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14 November 2022

Ms Julie Abramson/Dr Stephen King
Commissioners
Productivity Commission

cc: Ms Lou Will, Assistant Commissioner – Productivity Commission

Dear Commissioners

Further Submission - Response to matters raised in Public Hearing for Productivity Commission's Maritime Logistics System Inquiry

I refer to the Productivity Commission's Public Hearing for the Maritime Logistics System Inquiry held on 4 November 2022 (**Public Hearing**).

This submission is supplementary to earlier submissions made by Patrick Terminals to the Commission, including detailed confidential submissions and accompanying economic analysis, as well as public submissions, made on 24 October 2022 (**Patrick Submissions**). The Patrick Submissions followed earlier detailed submissions by Patrick Terminals to the Commission, including with supporting economic reports from Synergies, on 16 February 2022 and meetings with the Commission between February and June 2022, principally on industrial relations matters. Patrick also wrote to the Commission in September 2022 to raise concerns about the process by which the Commission has reached draft conclusions and recommendations regarding stevedore landside fees in its Draft Report.

Patrick provides this supplementary submission in response to matters raised in the Public Hearing related to landside fees.

Clarification of FTA's information requests

It is important to clarify the position in relation to comments made by Mr Paul Zalai of Freight & Trade Alliance (**FTA**) at the Public Hearing. Mr Zalai noted that FTA wrote to each stevedore requesting information and that stevedores declined to give any level of detail that gave him comfort. To be clear:

- (a) the request made by FTA was for Patrick Terminals to provide FTA with **open book data on Patrick Terminals' full landside cost structure**. Specifically, FTA requested '*detailed explanation for the increase including disclosure, supporting information and data justifying the full cost structure of the total fee to be applied...*';
- (b) Mr Zalai has an established practice of publishing verbatim correspondence provided by the stevedores (see for example FTA newsletter dated 2 February 2022);
- (c) at the time, Mr Zalai acknowledged that 'constructive meetings were held with stevedore executives'.

It is important to recognise that a request of this nature is not one with which stevedores could reasonably be expected to comply. We note that FTA members, being some of Australia's largest importers and exporters, are not expected to provide open book data on their full cost structure to their own customers.

Patrick Terminals reiterates its commitment to all aspects of the NVGs and reasonable enhancements over time.

Relevant information before the Commission

We have reviewed the Post Draft submissions and the relevant information put before the Commission at the Public Hearing. We have been unable to identify any substantive evidence or supporting analysis that supports regulatory intervention in respect of landside fees (whether in the manner suggested in the Commission's Draft Report or otherwise). To the contrary, much of the information put at the Public Hearing and in Post Draft submissions shows the lack of any evidence-based case to support regulatory intervention and further underscores the risks of a range of adverse consequences as identified in the Patrick Submissions.

For example, we refer to the following relevant information put to the Commission at the Public Hearing:

- (a) that shipping line market power is the reason restructuring of charges was required and that the industry must look at a reasonable spread of charges to support long term investment required to support productivity (**MUA**);
- (b) that there should be an evaluation of the NVGs after a 3 year period to see how it has worked before any regulatory intervention (**MUA**);
- (c) that for the Commission to come to the conclusion that regulation is required, the Commission needs to be able to point to the evidence (in the context of port regulation) (**Ports Australia**);
- (d) that there is a need to first look very closely at the effectiveness of the voluntary NVGs (**Ports Australia**);
- (e) that the Commission has underestimated the impact on the Australian economy of inefficiencies by using a \$605m figure as there is no reference to landside issues. Once the landside issues are addressed, the economic cost could easily double (**CTAA**);
- (f) that there is some sympathy for the view that if landside fees are not charged to transport operators, there is a likelihood that all focus will be back on ship and ship owner clients (**CTAA**);
- (g) that there is concern that without landside fees being charged to the landside, the landside interface will be affected (**CTAA**);
- (h) that landside operators are achieving cost recovery of landside fees (in most cases with an administration margin) (**CTAA**);
- (i) that if stevedores cannot charge fixed fees, there is concern that shipping lines will not be transparent about these additional costs and will add these costs into their overall costs, with shippers worse off (consistent with current practices, where the ACCC has described the reduction in lift rates being paid to stevedores, none of which has been passed on by way of reductions to shippers and that there is already no transparency about what shipping lines are paying to stevedores and then passing on to shippers) (**CTAA**);

- (j) if shipping lines are forced to pay and pass on landside fees, then they will likely charge a mark-up to cover costs and administration. Draft Recommendation 6.2 will likely lead to an unnecessary escalation in costs (**Shipping Australia**);
- (k) shipping lines will not exercise market power for the benefit of third parties. If shipping lines are somehow forced to pay for landside fees, they will eventually pass on these charges to Australian shippers and consignees. The passing-on of fees will likely become a private matter between the parties involved. The supply chain as a whole will then lose visibility of landside fees and it will lose the opportunity for regulatory oversight (**Shipping Australia**).

