

Review of the Port Tariff Methodology: Industry Submission

Shipbuilding and Repair Committee
SA Aerospace Maritime & Defence Industries Association (AMD)

Full submission available [here](#)

Based on a broader study '[Shipbuilding and Repair Lease Review for South Africa Ports](#)'



Motivation for the Submission

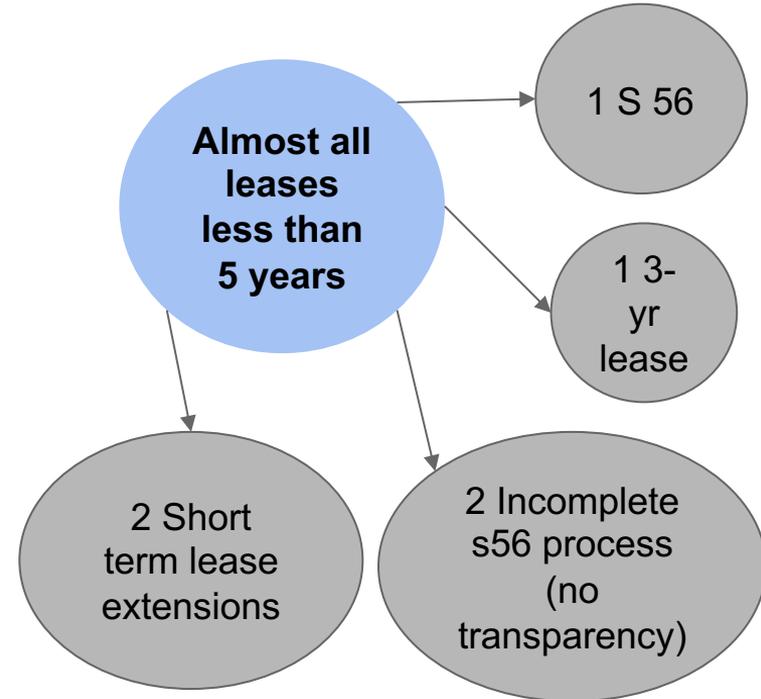
- Shipbuilding and repair industry holds value to the economy and is prominent in South African policy
- Significant potential for growth but being held back partly by TNPA lease terms and conditions
- Despite several attempts being made, industry has not been able to better these terms
- Several further studies corroborate concerns of industry

- Challenges include...



