.

Toll means Toll Holdings Limited (ACN 006 592 089)

Transferred Contracts means the contracts listed in Schedule 2.

Transferred Contracts Condition has the meaning given in clause 1.



Tribunal means the Australian Competition Tribunal.

Vehicle Freight Services means scheduled services for the transport of motor vehicles by sea, specifically meaning a domestic vehicle under 6m in length.



SCHEDULE 2

TRANSFERRED CONTRACTS

Item	Customer
1.	IBIS
2.	Boral
3.	Gemco (BHP) (Groote Eylandt)
4.	Pacific Aluminium (Rio Tinto) (Gove)
5.	ALPA
6.	PUMA
7.	Allied Pickfords Pty Ltd
8.	Alyangula Recreation Club
9.	Aminjarrinja Enterprises Aboriginal Corporation
10.	Kun Huy Kag t/a Angurugu Chinese Takeaway
11.	Anindilyakwa Land Council
12.	B Kumar & P Kumar & P Kumar & R Kumar t/a Country Fried Chicken
13.	The Trustee for Dugong Beach Resort t/a Dugong Beach Resort Pty Ltd
14.	Groote Eylandt & Bickerton Island Enterprises Aboriginal Corp
15.	Gove Unit Trust t/a Gove Motors
16.	Gove Tackle & Outdoors
17.	Groote Eylandt Aboriginal Trust
18.	Ericann Pty Ltd t/a Groote Retravisioin & Homeware
19.	Hasting Deering (Aust) Ltd
20.	Scoffee Pty Ltd t/a The Coffee Shop
21.	Three C's Café
22.	Walkabout Lodge & Tavern
23.	Bradley Carey t/a BC Autos
24.	Fulton Hogan Industries Pty Ltd
25.	Miwatj Health Aboriginal Corporation
26.	Best Bar Pty Ltd
27.	Outback Stores Pty Ltd
28.	Maningrida Progress Association



SCHEDULE 3

REMOTE COMMUNITY SERVICE SCHEDULE

Location	Frequency (per week)*			
	Dry Services	Refrigerated Services	Dangerous Goods Services	Vehicle Services
North Queensland (ex Cairns)				
Boigu	1	1	1	1
Dauan	1	1	1	1
Mabuiag	1	1	1	1
Saibai	1	1	1	1
St Pauls	1	1	1	1
Hammond	1	1	1	1
Coconut	1	1	1	1
Murray	1	1	1	1
Darnley	1	1	1	1
Stephen Island	(1/mth tide dependant)	(1/mth tide dependant)	(1/mth tide dependant)	(1/mth tide dependant)
Warraber	1	1	1	1
Yam	1	1	1	1
Yorke	1	1	1	1
Badu	1	1	1	1
Kubin	1	1	1	1
Horn Island	2	2	2	2
Thursday Island	2	2	2	2
Seisia/Bamaga	2	2	2	2
Aurukun	1 (wet season only)	1 (wet season only)	1 (wet season only)	1 (wet season only)
Lockhart River	1 (wet season only)	1 (wet season only)	1 (wet season only)	1 (wet season only)
Weipa	2	2	2	2
Northern Territory (ex Darwin)				
Milingimbi	1	1	1	1
Ramingining	1	1	1	1
Elcho Island	1	1	1	1
Numbulwar	(1/fortnight tide dependent)	(1/fortnight tide dependent)	(1/fortnight tide dependent)	(1/fortnight tide dependent)
Umbakumba	1	1	1	1
Bickerton Island	Fortnightly	Fortnightly	Fortnightly	Fortnightly
Lake Evella	1	1	1	1
Groote Eylandt	1	1	1	1
Nguiu	2	2	2	2
Pirlangimpi	2	2	2	2
Port Keats	1 (wet season only)	1 (wet season only)	1 (wet season only)	1 (wet season only)
Milikapiti	1	1	1	1
Gove	1	1	1	1
Paru	2	2	2	2
Croker Island	1	1	1	1
Goulburn Island	1	1	1	1
Maningrida	1	1	1	1

* Unless otherwise specified.



SCHEDULE 4

BASE PRICES

NORTH QUEENSLAND

Schedule of rates (excludes GST)¹

Freight (ex-Cairns) ²	Bamaga / Seisia (NPA), Thursday Island, Horn Island, Weipa	OTSI, Lockhart, Aurukun
Dry (m ³ or tonnes) ³	275.54	413.31
Refrigerated (m ³ or tonnes) ⁴	482.20	723.29
Passenger vehicles (each) ⁵	984.07	1,476.10

¹ Excludes Additional Fees, including the Fuel Surcharge Fee and Port & Council Charges (see further information below on Additional Fees).

