



## Stevedore Carrier Access Agreements (CAAs) A Fairer Go for Container Road Transport Operators

### Introduction:

DP World has prepared a draft “*National Carrier Access Agreement, July 2015 – June 2016*” (CAA), which differs little from its existing CAAs in each capital city port.

Similar access conditions exist for Patrick Terminals Australia-wide, through acceptance of the *Patrick Terminals & Logistics Standard Terms & Conditions* and associated Charges & Rates tariffs (see: [http://asciano.com.au/external\\_link\\_categories/patrick-and-pacific-national-terms-conditions](http://asciano.com.au/external_link_categories/patrick-and-pacific-national-terms-conditions)), and the Patrick VBS Handbook available via the Patrick Enet2 on-line system (see: [http://enet.patrick.com.au/enet2/vbs/handbook.aspx?term\\_cd=OMSPB](http://enet.patrick.com.au/enet2/vbs/handbook.aspx?term_cd=OMSPB)).

The Hutchison Ports Australia Terminal Access Terms & Conditions are published through the HPA Portal ([www.hpaportal.com.au](http://www.hpaportal.com.au)), as is the HPA Truck Appointment System (TAS).

The current container terminal Stevedore CAAs (and the draft DPW 2015-16 CAA) do little to address real concerns expressed by Container Transport Operators (CTOs) for many years, as they:

- Don’t balance commercial fairness between the parties, particularly reasonable stevedore performance measures and associated financial penalties;
- Don’t promote positive changes to Vehicle Booking Systems (VBS) and associated operational interface initiatives; and
- Lack commitment to transparent performance monitoring, particularly at an industry level (by port). <sup>(1)</sup>

**This paper comments on strategic issues for consideration by Container Transport Operators (CTOs) in the pursuit of fairer stevedore access & performance outcomes.**

We acknowledge the current efforts by DP World senior management to reform its terminal performance management and operational practices – these efforts should be applauded and encouraged. On the flip side, there is evidence of performance deterioration at Patrick Terminals, and performance issues exist in the Hutchison Ports terminals in Sydney and Brisbane.

**CTOs would be better served by Service Level Agreements with the stevedores in every capital city port (or regulatory intervention) that establish transparent performance metrics, encourage continuous improvement, & deliver balance in performance obligations.**

1. The 1-Stop Business Intelligence Suite provides individual CTOs with useful operational performance information – see: [1-Stop Business Intelligence Suite Brochure](#)

## Principles of Fairness and a Better Outcome:

It is proposed that CTOs should seek outcomes based on the following strategic principles:

1. Improved & Transparent Performance Monitoring;
2. Service Level Agreements with Balanced Performance Standards (or equivalent regulatory intervention); and
3. Upgraded Vehicle Booking Systems (VBS) with associated Operational Functionality

## Improved & Transparent Performance Monitoring:

Lessons can be learnt from the level of performance monitoring in NSW that accompanies the Port Botany Landside Improvement Strategy (PBLIS) regulated Mandatory Standards.

Performance metrics are monitored and reported weekly on a transparent published basis for the three international container stevedores in Port Botany:

- **Combined Stevedore Container Volume** – per day in the reporting period;
- **Truck Turnaround Times (TTT)** – published for each stevedore;
- **Combined Truck Trips per Time Period** (*Peak, Shoulder, Off-Peak, Weekends*);
- **Truck Trip Arrival** (*On-Time, Early, Late, Extended Late (2+hrs), No Show*);
- **Truck Density** (*Containers Per Trip (Imp & Exp)*) and **Truck Turnaround** measured against the **allowable TTT** under the Mandatory Standards for each container;
- **Slot Performance** (*Bookings Completed, Carrier Cancelled, Stevedore Cancelled, No Show, Total Listed (in Pool), Remaining on Offer, Unforeseen Event*)

PBLIS also produces a weekly **Penalty Trend Report** for all terminals combined, measuring:

- Carrier Non-Service
- Early Arrival
- Extended Late Arrival (2+hrs)
- Late Arrival (up to one hour after the booked Time Zone)
- Slots Listed Not Picked Up (0 – 12 hours)
- Slots Listed Not Picked Up (12 – 24 hours)
- Slots Listed Picked Up (0 – 12 hours)
- No Show
- Stevedore Cancelled Slot
- Stevedore Non Service
- Truck Turnaround Time (TTT) Exceeded

These performance monitoring statistics are collated and published independently by the NSW Government (through the Cargo Movement Coordination Centre (CMCC), Transport for NSW).

A common concern of CTOs in Melbourne, Brisbane and Fremantle is the **lack of visibility on the number of slots** made available by stevedores in given time periods. PBLIS reporting makes this available, albeit in a combined format and post (a week after) the event.

