

3rd November 2022

Commissioners Julie Abramson and Stephen King
Australia's Maritime Logistics System Inquiry
Productivity Commission

Via email: maritime@pc.gov.au

Dear Commissioners,

Re: Australian Maritime Logistics System Inquiry – Draft Report

Container Transport Alliance Australia (CTAA) thanks the Productivity Commission for a comprehensive and well written Draft Report on Australia's Maritime Logistics System.

CTAA apologises for this delayed submission, and seeks to limit our supplementary views on targeted aspects of the Draft Report:

- Measures of productivity & performance. Need to include landside interface performance indicators in addition to quayside productivity measures at the “blue-water” interface.
- Terminal Access Fees (TACs) – what is the balance between landside and quayside fees, how they are derived and who pays? The need for transport operators to be treated as a true “customer” of container terminals.
- Container detention policies and practices of the foreign container shipping lines – potential unfair contract terms.

Productivity & Performance Measures:

It is acknowledged that the Draft Report (p.101) observes that:

A more efficient port will minimise the total time that land transport spends in the port. That is, the time between when it enters and exits the port. The time that trucks spend waiting at the port gate also should be minimised (even though this occurs outside of the port perimeter), otherwise ports could artificially deflate truck turnaround times by forcing trucks to wait outside the gate. All other things equal, lower turnaround times are indicative of higher landside productivity. Further, a more efficient port will backload trucks such that trucks haul containers on both the in-bound and out-bound legs of a single trip.

The Draft Report also reiterates that measures of landside logistics performance, as reported in the *Waterline* series published by BITRE, include:

- Containers per truck
- Percent of “backloaded” trucks (i.e. two-way loading)
- Average truck turnaround time (TTT)
- Average container turnaround time (CTT)

We note to that the Report (p. 107) highlights that:

Truck turnaround times do not include the time taken for the truck to exit the port after a container is loaded or any time that the truck spends waiting outside the port. As noted above, ports can appear relatively efficient if trucks are forced to wait outside the gate rather than inside the port

We agree with the Commission's draft conclusion that the existing approach to assessing container port performance in Australia could be improved.

In CTAA's initial submission, we highlighted the "patchwork" approach to landside container logistics performance measures either collected and reported under the legislative framework of the NSW Port Botany Landside Improvement Strategy (PBLIS) mandatory standards, or on a voluntary basis in Victoria and Western Australia, but not at all on an independent basis in Queensland and South Australia.

For instance, the issue of a useful measure of truck turnaround times has always been a point of contention between road transport operators and container terminals as most published data only measures from "gate-in" (i.e. once the driver has "swiped" their access card at the terminal entrance) to "job complete" (i.e. when the container handling equipment employed in the terminal has finished that job with the truck).

In poor performing container terminals, there can be a considerable truck waiting time in queues outside the terminal gate prior to "gate-in" being achieved. Transport operators are left to deal with the added cost of these delays either by absorbing the cost of such inefficiency or otherwise charging their customers (importers & exporters) for truck waiting time.

The landside interface performance of empty container parks associated with all capital city container ports has also come under the microscope in the last few years as empty container congestion has increased.

The factors contributing to this congestion are high levels of demand (notably import demand), overall empty container storage capacity in the port, gate processing capacity at individual ECPs, operating practices within the individual ECP, and the rate at which shipping lines repatriate empty containers either overseas or around the Australian coast to meet future freight cargo demand.

CTAA believes that the direct cost of inefficiencies estimated in Draft Finding 3.9 of \$605 million per year is underestimated by the Commission. If additional landside logistics inefficiencies were measured adequately, including those associated with empty container management, the cost would be far greater.

For instance, inefficiencies in the empty container management chain alone in Port Botany were estimated in 2020 to be \$49 million per annum, escalating to over \$100 million per year unless measures are taken to improve efficiency (*NSW Empty Container Supply Chain Study, Transport for NSW, 5 May 2020*).

