

31 May 2013

The Chairman  
Ports Regulator  
Private Page X54322  
Durban  
4000

Attention: Mr Phakade Sicwebu

## **COMMENTS ON PROPOSED TARIFF METHODOLOGY AND PRICING STRATEGY FOR PORTS TARIFF**

We wish to submit the enclosed document as comments on the above process.

Regards



Nosi Mbongwa

**Bidvest Freight - Commercial Director**

## SUBMISSION TO THE PORTS REGULATOR

### TNPA PROPOSED PRICING STRATEGY

1. This submission is made by Bidvest Freight (Pty) Ltd on behalf of various companies within The Bidvest Group Limited which operate terminals and offer port services in the major South African Ports namely

- Island View Storage Limited
- Island View Storage Richards Bay (Pty) Ltd
- South African Bulk Terminals Limited
- South African Container Depots (Pty) Ltd
- Durban Coal Terminal Company Limited and
- Bidfreight Port Operations

(all of whom are referred to collectively hereinafter as "Bidvest Freight").

2. Bidvest Freight is part of the JSE-listed "Bidvest Group Limited". Our division is a freight management group in sub-Saharan Africa, consisting of several independent businesses focusing on terminal operations, marine services, container freight stations and logistics, customs clearing and freight forwarding.

3. In our role as terminal operators we provide facilities and services to customers in the following sectors:-

- Dry bulk terminals: Minerals, ores, grains and fertiliser
- Liquid bulk terminals: Chemicals (liquid and gas), edible oils and lube oil additives
- Break bulk: Steel, forest products and general cargoes

4. We appreciate the importance and complexity of Port Pricing and we hope that it will yield positive results for South Africa's importers and exporters who ultimately bear any impact on port charges. What we can't do as part of this process, is ignore all the factors that make up costs of a product, unless there is some level of government subsidisation for those particular products.

5. We acknowledge that Port Pricing has to support Government's objectives for the country and we understand these to be as follows:-

- Inequality in the pricing
- Unemployment and
- Job creation

Therefore focusing on the manufacturing industries due to this industry's effect on job creation.

6. This submission is made in response, as Terminal Operators, to the request by the Regulator contained, inter alia, in the Regulator's publications notice dated 21 December 2012, in the Regulator's discussion notes made available as part of the Road Shows which took place during March 2013 and the notice headed Invitation to Comment which has also been published by the Regulator.

7. This submission relates, particularly, to a document of Transnet National Ports Authority headed "Transnet National Ports Authority – Proposal for a new tariff structure".
8. There exists an "anomaly in the law" regarding the relevant Transnet SOC Limited division which is referred to variously as "Transnet National Ports Authority" and "National Ports Authority" the latter being the designation ascribed to that division in the National Ports Act 2005 ("the NP Act"). In these submissions the acronym "TNPA" will be used to describe both Transnet National Ports Authority and the National Ports Authority.
9. We know that TNPA embarked on a stakeholder engagement process relating to its Pricing Strategy and to which we participated and gave input.
10. This submission will deal with a number of issues arising out of the proposals that have resulted from TNPA's engagement process and which we will address under these three main categories:-
  - A. The South African Argument
  - B. The Legal Argument and
  - C. The Commercial Argument.

## **A. The South African Argument**

### **11. The Dilemma**

Transnet National Ports Authority and Transnet Port Terminals both fall under Transnet. The suggested proposal and rebalancing of the required revenue affects both these divisions but the net effect may ultimately be a nil effect or a reduced effect on the Transnet group as a whole which will not be the effect on privately owned terminals.

The proposal rests on the suggestion that income should be funded to a greater extent than previously by rentals from the various terminals located in the harbours in South Africa, due cognizance is not taken of the fact that, in respect of a large number of those terminals, TPT is a significant operator - for example TPT has control over container traffic (the operation of the import and export of goods via containers) and over the import and export of wheeled vehicles (what is referred to as Ro-Ro traffic).

Consequently any increase in rentals attributable to TPT will merely give rise to book entries in the books of the same legal entity namely Transnet SOC Limited.

### **12. South Africa as a Landlord Port**

We understand that TNPA ultimately want to have the South African Ports aligned to other international ports to make it more competitive from a pricing and productivity perspective. We however believe that there are other issues that need to be addressed before this.

