Public Consultations discussions held at the National Ports Authority's 2020/21 Tariff Application

As per the Section 72(1) of the National Ports Act, 2005 (Act No.12 of 2005). The National Ports Authority ("NPA/Authority") shall on an annual basis on or before 1 August submit its application setting out its proposed tariffs for the services and facilities offered for the following financial year for approval by the Ports Regulator of South Africa ("Ports Regulator/PRSA"). The 2020/21 application by the NPA is part of a multi-year tariff methodology process to determine Required Revenue of the NPA by the Ports Regulator. The Tariff Methodology is applicable up to 2021/21 financial year, thus this is the last tariff application prepared on the basis of this Methodology.

The tariff application roadshow allows the Ports Regulator to engage with port users and stakeholders on the NPA's Tariff Application held in four cities, Durban, Johannesburg, Port Elizabeth and Cape Town. Industry representatives and port users are provided with an opportunity to ask the NPA panel members questions and state their own views on the proposed tariff increase.

Discussions during the question and answer session are recorded below with responses from the NPA (unless otherwise indicated) and are grouped per issue and city they were raised. (A list of abbreviations in provided at the end of the report). The sessions were opened by the CEO of the Ports Regulator, Mr. Mahesh Fakir whose opening remarks are attached hereto together with the NPA and Ports Regulator's presentations.

Durban - 2 August 2019

Question: On the Capex plans presentation, are all the business cases approved by the Transnet National Ports Authority's deemed board?
Response NPA: All the business cases have been approved and are ready for implementation.

Question: User appreciate that the increases over the last few years as approved by the Ports Regulator have been manageable. Why coal cargo dues are subjected to a substantially increase of 7.4%? How was the increase determined? Noted also that break bulk tariffs increase are also higher which seem to contradict government's drive to encourage export.

Response NPA: The decision is in line with the Tariff Strategy that aims to balance prices in the port system. In terms of the Global Port Comparative Study, coal has been identified as one of the dry bulk

commodity that is paying lower tariffs. This is a proposal and further suggestions from port users will be welcomed.
Response PRSA: Coal has been subsidized for the longest time and the Tariff Strategy is correcting that but it will be implemented smoothly over time.

Question/Comment: A tariff increase of 9.7% for marine charges seem to be very high and will be transferred to consumers.
Response: According to the NPA's studies looking at revenue, there is an imbalance between the different tariffs that the Authority is charging. Primarily, containers and RoRo's pay more than their fair share of dues compared to other commodities, i.e. dry bulk and breakbulk. With regards to coal, it is one of the commodities that are paying much lower tariffs than other dry bulk commodities e.g. iron ore. The aim of the tariff strategy is to correct this imbalance, hence the proposal for higher tariff increase for coal and for breakbulk are at 7.40% relative containers and RoRo's at 1.50% which attempts to balance the contribution of each of these sectors. This also applies to shipping lines.

In terms of the Ports Regulator's Tariff Strategy and Global Port Comparative Study, shipping lines are paying less than they are supposed to pay. The study indicates that NPA should be recovering more from the marine. Given the purchasing power parity and revenue base, it is anticipated that shipping lines have room to accommodate the proposed increase as they earn in US Dollars but pay for services in South African Rand. This explains the 9.7% increase that is proposed for shipping lines. User and industry comments on these proposals will be welcomed, including how this balance can be achieved.
Response PRSA: The Tariff Strategy sets out, within the context of the required revenue, who should pay for what. The Tariff Strategy is not about generating more revenue. It sets tariffs that are reflective of the cost or benefit for the different port users in the system. Looking at cargo dues for coal against the published base rates – which reflect the cost of infrastructure, investment and benefit for the coal sector - the ROD reflects that the base rate should be R6.00 per ton against the R3.00 per ton which coal is currently paying. This means that manufactured products in containers, for example, are currently subsiding coal. The rebalancing is a process and not a once off decision and the strategy provides transparency and certainty in the coal mines know that their tariff will increase over time and the reasons and rationale for the increase. The same applies for commodities. With regards to shipping lines and why marine charges are increasing, where shipping lines have argued that this cost will be passed on to users, this is understood. However, it restructures who will be paying. If a shipping line absorbs some of those costs due to the weakening of the Rand, we externalise /export some of the port costs given that the majority of the vessels are not South African registered. The Ports Regulator will be updating the Tariff Strategy during the course of the year.

Comment: Commended recent progress with CAPEX and encouraged by the efforts by the Acting Chief Executive of the NPA. It is a big step forward.
Question: Until now, the Transnet Group Capital ("TGC") has been doing a lot of projects for the NPA, and there has been reports about corruption across the Transnet processes that have influenced the economy negatively. There is no transparency in the bidding process where TGC would bid alongside industry for projects. What is the process going forward to increase transparency and not merely award projects to Transnet Group Capital?
Response NPA: Transnet Group Capital as a division of Transnet and in accordance with the Transnet's procurement process – PPM, TGC has the first right of refusal on certain projects as per project

classification. NPA has had robust discussion with TGC on the matter. The process has been changed so going forward the NPA will conduct its own project scoping and cost estimates. TGC will be given the opportunity to quote for projects and where TGC's price is above the NPA's estimate, then the project will be put out on open tender. This is how NPA aims to address the participation of TGC whilst complying with the Transnet mandate that gives first right of refusal to TGC on particular projects.
Response Transnet: On the separation of powers, there is a concerted effort within Transnet to ensure that there are "firewalls" between TPT and NPA acknowledging the role that NPA must play as regulator of port operators. On the performance of TPT in recent times, Transnet are first to acknowledge that TPT is in ICU and they are treating it as such. A team has been put together and a command center established/activated to monitor TPT's performance on a daily basis. In addition, key people have been dispatched to all ports affected to manage on the ground, identify problems, find solutions, address problems and report progress to Transnet Group on a two hourly basis. This will carry on for the month of August 2019 until there are major changes in TPT's performance (notwithstanding the impact of weather changes in Cape Town, Port Elizabeth and Durban).