We would reiterate our original recommendations:

Recommendations:

- 1. National & State/Territory Governments, through the Infrastructure and Transport Ministers' Meeting (ITMM) regime, should develop consistent, independent performance indicators for the landside interface (road and rail) with container stevedore terminals in each capital city port in Australia, as well as for corresponding empty container management chains.**
- 2. Consideration be given to the consistent implementation of technology tools that support independent verification of the container logistics performance indicators, including:**
 - ✓ **Automated Number-Plate Recognition (ANPR) camera technology;**
 - ✓ **Seamless electronic data exchange between stakeholders; and**
 - ✓ **Automated reporting systems**

Terminal Access Fees (TACs):

CTAA's initial submission was silent on the threshold question of whether landside terminal access fees should be charged directly to transport operators, or only to shipping lines, or to any other stakeholder group in the supply chain.

Rather, our submission concentrated on the issue of whether landside stakeholders have witnessed productivity offsets in any way commensurate with the significant increase in Terminal Access Fees (TACs) since 2017, as well as Vehicle Booking System (VBS) and associated ancillary fees.

It is worth reiterating that the landside interface with all container terminals (road & rail) is governed by "standard form" Carrier Access Agreements (terms & conditions of terminal entry) that are imposed on transport operators on a "take it or leave it" basis:

See:

- [DP World Australia \(DPWA\) – National Terminal Carrier Access Terms and Conditions](#)
- [Patrick Terminals – National Terminal Access Terms & Conditions](#)
- [Hutchison Ports Australia – Terminal Carrier Access Terms and Conditions](#)
- [Victoria International Container Terminal \(VICT\) – Carrier Access Agreement](#)
- [Flinders Adelaide Container Terminal \(FACT\) Vehicle Booking System Rules](#)

These Carrier Access terms and conditions dictate the penalties to be paid to the container terminals for non-performance by transport operators (i.e. financial penalties for not turning up to a slot booking on time or being a "no-show"). However, there is no corresponding regime of financial compensation to transport operators for poor terminal operational performance (except in NSW under PBLIS)

Similarly, landside productivity is hampered by:

- Container terminal access rules that diminish opportunities for "two-way" utilisation of trucks, leading to one-way empty running and additional trucks on public roads for the given freight task
- Limited visibility of slot allocations by stevedore terminal operators to meet forecast demand
- Deteriorating Truck Turnaround Time (TTT) performance and Container Turn Time (CTT) Performance – the latter being a measure of the time taken by the terminal to service the landside vehicle with a container.

As noted previously, exploring regulatory and operational opportunities to improve truck turnaround and truck utilisation rates into / out of container terminals across Australia would drive down road transport operating costs.

Terminal Access Fees – Why Have They Increased Substantially Since 2017?

The Commission posed an information request (6.2) as to the factors influencing the significant increase in TACs charged to container transport operators since 2017.

CTAA reiterates the views we provided in our initial submission:

The ACCC's [Container Stevedoring Monitoring Report 2020-21](#) (October 2021) provides a succinct analysis of the commercial dynamics driving a "re-balancing" of revenue generation by the container stevedores away from their traditional shipping line customers, due to greater container terminal competition on Australia's east coast and the greater bargaining power of shipping lines), and towards landside transport operators.

