



**competition commission**  
*south africa*

# **STATEMENT OF ISSUES**

**25 April 2018**

**Market Inquiry into Public Passenger  
Transport**

## INTRODUCTION

- 1 On 10 May 2017, the Competition Commission (“the Commission”), in its exercise of 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 land based public passenger transport sector (“the Inquiry”). The Terms of Reference (“ToRs”) for the Inquiry were also gazetted on the same day.
- 2 The ToRs identified the centrality of public transport in providing meaningful mobility for the majority of the population in pursuit of economic participation. The Commission has identified the public passenger transport sector to include road and rail based public passenger transport as relevant for this inquiry. The inquiry therefore focuses on minibus taxis, 4+1s, metered taxis, app-based taxi services, Metrorail, Gautrain and various types of buses (“collectively referred to as land based public passenger transport”).
- 3 The ToRs broadly outline the following themes to be considered by the Inquiry:
  - 3.1 Price setting mechanisms: the Inquiry analyses different price setting mechanisms and their impact on competition in the land based public passenger transport industry;
  - 3.2 Price regulation: the Inquiry examines applicable price regulations and their impact on competition in the land based public passenger transport industry;
  - 3.3 Route allocation, licensing and entry regulations: the Inquiry assesses the impact of regulations, including route allocation, licensing and entry requirements on intermodal and intramodal competition in the land based public passenger transport industry;
  - 3.4 Allocation of operational subsidies: the Inquiry assesses the impact of operational subsidies granted to commuter buses, Metrorail and Gautrain on intramodal and intermodal competition in the land based public passenger transport industry;
  - 3.5 Transport Planning: the Inquiry evaluates the impact of government’s transport plans on dynamism, efficiency and competition in the land based public passenger transport industry; and
  - 3.6 Transformation: the Inquiry assesses transformation issues, including ownership patterns in the land based public passenger transport industry.
- 4 In light of the ToRs highlighted above, this Statement of Issues (“SOI”), sets out a narrow analytical framework in order to assist participants to focus on issues that have arisen so far from the Inquiry. What is set out in this SOI reflects the emerging themes or views from market participants and stakeholders. What must be emphasized is that the points raised in this SOI are intended to be topics or themes for further engagements and **do not** represent any settled views or findings of the Inquiry. This SOI also invites participants to make full submissions on the matters raised herein.
- 5 This SOI must always be read in conjunction with the ToRs and is not intended to restrict the scope of the Inquiry contemplated therein.

## PROGRESS OF THE INQUIRY

- 6 The PTMI officially commenced in June 2017 and is currently at information gathering phase. The information gathering or investigative phase is concerned with gathering evidence on the market

dynamics in the sector and to understand the impact of the regulatory framework on competition. During the information gathering phase, the following milestones were achieved: issuing call for submissions; releasing guidelines for stakeholder participation; targeted information requests; field investigations, stakeholder engagements across all provinces. Stakeholder engagements will continue until the finalization of the Inquiry. This phase will also guide requests for any additional information and clarity that the Inquiry requires as it enters the public hearings phase. Some of the issues raised in this SOI will provide the focus areas for the public hearings.

- 7 In this investigative phase, the Inquiry received a number of submissions from a variety of stakeholders. A number of submissions broadly concurred with the issues raised in the ToRs and further raised concerns about the regulatory environment. Some have submitted that there is a lack of regulation or adequate enforcement of the applicable regulations due to a large informal sector. Concerns of ineffective oversight by the regulatory bodies and enforcement agencies were also identified.
- 8 A number of submissions raised concerns about the negative impact of subsidies to other modes of public transport and its impact on competition. In particular, the minibus taxi industry has argued that taxi operators are responsible for transporting the majority of commuters yet they do not receive subsidies.

