Press Statement

Ports Regulator Record of Decision

on the

Tariff Application by the National Ports Authority

for the Tariff Years 2022/23-2024/25

Tariff Record of Decision

On 15 December 2021, Dr. Tshisikhawe Victor Munyama, Acting Chairperson of the Ports Regulator of South Africa stated as follows:

1. "Whereas Directive 22(1) requires the National Ports Authority ("the NPA" or "the Authority") to submit their tariff application to the Ports Regulator of South Africa ("the Ports Regulator") on or before the 1st of August, on the 30th of July 2021 the National Ports Authority requested a postponement of the submission of the 2022/23 Tariff application to the Ports regulator due to delays caused by the cyber-attack on Transnet at the time, as well as changes in the Audit methodology.
    1.1. After considering the NPA's request and balancing that against the need for a timely tariff decision to allow port users the ability to make necessary adjustments to their budgeting process without deviating from the regulated four-month assessment period (as per Regulation 22(16)), the Regulator granted the Authority a two-week extension to the 16th of August 2021.
2. On 16 August 2021, the National Ports Authority applied to the Ports Regulator in terms of Section 72 of the National Ports Act, 12 of 2005 for approval of the tariffs for services and facilities offered by the Authority of an average of 23.96% increase for the period 01 April 2022 to 31 March 2023, together with indicative tariffs of 1.81% for the period 01 April 2023 to 31 March 2024 and 2.45% for 01 April 2024 to 31 March 2025.
3. The Authority proposed the utilisation of some of the Excessive Tariffs Increase Margin Credit (ETIMC) to bring the tariff application to 9.4%. The Authority's tariff application was for a revenue of R14,733bn.

4. During the four-month assessment period, the Authority did not submit their Audited Financial Statements. Despite the Authority not able to submit their audited annual financial statements nor responses to all requests for such, the Regulator was able to adequately assess the application and made the following decision after considering not only the application but also the submissions made by all of the stakeholders during the consultation period. Following and based on latest available data, the Ports Regulator has concluded that an appropriate overall increase in average tariffs for the financial year 2021/22 is 4.8% with the use of ETIMC, which translates into revenue of R14,815 billion providing the Authority with the revenue they applied for. In particular:

    4.1. Marine services and related tariffs (Sections 1-8 of the Tariff Book, excluding Section 7 that deals with cargo dues) are to increase by 12%;

    4.2. All container cargo dues are to remain unchanged;

    4.3. Dry Bulk Coal export cargo dues to increase by 11%;

    4.4. Dry Bulk Magnetite export cargo dues to increase by 15%;

    4.5. RoRo export cargo dues are to remain unchanged;

    4.6. All liquid bulk cargo dues are to remain unchanged; and

    4.7. All other tariffs are to increase by 4.2% in line with expected inflation.

5. All marine tariffs (Sections 1-8 of the Tariff Book, excluding Section 7 that deals with cargo dues) for existing commercial South African flagged vessels as well as commercial vessels registered in South Africa from 2019/20 will receive a 30% discount applicable year on year up to 31 March 2023.

6. All licence fees (Tariff) applicable per port for the tariff year 2022/23, will continue to be discounted by 30% and can be paid in equal instalments on an annual basis over the duration of the license.

7. In support of Government's continued economic response to the Covid-19 pandemic and economic recovery plan, for the 2022/23 tariff year, as per section 4.1.1 of the Tariff Book a continued reduction of 35% in port dues applicable will be allowed in the following instances:

    7.1. "Vessels not engaged in cargo working for the first 30 days only;

    7.2. Bona fide coasters;

    7.3. Passenger vessels; and

    7.4. Small vessels resorting under Section 4, Clause 2 when visiting a port other than their

        7.4.1. registered port; or

7.4.2. vessels in port for longer than 30 days not engaged in cargo working or undergoing repairs will be liable for a 20% surcharge on the incremental fee of port dues."

7.4.3. Further, a reduction of 60% will be allowed to vessels calling for the sole purpose of taking on bunkers and/or stores and/or water or a combination of all three, provided the vessel's entire stay does not exceed 48 hours. This reduction will not be enjoyed in addition to the 35% reduction granted for vessels not engaged in cargo working for the first 30 days only, bona fide coasters, passenger vessels and small vessels resorting under Section 4, Clause 2.

Tariff Assessment

8. In conducting its assessment, the Ports Regulator takes a view on a cargo volume and market-related factors, including the inflation outlook and the cost of debt, the operational and cash flow requirements of the National Ports Authority, as well as the implementation of the published Tariff Strategy that aims to rebalance the tariff structure to closely reflect the underlying cost and benefit to specific users of port infrastructure. In addition, the Ports Regulator takes its decisions still cognisant of the economic challenges facing the country, both from the underlying structural challenges facing us, but also more pressing the continued impact of the COVID-19 pandemic on the port system.

9. The decision was therefore taken with due consideration to balancing the sustainability of the Authority with the need to keep administered prices increase low as far as possible. In this regard we are fortunate that the Tariff Methodology, developed and applied in the setting of port tariffs has adequately provided the required instruments and flexibility to, not only protect port users, but also ensure that the Ports Authority remains sustainable and adequately resourced to fulfil its mandate and deliver services to port users and stakeholders.

10. In this regard, the Ports Regulator is of the opinion that an overall 4.8% tariff increase and the trade and export biased differentiation, together with a meaningful move towards cost reflective tariffs would be in the best interest of stimulating local manufactures, beneficiation, and employment creation in South Africa.

11. It should be noted that for 2022/23 tariff year, the Ports Regulator approved a higher revenue of R14.815 billion versus the Authority's R14.733 billion applied for, mainly due to the consistent application of the tariff methodology. The revenue can be recovered by the Authority through a reduction in the ETIMC liability of R1.188 billion and an expected R4.085 billion in rental income with the difference of R9.542 billion to be recovered through anticipated volume increases and the approved differentiated tariff increase.