Patrick reiterates the concerns raised in the Patrick Submissions that the Commission's procedure in reaching the conclusions that it relies on as a basis for its draft recommendation represents a departure from due process.

It is not appropriate that some form of onus falls on industry to disprove the Commission's hypothetical reasoning. The onus rests on those proposing regulation. Accordingly, it is for the Commission to gather the evidence properly and carefully relevant to its inquiry and properly, carefully, and fully consider the implications to support any recommendations included in the Final Report.

In light of the significant concerns regarding due process and onus of proof, Patrick continues to consider that it is essential that the Commission detail its existing analysis and evidence, or undertake further analysis and gather evidence as part of its ongoing inquiry, in respect of the following matters:

- (a) the basis for assumptions that (i) stevedores have market power on the landside; (ii) that by extension landside fees are a reflection of market power returns by stevedores; (iii) that a lack of competition between stevedores means consumers pay too much; (iv) that consumers will pay less if landside fees are charged to shipping lines;
- (b) the basis on which the Draft Report has analysed and validated that regulatory intervention will not lead to adverse outcomes such as (i) loss of transparency and higher margins; (ii) differential pricing benefiting powerful shippers; (iii) any savings unlikely to be passed onto all shippers; (iv) risk of deterioration in landside performance; (v) increased ability to leverage market power for vertically integrated shipping lines;
- (c) how shipping line fees are currently passed onto shippers overall and the variability of those practices between shippers with countervailing power and those without;
- (d) the potential effects of the draft recommendation on landside productivity and/or broader supply chain efficiency, as well as the economic costs of reduced landside productivity (taking a whole of supply chain view);
- (e) whether landside customers value stevedores' investment in landside capacity and efficiency and the overall costs for supply chain participants (that may ultimately be borne by consumers) of a decline in terminal landside service levels such as reduced operating hours, reduced landside resource allocation, slower truck and rail turnaround times;
- (f) whether landside customers overall are in favour of the draft recommendation or status quo and the reasons for that position;
- (g) the implications for landside access decision making where Vehicle Booking Fees are charged to shipping lines;

- (h) analysis undertaken in relation to the findings and outcomes of previous government reviews;
- (i) the basis for departing from the ACCC's findings without any material justification or explanation in the Draft Report, noting the inquiry's terms of reference for the Commission to have regard to the ACCC's container stevedoring report;¹
- (j) the basis for the Draft Report concluding that voluntary regimes will not be effective, including whether the Commission engaged with stevedores to ascertain whether they do or do not intend to comply;
- (k) how such a regulatory intervention would be implemented in practice, including by reference to any analogous precedents between two *commercial* parties.

Confirmation of Patrick Terminals' Commitment to NVGs

Patrick Terminals reiterates its commitment to all aspects of the National Voluntary Guidelines and reasonable enhancements over time. For example, Patrick Terminals will shortly commence the following additional initiatives (on a voluntary, industry-led basis):

- (a) publication of landside performance metrics for each terminal, adopting a framework similar to the Victorian Voluntary Performance Monitoring Framework (noting that these metrics were developed in consultation with landside operators);
- (b) establishment of representative stakeholder landside groups, with a formal Charter to be published. The purpose of these stakeholder groups will be to develop solutions which support landside performance and efficient terminal operations and to provide information about Patrick Terminals' landside investment program.

Further details on these initiatives will be announced shortly.

Patrick encourages the Commission to carefully consider these matters and to openly engage with all key stakeholders as the Commission reviews the appropriateness of its draft recommendation.

Yours sincerely,

Michael Jovicic
Chief Executive Officer
Patrick Terminals

¹ See point 7 of the Commission's terms of reference issued by the then Treasurer, the Hon Josh Frydenberg MP. A copy is available at <https://www.pc.gov.au/inquiries/current/maritime-logistics/terms-of-reference>.