

22 May 2018

Hutchison Port Sydney Terminal Infrastructure Surcharge – Latest Unregulated and Unfair Cost Impost

Hutchison Ports Sydney is the latest container terminal in Australia to announce the impost of a new Infrastructure Surcharge of \$10.45 per full import or export container handled at the Terminal by road or rail from 25 June 2018.

Hutchison Ports Sydney took just one paragraph, posted through its online Customer Portal on 21 May, to justify the Surcharge impost, without any consultation with those who must pay – container transport operators (road and rail), and ultimately importers and exporters.

CTAA Director, Neil Chambers observed that “it shows a particular mind-set when Hutchison Ports clearly believes that the only explanation they need to offer to the landside logistics sector is a one-liner describing the Surcharge as necessary *“because of the high cost of additional equipment and infrastructure procured in recent years and used to provide and maintain an efficient terminal landside operation.”*

“Hutchison Ports Australia, and its parent company headquarters in Hong Kong, have watched while the other incumbent container stevedoring companies in Australia have hiked up their own landside Infrastructure Surcharges with impunity. They have now decided to get a piece of that unregulated action as well.”

“CTAA has engaged with Federal and State Government Ministers, departments and regulators, urging an investigation into how costs and service pricing are being allocated in the international container logistics chain. This seems yet another example of large scale cost shifting occurring without any regulatory balance ... at what cost to Australia’s trade competitiveness?”

“CTAA maintains that this is not about the recovery of rising business costs at all. All of the recent massive Infrastructure Surcharge increases, including this latest one by Hutchison Ports Australia in Sydney, are about the stevedore companies trying to maintain their viability in what seems like a stevedore services “price war” playing out as Shipping Line contracts become due for renegotiation.”

“The other major concern of CTAA’s container transport operator Alliance companies is that the Surcharges are being imposed through Terminal Carrier Access Agreements which we believe breach the “unfair contract terms” provisions of Australia’s competition laws.” Neil Chambers continued.

The published Hutchison Ports Australia (HPA) Terminal Carrier Access Agreement states that they may vary the Terms & Conditions “... *at any time by placing a notice on the HPA Portal advising that the Terms and Conditions have changed.*”

Container transport operators are then deemed to have accepted and agreed to the revised Terms & Conditions if they continue to use any login or the Truck Appointment System (TAS) after the revised Terms & Conditions have been posted on the HPA online portal.

“No ifs or buts ... use the Truck Appointment System to arrange to come to the terminal and automatically agree to any charge or levy they’d like to impose ... no chance to negotiate.”

While the HPA Terminal Carrier Access Terms & Conditions aren't reissued each year, transport operators pay an annual subscription in July each year. CTAA therefore believes that the Terms & Conditions are set each calendar year.

"In March this year, AWB Harvest Finance Pools Pty Ltd (AWB) amended its standard form grain pool contracts after the ACCC raised concerns that some terms in the contracts were unfair." observed Neil Chambers.

AWB's grain pool contracts originally included terms giving it the power to (inter alia):

- Unilaterally increase fees to growers after the contract had been accepted by a grower; and
- Introduce new fees from time to time after the contract was signed.

"The question that CTAA has raised with the ACCC is "what's the difference between the AWB unfair contract concerns and the unfair actions of Australia's stevedoring companies who have each imposed Infrastructure Surcharges without consultation during the term of their access "contracts" with transport operators?"

"We note that the ACCC Chairman, Rod Sims, has indicated that a priority for the competition regulator in 2018 is to follow up on unfair contract terms where the terms are substantially and unfairly weighted to the benefit of one party and cannot be negotiated."

"CTAA is again bringing to the attention of the ACCC our belief that the Infrastructure Surcharges imposed by the stevedores on container transport operators breach the unfair contract terms provisions of Australia's competition laws and involve substantial small business detriment."

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About CTAA:

Container Transport Alliance Australia (CTAA) is strong Alliance of leading businesses engaged in the container transport logistics industry. CTAA Alliance companies account for the majority of containerised freight handled in capital city ports in Australia.