Question: Does TPT report to the NPA or do they operate independently – the question is raised because there are lots of resource issues affecting Ro-Ro and break bulk terminals which are causing major delays to ships and consumers who pay the price.
Response: TPT reports to Transnet Group with NPA but NPA plays oversight role over TPT. The NPA acknowledges its poor performance of TPT and has issued a Notice of Performance (pursuant to a directive to do so by Transnet) which required TPT to provide a plan and provide progress reports on implementation of the plan. A task team has been assigned to monitor TPT on a daily basis - to understand their challenges and find solutions. NPA is holding TPT accountable and makes sure that they perform as they are required. NPA will continue to monitor them.

Question: Question sought to understand why it seemed that Transnet representatives are always "chaperoning" the Authority. How is the NPA empowered to play the role that it must play in terms of the National Ports Act i.e. as regulator of operators, when one of the biggest operators in the country reports in the same Transnet Group? Can the NPA challenge the TPT effectively when they both report to Transnet? This is why the Act requires that the NPA be separated into a subsidiary within Transnet and be at arm's length to the operators, enabling the NPA to manage TPT as a terminal operator and not a sister division.
A practical question arises in relation to the revenue raised by the Authority. The NPA's presentation (slide 6 NPA presentation) shows that it always applied for more that it could spend. Is CAPEX applied for being used to facilitate borrowings from markets by Transnet and spent elsewhere in the Group? This should not be the case as the National Ports Act – if fully implemented - requires revenue generated from port to be spent in ports?

Comment PRSA: there are contradictions in the presentation in that the Authority is borrowing to develop the SA port system and is not able to spend its CAPEX, but the Group has established Transnet Holdings which is taking capacity from SA ports and deploying this in other ports in the continent that are in competition with SA ports. For example, should the skills and competencies in Transnet Holdings not be deployed to ensure that TPT performs on its mandate in South Africa?

Response: On borrowings and Capital in relation to the referenced slide, the NPA does not borrow until it has an indication of what the Ports Regulator will allow. It should also be noted that there is a 20-month time lag between the tariff application and when the Authority actually spend on projects applied for. As an example, what has been applied for on 1 August 2019 reflects forecast of what will be spent by 31 March 2021. In the past, business cases for the projects would not be approved at the time the application is made leading to delays and under expenditure. Changes have been introduced to the effect that only projects with approved business cases are not included in the tariff application. The NPA does not borrow to the extent of the amounts reflected as applied for, it borrows based on what is approved as per the tariff decision by the Ports Regulator.

While state owned companies have faced challenges with budgeting, financing and cash management as well as problems with governance, corruption and fraud, the National Ports Authority has not had financial management issues. Transnet has ensured that NPA has created a buffer where the NPA is not overcommitted, it has to justify its cash-flow forecast based on readiness to implement the CAPEX projects. Accordingly, borrowing for NPA happens when CAPEX projects, closer to implementation and not on the application 'wish list'. Had that been the case the NPA would be in a much worse situation and on par with other state owned companies. The focus is on spending the capital.

To address the other non-business case related challenges with CAPEX expenditure, the Authority is filling vacancies and additional skills as well as restructuring for delivery; benchmarked delivery models with the Development Bank of Southern Africa (DBSA), Airports Company South Africa (ACSA), SASOL and Coega Development Corporation (on procurement management); and sourcing of required but non-permanent skills from private sector. Efforts are made to align business planning with procurement and the post of Chief Procurement Officer which has been vacant for the last four years has now been filled with appointment of Ms. Chantal Mackay. The Authority appreciate being taken to task about lack of delivery and will be reporting improvements in the next consultations on the tariff application.

The Authority is taking its oversight role over TPT seriously. Practical action has been taken with the recent challenges: The NPA has for the first time given TPT a notice on lack of performance (sanctioned by Transnet through a directive); NPA required to give a plan and progress report on the implementation of the plan. With the port of Port Elizabeth crane problem which affected the fruit industry, TPT has now deployed a crane which has been tested and commissioned. Transnet Acting Group Chief Executive has been holding roadshows with employees to ensure that they perform. Mr. Moshe Motlohi has been assigned to the Durban Port with a mandate to address the problems experienced with TPT and find solutions. War Rooms/Command Centers have been established in Cape Town, Ngqura and Durban with NPA holding TPT accountable in those war room/command centers.

Response Transnet: On chaperoning, like other stakeholders Transnet representative attends the road show to listen to what port users are saying so that they can hold both NPA and TPT accountable.

PRSA Question/comment: why is there reluctance to implement Section 3(2) of the National Ports Act for 14 years?