Each container truck is monitored by **RFID tags** (or other transponder device) at various strategic way-points on the approaches to the terminal(s) and at the terminal gate. Yet, other than in Port Botany, these data are not being used to refine the joint understanding between stevedores and CTOs of **actual TTT** rather than stevedore assessments of Gate In to Job Complete.

An additional concern in relation to DP World is the use and management of the **Carrier Class Matrix** and the associated business rules. The Matrix (which embeds Key Performance Indicators (KPIs) on CTO performance) dictates the number of slots available to the individual Carrier in given time zones and the class of the Carrier.

The Matrix is based on historical inputs and doesn't easily allow for dynamic changes in the CTOs business (such as higher volumes due to new business acquisition, etc.) that may impact on the Carrier's profile and slot allocations. This is a general concern of the existing VBS, underpinned by the current slot drop arrangements that lead to the "mad rush" each day to obtain slots.

If a CTO's container volumes associated with a vessel are higher, and they are unable to obtain appropriate slot allocations through the existing VBS slot drop processes, they are at the mercy of the stevedore to be allocated additional slots, or they must take their chances picking up Listed Slots if and when these are put back into the Slot Pool by other carriers.

### **Service Level Agreements with Balanced Performance Standards:**

Excluding Port Botany where the PBLIS Mandatory Standards dictate CTO and stevedore performance standards and associated financial penalties, the existing CAAs in Melbourne, Brisbane and Fremantle are extremely one-sided, regulating the behaviour of CTOs through No-Show and Wrong Time Zone, and other penalties, as well as the way in which carriers must request slots through the Vehicle Booking System (VBS).

The current CAAs lack rigour on stevedore performance, with no relief for transport operators when poor stevedore performance leads to lengthy truck delays, throws shift plans into disarray, and forces carriers to scramble to "catch up" on unfinished container moves when the stevedore finally gets its act together again.

Thereafter, while transport operators work hard to reallocate trucks, trailers and drivers into subsequent shifts, toil to book slots again through the VBS (if slots are available), and incur added operational costs, including overtime and inefficient vehicle allocation, they can run foul of Wrong Time Zone and No Show penalties in future operating periods. Complaints to the stevedores that their previous poor performance largely caused these subsequent delays in future Time Zones frequently fall on deaf ears.

Three PBLIS Mandatory Standards provide more balance in the performance relationship which should be sought in new Service Level Agreements (SLAs) in Melbourne, Brisbane and Fremantle:

#### **1. Stevedore Cancelled Slots:**

Under PBLIS, stevedores are not allowed to cancel an entire Time Zone unless it is due to an Unforeseen Event or for safety reasons (*Clause 13.4, PBLIS Mandatory Standards*). In other words, stevedores just can't cancel Time Zones in order to "catch up" on their own operational delays.

An “Unforeseen Event” is defined as matters such as weather events, fire or flood, activities of emergency services, power or lighting failures, malfunction in the stevedore’s Terminal Operating System or VBS provided by a service provider (of greater than 60 minutes in length), an industrial dispute, any delay in the arrival of a vessel (provided the stevedore gives notice to the carrier as prescribed), or the direction of a regulatory authority. An “Unforeseen Event” does not include any failure of the stevedore’s operating equipment (i.e. container handling equipment).

If the stevedore cancels a booking in contravention of the mandatory standards, the stevedore is:

- Liable to pay the carrier a penalty of \$100 for each applicable time slot (notice must be given to the carrier at least two hours before the cancellation);
- Must make another slot available to the carrier that is no later than 36 hours after the Time Zone for the cancelled booking;
- The alternative slot booking must be in the same Time Zone, or in a Time Zone either side of that Time Zone, or at an alternative time agreed with the carrier; and
- The carrier is not liable to pay a booking fee for the new slot, or any storage that may have arisen between the time of the cancelled booking and the new time slot.

In relation to DP World West Swanson, it should be argued that late notice of the transfer of containers from West Swanson Terminal (WST) to West Swanson Intermodal Terminal (WSIT), or the failure of the stevedore to transfer the container(s) as advised, should fall within the definition of a Stevedore Cancelled Slot that fails the performance standards.

## 2. Stevedore Non Service:

If the stevedore fails or refuses to perform the truck servicing for which a booking has been made, the stevedore is:

- Liable to pay the carrier a penalty of \$100;
- Must make another slot(s) available to the carrier that is no later than 24 hours after the Time Zone for the failed booking;
- The carrier is not liable to pay a booking fee for the failed slot, or any storage that may have arisen between the time of the cancelled booking and the new time slot.

This clause does not apply to a failure or refusal to perform truck servicing that results from the truck not being capable to receive the services for which it was booked, or because of any act or omission of the carrier or the driver that prevents the stevedore from servicing the truck.