## **ISSUES OF INTEREST**

- 9 The work of the Inquiry is broadly divided into two areas.
  - 9.1 The first is to diagnose the most probable structural features impeding effective competition in the passenger public transport industry; and
  - 9.2 The second is to evaluate the most effective remedies to counteract the adverse findings from the diagnostic exercise.
- 10 The various issues raised in the sections below provide an overview of the direction of the diagnostic exercise, which will now move into a process where it can incorporate the inputs from further submissions and from public hearings. The public hearings will provide an opportunity for stakeholders to respond to the issues raised in the SOI.
- 11 In line with the scope of the Inquiry as set out in the ToRs, this SOI outlines the issues which the Inquiry now considers to be the appropriate focus of the Inquiry. Based on the Inquiry's understanding of the submissions and the issues they raise, as well as the additional information gathered during stakeholder engagements and field investigations, the Inquiry intends to explore further the issues set out in the ToRs above and additional issues that have emerged.
- 12 In an endeavour not to limit the submissions on the issues identified and give an opportunity to stakeholders that did not make submissions as yet, the Inquiry will first provide a summary of the submissions as per the ToRs and request further submissions on identified questions. In addition, emerging themes that encompass or are a combination of various aspects of the ToRs will be highlighted separately from the ToRs to ensure clarity.
- 13 These are discussed in more detail below.

## **ToR 1: Licencing, Route allocation and entry regulations**

### *Licencing and Transport Planning Misalignment*

- 14 Submissions from stakeholders indicate limited coordination and misalignment between planning and licencing functions. The issuing of operating licences<sup>1</sup> to operators within the transport industry is the function of the Provincial Regulatory Entity (“PRE”) in circumstances where the powers are not assigned to municipalities in terms of sections 54(1), 11(2) and 24 of the National Land Transport Act (“NLTA”). With respect to buses, applications for operating licences (excluding inter-provincial tourist transport services) are considered and approved by the PREs. The function relating to the issuing of operating licences for buses primarily resides with the National Public Transport Regulator (“NPTR”), but this function is currently performed by the PREs.
- 15 Municipalities on the other hand are transport planning authorities responsible for the implementation of integrated transport plans. Whilst municipalities do not issue operating licences, they make a recommendation to the PRE to either approve or not approve the operating licences. A number of submissions alluded to the fact that municipalities take time to provide their recommendations to the PRE and this results in a backlog of applications which has led some operators to be on the road illegally. In addition, municipalities have emphasised that their recommendations to the PRE are not binding and the PRE may take a decision to issue operating licences when the municipality has inadequate infrastructure such as ranking facilities.
- 16 This misalignment of functions or lack of proper coordination in the provision of public passenger transport has been a cause of concern for the industry. According to both the PREs and municipalities contacted by the Inquiry, there is consensus that the integrated transport plan (“ITP”) calls for complementarity between the different modes of transportation. However, because the implementation of the ITP is the responsibility of largely municipalities and the licensing function rests with the provincial government, integration is not adequately being realised. This could be partly because of the misalignment of functions or lack of coordination between the implementers of the ITP.
- 17 The misalignment is attributed to some municipalities that do not have the capacity to do ITP or provide recommendations regarding the issuing of operating licenses. Some of the municipalities do not have dedicated personnel to be able to develop the ITP and subsequently provide recommendations to the PRE. In such a case, the PRE will end up issuing licences without consideration of the ITP which in most cases results in routes being overtraded and appropriate infrastructure not put up by the municipality.
- 18 For passenger rail services, submissions so far indicate that municipalities do not have much influence in terms of operations even though rail is part of the ITP produced by the municipality. A few metros indicated a closer working relationship with the Passenger Rail of South Africa (“PRASA”) which meant that the aspirations of rail in terms of the ITP is dependent on PRASA.
- 19 Whilst the Inquiry understood the rationale of the NLTA in terms of assigning responsibilities within the intergovernmental framework, a deeper exposition of how this misalignment from the

---

<sup>1</sup> Minibus taxis, buses (with the exception of inter-provincial buses)

regulatory framework impedes the proper function of the industry needs to be explored. Some of the points that require further submissions among others are:

- 19.1 What are the limiting factors for the National Department of Transport (“DoT”) to delegate the responsibilities of issuing licences from the PRE to the municipalities?
- 19.2 What resources would municipalities require if such a delegation by the DoT is to be instituted? Are municipalities reluctant to undertake such functions and if so, what are the reasons?
- 19.3 How can passenger rail services be fully incorporated in the municipality’s ITP with the municipality playing a significant role in issues such as timetables to ensure complementarity with other modes of transport.