Transnet Response: The Act refers to the Minister of Public Enterprises being responsible for corporatization of the NPA, thus the onus is not on NPA but DPE to corporatize NPA. It should be noted that there have been numerous discussions between departments (DOT/DPE) which led to the then President of the country in 2008 writing a letter to the two Ministers acknowledging discussions that have been happening and challenges contributing to the Minister of Public Enterprises not effecting section 3(2). These strategic discussions are continuing leading to what the CEO of the Ports Regulator alluded to i.e. that the Minister of Public Enterprises is considering the implementation and the DOT has pronounced on it. DPE has made it clear that it will consider corporatization of the NPA in a responsible manner and will not ignore the issues that led to the delay in the implementation of Section 3(2) and the interest of the country.

Comment: The port system is in crisis in South Africa, at this stage the port (Durban) has its foot on the throat of the SA economy. Pleased to see that there are competent ladies (and others) working to address the problems and as a partner, we wish them well and hope to work with them to sort out issues.

Question: The WEGO benchmark is the previous year's performance and monetary reward will only be in the next year. Shipping lines would like to ask if international norms could rather be set as the benchmark instead of previous year performance?

Answer: NPA agrees that international norms be considered. However, when benchmarking you must compare apples with apples which is a challenge since ports/terminals are different. The intention of WEGO is not to set standards but to reduce inefficiencies in operation. NPA is still responsible for the regulation of terminal performance through oversight on terminal operators i.e. TOPS. WEGO provides an incentive for the NPA to drive efficiencies from operators. [WEGO ROD is clear that last in the case of lower performance in a subsequent year, previous best performance will be considered]. Notably, WEGO is also part of the methodology review and thus open for discussion. The Ports Regulator will welcome port user's thoughts and proposals on WEGO.

Comment: The NPAs volume growth forecast is a low and may impact tariffs.

Response PRSA: This is why there is a request for port users to submit their own volume projections to the Ports Regulator, which can be done confidentially. This will allow the Ports Regulator to interrogate NPA's volume growth projections.

Question: RAB is still the elephant in the room, but pleased to see something is being done about it.

Response: In the last Valuation of Assets methodology the Ports Regulator has reduced RAB by R12 bn. Thus there is improvement and work is done to address the challenges with the RAB.

Question: For shipping lines time is money. It is not only about how much you pay but what service you get. Thus when evaluating marine charges competitiveness is very important. What value are shipping lines going to get for paying 9.7%?

Response: There are engagements at head office to ensure that shipping lines get value for money.

Question/comment: There is no comprehensive focus on Profit and Loss numbers in the application. Can this be included in the future?

Response: NPA acknowledged and indicated that this will be addressed.

Comment PRSA: Profit and Loss statement issues had been raised at PCCs and the NPA is required to submit these to increase transparency in the Financial Statements of the NPA. Each port should be publishing financials and the PRSA has asked NPA to publish full and not just segregated division financial report.

Question: NPA has oversight role on TPT but is this documented somewhere? E.g. the CTOC berthing payments that happen?
Question: There is a lot of focus on Capital expenditure, user suggests there be more focus on operational costs.
Response: Good suggestion and it will be taken into consideration.

Johannesburg - 05 August 2019

Question: Clarity was sought on why the average tariff increase is 4.80% and the coal cargo dues is 7.9%, what led to the above average number?
Response: The Tariff Strategy clearly indicates that coal cargo owners are paying less tariffs than they should. Thus in order to rebalance these tariffs, coal cargo dues – which have been lagging behind iron ore and manganese in the dry bulk sector, have to be adjusted upwards in line with the Tariff Strategy. The strategy as approved by the Port Regulator is in year 3 of a 10-year implementation period.

Question: Transnet focus of expanding its footprint outside the country- a model that works better with franchising - and against the background of non-corporatisation of the NPA, its model which is currently not working, is this Transnet strategy supported by the NPA; will it be implemented after corporatisation; how is it costed and what happens if it does not work; are port users expected to fund it or will it be funded by tax payers; and what about volumes that would be lost to other ports in the continent?
Response: South Africa must respond to the continental free trade agreement and find ways to collaborate although compete with other ports in the continent. An expansion model has not been defined e.g. Walvis Bay has dry port for Zambia, some cargo has migrated to Maputo from the Port of Richards Bay which requires defined models to build the relationships, facilitate trade and contribute to regional integration. Port users are not expected to pay for the expansions outside of South Africa, this is not part of NPA's plan. Any initiatives will be part of the tariff application process and its transparency.

Question: In relation to developments with neighbouring ports, what will the pricing and hub-port effects of the proposed change in the definition of coast wise shipping to include Walvis Bay be and should the proposed change be accepted?

Comment: The proposed increases for shipping lines may seem at face value to be saving, but the end user and cargo users pay for this anyway in the final bill - including the cost of inefficiency where vessels have to wait at port.
Response: The shift towards the shipping lines was done in order to rebalance tariffs in the South African port system as per the Tariff Strategy. With the depreciation of the Rand and invoicing done on Rand basis relative to earnings in US Dollars, there is an opportunity of shipping lines to contribute to SA economy by cushioning some of the cost and contribute to reducing the cost of goods in the country.

Question: With the berth deepening planned for the Port of Durban, bigger vessels will mean more containers. Who will look after the congestions in the roads as a result, given the current problems?
Response: Each expansion in the port is accompanied with the model to feed and de-feed the port which means the Authority must find ways, in partnership with users and stakeholders to ensure a working model for feeding and de-feeding the port through road and rail taking into account the municipality's objectives of having less trucks on their network, driving efficiency and reducing costs. The NPA is aware that the Maydon Wharf is currently experiencing high volumes of traffic and the NPA will ensure that it does not persist as a result of the berth deepening project.