² Dry and refrigerated freight will be charged either per cubic metre or per tonne, whichever measure is the greatest for a given consignment. Note that where freight is outside standard slot dimensions (20ft container size 6m x 2.4m x 1.8m) or weighing more than 20 tonnes, this schedule of rates will not apply and the Remote Community Price Condition does not apply to that service. Sea Swift will provide an individual quote to customers for such freight.

³ Sea Swift and TML adopt different terminology in categorising their respective rates. Sea Swift's standard terminology for all dry freight is "Dry". TML's standard terminology for dry freight is "General Cargo". Sea Swift's terminology has been adopted in this Schedule.

⁴ Sea Swift's standard terminology for temperature controlled freight is "Refrigerated". TML's standard terminology for temperature controlled freight is "Freezer / Chiller". Sea Swift's terminology has been adopted in this Schedule.

⁵ Sea Swift's standard terminology for vehicle freight is "Passenger Vehicles". TML's standard terminology for vehicle freight is "Vehicles up to 5.3 mtrs". Sea Swift's terminology has been adopted in this Schedule. Note that the schedule of rates will not apply to vehicles over 6 metres in length and the Remote Community Price Condition does not apply to that service. Sea Swift will provide an individual quote to customers for such freight.





NORTHERN TERRITORY

Schedule of rates (excludes GST) ¹

Freight (ex-Darwin) ²	Dry (m ³ or tonnes) ³	Refrigerated (kg) ⁴	Passenger vehicles (each) ⁵
Port Keats ⁹	189.55	1.30	974.84
Milingimbi / Ramingining	279.74	1.40	2,008.64
Maningrida	217.79	1.40	1,555.96
Lake Evella	329.92	1.40	2,356.88
Gove	250.00	1.61	1,000.00
Groote Eylandt	369.99	1.62	1,000.00
Garden Pt (Pirlangimpi)	156.07	1.37	1,114.14
Goulburn	218.96	1.40	1,564.66
Elcho	302.07	1.40	2,158.82
Snake Bay (Milikapiti) ⁸	132.14	0.83	649.90
Croker	208.15	1.40	1,486.36
Nguiu ⁶ / Paru ⁷	119.15	0.75	541.58
Black Point	208.15	1.44	-
Bickerton / Numbulwar / Umbakumba	401.84	1.44	2,809.52

¹ Excludes Additional Fees, including the Fuel Surcharge Fee and Port & Council Charges (see further information below).

² Dry freight will be charged either per cubic metre or per tonne, whichever measure is the greatest for a given consignment. Refrigerated freight will be charged per kg. Note that where freight is outside standard slot dimensions (20ft container size 6m x 2.4m x 1.8m) or weighing more than 20 tonnes, this schedule of rates will not apply and the Remote

Community Price Condition does not apply to that service. Sea Swift will provide an individual quote to customers for such freight.

³ Sea Swift's standard terminology of "Dry" freight has been adopted.

⁴ Sea Swift's standard terminology of "Refrigerated" freight has been adopted.

⁵ Sea Swift's terminology for vehicle freight has been adopted in this Schedule. Note that the schedule of rates will not apply to vehicles over 6 metres in length and the Remote Community Price Condition does not apply to that service. Sea Swift will provide an individual quote to customers for such vehicles.

⁶ Note that TML does not currently service Nguiu. Sea Swift's rates as at 1 August 2015 for deliveries to Nguiu have been adopted.

⁷ Note that TML does not currently service Paru. Sea Swift's rates as at 1 August 2015 for deliveries to Paru have been adopted.

⁸ Note that TML does not currently service Snake Bay. Sea Swift's rates as at 1 August 2015 for deliveries to Snake Bay have been adopted.

⁹ Note that TML does not currently service Port Keats. Sea Swift's rates as at 1 August 2015 for deliveries to Port Keats have been adopted.



Additional Fees Information

Fuel Surcharge Fee	A fuel surcharge fee applies on all deliveries. The fuel surcharge fee is subject to monthly review based on movements in the national average fuel price as monitored by the Australian Institute of Petroleum.
Consignment Note Fee	A one-off consignment fee applies on all deliveries (\$15.00).
Port & Council Fees	Various ports and councils charge port cargo fees on the volume of cargo that is shipped through the relevant facility. Port & Council fees will be added to those consignments which attract port cargo fees (where applicable).
Dangerous Goods Surcharge	For goods classified as dangerous goods under the Australian Dangerous Goods Code or the International Maritime Dangerous Goods Code, a 25% surcharge on the Maximum Base Freight Charge will apply.
Minimum Freight Charge	Where the total calculated rate for a consignment (including all Additional Fees other than any applicable Other Charges) is below \$50.00, a minimum charge of \$50.00 for those services will apply, in accordance with clause 3.2(b)(ii).
Other Charges	Where customers request additional services from Sea Swift, including pallet wrapping or transport by road to the departure depot, Sea Swift may apply a charge for those additional services.