Is it fair to compare South Africa to those Ports in more developed countries?



Other points that should be considered are:

- What are the factors that make up a landlord port and what do we need to do to get there?
- In these countries, does the same entity own and operate the ports?
- What role does government play in these ports?
- Does government make the investments and the terminal operators only rent the infrastructure and with little investment required from the terminal operators in these countries?
- How mature is the logistics/supply chain in those countries compared to that of our South African Ports?

### **13. Rentals as a percentage of the tariff income**

#### 13.1 Page 7 – fourth bullet

It is submitted that it is no more reasonable to compare rentals payable in South African Ports with rentals payable to landlord port authorities in developed countries, than it is to compare office rentals in the CBD's of say Durban or Cape Town with office rentals in the CBD of say London or Rotterdam. The TNPA Tariff Proposals make a sweeping statement. It should be justified with reference to the actual rentals payable in comparable ports (for example Maputo or Beira or other comparable African ports). No details of any such comparison are provided.

#### 13.2 Page 18 – paragraph 5.3.4

Attention is drawn to the fact that the bar chart compares rental income to total port income in the South African ports (first bar) with a large number of ports in sophisticated countries. A proper comparison should really compare South African ports to other similar African ports and this information is absent.

13.3 Furthermore information of this nature should be reviewed by means of a full analysis of the manner in which those ports operate and particularly the flexibility which will be given to, or withheld from a terminal operator, in so far as its own operations are concerned. In this regard, the Regulator's attention is drawn to the following factors

13.3.1 In a large number of the Bidvest Freight leases, the lessee is provided only restricted rights to handle specific products. This results in a lack of flexibility and an inability to react rapidly to changing economic circumstances. We believe that this is also probably the case in relation to many other TNPA leases.

13.3.2 Almost all of the Bidvest Freight leases contain provisions in accordance with which the rental payable is adjusted periodically (normally every five years) so as to bring those rentals into line with market rentals in the areas in question. Consequently TNPA is receiving rental which is market based. The facts do not consequently support TNPA's allegation that its rentals are too low. They may be too low, in relation to TNPA's proposed Pricing



Strategy, but they are not too low if measured against factual market circumstances.

13.4 Furthermore a bar chart which reflects gross income may also be subject to distortions which are a function of the amount of land within each relevant port, which is leased by the relevant port authority, to terminal operators. Thus ports with large areas controlled by the relevant ports authority are likely to yield greater gross rentals, than ports which have smaller areas controlled by the relevant ports authority. Consequently further details are required so as to adequately analyze the content of those bar charts and the conclusions derived from same.

## **B. The Legal Argument**

14. We note that the TNPA makes comments that it will have to engage the terminal operators on how this process would work and how it will be implemented.
15. They have acknowledged that there are existing lease agreements with certain terms and conditions.
16. We record that the land rentals are payable to TNPA in accordance with these leases negotiated from time to time between TNPA and the relevant lessee. These agreements constitute real rights. The rental payable is determined by the provisions of the lease; neither TNPA nor the Ports Regulator nor Bidvest Freight (on its own or in isolation) has legal authority or power to alter those rentals. Any such alteration in rentals requires agreement between the TNPA and the relevant lessee.
17. Page 25 and 26 – paragraph 7.2.1 and 7.2.2

Bidvest Freight points out to the Regulator that in its view neither the TNPA nor the Regulator is empowered to amend the contractual rights which exist between TNPA as a landlord and the various terminal operators (including Bidvest Freight) as a lessee.

However, Bidvest Freight is also of the view that this is not the proper place to deal with the legal issues involved but points out that

- 17.1 It denies that TNPA will be entitled to increase its rentals under existing leases save by agreement between the landlord and the tenant.
- 17.2 It denies the suggestion, which is contained in paragraph 2.3 of Transnet's National Ports Authority Proposed Pricing Strategy - Q&A document, that TNPA is entitled to control and set the cargo handling charges or other fees charged by Bidvest Freight to any of its customers.
- 17.3 Bidvest Freight has made a practice of endeavouring to meet the Authority's legitimate requirements aimed at increasing the efficiency of the ports but

points out that both the issues raised in paragraphs 25.1 and 25.2 will require negotiation with Bidvest Freight /the relevant lessees.