Question: Request update on the current status of the customer satisfaction and market share as presented. What other instruments and steps is the NPA using to ensure TPT performs well except the TOPS process?
Response: The NPA acknowledge that it is not doing well. In 2017/18 from Transnet's customer satisfaction survey, only 65% of NPAs customers were satisfied. The results of the same survey in 2018 showed only 40% of NPA customer satisfaction. NPA acknowledges that it cannot continue to be business as usual and is working hard to satisfy the customers and improve these results.
In terms of market share, the NPA also acknowledges that is has lost volumes to other neighbouring ports as confirmed by feedback received from its customers (e.g. shipping line that has moved a vessel per week to a neighbouring port due to inefficiencies in SA ports). A team has been deployed to work on detailed plans from conducting diagnostics (in the 10 strategic areas outlined in presentation) to understand what plans must be put in place and by when to regain volumes and attract new volumes that are destined for South Africa but not going through SA ports.

To manage relationships and oversight on TPT (and all terminals) the NPA has comprehensive Terminal Operator Agreements (TOA) with all operators. In the case of non-performance from a terminal operator performance standard point of view, the NPA's process includes: engaging with non-performing terminal; escalation of non-compliance to the Executive Committee through a determined process with the terminal operator as per TOPS/MOPS/ROPS and HOPS (which outlines what action the Authority must take at each stage of a process where there is non-compliance – available on NPAs website); and issuing of a notice. With TPT's recent incidents of non-performance, the NPA followed these avenues and issued it with a letter of notice – holding it accountable and has intervened to make sure TPT solves the problem with cranes in PE.

Question PRSA: Can the NPA clarify what it means by developmental pricing which according to the presentation, they will be implementing when port pricing is done in terms of Ports Regulator's pricing system. The Port Regulator's strategy aims to create a cost reflective system. Thus introducing cross subsidy on your own is not a wise thing to do when you have a Port Regulator responsible for pricing.
Response: The Ports Regulator is responsible for port pricing and the NPA works within the Ports Regulator's pricing system. However, it has a desire to open up the port system to those who are currently not participating due to perceived high tariff structure. As per established process, the NPA will consult the Ports Regulator on its proposals for developmental tariffs and the normal course of approval will be followed.

Question: PRSA – on Operation Phakisa projects presented, the Authority will be implementing half of the projects that were supposed to be done through private sector participation (half of the R9bn). How were they decided on and have they been discussed through the public forums?

Response: The context to the Phakisa projects, the initial project estimates in 2014 put Operation Phakisa's total at R15bn with R10bn by NPA and R4,3bn expected from private sector. A review was conducted including detailed feasibility studies and scope of work for each project. This resulted in the reported changes made in 2019 where R15bn in total will be spent and NPA R4.7bn and private sector R10bn. The shift has been in initiative 5 where the NPA was initially to spend R1b now it will be spending R3.7bn. In Saldanha the portion of the NPA has dropped due to infrastructure for bulk services, roads and sewer service, etc., now being provided by the IDZ as part of the lease agreement. The proposed changes have been supported by MTM with support of DPME so that they can be approved.
Comments PRSA: There is a need for deeper discussions on these projects between the Authority and the Ports Regulator as they seem to have come up lately as part of the application but do not seem to have been processed through the port development framework and the PCC consultation process.

Question: The NPA has a negative working capital because in reporting on current asset and liabilities it does not include cash in bank. How does the NPA operate with a negative working capital? The Ports Regulator approves what the NPA applies for, yet at port level when CAPEX is not spent, projects are not implemented and the narrative is that the Ports Regulator has not approved the funding for projects, e.g. example where a project at Sturrock Dock in the port of Cape Town was said not to be implemented because the Ports Regulator did not approve funding. Who approves projects and takes decisions on which projects is implemented and which will not?
Response: In terms of how the NPA's bank account works, the current assets are higher than current liability thus the NPA is technically insolvent. However, this is due to an anomaly of the NPA being a division of Transnet. The NPA does not have its own Treasury desk. All the money that gets into NPA's account is swept into Transnet's Treasury on a daily basis hence the NPA will reflect a zero cash balance. However, Transnet is then indebted to the NPA for the amounts transferred to it daily. These transactions are ring-fenced for each Division to know what they owe or are owed by Transnet. The individual financial performance of all the Transnet Divisions are reflected on the financial statements where non performing and performing divisions are highlighted. The speculation about monies not being spent within the NPA whereas the Ports Regulator approves what has been applied for i.e. NPA spending only a third of what is applied for to date is understandable. The narrative about the NPA not being able to access funds is due to internal process and will be addressed so that it is clear that the Ports Regulator approves CAPEX applied for.

Question PRSA: NPA to advise which part of the National Ports Act empowers them to take port users money and invest it outside the country?
Response NPA: Nothing on the Ports Act suggests that the Authority should invest Port users' money outside the country and the NPA does not have plans to do that. The transparency in the tariff application process and the work that the Regulator performs to hold the NPA accountable must assure users that the NPA will never invest SA port monies outside the country.