#### *Route allocation*

- 20 Approval of operating licences on most of the routes is primarily the responsibility of the PREs with the recommendation from municipalities (planning authorities). In terms of making its recommendation to the PRE, the municipality is required to assess whether there is a need for public transport for a particular route based on its ITPs. Planning authorities must supply their comments or recommendations to the PRE within 30 days after which the PRE may proceed to process and decide on the application without the planning authority’s input.<sup>2</sup>
- 21 The process followed for route allocation differs significantly per transport mode. In relation to minibus taxis, under normal circumstances, the process of identifying a possible new route starts from the municipality’s ITP where operators are able to see how the municipality is going to develop. Most of the new routes are largely driven by new developments (malls or housing projects). Once a new route has been identified, the municipality normally consults with taxi associations that already operate in the area, or alternatively, taxi operators approach the municipality or the taxi association that is closer to the new route before the route is registered or an amendment is sought from the PREs. In some instances, both the municipality and the PRE are not aware of the existence of these new routes and the taxi operators develop the routes based on the needs identified. Submissions received indicate that in most cases, taxi operators deviate from the routes specified in the operating license to service demand as a result of a new development. This has often led to conflicts between taxi associations in instances where the new routes might overlap in existing routes operated by two associations.
- 22 Stakeholder engagements revealed that there are a number of key issues relating to routes that still need to be probed further. In light of this, the Inquiry requests submissions that would address some of the issues below:
  - 22.1 For existing operators who are extending their routes, what mechanisms can be put in place by the PREs to timeously deal with route amendments?
  - 22.2 How can the process of route amendments be made seamless and without resulting in conflicts from different taxi associations?
  - 22.3 What would be the optimal process that needs to be followed by taxi operators to get new routes allocated to them?
  - 22.4 Are the current measures undertaken by the municipalities to identify the public transport needs sufficient?
  - 22.5 Does the PRE in terms of new routes acting more reactive, in such a way that they would be obliged to approve operating licences because the minibus taxis are operating already?

---

<sup>2</sup> NLTA Regulations section 6(4) and 6(5)

- 23 As for metered taxis and e-hailing services, stakeholder engagements so far have revealed that operating licences for traditional metered taxis are largely subjected to area radius within a local municipality. On the other hand, e-hailing services do not operate on fixed routes and may overlap into adjacent municipalities. This has led to the belief that e-hailing services have bypassed regulatory scrutiny and have a competitive advantage as they can operate almost everywhere. A number of submissions allege that the current South African regulatory regime is not designed to regulate e-hailing services. In order to address the regulatory vacuum, Parliament is currently considering proposed amendments to the NLTA through the National Land Transport Amendment Bill which specifically accommodates electronic hailing. The main issues raised in the submissions are that e-hailing services are able to operate without regulatory scrutiny and with no restriction on the area they can operate. This is alleged to create an uneven competitive environment between traditional metered taxis and e-hailing services. Traditional metered taxis are required to operate in designated areas (ranking facilities) whilst app-based services are not subjected to such requirements.
- 24 The Inquiry is inviting submissions to address the following issues, among others:
- 24.1 Is the regulatory framework between traditional metered taxis and app-based services in terms of area restrictions different, and if so, identify the differences and the impact thereof on competition?
- 24.2 Does the proposed amendments to the NLTA address the issues of area restrictions between traditional metered taxi operations and e-hailing services and if not, propose mechanisms that would address the issues identified.
- 25 For intercity bus services, an operator determines the routes that he or she wishes to operate when applying for an operating licence to the PRE. The operating licence then specifies the routes to be operated, including the starting point, scheduled times and various stops along the way. The operator has to adhere to the specifications on the operating licence. As part of the operating licence application process, the PRE issues a notice in the government gazette indicating the applicant's name and the routes the operator intends to service. There is also a process for objecting to such applications as set out in section 57 the NLTA. The Inquiry received submissions highlighting concerns regarding larger bus operators who object to operating licence applications especially by small bus operators to operate on certain routes. The Johannesburg to Durban route is predominately cited as the most problematic route where large and established bus operators use regulations to inhibit entry of small bus operators. The process from application to the actual receipt of an operating licence can take about three months. This process takes even longer when there are objections to the application. Smaller bus operators have expressed a concern that it is costly to defend applications where objections have been filed, as legal representation is required. Moreover, in some instances objections are unwarranted and only serve to discourage entry and the expansion of existing small bus operators. It is for this reason that there is a general concern that the application process in its current form is open to abuse, especially by larger operators. Therefore the Inquiry will require submissions to address the following issues, among others:
- 25.1 What are the main reasons raised by operators during the objection process? How widespread is the practice of objecting to new applications especially by large bus operators? The Inquiry will require more information to substantiate these allegations.
- 25.2 In instances where objections were raised by the large operators, did the PRE finally grant such operating licences and how long did it take to acquire such operating licences, and