12. The Ports Regulator is confident that the application of the Tariff Methodology and the use of the ETIMC (a facility put in place to smooth future tariff spikes) will ensure the sustainability of the Authority and provide the financial space, especially as a corporatized entity, and for the capital program included in the application totalling R2.454 billion to be fully implemented. This is despite previous under-expenditure on CAPEX, including a very poor capex rollout of only R684 million over the previous tariff year.

13. The Regulator remains particularly concerned regarding the under expenditure on CAPEX. It is evident that, in spite of a clear regulatory incentive to increase CAPEX spending, the NPA has consistently failed to execute the full CAPEX program as allowed for by the Regulator. The Ports Regulator is cognisant that capital expenditure is a key component to the development and sustainability of our port system, not to mention the multiplier impact of the program on the recovery of the economy. In this context it would not be prudent to cut back on capital expenditure in an economic downturn as spending on infrastructure also contributes to the country's gross capital formation and allows the port system to be ready for the eventual upswing in economic growth.

14. The Regulator will place a continued and increased focus on the Authority's CAPEX under-expenditure and shall, among other initiatives, carry out capital works-in-progress assessments; closely monitor the expenditure improvement program and periodically conduct meetings at respective ports; and receive reports from the Authority that include technical skills and capacity, planning and supply chain processes impacting CAPEX implementation.

15. It must again be noted that besides capital expenditure allowed, operational cost amounting to R 5.919 billion, including Transnet Group overhead costs was fully allowed for, thus ensuring both the sustainability and further development of the South African ports infrastructure system.

16. It must however be noted that the Regulator is disappointed that the Authority was not able to, in time for this decision, provide the Regulator with their Audited Financial Statements as well as responses to "requests for clarity" regarding some of the 2020/21 operational expenditure items in the application. As such, the Regulator will in departing from previous practice retain the right to recalculate and verify the claw-back for the 2020/21 tariff year in the next tariff assessment to ensure full consistency and transparency in the tariff setting process.

Corporatisation of the National Ports Authority

17. The Regulator has in this application, based on the pronouncements made by the Minister of Public Enterprises; the notice of intent in terms of section 3(2) of the Act gazetted on 30 July 2021 and the process commenced in the establishment of an independent board for the Authority in

terms of section 15 of the Act, treated the Authority as a subsidiary of Transnet SOC Ltd as opposed to an operating division, especially with regards to the calculation of the taxation allowance and the valuation of the Regulatory Asset Base for the 2022/23 FY. The Regulator looks forward to the full corporatisation of the Authority in FY 2022/23 and believe that the benefits to port users, as per the intention of the Act, will far outweigh the costs.

Other measures in support of the Economic Recovery effort

18. In addition to the inflation related tariff change allowed for during the next tariff year, the incentive for South African flagged vessels is retained but will be revisited in the next tariff application process. However, following the changes made in the 2021/22 tariff year aimed at reducing the cost of doing business for entrants to the port system, the Regulator decided to retain the reductions in licence fees - with all licence fees (Tariff) applicable per port for the tariff year 2022/23 - at 30% and all licence fees can continue to be paid in equal instalments on an annual basis over the duration of the license. Whilst the Regulator still requires the NPA to develop and introduce a system to target and support the Small, Micro and Medium Enterprises (SMME) licence holders, especially historically disadvantaged individual (HDI) and Women owned and/or managed businesses, the assistance provided for through these reductions, will hopefully benefit marginal small businesses mostly key to sustainable job creation.

19. A retention of the existing discounts to non-cargo working vessels for the 2022/23 tariff year is included in the Record of Decision (ROD) with short stay vessels taking on bunkers, water or stores continuing to receive a 60% discount. Other vessels not engaged in cargo including vessels not engaged in cargo working for the first 30 days only; Bona fide coasters; Passenger vessels; and some Small vessels will continue to receive a 35% discount. More details are available in the ROD.

Conclusion

20. In concluding, the Regulator in carrying out this tariffs assessment continue to be guided by, amongst others, Directive 23(1) that sets out the requirements and/or principles the proposed tariff must reflect and balance, and these include:

   i. *A systematic tariff methodology that is applicable on a consistent and comparable basis;*
   ii. *Fairness;*
   iii. *The avoidance of discrimination, save where discrimination is in the public interest;*
   iv. *Simplicity and Transparency;*
   v. *Predictability and stability;*

vi. *the avoidance of cross-subsidisation save where cross subsidisation is in the public interest; and*

vii. *The promotion of access to ports and efficient and effective management and operations in ports.*

21. The Regulator's decision follows a prudent approach and remains in compliance with the tariff methodology despite current challenges and absence of some of the important and required information from the Authority. Overall, the Authority is allowed to raise the Revenue Required in line with the Tariff Methodology with the use of the ETIMC to smooth tariffs for port users.
22. Though still a long journey ahead, the Ports Regulator remains committed to reducing the cost of doing business through fair pricing within the South African ports system, and this balanced tariff decision is considered the most prudent course of action for the 2022/23 FY under the (still) extraordinary circumstances we find ourselves in.
23. Allow me to end with this quote from our first democratically elected President of the Republic, Tata Nelson Mandela, where he says,

    "I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb. I have taken a moment here to rest, to steal a view of the glorious vista that surrounds me, to look back on the distance I have come. But I can only rest for a moment, for with freedom come responsibilities, and I dare not linger, for my long walk is not ended."

The official tariff Record of Decision for 2022/23 tariff year can be found on the Ports Regulator website, www.portsregulator.org

End.