Comments/ questions PCC secretariat: All of us are working for SA incorporated. There is no conviction on the ability of the NPA to actually implement what it is talking about as things have been said before but performance continues to deteriorate: congestion in Durban, CAPEX not spent and transparency in the CAPEX implementation by TGC, efficiency in ports, lease process takes too long. The DPE is requested to address the challenges with leases. A serious concern is raised that most of the what the Authority is presenting is about what it intends to do instead of what it has done – lots of good intentions but no action. Why is the Sunrise terminal which is an illegal contract included as a terminal in the tariff application?

Comments/questions PCC chairperson:

Ports Regulator

a) Comments from State Law Advisors have been finalised on the Ports Regulator's funding model.
b) The short listing for the PRSA board members has been done and hopefully the new board will be appointed by the end of August 2019.
c) Department of Transport requests that the Ports Regulator strengthen the tribunal function and want to see more focus on the real estate space and regulate these.

National Ports Authority

d) The DOT view is that NPA is not doing the work they are required in terms of facilitating trade in SA. It is more concerned about the bottom line.
e) NPA is not geared to work with black people of this country. The NPA is responsive to big business but does not have an effective strategy to open up access to/in the port space in terminal operations and conducting business in the ports – black business participation is non-existent. This is based on complaints send to the DOT.
f) Over the years the NPA has been struggling to execute its CAPEX plans. The Bayhead road congestion still remains a huge challenge in the Port of Durban. The NPA cannot focus on doing business everywhere else in the continent when they are not able to deliver on their mandate in South Africa.
g) DOT wants to be consulted by the NPA before it advertises section 56s as it is not implementing section 56 properly – it compromises common user character of terminal at outsourcing commercial functions and compromising common user
h) In terms of MARPOL 6, Annexure 6 which is part of the requirements of the IMO, the NPA is required to build waste facilities but that has not been done.
i) DOT is drafting Regulations for corporatisation of the NPA.

Response: The participation of SMME covers not only Black companies but also how the NPA includes other designated group i.e. women, people with disabilities, from rural areas and the youth. The NPA has set up enterprise development hubs to participate in these groupings in procurement projects. In the terminal operation space, i.e. section 56, the NPA has developed a strategy to address ownership. Minimum requirements have been set on real estate and concession program for black ownership. A NPA specific strategy is being developed, as required by the deemed board, which will focus on areas where transformation must be driven in the port space and against which the NPA must be held accountable.

Response: Oversight role: NPA has regulatory oversight function governed by the National Ports Act to oversee all the terminals operators and various activities. Example, operations teams set operator performance standards to drive and ensure optimal use of facilities and drive efficiency; similarly oversight is exercised on marine operations through the MOPS process and safety and security in the waters taken care of by Marine Department; real estate oversight over leases and development of facilities; oversight on infrastructure which is supposed to ensure that every terminal operator is spending enough on maintenance with reporting processes e.g. submission of maintenance reports

three months before the end of terminal operators financial year end, which reports must show how much they are spending on maintenance to enable an assessment of the adequacy thereof; Security undertakes oversight in line with ISPS code with the DOT; on transformation, the NPA aims to pursue this by its needs to be underpinned with legislation and requires DOT to amend legislation to provide policy assurance that empowers and strengthens the Authority's set transformation requirements with regards to ownership. Currently the Authority is hamstrung by the regulations which only requires a level 4 B-BBEE participation level.
Response: NPA has not applied for MARPOL tariffs in this application. The IMO mandates the charging of a tariff based on user pay by vessels using MARPOL compliant facilities for waste reception and the tariffs for constructing the facility. An expression for construction of compliant facilities is being undertaken in the Port of Ngqura and once the facilities have been constructed an application for the MARPOL tariff will be made. The user pay principle will be implemented in line with MARPOL requirements. Currently the function is provided through waste reception by 57 SMMEs in the various ports and it is funded by the NPA as an interim structure that has been approved by the IMO.

Question: On CAPEX spent, a lot has been mentioned about inefficiencies as a result of the approval process. Berth 5 in Island View at Durban was taken out of operation in June 2009 and it still has not been recommissioned. Port users have paid for this infrastructure and continues to pay for lack of capacity due to it being out of commission and inefficiency related thereto. This raises concerns about the competence and skill levels of those charged with implementing these projects. Port users have been waiting for six months for approvals on way leave, etc., yet there is a project manager appointed for the project. There is no demonstrable ownership and leadership by NPA staff to get things done. Every day a ship waits because a berth is not in operation costs about US$30 000 and this has been happening for over 10 years.
Response: NPA leadership has spent the better part of this year introspecting and reflecting on the things that have not gone right. What has been presented is the result of the process concerning how the NPA effected changes to address its problems as well as become outward focused. Feedback from customer satisfaction survey has been taken seriously and target set to go from 40% to 80% customer satisfaction levels. Implementing changes on CAPEX implementation. Increase revenue by bringing more trade over the next 10 years.
Response DPE: DPE is aware of the capital development issues in the port system and is in consultations with the NPA through the shareholder compact to address the issue. Being part of the PCC assist DPE in monitoring NPA and ensuring that they perform their mandate. The DPE is also concerned about all the expiring leases in the port and request the NPA to provide a comprehensive update on the Island View leases. The DPE is not aware of the issue of illegal license and would follow up with the NPA on the matter.
Response: Appreciate and welcomed comments which are taken as a mirror reflecting what port users feel about how the NPAs has served/not served. The Authority is not yet at a stage where industry is able to give positive feedback. Some of the achievements in the immediate past include: on CAPEX which has been a concern at PCC road shows and at National Port Consultative Committees ("NPCC"), the Authority has taken heed of the problems. When the last tariff application was submitted, the NPA had most of the business cases outstanding. This tariff application for 2019/20 includes projects to the value of R2,7bn and all of them have been approved business cases which is something the NPA has never achieved before; similarly, for 2021/22 applied for budget of R3.8bn and 2022/23 applied for R1,4bn projects have business cases.