SCHEDULE 5

INDEPENDENT PRICE REVIEW CONDITION PROCESS

1 Appointment of Remote Communities Independent Price Expert

- (a) Within 28 days of the Completion Date, Sea Swift must appoint a Remote Communities Independent Price Expert for, subject to paragraph 1(c) of this Schedule 5, the duration of this Condition.
- (b) Remote Communities Independent Price Expert must have the qualifications and experience necessary to carry out its functions independently of Sea Swift and must not be:
 - (i) an employee or officer of Sea Swift or its Related Bodies Corporate or of Toll or its Related Bodies Corporate, whether current or in the past 3 years;
 - (ii) a professional adviser of Sea Swift or its Related Bodies Corporate or of Toll or its Related Bodies Corporate, whether current or in the past 3 years;
 - (iii) a person who holds a material interest in Sea Swift or its Related Bodies Corporate or of Toll or its Related Bodies Corporate;
 - (iv) a person who has a contractual relationship with Sea Swift or its Related Bodies Corporate or of Toll or its Related Bodies Corporate (other than the terms of appointment of the Remote Communities Independent Price Expert);
 - (v) a customer, material supplier or material customer of Sea Swift or its Related Bodies Corporate or of Toll or its Related Bodies Corporate;
or
 - (vi) an employee or contractor of a firm or company referred to in paragraphs 1(b)(iii) to 1(b)(v) of this Schedule 5.
- (c) Sea Swift must, as soon as practicable, appoint a replacement Remote Communities Independent Price Expert who meets the requirements set out in paragraph 1(b) of this Schedule 5 in the following circumstances:



- (i) if the Remote Communities Independent Price Expert resigns or otherwise stops or is unable to act as the Remote Communities Independent Price Expert; or
 - (ii) if Sea Swift has terminated the Remote Communities Independent Price Expert's terms of appointment in accordance with those terms of appointment.
- (d) Where the Remote Communities Independent Price Expert is unable to act for a period of time, Sea Swift may appoint a replacement Remote Communities Independent Price Expert to act as the Remote Communities Independent Price Expert for that period of time only.
- (e) Within 2 Business Days of the appointment of the Remote Communities Independent Price Expert under paragraph 1(a) of this Schedule 5 or replacement of the Remote Communities Independent Price Expert under paragraphs 1(c) or 1(d) of this Schedule 5, Sea Swift must:
- (i) forward to the ACCC a copy of the executed terms of appointment; and
 - (ii) publish the name and contact details of the Remote Communities Independent Price Expert on Sea Swift's website.

2 Conditions relating to the Remote Communities Independent Price Expert's functions

Sea Swift must:

- (a) procure that the terms of appointment of the Remote Communities Independent Price Expert include obligations on the Remote Communities Independent Price Expert to:
- (i) continue to satisfy the independence criteria in paragraph 1(b) of this Schedule 5 for the period of his or her appointment;
 - (ii) provide any information or documents requested by the ACCC about Sea Swift's compliance with this Independent Price Review Condition Process directly to the ACCC; and
 - (iii) report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as the Remote Communities



Independent Price Expert or in relation to any matter that may arise in connection with this Independent Price Review Condition Process;

- (b) comply with and enforce the terms of appointment for the Remote Communities Independent Price Expert;
- (c) maintain and fund the Remote Communities Independent Price Expert to carry out his or her functions;
- (d) indemnify the Remote Communities Independent Price Expert for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Remote Communities Independent Price Expert of his or her functions as the Remote Communities Independent Price Expert except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Remote Communities Independent Price Expert;
- (e) not interfere with, or otherwise hinder, the Remote Communities Independent Price Expert's ability to carry out his or her functions as the Remote Communities Independent Price Expert;
- (f) provide and pay for any external expertise, assistance or advice required by the Remote Communities Independent Price Expert to perform his or her functions as the Remote Communities Independent Price Expert;
- (g) provide to the Remote Communities Independent Price Expert any information or documents requested by the Remote Communities Independent Price Expert that he or she considers necessary for carrying out his or her functions as the Remote Communities Independent Price Expert or for reporting to or otherwise advising the ACCC; and
- (h) ensure that the Remote Communities Independent Price Expert will provide information or documents requested by the ACCC directly to the ACCC.

