

## DEPARTMENT OF ECONOMIC DEVELOPMENT

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## **CONCLUSION OF THE LAND BASED PUBLIC PASSENGER TRANSPORT MARKET INQUIRY**

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### **SUMMARY OF THE FINDINGS AND RECOMMENDATIONS**

#### **Background**

1. On 10 May 2017, the Competition Commission (the Commission), in exercising its powers under Section 43B of the Competition Act No 89 of 1998 (the Act), published a notice that it would conduct a Market Inquiry into the land-based public passenger transport sector (the Inquiry). The Terms of Reference (ToRs) for the Inquiry were also gazetted on the same day. The Commission has identified the public passenger transport sector to include road and rail based public passenger transport, as relevant to this Inquiry. The modes of transport covered in the ToRs are buses (excluding cross-border services), taxis (minibus, metered taxis, e-hailing) and commuter rail (excluding tourist rail).
2. The Inquiry was initiated because the Commission was of the view that there are features, or a combination of features, in the passenger public transport sector that were distorting or inhibiting competition. The Commission made this assessment based on several complaints in the industry, as well as complaints lodged with the Commission by some stakeholders.

3. In addition, the transport sector is one of the priority sectors of the Commission. South Africans spend a significantly high proportion of disposable income on public transport (over 20 per cent) against a benchmark of 10 per cent for developing countries. The implication is that any resolution on identified impediments in the public transport sector may have benefits in the long run.
4. Public transportation is also key to sustainable economic growth in any country. Developing and maintaining transport infrastructure and providing an effective and efficient public transport system can create employment, improve efficiency across the economy, and ensure sustainable development by reducing carbon emissions from private vehicles in congested urban spaces. Statistics South Africa (2015) highlights that minibus taxis are the most commonly used mode of public transport in South Africa, accounting for 66.5 per cent of households that use public transport. The bus and rail modes account for 23.6 per cent and 9.9 per cent, respectively.
5. Government has also dedicated Outcome 6 to promoting, “an efficient, competitive and responsive economic infrastructure network”. Transport-related infrastructure and mobility of commuters contribute to the achievement of Outcome 6. Different spheres of government play a role in pursuit of achieving Outcome 6, as will be elaborated in this report.
6. The ToRs identified the central role of public transport in providing meaningful mobility for most of the population, in pursuit of economic participation. The ToRs identified the following broad themes as the rationale for initiating the Inquiry:
  - 6.1. Price setting mechanisms: Analysing different price setting mechanisms for all modes of public transport and their impact on competition;
  - 6.2. Price regulation: Examining applicable price regulations and their impact on competition;
  - 6.3. Route allocation, licensing and entry regulations: Assessing the impact of regulations, including route allocation, licensing and entry requirements on intermodal and intramodal competition;
  - 6.4. Allocation of operational subsidies: Assessing the impact of operational subsidies on some modes of public transport, and its impact on both intramodal and intermodal competition;
  - 6.5. Transport planning: Evaluating the impact of government’s transport planning framework on dynamism, efficiency and competition; and

- 6.6. Transformation: Assessing transformation issues, including ownership patterns in the public transport industry.
7. The reports have been separated for ease of articulation - the main report focuses on the traditional markets (i.e. minibus, bus and rail), whilst the second report has a specific focus on e-hailing and metered taxi services. The Commission is of the view that the dynamics of competition between the metered taxis and e-hailing services are driven largely by technological developments.

## **MAIN REPORT FINDINGS AND RECOMMENDATIONS**

8. The full report with all findings and recommendations can be accessed from the Competition Commission's website at <http://www.compcom.co.za/wp-content/uploads/2021/04/PTMI-Non-Confidential.pdf>

### **Major Findings**

#### **Is public transport in South Africa considered as a network or system?**

9. The Commission finds that there is lack of integration in the public transport system and this is worsened by the persistent inequality between modes (i.e. minibus taxi and BRT) and within modes (i.e. Gautrain and Metrorail). The stark differences in infrastructure investment, service levels and quality standards in the modes is an impediment to integration. The differences in service levels further deepens the socioeconomic divide in the society, as public transport is now catering for different classes.
10. Another example of the lack of integration is in the provision of rail services by both Metrorail and Gautrain in Gauteng. This is not an efficient utilisation of limited government funding, as both services are subsidised. Metrorail is operated at a national level and Gautrain at a provincial level, and ideally commuter rail should be provided by one entity at lower levels of government to derive economies of scale and foster integrated planning.
11. Integration of transport modes has not yet been achieved in South Africa, and this is further exacerbated by the way subsidies are transferred to the different spheres of government.