On real estate – last year there were issues of Delegation of Authority (DOA). In May 2019 the deemed board approved a DOA to the NPA of 15 years (NPA can enter into lease agreements up to a maximum of 15 years, above which approval must be granted by Transnet) and maximum contract value of R500m where previously it was 5 years and R200m.
We will continue to work hard until Industry can feel the changes.
CAPEX implementation vs reliance on TGC – Authority is reviving the design office which it previously had. Two senior engineers have been appointed. Have not started delivering but now has resources. Specifically, on TGC involvement, there in now an internal agreement that if TGC prices are higher and not within what has been budgeted for, the NPA will go out on open process – TGC no longer has a given right to implement all projects of the NPA.
Benchmarking on project execution have benchmarked from DBSA, SASOL, CDC processes and procedures to for faster turnaround on projects.
On transformation the NPA is requesting support from the DOT with legislative support for Authority's initiatives to drive transformation beyond the targets set in current regulations. The deemed board has adopted principles for transformation.

Comment PRSA – there is a need for clear articulation of transformation and what it is that the entities must be driving beyond the regulations that specifies a level of B-BBEE which only achieves compliance. Recommend that the DOT publishes regulation on what all transport entities even the ones not reporting to the DOT must report on.
On oversight and real estate, the NPA has not performed well and these functions are now being elevated and will receive more attention and focus.

Question: How would the NPA ensure that deserving parties receive the tariff incentive without compromising the rest of the market, users pay fair value for service received. In terms of benchmarking what is being done about price and performance where is the NPA sitting at and what are the plans to improve.
Response: The Tariff Strategy aims to ensure that port tariffs are reflective of the cost of infrastructure, but where applicable and appropriate, cross-subsidies are allowed. The strategy shows the base rate that each user should be paying based on usage of infrastructure. Those paying below the rate are being subsidised by those paying more than the published base rate. The differentiation in the adjustment of tariffs is aimed at rebalancing. The strategy also provide space for incentives through PTIP which allows for cross-subsidy on the tariff line rather than at company level. It already includes an inherent subsidy for ship repair.
Pricing benchmarking is undertaken on an annual basis as published in the Global Pricing Comparator Study however it does not set SA tariffs, these are set based on the strategy. Performance benchmarking has also been conducted showing how SA ports fare against a sample as published in circulated reports.

Comment: the right of the NPA to make decisions focused on ports and to effect the changes it wants to is dependent on its form and location within Transnet which requires the implementation of section 3(2) of the National Ports Act driving a focus by the NPA on ports as intended in the Ports Act.

Port Elizabeth - 06 August 2019

Question: What incentives or exemptions are going to be available for small businesses. Small businesses are liable for huge license fees of about R35 000 just for registration?
Response: Admin charges are there to cover admin costs of NPA to generate and issue licenses for oversights. The cost is not to disincentive new entrants, they were calculated by the tariff team. But the NPA hears the industry concerns and will look into ways on how small players can be accommodated. The NPA will welcome any ideas or proposals on what can be done to address the issue.

Comment PRSA: Developmental tariff plans can be used to incentivize new entrants in the port.
Question: The tariff application increase does not sound like a lot but there is concern of marine tariff increase of 9.8% that seems to increase by more than the average tariff increase every year. While in other ports around the world, marine tariffs are normally kept constant but in SA they are always adjusted upward. What is the proportion of revenue generated from marine tariff? Has the NPA taken into account the fact that vessel sizes are generally going up thus the number of vessels is not increasing but decreasing?
Response PRSA: Marine charges recover about 20% of the revenue, 30% from rentals and the rest from cargo dues. Tariff Strategy seeks to implement efficient pricing within the port. The investment decisions in the past were based on decisions being made based on risks and revenue that will be coming in. The Tariff Strategy seeks to create cost reflective tariffs, shipping lines are currently paying below base costs. The Ports Regulator works on the assumption that all charges will be passed on to port users and that there are no shipping lines in SA. The idea is thus not to punish shipping lines but to create efficient pricing in the port system. The NPA application is thus in line with the PRSA approved Tariff Strategy.

Question PRSA: It would be helpful if the financial statements of the NPA can be publicly available, since the minister of DPE is in the process of corporatising the NPA.

- How does the NPA approve its CAPEX budget? There were rumours that the budget is being approved from the Transnet Group, please provide clarity.
- How does the NPA arrive at various projects?
- How are the PCC/NPCC comments or concerns on CAPEX taken into account?

Response: The CAPEX is workshopped with port user through PCC, all the comments or concerns raised by the port users were taken into account. CAPEX is informed by the NPA engagements with the port users, the process that informs the budget and get presented to Transnet. NPA deemed board makes the final decision or call in terms of the CAPEX budget.

Question: It has been reported in JHB that the CAPEX business cases have been signed by the deemed board. For the CAPEX presentation, it is important to not only list projects but to provide motivation and reasons for doing the projects i.e. financial returns or economics returns of the projects.
Response: The financial and economic benefits of CAPEX projects are outlined in the business cases.

