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NIGERIAN PORTS AUTHORITY DIRECTS TERMINAL OPERATORS TO SUSPEND THE APPLICATION OF DEMURRAGE FOR 21 DAYS DUE TO COVID-19 PANDEMIC



The Nigerian Ports Authority ('the Authority' or 'NPA'), on 27th March 2020, issued a press statement directing all terminal operators to stop the application of "terminal storage fees on consignments (demurrage)" for an initial period of 21 days effective from 23 March 2020.¹ This, the Authority said was done in acknowledgement of the pressure the COVID -19 pandemic has placed on businesses in Nigeria as well as to support the Federal Government's Ease of Doing Business Policy in this challenging time.²

¹ NPA Press Statement by Jatto A Adams Via Nigerian Ports (nigerianports). "#Coronavirus: NPA Suspends Demurrage" 27 March 2020, 6:29 pm. Tweet.

² Ibid.

The Authority also said that it was aware of the financial implications the directive would have on terminal operators and would therefore be willing to consider a shift in its operational charges to make the situation for the terminal operators more tolerable.³

No doubt the objective of the directive, which is to give some relief to businesses affected by the COVID-19 pandemic, is laudable. The question however is whether the NPA can validly issue such a directive unilaterally. The demurrage/storage charges form part of the consideration due to terminal operators for their services under the terminal services contract with users of their respective terminals. The NPA is not party to the terminal services contract between the terminal operators and users of the terminals. NPA, a third party to the contract, cannot validly restrain a party from demanding and receiving agreed consideration for services duly rendered under the contract. The relationship between NPA and most of the terminal operators is essentially that of lessor and lessee. NPA's enabling statute, the NPA Act⁴, does not empower it to restrain its lessees from demanding and receiving agreed consideration for services duly rendered from the lessees' customers.

A more prudent and courteous approach, in our view, would have been for NPA to have a prior dialogue on the issue with terminal operators. The proposed shift in NPA's own charges to terminal operators would have been offered to the terminal operators as a consideration for their agreement to suspend the demurrage/storage charges. A press statement will then be issued after a consensus had been reached with terminal operators on the matter.

Unsurprisingly, the directive was not implemented by terminal operators before expiration of the initial 21-day period on April 12, 2020.

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³ Ibid.

⁴ See Section 8 of the Nigerian Ports Authority Act CAP.N126 The Laws of the Federation of Nigeria 2004