### **Impact of spatial planning on public transport**

12. The system of apartheid in South Africa left a legacy of social segregation which resulted in black people settling far away from economic hubs. Spatial planning problems are still

lingering in the democratic South Africa, because of limited land available closer to economic opportunities.

13. Subsidies more broadly assist workers to reach places of work, and this has inherently created two peak periods in the day – morning and evening peak – with idle capacity during off-peak. The problem with only two peak periods in a day is that this results in inefficiencies in the subsidy framework, as the assets are idle during off-peak periods.

**What informs the current subsidy regime?**

14. Government currently does not have a subsidy policy which provides justification for some modes of transport being subsidised while others are not. The Commission notes the effort by government to change the subsidy framework through the development of the subsidy policy.
15. Different subsidies are allocated to different spheres of government and given the intergovernmental coordination failures, value for money is compromised (from duplicated effort due to lack of integration), and economies of scale from a planning perspective is lost. Other modes of transport are subsidised while others are not.
16. For instance, the Commission finds that the IRPTN/BRT system in its current format has led to several inefficiencies, due to low passenger numbers. This results in under-recovery of revenue. In some instances, wrong corridors were chosen for the first phase of the implementation of the IRPTN system. The chosen corridors had low density routes, and low passenger volumes. In some cities, it is evident that no feasibility studies or needs assessments were conducted to justify the implementation of the system.
17. For contracted commuter bus services, provinces are entrusted with the responsibility for managing the contracts. During the transition from the apartheid regime, government continued with the bus contracts. As a provisional measure, before the finalisation of the contracting system, government signed interim contracts with bus operators that were already part of the subsidy system. However, the majority of these contracts have now been in existence for over 21 years without being put on tender.
18. Commuter rail is subsidised across the world for economic, social and environmental reasons. In South Africa, Metrorail services are considered a social service and are thus provided in the interest of the public. However, Metrorail is inefficient in the provision of urban rail commuter services. There are several challenges that constrain the quality of the

service – including continuous breakdown of trains, unreliable services, and fare evasion by passengers.

19. Contrary to the social service provided by Metrorail, the main objective of the Gautrain was to reduce traffic congestion in Gauteng, thus providing an alternative for private motor vehicle users. Gautrain provides a superior service that benefits a smaller proportion of the commuters, despite significant subsidies provided by government. Rail (both Gautrain and Metrorail) accounts for around 9.9 per cent of commuters yet receives substantial support from government.

#### *Breakdown of subsidy allocation*

20. The minibus taxi industry accounts for approximately 66.5 per cent of commuters, buses 23.6 per cent, and rail 9.9 per cent. There is a skewed relationship between ridership levels and subsidy funding. For instance, minibus taxis only receive 1 per cent of the total subsidy in the form of capital subsidy (taxi recapitalisation).

#### **Regulatory failures compromising minibus taxi operations**

21. The top concern from the taxi industry is that subsidies skew competition in favour of the subsidised services as well as route allocation challenges which fuels violence. Approval of operating licences on routes is primarily the responsibility of the Provincial Regulatory Entities (PREs) with the directives from municipalities (planning authorities). There are significant backlogs in applications and the general time period for the issuing of operating licences is approximately 9 to 18 months in some provinces, as opposed to the 60 days stipulated in the National Land Transport Act.
22. Conflict over routes has plagued the minibus taxi industry for many years. Submissions from the industry indicate that there is currently no framework to guide planning authorities and the PREs in the allocation of new routes arising from the development of new residential areas or shopping malls.