- what were the financial implications to the smaller bus operators in defending their applications?
- 25.3 Are the PREs dealing effectively with the objections?
- 25.4 Identify ways that can be utilised to balance the legal provisions in the NLTA (of objecting) with potential abuse of the objections process by the larger operators.
- 26 With regards to subsidised buses, the Inquiry's engagements with some stakeholders revealed that for the subsidised bus operations, fares and routes are determined in the contracts by provincial government and the annual fare increases are regulated by government. In the case of bus rapid transit system ("BRT") and municipal buses, engagements have revealed that routes are determined by municipalities in line with their ITPs. The Inquiry requests submissions to respond to the following issues:
- 26.1 How can provincial government determined routes be responsive to the changing needs of commuters? There are allegations that the routes are outdated and not responding to the changing needs of commuters.
- 26.2 How can municipal subsidised bus routes be determined in such a way that the buses are fully utilised with sufficient passenger numbers? The allegation is that municipal buses operate in middle class areas and BRT has low capacity utilisation.
- 27 With regards to passenger rail services provided by PRASA, the Inquiry's engagements with stakeholders revealed information which suggest that passenger rail fares and route allocation are determined by the National Department of Transport. The Inquiry also has information suggesting that there is lack of alignment in the routes operated by Metrorail and those operated by complementary providers such as minibus taxis and this has led to reduced number of passenger rail users. In this regard, the Inquiry request submissions to respond to the following:
- 27.1 How can the route allocation for Metrorail passenger rail services be improved or better aligned with other modes to insure that commuters continue using passenger rail services again.

#### *Entry barriers – Moratorium on taxi operating licences and backlogs at PREs*

- 28 The Inquiry's engagements with some of the PREs and submissions from some stakeholders seem to suggest that some PREs have taken a decision to impose a moratorium on the issuing of new operating licences. The basis for such moratorium is that the minibus taxi industry is over traded (oversaturated). The Inquiry has noted that moratoria has only been issued with respect to minibus taxis and not to other modes of transport. Some of the PREs do not explicitly indicate that there is a moratorium in place due to anticipated backlash from the industry. In such instances, the PREs would continue receiving applications which are not processed timeously (this has been referred to soft moratorium by some of the stakeholders). This has resulted in a backlog of a substantial number of applications for operating licences which are still awaiting consideration by the PREs and has often generated frustrations amongst new applicants for operating licences. Therefore, a potential entrant into the industry who meets all the requirements for an operating licence may be confronted by either a moratorium on the issuing of new operating licences or a substantial backlog at the PRE. This has resulted in some potential entrants having to operate without operating licenses and thus ultimately leading to overtrading.
- 29 The Inquiry has also learnt that operators who have applied for renewals are able to operate as long as they have some form of evidence that an application for renewal was lodged at the PRE.

However, law enforcement officers across the country tend to apply different rules when dealing with such operators and this has created some level of dissatisfaction among operators.

30 Whilst some of the stakeholders have explained the rationale for the introduction of moratoria in respect to the issue of operating licences and also the causes of the backlogs at some of the PREs, the Inquiry requests submissions on the following questions among others:

30.1 What are the underlying reasons for issuing a moratorium by the municipality and the respective PREs? Were any studies undertaken to justify such moratoria?