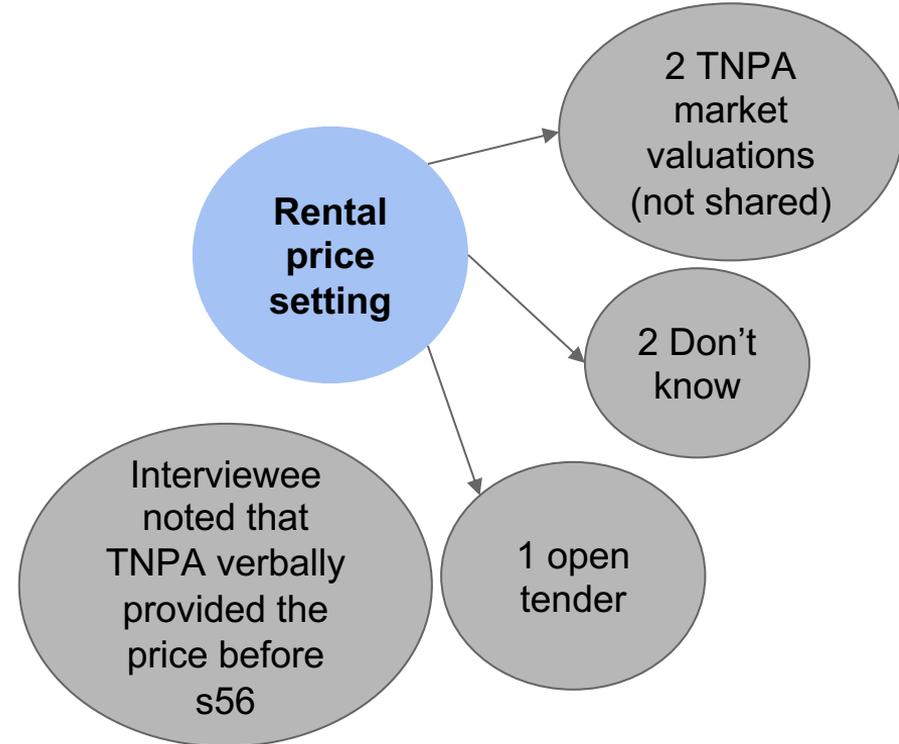
TNPA Tender Process

- Sound process that is laid out in the National Ports Act to arrive at rental agreements - section 56 agreement - in line with UNCTAD published best practice.
- If the legal process as set out in the Act and the Guidelines is followed (i.e. open tender), then the highest bidder that meets the compliance, B-BBEE and technical requirements will be selected and that will reflect what the market is willing to pay.
- However, industry finds that TNPA tender processes are unclear, non-transparent and inefficient, resulting in ad-hoc extensions (which are illegal), short lease periods, and lost investment opportunities.
- Furthermore, TNPA seems unwilling to negotiate lease terms and conditions in good faith.



Rental Price & Escalations

- The rental price is high and, while TNPA claims that the rental is based on market prices, the price determinant is not stipulated in the lease or in any other guideline or document.
- Confusion and disagreement about TNPA's valuation. No methodology published.
- Legally, the 'market rent' should be determined via competitive open tender process and not stipulated by TNPA, as is currently occurring.
- Escalations are set at 9% annually, which is compounded over 4 years (just over 50% in total).
- This escalation rate is internationally unprecedented.
- Improvements used to increase pricing



Recommendations

- There is provision in the National Ports Act (sections 72 and 73) for rentals to be approved by the Ports Regulator, as rentals are not treated any differently in the Act than port dues, cargo dues and berth dues, which are included in the Tariff Book.
- 2014 research recommendation
- Potential options include...

Recommendations: Price setting

- The **asset valuation in combination with the tariff strategy** makes available the option to know exactly how much of the required revenue should be recovered from tenants based on the 'user pays' principle.
- It is therefore possible to determine a **minimum requirement (Rands) per meter squared**. This can be tiered in accordance with the nature of the land, for example, distance from the waters edge, assets, potential etc.
- Once the price per metre squared is determined, it can be **published in the tariff book**.
- Potential tenants can use this price as a **base off which to put in proposals** during the open tender process. This also allows for tenderers to be able to **compete on other terms** such as investment and transformation.
- If the Ports Regulator is not happy with using the RAB and the Tariff Strategy as a way of determining base rentals, then they should **publish a preferred methodology along with this tariff methodology review**, which can also be renewed every three years. Internationally there are **different types of rental structures** incl. min/max and profit sharing.

Recommendations: Escalation

- It is recommended that all leases are immediately amended to reflect an **escalation tied to CPI** (currently approximately 4%).
- If rental is meeting or superseding the required revenue placed on tenants through the asset valuation and tariff strategy (as it currently is according to TNPA's application), there is no reason for a real annual escalation, as this would just mean that tenants would increasingly subsidise the tariffs of cargo owners and shipping lines.
- Furthermore, it is recommended that TNPA is **not allowed to increase the rental based on improvements that the tenant has themselves invested during the lease term** as this is fundamentally against the valuation methodology, i.e. assets that TNPA have not themselves built, do not need to be depreciated and do not need to be recovered and should therefore have a R0 value.

Recommendations: s56 Monitoring



- TNPA could **forfeit rental earned** from land while it is being **illegally leased**. The forfeited money should come from their returns and not be pushed onto other port users.
- An instrument similar to that being utilised for WEGO could be used to **incentivise and penalise efficient award** of Section 56 leases.
- **Section 56 leases** up for renewal in the coming 3 years should be **published in the tariff application**. TNPA should also publish Section 56 agreements that have come to a close in the prior year, inclusive of the agreement reached, as is in line with UNCTAD recommended guidelines to promote transparency and reduce corruption.

Other Considerations



- It is of concern that the **treatment of depreciated assets in use** in the RAB valuation is going to have the unintended consequence of pushing up rental prices. This is more reason for the Regulator to more closely monitor rental price setting.
- In addition to the methodology related recommendations provided, it is requested that progress and details of **'discussions' with TNPA on leasing should be included in the upcoming Record of Decision**. Furthermore, this investigation should be concluded rapidly.

