19th July 2019

Dr. Kerry Schott AO
Chair
Moorebank Intermodal Company
Suite 2, Level 9, 1 O'Connell Street
Sydney NSW 2000

Dear Dr. Schott,

Re: Moorebank IMEX Terminal Standard Customer Agreement - Consultation

Freight & Trade Alliance (FTA), the Australian Peak Shippers Association (APSA) and Container Transport Alliance Australia (CTAA) welcome the opportunity to provide this joint submission on the draft open access regime documents made available for public consultation by the Moorebank Intermodal Company (MIC).

Freight & Trade Alliance (FTA) is Australia's leading representative body for the international supply chain sector bringing together importers, exporters, customs brokers, freight forwarders, logistics service providers and industry groups. www.ftalliance.com.au

The Australian Peak Shippers' Association (APSA) is the peak body designated by the Federal Minister of Infrastructure and Transport to protect the interests of Australia's cargo owners and shippers in respect to shipping and international logistics services. The secretariat for APSA is provided by FTA: https://www.ftalliance.com.au/about-apsa

Container Transport Alliance Australia (CTAA) is a strong alliance of leading businesses engaged in the container transport logistics industry. CTAA Alliance companies account for the majority of the landside movements of containerised freight handled through Australia's capital city ports. www.ctaction.com.au

Our comments and feedback are, in the main, confined to the clauses in the draft Standard Customer Agreement. However, in respect to the review and variation of service charges for Reference Services, our comments also relate to clauses in the Moorebank IMEX Terminal Access Protocol:

Standard Customer Agreement – Comments:

Clause 3.5 – currently, this draft clause allows for Terminal Operations Co to **publish a notice of updated Service Charges** on the IMEX Terminal website not less than 10 Business Days' prior to their commencement. Similarly, **Clause 7.1** in the draft Access Protocol document provides for a minimum of 10 business days' notice of changes to Reference Services prices.

We contend that 10 days' notice is too short a period in both Agreements, and should be amended to a minimum of 30 days' notice.

By contrast, the Australian Competition and Consumer Commission (ACCC) recently sought changes to minimum notice periods for price changes published by Australia's container stevedoring terminals to a minimum of 30 days' notice.

A longer minimum notice period of price changes is important to businesses in the container logistics chain. They, in turn, have contracts with customers that require minimum notice periods for price increases, and must be given adequate time to consult with their own customer base.

Clause 3.5 also has a note that the manner for reviewing prices between Terminal Operations Co and the Customer is still to be determined.

We would contend that there should be meaningful processes established for negotiation with Customers ahead of any price increases, not just unilateral action by Terminal Operations Co to determine and set price increases without adequate consultation.

Clause 4.3: Customer forecasts

We are unclear as to the purpose of this clause requiring customers to provide forecasts of the estimated volume of containerised freight that is expected to be dropped off or picked up from the IMEX Terminal.

How is this data to be used by the Terminal Operations Co, and what are the benefits to the customer of providing this information?

Clause 11.2(b) – Liability Caps

We believe that this clause should be explicit in the Liability Cap which would be applied to damage or loss to transport equipment (i.e. road transport prime movers and trailing equipment), and that the Cap should be at least $150,000.

For example, a Super B-double or A-double prime mover and trailer combination costs over $420,000 per combination. Serious damage therefore sustained to these combinations can amount to over $100,000 in some instances.

Clause 12.1 – Insurances Required

The amount of public liability insurance required in clause 12.1(a) ($200,000,000), as well as the threshold of $100,000,000 cover for damage to property and injury & death, seem extraordinarily high.

By contrast, the Patrick Terminals National Terminal Access Terms & Conditions (*Clause 6(a) see: www.patrick.com.au – Customer Information tab*) requires insurance coverage of $20,000,000 for third party property and public risk liability insurance.

Schedule 2 – Vehicle Booking System (VBS)

We note that Schedule 2 of the Standard Customer Agreement indicates that Terminal Operations Co will publish standard carrier terms and conditions (Carrier Access Terms) that will govern access by Carriers to the IMEX Terminal.

It is important that these Carrier Access Terms are negotiated with Carriers ahead of the commencement of operations at the IMEX Terminal.

Container terminal access at Port Botany and the associated conditions of use of Vehicle Booking Systems (VBS) are governed by the Port Botany Landside Operations Mandatory Standards set out in Part 3 of the *Ports and Maritime Administration Regulation 2012*.