## 3. Truck Turnaround Time (TTT) Exceeded:

The PBLIS Mandatory Standards set out the performance measures for Truck Turnaround Time (TTT) and the penalties to be paid by stevedores to carriers if the TTT is exceeded for the truck trip (i.e. \$25 for every 15 minutes by which the TTT is exceeded). The current TTT prescribed in the PBLIS Standards for each truck trip (*\*\*under current review by Transport for NSW\*\**) are:

TTT for one Container	Additional TTT for each additional Container	Measurement of TTT (applies to a Truck Trip)
50 minutes	10 minutes	<b>From</b> time at which Truck Arrives <b>until</b> Stevedore has achieved Job Completion

## Next Generation VBS with Associated Operational Functionality:

### VBS Advanced Bookings:

The current “mad rush” by CTOs each morning to secure container time slots has become very dysfunctional as container volumes through each capital city port have risen.

1-Stop admits that its current VBS relies on CTOs booking what they need, but in reality everyone tries to book whatever they can get and then determine what they need.

The result is slots end up being listed back into the pool later, or not listed at all, with forecast capacity being wasted and CTOs being penalised for not using the slots.

It is anticipated that wasted slot capacity is anywhere from **7% to 14% of weekly slot capacity** allocated by the stevedores (*see PBLIS CMCC Weekly Reports, Transport for NSW - <http://freight.transport.nsw.gov.au/network/cmcc/pblis-performance-reporting.html> - similar statistics have been discussed in other ports*).

**CTOs should work actively with the stevedores and their VBS providers to move to a slot allocation system that more closely reconciles demand with available supply.**

1-Stop has already developed its **Advanced Bookings VBS Module** which would eliminate the “mad rush” based on an upload of the container numbers for which a slot is sort, rather than grabbing a slot and allocating the container to the slot later.

The Advanced Bookings Module would still allow container numbers to be swapped between slots later prior to the truck being manifested.

The DP World Automated Terminal in Brisbane has used Advanced Bookings since January 2014, but is the only terminal to do so to date.

When the containers have met pre-defined business rules, CTOs can have the VBS find slots automatically, or can seek slots manually (within the criteria of date range and time zones that are set by the CTO). There is also a matching drop-off and pick-up functionality to select slots in a corresponding time zone to facilitate dual manifesting (two-way loaded truck running).

Pre-defined business rules are set by the stevedore terminals into the Advanced Booking module. For instance, for Import Pick-Ups, the container numbers can be required to be uploaded into the VBS for a set period of days before slots are allocated.

This type of business rule discipline would have an effect up the container supply chain requiring customers (importers, customs brokers and forwarders) to clear containers from Hold in an adequate timeframe to allow a time slot to be allocated for the container to be picked up from the terminal by the CTO.

A useful Fact Sheet on the Advanced Bookings Module is available from the 1-Stop website at: <http://www.1-stop.biz/Services/Documents/VBS/1-Stop%20VBS%20Advanced%20Bookings%20fact%20sheet%202013.pdf>

## **VBS Stack Run Functionality:**

Not all stevedore terminals are adequately using the Stack Run functionality (Empty In, Empty Out, Full In or Full Dual Manifesting) available in the 1-Stop VBS, or allocating the necessary operational resources and processes to make this work.

High volume CTOs would benefit greatly from efforts to improve Stack Run capability and reliability. Indeed, all CTOs would benefit if TTT for the high volume carriers is improved, particularly during night shifts, thereby increasing the slot capacity of the stevedores to handle overall forecast container volumes.

Truck density would be increased where the VBS and operational practices facilitate matched import and export time slots. This would have a positive impact on vehicle asset utilisation, and a positive impact on community amenity and road congestion through the need for less trucks overall for the port freight task.

## **Other Operational Matters Requiring Attention / Negotiation:**

- DP World not allowing **Import and Export Slot Swapping over multiple days**.
- DP World Time Slot allocations should be modified to **allow CTO Night Shift operations to be planned effectively** (i.e. not end the allocation at 12 midnight, but take the allocation through to 6.00am or 6.30am the following day).
- **Time Up should revert to 6.00am or 6.30am rather than 12 midnight**. There are examples where Night Shift delays have caused containers to become Time Up prior to pick-up over a night shift.
- **Fatigue Management** – DP World draft CAA 2015-2016 states (clause 26.3) that “*Carriers must change over drivers who have worked their maximum number of hours*”, yet examples can be cited when CTOs were unable to facilitate a change of drivers while the trucks were in the terminal.
- DP World draft CAA 2015-2016 requires all carriers to have a **DP World Australia authorised PIN BAT number clearly displayed** on both doors and on the truck cab roof – new requirement in terminals such as Melbourne.

## **Pursuing Improved Monitoring and Balanced Performance Standards:**

It is unlikely that pure commercial discussions / negotiations between stevedores and CTOs in Melbourne, Brisbane or Fremantle will achieve the necessary improvements in performance monitoring and balanced performance standards sought by CTOs.