Question: It would be useful to understand how maintenance is planned and built up to your budget?
Response: The engineers conduct inspection of all the assets to investigate their condition and required work, which in turn informs the maintenance budget.

Comment PRSA: The Ports Regulator would like to see WEGO results being reported at PCC quarterly meetings so that port user can be kept abreast with NPAs' performance on the KPIs.
Response: NPA welcomes the suggestion that WEGO be discussed quarterly not yearly. On an annual basis the port framework plans are shared with port users to assess their relevance and whether current capacity meets demand. The next question is how we create capacity and respond to the request by the port users. The NPA responded to all the CAPEX concerns raised by the industry.

Question: If reducing the cost of doing business is core NPA/ Transnet objectives RAB becomes very critical since it accounts for largest proportion of the overall tariffs.
Response: RAB is about bringing down the logistic cost by improving efficiencies in the port system.

Question: The NPA presentation mention that RAB was evaluated on TOC. Clarify if it was based on the straight line or HC method.
Response: Depreciation is based on straight line method over the useful life of an asset. They have moved away from 40-year depreciation method. Every asset on fixed asset register is being depreciated on its own useful life.

Question: The berth deepening project in the Port of PE requested by port users was it taken into account and if not please justify?
Response: The NPA is not only focusing on the deepening of entrance channel at PE but at all the projects. Business case has been finalised and submitted to the deemed board. Their thoughts will be shared with the Ports Regulator.

Question: The issue of regional development within SA, i.e. treating region or pricing them differently suggest tariff differentiation? This conflicts with the current Tariff Strategy that suggests system pricing. Is NPA contemplating differentiated pricing strategy?
Response: With regards to contemplating different prices to different regions for developmental pricing perspective, the NPA will present a strategy and share it with the Ports Regulator.

Question: In your customer satisfaction surveys did you include an element of effective regulator i.e. whether NPA is an effective regulator of port terminals?
Response: Customer surveys were done at the group levels with standard questions but the NPA welcome the proposal to include an element of effective regulation of terminals.

Comments PCC secretariat: The PCC/NPCC will be making submission to the Ports Regulator on behalf of the port users around the port system, looking at the following issues: Lease issues; how the NPA deals with low TOPS targets; and whether NPA is a good regulator.

Question: What does the deemed board mean? Are there formal processes being followed? What are the terms of reference? With problems with section 56 the Ports Regulator is requested to conduct forensic audit on the NPA's processes.
Response: The NPA confirms that it has a deemed board with the terms of references.
Response PRSA: If there are issues that port users have identified that would require a forensic audit, due processes would have to be followed. The Ports Regulator's functions include an appeal and complaint process; however, the coverage of forensic audits may fall outside its scope.

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Question: Concerns regarding the DCT berth deepening project that was put on hold. Aware that the NPA is in the process of recommencing the procurement process but what is the NPA going to do to ensure that the process is done correctly and who will bear the costs for re-doing the process?
Response: Project was terminal earlier this year. The process had to be re-started and it will be re-advertised in September 2019. It will take approximately 12 months before the commencement of any construction. To avoid the repeat of the problems and ensure that appropriate award is made, additional governance controls will be put in place. Delays in the process would mean that the construction tender will come in at a higher price and there is an investigation underway to determine the root cause and identify appropriate action to be taken.
Comment PRSA: Construction contracts ordinarily have penalty provisions which are supposed to protect the client from not paying more. From a pricing perspective, it should be noted that port users are paying for the projects and for the delays and they should not be paying for poor contract performance. There must be a way to isolate these costs and ensure they are borne by the NPA and not covered by required revenue.

Question: The NPA's application again shows a pessimistic growth forecast in respect of container volumes. Although the Authority promised last year that it would engage with stakeholders regarding this matter, but no consultations had taken place with the speaker's company, one of the large shipping lines operating in South African ports.
Response: Consultations had not taken place between the NPA and stakeholders directly. Instead, the terminal operator provide volume forecast based on its agreements with its stakeholders including shipping lines.

Question: What are the consequences for TPT's non-performance?
Comment DOT: Noted the presence of DPE and wanted DPE to note that TPT was collapsing the Ports System with its inability to run proper acquisition and maintenance of their superstructure. DPE was urged to intervene in this matter as they were the Ministry responsible for TPT, even though terminal oversight was the responsibility of NPA.
Response: NPA is responsible for oversight over TPT and is guided by provision of the terminal operator agreement in addressing non-performance. In the case of TPTs non- performance, TPT had to submit to the NPA a report about the problems and what will be done to address the problem. NPA wants the Ports System to be efficient overall.

Question: Concern that the last procured tug was not fit for purpose given the operating conditions due to weather at the Port of Cape Town. What lessons have been learnt and how is the NPA going to avoid this from happening in the future?
Response: The Port of Cape Town has sufficiently powered tugs. The procurement for two 70-ton bollard pull tugs is in process. The problem is vessels are getting larger and the weather patterns changes drastically which impacted movements. This is coupled with the fact that the layout at the Port of CT is outdated, the entrance channel was narrow and pilots have to be cautious. For example, pilots would be able to navigate vessels in or out port under certain conditions, the ship Captains may not be.

Question: Noting from the Regulator's presentation that the NPA has accepted the challenge to provide tangible results instead of just plans, the concern is that the timeframe for the NPA to report on how they are doing is the day that the tariff decision is announced. Should this not be before so that the Ports Regulator can take this into account in arriving at its decision?
PRSA Response: The Ports Regulator has not disallowed the NPA to raise revenue to implement CAPEX. The feedback would not materially change the Record of Decision. The Ports Regulator's challenge to the NPA is based on its interest to see real, practical progress made in CAPEX implementation.