3 Raising an Additional Proposed Price Increase

- (a) Sea Swift may seek an Additional Proposed Price Increase by providing written notice to the Remote Communities Independent Price Expert (Price Increase Notice).
- (b) A Price Increase Notice must detail:



- (i) the specific Service and location (within the Northern Territory or Far North Queensland) to which the Additional Proposed Price Increase relates;
 - (ii) the specific amount of the Additional Proposed Price Increase; and
 - (iii) Sea Swift's reasons for the Additional Proposed Price Increase. By submitting a Price Increase Notice, Sea Swift agrees to comply with this Independent Price Review Condition Process.
- (c) Sea Swift may at any time withdraw a Price Increase Notice by written notice to the Remote Communities Independent Price Expert, in which case the powers and authority of the Remote Communities Independent Price Expert to make a determination of that Price Increase Notice under paragraph 4 of this Schedule 5 shall forthwith cease.

4 Remote Communities Independent Price Expert Determination

- (a) Where the Remote Communities Independent Price Expert has received a Price Increase Notice in relation to an Additional Proposed Price Increase, the Remote Communities Independent Price Expert must:
- (i) determine whether Sea Swift's proposed price increase is reasonable and appropriate having regard to the principles listed in paragraph 5 below; and
 - (ii) decide whether to accept, reject or vary Sea Swift's proposed price increase.
- (b) The Remote Communities Independent Price Expert will make his or her determination within:
- (i) 30 days of the receipt of the Price Increase Notice from the Sea Swift; or
 - (ii) such further period as necessary for the Remote Communities Independent Price Expert to consider information requested under paragraph 4(c) of this Schedule 5, as the Remote Communities Independent Price Expert reasonably requires.
- (c) Sea Swift must provide the Remote Communities Independent Price Expert with any information he or she requires to make a determination under this



paragraph 4 of this Schedule 5 within a timeframe reasonably determined by the Remote Communities Independent Price Expert.

- (d) In the event that more than one Price Increase Notice is received in relation to a proposed new Additional Proposed Price Increase for a particular Service, the Remote Communities Independent Price Expert will only make a single determination about that Additional Proposed Price Increase.
- (e) The Remote Communities Independent Price Expert's determination is final and binding on Sea Swift.
- (f) When making a determination under this paragraph 4 of this Schedule 5, the Remote Communities Independent Price Expert is acting as an expert and not as an arbitrator.

5 Relevant considerations

In determining whether an Additional Proposed Price Increase is reasonable and appropriate, the Remote Communities Independent Price Expert will have regard to the following principles:

- (a) that the Additional Proposed Price Increase should be set taking into account:
 - (i) all efficient input costs;
 - (ii) an appropriate allocation of Sea Swift's relevant overhead costs;
 - (iii) expected volumes over the period Sea Swift has used to calculate the proposed price increase;
 - (iv) whether the "weighting factors" (WF^{CPI} , WF^{WPI} and WF^F) referred to in the calculation of Maximum Base Price continue to accurately reflect the cost component weighting of general costs, labour and fuel;
 - (v) a rate of return that utilises a weighted average cost of capital which would be required by a benchmark efficient entity providing services with a similar degree of risk as that which applies to Sea Swift; and
 - (vi) the long term interests of customers of the Service.



6 Notice and Publication of Determination

- (a) The Remote Communities Independent Price Expert must notify Sea Swift of the determination within seven days of making a determination.

- (b) Within 30 days of receiving the determination:
 - (i) Sea Swift must notify its affected customers of the Remote Communities Independent Price Expert's determination by writing to or emailing customers, or publishing the information about the determination on its website;
 - (ii) if a retrospective adjustment is necessary to comply with the Remote Communities Independent Price Expert's determination, Sea Swift must refund the relevant adjustment amount to the relevant customer(s).
- (c) Whatever the outcome, the cost of the Remote Communities Independent Price Expert's determination will be borne by Sea Swift.

7 Date price increase takes effect

If the Remote Communities Independent Price Expert makes a determination under paragraph 4, then the new price increase as determined by the Remote Communities Independent Price Expert takes effect on the date that Sea Swift is notified under paragraph 6(a) of Schedule 5.

8 Sea Swift must notify the ACCC

Sea Swift must notify the ACCC at the time it initiates an Independent Price Review Process and must notify the ACCC of the results of each review, in each case within 5 business days of the relevant event occurring