#### **Interprovincial bus services**

23. The Commission finds that certain practices in the provision of interprovincial bus services limit, distort and/or prevent competition between bus operators, for example, abuse and exploitation by large established bus operators to object to applications by new and existing players that try to expand.
24. Interprovincial bus services require access to terminal facilities. PRASA manages most of the terminals in the country, and provides access to these facilities through its division,

PRASA CRES. PRASA is vertically integrated as it runs most of the bus terminal facilities and also active in the interprovincial bus services through its subsidiary Autopax Passenger Services (SOC) Ltd (Autopax). Autopax operates two brands, City to City and Translux.

25. PRASA's presence in (both) the provision of intermodal terminal facilities and the provision of interprovincial bus services is undesirable. Between March 2017 and July 2019, the Commission received five complaints from interprovincial bus operators concerning allegations of, among other things, excessive access fees charged by PRASA for access to loading bays at Park Station. The Commission duly investigated the complaints and found that PRASA has contravened sections 8(1)(c), 8(b) and 8(a) of the Act. Based on these findings, on 07 February 2020, the Commission referred the five complaints to the Competition Tribunal for determination.
26. Based on the information gathered during the Inquiry, the Commission finds that:
  - 26.1. Autopax has the largest debt compared to other operators.
  - 26.2. The Commission has established that Autopax's semi-luxury brand, City to City, has been allocated an exclusive loading area and ticketing office, by PRASA CRES, at Park Station.
  - 26.3. The Commission finds that PRASA constantly provides financial support and bailouts to Autopax which may impact competition.
27. PRASA's ownership of Autopax creates perverse incentives, as PRASA always tries to safeguard and protect the interests of Autopax even in instances where it is not economically justifiable to do so. The interprovincial bus services market is competitive, and the continuous protection and/or bailing out of Autopax seems unjustifiable.

### **Transformation**

28. The Commission's findings in relation to transformation are, there is no or limited transformation within the public transport industry across the value chain (financing, manufacturing, fuel supply etc). Upstream levels of the value chain, such as financing and manufacturing, are not transformed. At an operational and ownership level, the minibus taxi businesses are majority Black-owned.

### **FINAL RECOMMENDATIONS**

29. The Commission published provisional recommendations in February 2020 for public comments. Having considered the comments from stakeholders, the Commission has

identified final recommendations which will improve the functioning of the public transport system.

30. The relationship between PRASA and Autopax raises several concerns for the interprovincial bus industry. It is recommended that DOT must address the conflict of interest between PRASA CRES and Autopax. This can be achieved through, among others, a complete structural separation between the entities. Furthermore, PRASA CRES should ensure that all bus operators are treated in a non-discriminatory manner.
31. The perpetual extension of subsidised bus contracts, without going out on tender, inhibits competition. Where contracts are put out on tender, government (provincial transport departments or the DOT) should consider breaking some of the contracts into smaller contracts in order to create opportunities for new entrants and smaller bus operators. Small and local bus operators should be given preference, given the incumbency advantages enjoyed by the existing large bus operators.
32. To promote the use of public transport as an integrated system and improve coordination, the Commission recommends:
  - 32.1. The establishment of dedicated transport authorities at provincial or metropolitan or district or municipal level, where appropriate.
  - 32.2. Government (national and provincial government) and SALGA to create capacity at local government level to ensure that transport planning is prioritised by municipalities.
33. To facilitate proper functioning of commuter rail services, foster coordination in the rail sector (especially in Gauteng), and improve efficiencies through economies of scale, the Commission recommends the following:
  - 33.1. DOT to develop a policy that ensures efficiency and integrated planning in commuter rail services. This policy may include, among others, integration of Metrorail and Gautrain in Gauteng.
  - 33.2. The DOT and National Treasury should explore alternative funding sources to deal with infrastructure backlogs and new rail infrastructure investments.
34. The Commission notes that government, through the DOT, is currently in the process of developing the subsidy policy. The Commission recommends that the subsidy policy be finalised and consider the following:

- 34.1. Address fragmented subsidies in the public transport sector to improve coordination and correct the skewed distribution of subsidies between urban and rural areas.
  - 34.2. Equitable allocation of subsidies to the taxi industry and rural bus operators.
  - 34.3. Prescribe the conclusion of negotiated contracts (as opposed to tendered contracts) with small bus operators. The negotiated contracts awarded to small bus operators should account for a minimum of 30 per cent of all contracts, and progressively increase over time.
35. With respect to the BRT/IRPTN implementation, the Commission recommends that DOT and National Treasury, should do a complete review of the BRT/IRPTN model taking into account long-term fiscal and financial sustainability; suitability of the model in smaller cities; and inclusion and participation of the minibuss taxi industry. In addition, DOT should consider reviewing the 12-year BOC/VOC model, or undertake a study to evaluate if the 12-year model promotes transformation and empowerment.