Question: The Ports Regulator to advise on what is happening with the STER process.
Response: The Transport Economic Regulation Bill has been *gazetted* by the Department of Transport. In terms of the Bill, the PRSA would form the nucleus of STER. PRSA would play a role therein, and would assist in the development thereof, if given such opportunity to do so.
DOT comment: STER has been included in the DoTs APP for the financial year. There had been disagreements with the Shareholding Ministry regarding the regulation of TPT (eg. TPT role in container business, and RBCT in relation to it role in the coal industry). If any domination of aspect of business, such needs to be regulated. The evergreen contracts of TPT also needed to be looked at.

Question: As a principle, the port user should not fund the Ports Regulator, and the user-pay principle was not supported. If it were implemented as a hybrid as proposed, what proportion will be from user pay as opposed to allocations and how would this work?
PRSA Response: User pay principles is generally applied in the funding of Regulators**.** NERSA, for example, derives revenue from the tariffs changed on electricity and pipelines. ICASA derives revenue from telecommunications such that a portion of what you pay on your cell phone bill is funding ICASA. The fees are embodied in the product itself, and this is also done internationally. To date all other sector regulators, as above, are funded through model except the Ports Regulator which is currently fully funded by allocations from the Department of Transport which also limits its ability to carry out its functions fully from a resource perspective. The PRSA currently only comprises approximately 21 people, and funding model will assist in building the requisite capacity, especially where the Ports Regulator were to be the nucleus for STER.

Question: What has been the impact of tariff differentials particularly on containers. Additional cost to shipping lines are ultimately going to be passed on to cargo owners.
Response: There has not been an upward trajectory on container volumes. The NPA need to ascertain what needs to be done from a service perspective to improve volumes. The Tariff Strategy from the

user pay principle it is clear that cargo owners are paying a lot than shipping line, thus the aim is to correct this imbalance.
PRSA response: Differentiation and the increases in tariffs is in terms of the tariff strategy which amongst others aims to ensure that investment signals in the Port must be efficient. There was a lack of revenue from the wet side. CAPEX decision was moving towards a more holistic and pragmatic view of what was needed in the Ports system. The underlying assumption is that the cargo user ultimately pays but the incidence is carried by the user of the particular infrastructure or service.

Question: On the rental income that are determined by lease agreements, are there any increases foreseen in the next year and what would the average increase be?
Response: Individual increases are guided by the lease agreements of which there are about 700 making it difficult to indicate on average what the increases will be. However, the overall expected increase in revenue from rentals/leases as per table 18 in the application is an average of 8%.

DOT Comment: NPA was required to grow GDP and lower the cost of doing business, as had been referred to in the NPA Presentations. Policy certainty was required and the real estate of NPA needed to be seriously looked at. People would not invest if they did not know what was happening or what would be happening. Leases concerning ship repairs in CT had either expired or were coming to an end. NPA needed to make decisions. In the Liquid Bulk Sector, leases had not been renewed. Consideration to be had as to how much CAPEX investment had been lost. Investors were raising policy certainty issues.
Comment PCC secretariat: Submitted that PCC and NPCC Workshops would take place provisionally on 29/30 August 2019. These forums would be used to analyse the NPA Tariff Application. This had been done year on year, and subsequent recommendations would be made. These forums would *inter alia* look at CAPEX of each port, Questions/Answers from Roadshows, WEGO KPIs, issues raised throughout PCCs and undertake a rigorous analysis of the application. There was a lack of oversight by the NPA in terms of CAPEX. All Ports Users were encouraged to contribute to the consolidated written submission to be made, in addition to their individual submissions.

Glossary

ACSA	Airport Company South Africa
B-BBEE	Broad-Based Black Economic Empowerment
CAPEX	Capital Expenditure
CTOC	Container Terminal Operations Contract
DBSA	Development Bank of Southern Africa
DOA	Delegation of Authority
DOT	Department of Transport
DPE	Department of Public Enterprise
DPME	Department of Planning, Monitoring and Evaluation
GPCS	Global Port Comparative Study
HOPS	Hauliers Operations Performance Standards
ICASA	The Independent Communications Authority of South Africa
ICU	Intensive Care Unit
IDZ	Industrial Development Zone
IMO	International Maritime Organisation
KPI	Key Performance Indicator
MARPOL	Maritime Pollution
MOPS	Marine Operation Performance Standards
NERSA	National Energy Regulator of South Africa
NPA / TNPA/ Authority	National Ports Authority / Transnet National Ports Authority
NPCC	National Port Consultative Committee
P&L	Profit and Loss
PCC	Port Consultative Committee
PE	Port Elizabeth
PRSA / Regulator	Ports Regulator of South Africa
RAB	Regulated Asset Base
RBCT	Richards Bay Coal Terminal
ROD	Record of Decision
ROPS	Rail Operation Performance Standards
Ro-Ro	Roll on /Roll out
SASOL	South Africa Synthetic Oil Liquid
STER	Single Transport Economic Regulator
TGC	Transnet Group Capital
TOA	Terminal Operator Agreements
TOPS	Terminal Operator Standards
TPT	Transnet Ports Terminals
WEGO	Weighted Efficiency Gains from Operations