Concluding Remarks

- The leases and interviews of shipbuilding and repair companies show that the Section 56 process that aims to provide “a procedure that is fair, equitable, transparent, competitive and cost-effective” is not materialising and this is to the detriment of the industry. The lack of a publicly accessible archive of open calls and the results thereof means that no data exists to shed further light on these issues.
- This is having a negative impact on pricing and therefore on industry.
- Ideas have been put forward on how the methodology could affect change. Where the recommendations fall short, it is hoped that the Ports Regulator will consider new and better ways in which to address these problems.
- Finally, the AMD notes that it supports of the work that the Ports Regulator is doing to ensure that TNPA spend its CAPEX budgets, and that TNPA is corporatised. Lack of maintenance and services is seriously impacting the business of tenants.

Thank You

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Annexure 1: National Ports Act excerpt

Section 72	<p>Authority's tariff book.</p> <p>(1) (a) The Authority must, with the approval of the Ports Regulator, determine tariffs for services and facilities offered by the Authority and annually publish a tariff book containing those tariffs.</p> <p>(b) The Authority may, with the approval of the Ports Regulator, amend the tariff book whenever it is necessary to do so.</p> <p>(2) The Authority must, prior to any substantial alteration of a tariff, consult with the National Port Consultative Committee.</p> <p>(3) Subject to section 9 of the Competition Act, 1998 (Act No. 89 of 1998), the tariffs contemplated in subsection (1) may vary between ports.</p> <p>(4) Notwithstanding the provisions of this section, the Authority may enter into an agreement with a licenced operator or a party to an agreement or a port user for the variation of any tariff contemplated in subsection (1).</p>
Section 73(1)(b)	<p>73. (1) The Authority may charge fees, in accordance with a tariff determined in terms of section 72, for-</p> <p>(b) the provision and maintenance of port infrastructure, port terminals and port facilities, including-</p> <ul style="list-style-type: none">(i) land rentals;(ii) port dues for the provision and maintenance of entrance channels, breakwaters, basins, navigational aids and maintenance dredging inside port limits;(iii) cargo dues for the provision and maintenance of port infrastructure-(iv) berth dues for vessels occupying quays or repair quays while not engaging in the loading or unloading of cargo;

Annexure 2: Shipbuilding and Repair Industry Economic Impact

Employment: 4,600 direct, 18,400+ indirect (StatsSA 2018, multiplier of 4)

GDP: 0.2% of manufacturing production value (dti, 2018)

Investments: R6.9bn (dti, 2018)

Number of businesses: 75 direct, 200 in extensive supply chain (Sheila Farrell, 2014, dti, 2018)

Total revenue: R6bn (Sheila Farrell, 2014)

Exports: 80%-90% of production (dti, 2018)

Export value: R2.2bn (0.2% total exports) (dti, 2018)

Number of vessels entering ports for repairs: 287 (Operation Phakisa, 2012)

The shipbuilding and repair industry is labour intensive, has a large employment multiplier, has a large local manufacturing supplier base, and is a large exporter, therefore, has the ability to significantly contribute to the Operation Phakisa targets for the ocean economy. This is evidenced by the following.

- SA is capturing less than a quarter of the potential repairs market (excl. Oil rigs) (SF, 2014)
- There is potential for an increase in revenue for repairers of R15bn (SF, 2014)
- There is potential to capture 10 - 15 commercial builds per annum (SF, 2014)

01	Decreased productivity	<ul style="list-style-type: none"> • Delays in occupancy of leased land due to poor state of facilities • Inability to access required services and facilities such as launching facilities
02	Lost investment	<ul style="list-style-type: none"> • Inefficient and non-transparent tender processes, incl. non-award of tenders • Lack of interest by private sector due to costs, lease period & improvement clause
03	Loss of customers	<ul style="list-style-type: none"> • Lack of capacity of port facilities • Inefficient supply of services and facilities • Avoiding SA ports due to damages
04	Damages	<ul style="list-style-type: none"> • Damages to vessels due to poorly managed and maintained repair facilities with no compensation from TNPA
05	Liquidation	<ul style="list-style-type: none"> • Liquidation of companies due to market cycles coupled with high and rigid rent requirements • Companies leaving SA for neighbouring ports
06	High barriers to entry	<ul style="list-style-type: none"> • High costs and short lease periods make it difficult for EME's to access leases • Inefficient s56 process block new entrants

Annexure 3: Negative Impact of Lease T&Cs

The restrictive lease terms and conditions, poor maintenance and lack of capacity for expansion negatively impacts the shipbuilding and repair industry. The adjacent negative impacts were reported through stakeholder engagement.