Consequently Bidvest Freight has no alternative but to expressly reserve its rights to contend that the TNPA Tariff Proposals, or any part thereof, do not comply with the relevant constitutional imperatives or might for any other reason be unenforceable or set aside.

### **C. The Commercial Argument**

18. We understand the TNPA proposed rental structure to be as follows:-

- Fixed cost – cost recovery of TNPA
- Royalty that will recover a return for TNPA. We need to debate the basis of the required return as Transnet does not have the same risk exposure as private entities and so this should come across in the methodology used.

19. The Terminal Operators should equally be able to adopt the same principles as those implied by the TNPA rental structure in the proposal as follows:

19.1 The terminal operators should be able to recover their costs of doing business.

19.2 The shareholders should be allowed to get a required return on the investments that they have made in their terminals.

19.3 The terminal operators should reap the rewards of being efficient in their operations.

The above points cannot be achieved if the terminal operators are not allowed to recover these costs from their customers.

20. Private terminal operators transfer assets back to Transnet at the end of lease. Transnet obviously own their properties and assets freehold. This creates a significant cost advantage to Transnet Port Terminals.

21. If the additional rental charges cannot be passed on to the customers then the terminal operators should be incentivised or granted longer tenure with which to recover its investments.

22. This tariff structure is targeted at addressing efficiencies and productivity which is a function of the investments that have been made into the terminals by the operators. The tariffs that the terminal operators charge are to recover those costs and therefore the more efficient the terminal operator the more money they can make. In a competitive world this is what creates efficiencies and should be encouraged.

### **23. The possible effect of the proposal**

23.1 Cargo dues on bulk and break bulk products will increase which will effectively have an effect on the volumes that are handled by the terminal operators.

23.2 This shift in the pricing model will have a negative effect on Maydon Wharf



- 23.3 Most of the cargo handled in Maydon Wharf is breakbulk which has seen a decline over the years specifically due to the reduction in export steel volumes and a worldwide trend of the move of break-bulk cargoes to containers.
- 23.4 The proposed increase should therefore also allow a shift in terms of commodities and handling rights that are exercised in this area to prevent underutilisation of land in the port.
- 23.5 The terminal operators have made investments over the years based on the long term leases that they have and the returns required by the shareholders on those properties and the projected volumes in those various commodities. This shift will possibly have an effect on the projected volumes. It must also be noted that a number of facilities only have one or two customers who are on long term contracts of up to 10 years.
- 23.6 The reduction in cargo dues favours containers and cars which are terminals traditionally operated by a division of Transnet. This terminal operator will also get a rental increase in the rebalancing exercise however it is part of Transnet and the net effect for the entity will be nil. This will also possibly have a positive boost of volumes that can be handled through the terminals due to reduced cargo dues.
- 23.7 The private operators will have to bear any increases in costs and suffer possibly from the reduced volumes that they may encounter.
- 23.8 What effect will this have on tenants who are not doing port related operations in the port? Will this pricing structure exclude them? Whilst these tenants account for a smaller percentage, the terminal operators need to understand how these tenants will be treated?
- 23.9 Over the years, the TNPA capital investment has been targeted to growing the container sector. Specifically in the Port of Durban there have not been any new berths that have been built or berths that have been deepened for non container cargoes. Granted TNPA have now started deepening some of the Maydon Wharf berths and the liquid berths in the Island View area. The assets should be split according to the different commodities and each user should pay a rental equivalent to the benefit that they obtain and should also be port specific?

We support change but we must be careful that this does not come at the cost of "depressing" the exports in our country.

Our relationship with TNPA is good and we will continue to work together for the benefit of having efficient Ports. We believe that our input will be considered positive and constructive in the process of finalising TNPA's Pricing Strategy. As already indicated, we did provide input into this strategy and we would have preferred to engage more with TNPA on this matter.

We would be happy to engage further on the points raised above. Any queries or clarity to the above should be addressed to:



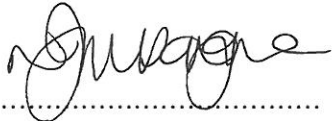
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**For Bidvest Freight (Pty) Ltd**

31 May 2013