CTOs are in a weak bargaining position due to the virtual monopoly position of the stevedores in providing road transport receipt and delivery services. This monopoly position arises because containers coming from or being delivered to a vessel must do so through the one stevedore servicing the vessel – as such, the stevedore has a monopoly as the CTO has no option but to do business with that terminal for the cartage of those containers.

## Collective Bargaining Immunity:

If the CTOs try to act collectively to negotiate outcomes with the stevedores, even with the assistance of industry associations, they run the real risk of breaching Australia's Competition Laws.

The *Competition and Consumer Act* generally requires businesses to act independently of their competitors when making decisions about pricing, and the terms and conditions of doing business. Competitors who act collectively risk breaching the competition provisions of the Act.

Unless businesses who act collectively (with or without assistance from industry associations) have authorisation issued by or a valid notification of collective bargaining lodged with the Australian Competition and Consumer Commission (ACCC), they have no protection under the Act and may be prosecuted for collusive and anti-competitive behaviour.

Unless CTOs have the necessary ACCC collective bargaining authorisation or notification "immunity", it will be very difficult to reach collectively negotiated outcomes with the stevedores on matters of substance such as price, terms & conditions, and performance standards that materially impact on the stevedoring services provided.

<p><b><i>How then could CTOs achieve their stevedoring service standard and performance monitoring aspirations?</i></b></p>
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CTOs may consider lobbying to achieve regulatory intervention that would deliver better service standards oversight and performance standards regulation. Avenues that may be considered include:

1. **State Government regulation** – pursuit of similar regulatory intervention to set performance standards and penalties for non-performance as occurs in NSW through the Port Botany Landside Improvements Strategy (PBLIS) Mandatory Standards.
2. **Declaration of container stevedoring services under the National Access Regime administered by the ACCC.** Part IIIA of the *Competition and Consumer Act 2010* establishes a legal regime to facilitate third party access to certain services provided by means of significant infrastructure facilities. This is known as the National Access Regime.

The aim of requesting a declaration is to get access to the infrastructure on government-mediated or regulated terms. If the services are declared by the Federal Minister, then negotiations can go ahead on the terms of access to that infrastructure.

If the infrastructure provider and the access-seeker(s) cannot agree terms, then the access-seeker(s) can ask the ACCC to become involved in the negotiations. If the parties still cannot agree, it is ultimately possible that the ACCC can require the service provider to provide access on arbitrated terms.

3. **Road Safety Remuneration Tribunal (RSRT): Container Ports and Wharf Sector Inquiry.** The RSRT has commenced an inquiry into road transport operations connected with the container ports sector (see: <http://www.rsrt.gov.au/index.cfm/annual-work-program/3rd-annual-work-program/wharf-and-port-sector-inquiry/>).

The *Road Safety Remuneration Act 2012* gives the RSRT wide-ranging powers to make Road Safety Remuneration Orders (RSROs), and to deal with disputes relating to road transport drivers, their employers or hirers, and participants in the supply chain, including loaders & unloaders such as stevedores.

CTOs may seek a binding RSRO that, inter alia, mandates performance obligations on stevedores, particularly the reduction of truck waiting times through improved Truck Turnaround Time (TTT) performance and associated penalties for non-performance.

Indeed, such an Order issued under a Federal Act of Parliament could take precedence over the PBLIS Mandatory Standards set under State regulation in NSW.

## **Conclusion:**

In most Australian capital city container ports, Container Transport Operators (CTOs) suffer from unbalanced and unfair access arrangements to container stevedore terminals.

The current container terminal Stevedore Carrier Access Agreements (CAAs), and the draft DPW 2015-16 CAA, do little to address real concerns expressed by Container Transport Operators (CTOs) for many years, as they:

- Don't balance commercial fairness between the parties, particularly reasonable stevedore performance measures and associated financial penalties;
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It is proposed that CTOs should seek outcomes based on the following strategic principles:

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Many lessons can be learnt from the Port Botany Landside Improvement Strategy (PBLIS) Mandatory Standards in NSW regulated by the *Ports and Maritime Administration Regulation 2012*. At the very least, the transparent performance standards monitoring regime administered independently from the commercial parties is worthy of replication in other capital city ports.

The CTOs are unlikely to achieve the desired changes in stevedore operational performance obligations through commercial negotiations alone, and run the risk of breaching Competition laws unless they have collective bargaining immunity obtained through the ACCC.

Alternatively, there are several regulatory routes that CTOs might pursue to achieve their strategic aims which are worthy of further consideration.

***Prepared as an independent analysis by Container Transport Alliance Australia (CTAA) for the information of all CTOs – April 2015 – [www.ctaction.com.au](http://www.ctaction.com.au).***