#### **E-HAILING AND METERED TAXIS REPORT**

36. The full report with all findings and recommendations can be accessed from the Competition Commission's website at <http://www.compcom.co.za/wp-content/uploads/2021/04/PTMI-Non-Confidential.pdf>

#### **Findings**

37. The entry of e-hailing services into South Africa disrupted the business model of metered taxis. The growing popularity of e-hailing services also caught regulatory authorities off-guard, as e-hailing services do not fall under the conventional regulatory framework. Despite the entry of e-hailing services, metered taxis were slow to respond and found it difficult to create their own digital platforms.
38. Digital platforms, such as e-hailing services, thrive on network effects or network externalities. Strong network effects increase barriers to entry into platform markets, because of the "winner takes all" or "winner takes most" phenomenon. The brand loyalty and first-mover advantages enjoyed by pioneers of e-hailing services make it difficult for metered taxi companies – or operators – to launch apps that can successfully compete with established brands.
39. Given these barriers faced by metered taxis and the nature of platform markets, which strive for economies of scale and network effects, metered taxi operators found it very difficult to compete with e-hailing services. The basis for the lack of competition arises from factors such as area restrictions and pricing dynamics, which will be discussed below.

### **The impact of area restrictions and price regulation on competition**

40. The practice note by the DOT makes provision for e-hailing operators to be licensed as metered taxi operators, whilst the National Land Transport Amendment Bill is being considered. At an operational level, metered taxis comply with the legislative restrictions imposed on their licences and operate within the defined radius. In the case of e-hailing services, the radius is not adhered to, because the app used by e-hailing operators allows operators to connect to the nearest passenger outside their municipal boundaries in violation of the licence conditions. The Amendment Bill formalises the distinction between metered taxis and e-hailing operators creating an uneven competitive environment. This distinction is in respect of operational areas (defined for metered taxis vs no restrictions for e-hailing services) as well as price regulation (regulated for metered taxis vs no regulation for e-hailing services).
41. Metered taxi operators have two ways of setting prices (i) regulated fares and (ii) fares determined by the local metered taxi association. The NLTA makes provision for the MEC or Minister, in consultation with the relevant authority, to determine a fare structure for metered taxis. E-hailing services, on the other hand, have adopted a market-based approach in which the fares are determined by the forces of demand and supply.

### **Recommendations**

42. The Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The regulatory dispensation in the Amendment Bill for e-hailing services should be extended to metered taxis in respect of the following:
- 42.1. The Amendment Bill does not impose any area restrictions for e-hailing services and this should be extended to metered taxis to create an even competitive environment.
- 42.2. The Amendment Bill does not regulate fares for e-hailing services and therefore, the Commission recommends that the legislature delete Section 66(3) of the NLTA which allows MEC or Minister together with the planning authority to determine a fare structure for metered taxi services. No price regulation for metered taxis is recommended as the Amendment Bill does not regulate e-hailing fares. This is essential to create an even competitive landscape.
43. **On backlogs of operating licences**, the Commission recommends that capacity at PREs and planning authorities be increased and all existing applications for operating licences.

44. **On empowering metered taxis and e-hailing operators** - metered taxi associations and e-hailing operators should be empowered to represent the interests of the industry in the following manner:
- 44.1. The DOT and PREs should assist the industry to establish a national association of metered taxis and e-hailing operators.
  - 44.2. DOT should assist metered taxis in conducting market research studies, business development, innovation which includes the development and deployment of technology to modernise the metered taxi industry.

#### **ACCESS TO THE FULL REPORT**

45. The full report with all findings and recommendations can be accessed from the Competition Commission's website <http://www.compcom.co.za/wp-content/uploads/2021/04/PTMI-Non-Confidential.pdf>