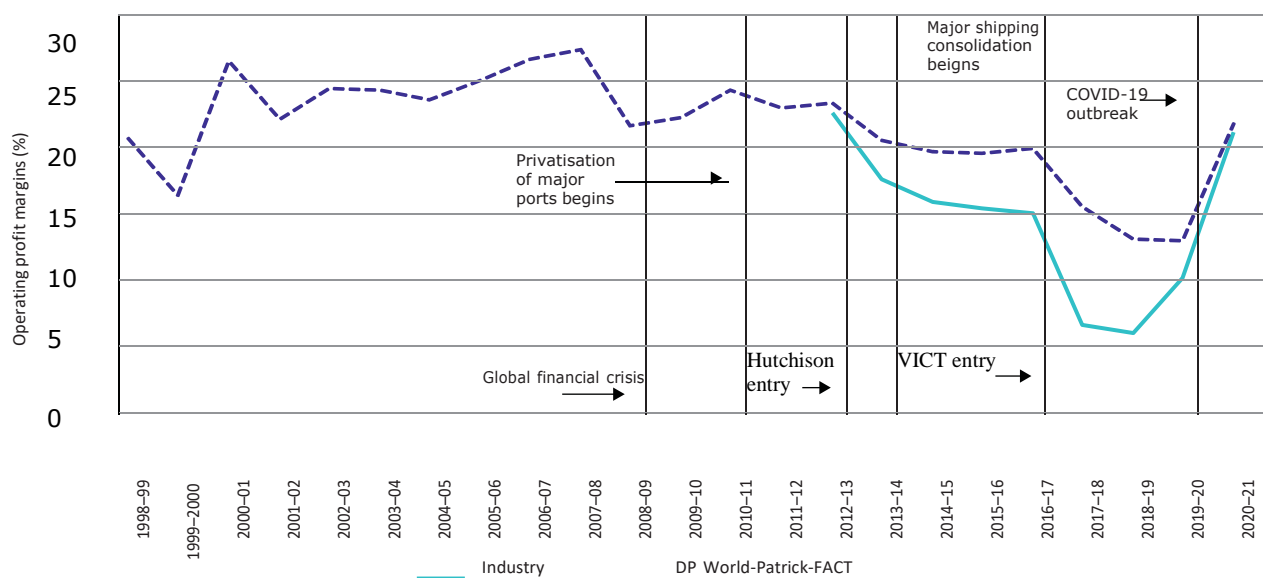
As the figure below illustrates (*ACCC Container Stevedoring Monitoring Report 2020-21, page 36*), in the period between 2012–13 and 2019–20, the aggregate operating profit of incumbent stevedores (DP World, Patrick and FACT) fell significantly, dropping to 12.7% by 2019–20.

Both Hutchison and VICT incurred substantial losses during their initial start-up period. Because of this, the aggregate operating profit of all 5 stevedores fell even more, reaching 5.8% in 2018-19. The existing stevedores (Patrick, DP World and FACT) displayed less of a downturn in profit margins, dipping to an average of 12.7% in 2018-19 prior to the COVID-19 pandemic.

Now however, there has been a substantial jump in stevedores’ profitability in 2020–21, almost returning to the level of profitability in the period prior to the entry of greater stevedore competition with the commencement of Hutchison Ports in Sydney & Brisbane, and VICT in Melbourne.

As the Commission has observed, the ACCC has concluded that the level of profitability of stevedores over the past 5 years does not appear to be indicative of the stevedores earning excessive returns. However, the ACCC is monitoring the situation and we eagerly await the publication of the 202021 ACCC Monitoring Report to see whether the profitability trend has continued.

Figure 4.1: Aggregate operating profit (EBITA) margins (industry vs. 3 incumbents): 1998–99 to 2020–21



Source: ACCC analysis of information received from stevedores as part of the monitoring regime.

The ACCC Container Stevedoring Monitoring Reports demonstrate that quayside revenue per lift for stevedores (i.e. the revenue collected from shipping lines) has fallen by **27.6%** over the past 10 years.

To make up for this lost revenue, since 2017, the stevedores have increased their landside terminal access charges (TACs - also sometimes referred to as landside infrastructure charges), vehicle booking charges and other ancillary fees, which now make up around **38%** of the stevedores’ total revenue.

Terminal Access Fees – Who Should Pay?

CTAA notes the Commission’s Draft Recommendation 6.2 that terminal access charges and other fixed fees for delivering or collecting a container from a terminal should be regulated so that they can only be charged to shipping lines and not to transport operators.

CTAA is sympathetic to the view that if the TACs are only allowed to be levied on shipping lines then there will be little incentive for the container stevedores to treat transport operators as true “customers”.

In turn, landside stakeholders such as importers and exporters may find that Terminal Handling Charges (THCs) levied on them directly by shipping lines might rise exponentially, with little transparency as to how the charges are derived.

This might lead to landside terminal interfaces likely deteriorating with no recompense to transport operators for poor terminal landside productivity, except in NSW under the PBLIS mandatory standards. Such a scenario may well lead to transport operators in other jurisdictions calling for PBLIS-like regulation of the landside / terminal interface.

Under the current circumstances where TACs are levied on transport operators as the ACCC has observed, transport operators pass on the TACs and landside fees to cargo owners, in most cases with a margin added to account for reconciliation administration.

A major concern of transport operators and their customers when TACs increased markedly from 2017 was the corresponding lack of notice given by the container stevedores, as well as stevedores adjusting their fees more than once per year.