While it is understood that it is not currently anticipated that the regulated mandatory standards will be extended to access conditions at the Moorebank IMEX Terminal, it will be beneficial to Carriers and Customers for the Terminal Carrier Access Terms to replicate the mandatory standards to a practical degree.

For instance, Clause 2.2(f) in Schedule 2 contemplates that the Carrier must comply with all timing and other requirements relating to a booking as confirmed during the booking process, and that a "no show" fee may apply if the vehicle does not show up for its manifested booking.

However, Schedule 2 is silent on the issue of whether compensation may be applicable to the Carrier if a vehicle is unduly delayed at the IMEX Terminal other than due to an unforeseen event or Force Majeure.

It will be preferable for the IMEX Terminal Carrier Access Agreement to be akin to a Service Level Agreement (SLA) between the contracting parties with identified key performance indicators applicable to each party, more so than a one-sided contract as exists with the existing container stevedore terminals.

VBS Provider

It is assumed that the Terminal Operations Co will procure Vehicle Booking System (VBS) services from a VBS technology provider, most likely 1-Stop Connections Pty. Ltd. given its part ownership by Qube through its financial interest in Patrick Terminals.

However, we understand that Terminal Operations Co would be able to acquire those services from another technology provider, or create their own system.

Carriers and Customers would urge that to avoid additional operational complexity in the NSW container logistics chain, it would be preferable for the VBS provider to be chosen from existing providers.

In NSW, there is already added complexity for Carriers due to Patrick and DP World Terminals using one VBS platform (1-Stop), yet Hutchison Ports Australia has a separate platform. Also, there is one dominate technology platform for the current management of empty container depots and truck interaction with those depots – Containerchain.

If a completely separate platform was implemented for VBS access to the IMEX Terminal, it would increase the level of operational complexity for Carriers.

Therefore, if there is to be a VBS, from a landside operators' perspective, the preference would be for an existing platform to be utilised.

Use of MSIC

It is noted that in Schedule 2 – Clause 2.2(a), the IMEX Terminal may require a driver's Maritime Security Identification Card (MSIC) details.

We are unsure as to whether the IMEX Terminal will be declared a "maritime security zone" under the *Maritime Transport Security and Offshore Facilities Act 2003*.

Irrespective of the proposed declared status of the Terminal, we understand that it may be convenient for Terminal Operations Co to make use of the MSIC as the identification process for drivers, including the ability of 1-Stop (or another VBS provider) to upload site induction records onto the smart card to which the MSIC is attached.

We would caution the imposition of this requirement on all heavy vehicle drivers that must access the IMEX Terminal.

If an MSIC is not required by law to access the Terminal unaccompanied, then there should be the option for another identification card to be used for driver identification and access.

This is because transport companies may have drivers who do not hold an MSIC as they are not required to access wharf terminals, yet they are employed for other delivery tasks, including potentially access to an inland terminal such as the IMEX Terminal.

VBS Fees

Schedule 2 – Clause 2.4 indicates that in consideration of allowing the carrier to use the VBS and/or access the IMEX Terminal, the carrier must pay to Terminal Operations Co the relevant fees specified in the Carrier Tariff Schedule, and that the Carrier Tariff Schedule may be varied from time to time by Terminal Operations Co in accordance with the Carrier Access Terms.

As stated previously, there must be an adequate consultation phase and, ideally, opportunities for negotiation with Carriers or Customers. Industry's expectation would be a minimum notice period (30 days) given for any amendments to the Carrier Tariff Schedule.
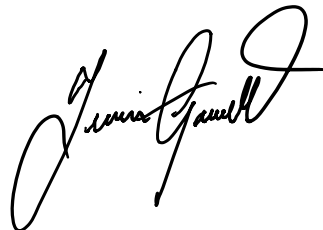
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Thank you again for the opportunity to provide these comments and views on the draft Access Protocol and Standard Access Agreement.

We are available to discuss these matters by contact with either Travis Brooks-Garrett (FTA/APSA) - 0434 105 145 / tbrooks-garrett@ftalliance.com.au, or to CTAA Director, Neil Chambers, 0413 662 263 / neil.chambers@ctaction.com.au

Yours faithfully,

Neil Chambers
Director
Container Transport Alliance Australia (CTAA)

Travis Brooks-Garrett
Director
Freight & Trade Alliance (FTA)