Predominately now however, the stevedores have agreed to the voluntary protocols devised by the Victorian Government and/or the requirements in NSW to provide adequate notice to the Secretary of Transport for NSW.

CTAA is of the view that this regime of scrutiny applied to stevedore landside fees could be strengthened, including transition of the NTC Guidelines for landside stevedore charges to a mandatory regime rather than a voluntary set of protocols.

Another option, the basis of which was considered in CTAA's initial submission to the Inquiry, may be for Terminal Charges, both quayside and landside, to be made thoroughly visible to all parties through a regulated Public Tariff.

We used the example of the defined Public Tariff of container terminal charges which has good visibility of the exact charges levied on the vessel and cargo interests at DP World London Gateway in the UK (see: <https://londongateway.blob.core.windows.net/n2cms/upload/PDF/LGW%20Public%20Tariff%2001JUL21%20v8.pdf>)

DP World London Gateway specifically defines basic handling charges borne by the shipping line to include “*discharge from vessel and transport to stack or lift container from stack and load to vessel*” and “*receiving or delivering from/to truck and lift container between truck and stack*”.

In other words, DP World recovers from shipping lines the costs (plus profit) of the terminal services from vessel discharge to landside vehicle delivery (or visa versa for export receipt through to vessel loading).

The cargo interests pay an infrastructure fee (section 2.5 of the above Tariff), but it is a vastly smaller amount than that charged in DP World Australia's container terminals (i.e. £10.05 = approx. AUD\$19.00 per full import container, compared to AUD\$144.70 per full import container at DP World Melbourne). This is because the main revenue for terminal services is collected through the ship operator, who, in turn, and in direct consultation with their cargo interest customers, charges a Terminal Handling Charge (THC) to the shipper (importer & exporter).

The difference is that the publication of a Public Tariff makes all the container terminal charges, landside and quayside, transparent.

We reiterate our initial recommendations that National & State/Territory Governments should jointly examine the relationship between stevedore landside charges, Terminal Handling Charges (THCs) levied for foreign container shipping lines, and their impact on Australian containerised import costs and container export commodity competitiveness.

We'd also suggest that a better regime would include mandatory protocols on the notice period, justification for and frequency of TACs being levied on whichever party, combined with greater transparency of both quayside and landside charges through the mandatory publication of a Public Tariff for each container terminal.

Container detention policies and practices of the foreign container shipping lines – potential unfair contract terms:

CTAA welcomes the focus given by the Commission in the Report (from p. 205) on concerns about the container detention policies, contract terms, and invoicing practices of the foreign shipping lines.

We'd stress again that shipping lines should maintain the right to impose container detention terms & conditions on importers for the late return of empty container equipment (past an allocated "free time"), as well as to exporters if empty containers designed for export pack-out and shipment are unduly delayed.

However, shippers (importers and exporters) and transport providers continue to express grave concerns with the "reasonableness" of container detention policies and practices imposed by the shipping lines, as well as the quantum of the penalties applied.

The key principle of detention charges should be to incentivise cargo interests to maintain the fluidity of the container movement through the supply chain. However, in circumstances where at incentivisation is not present, container detention fees should be deemed "unreasonable". This would include circumstances where the cargo interest and their transport provider cannot physically return a container because the return facility is closed or congested to the point of inefficient operation, etc.

We note the passionate submission regarding the Commission's Draft Report provided by CTAA Alliance company Secon Freight Logistics in Victoria. Secon's submission demonstrates the real frustrations and significant financial consequences involved in the rigid application of container detention fees in the container logistics chain, and their potential "unfair" nature.

CTAA thoroughly welcomes the Commission's conclusion that shipping contracts should not be exempt from the unfair terms provisions in the Australian Competition Laws (ACL) and that their exemption under s. 28 should be removed.

We agree that the evidence indicates that neither the national nor international legal frameworks are effective at restraining unreasonable and inefficient detention fees. Removing the exemption will provide cargo owners a remedy under the ACL for unfair instances of detention fees

We reiterate CTAA's view that once the ACL exemption currently afforded to shipping line contracts is lifted, the ACCC should be tasked with investigating the "reasonableness" of container detention terms imposed by the shipping lines and developing appropriate industry standards.

Any queries related to this submission should be directed to the undersigned

Yours sincerely,

Neil Chambers
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