30.2 Is the imposition of moratoria by some of the PREs effective in deterring entry into the taxi industry?

30.3 Why is overtrading a common feature even in some of the provinces where the moratoria is in place? Is the moratoria only put in place for new minibus taxi operating licences or the moratoria is extended to renewals?

30.4 What mechanisms did the PREs and the municipality put in place to enforce these moratoria?

30.5 To ensure effective control of public transport, what is the best way to deal with over saturation of minibus taxis in some of the identified routes?

30.6 What are the underlying causes for backlogs at PRE and how can they be remedied?

### **ToR2 and ToR 3: Price Regulation and Price Setting Mechanisms**

31 Fare determination in the land based public transport system varies per mode and within a mode of transport. The subsidies by government play a role in how the final fares to the commuters are derived. For rail transport, Metrorail (a subsidiary of PRASA) takes into account the subsidies provided by government in determining its fares. Fares charged by Metrorail to the commuters are aimed at ensuring affordable access to public passenger transport by the greater South African population living in or commuting to metropolitan municipalities. The fares charged by Metrorail are approved by the DoT. With respect to Gautrain, the Inquiry has learnt that its fares are determined in terms of a concession agreement between Gauteng Provincial Government and Bombela (private partner).

32 Minibus taxis – Submissions to the Inquiry indicate that fares for the minibus taxis are not regulated and are determined per route for all operators by taxi associations executive committees with the mutual agreement with their members. The Inquiry has learnt that there are two main fare structures (i) a uniform/‘flat’ fare structure where a single fare is charged despite the distance travelled (this is particularly common in Free State, Bloemfontein and Northern Cape, Kimberley) (ii) distance-based fare structure where a fare based on the distance travelled. Whilst taxi associations assert that fares for minibus taxis take into account affordability by commuters among other operating costs, some commuters that made submissions to the Inquiry are of the view that the fares are high and that government should play a pivotal role in the determination of fares for minibus taxis.

33 Traditional metered taxis – Section 66 (3) of the NLTA makes a provision that the Minister or MEC may, in consultation with the relevant authority, determine a fare structure for metered taxi service and such fare structure must be published in the Provincial Gazette. In addition, most of the metropolitan municipalities have by-laws governing the tariff structures for the metered taxis). The Inquiry learnt that in practise, all spheres of government are not regulating fares at all

and metered taxi associations or individual operators determine their fares. On the other hand, app based taxi operators use surge pricing system (“sometimes referred to as dynamic pricing”) where fares are determined based on demand and supply when the service is required. In other words, prices charged by e-hailing operators increase during periods of high demand such as evenings and weekends, special events or adverse weather conditions.

- 34 With regards to buses, there are two scenarios, subsidised and unsubsidised buses. For subsidised buses, fares are determined in the contracts between government and the operator with annual fare increases indicated. In the case of BRT and municipal buses, fares are determined by municipalities as part of the budget process and in terms of their fare policy. For unsubsidised commuter bus operators that operate within a town, the determination of the fares varies from town to town. Others have indicated that fares are determined at the association level based on the operating costs incurred by the operators. The Inquiry has received submissions alleging that unsubsidised bus operators in some parts of the country charge lower fares compared to the minibus taxis and this often results in conflicts.
- 35 Intercity bus operators submit that they determine their fares based on operating costs which reflect cost per kilometre travelled. Most of the bus operators in this market have differential pricing structures for peak and off peak periods.
- 36 In terms of the price setting mechanisms, the Inquiry requires submissions on the following issues:

#### *Taxis*

- 36.1 The decision making process within taxi associations on fare determination;
- 36.2 The underlying factors why there is lack of formal means of calculating the fare level for different routes by different taxi associations;
- 36.3 What is the rationale for surge pricing by app-based taxi services and whether such practise does not harm commuters by charging high fares?

#### *Buses*

- 36.4 The fare determination by unsubsidised buses;
- 36.5 The rationale of bus operators increasing prices during peak season as compared to off peak periods;

#### *All transport modes*

- 36.6 Does the differences in pricing mechanism impact on competition between the different modes of public transport?
- 36.7 Broad comments on the efficiency or inefficiencies of price setting mechanisms in the public transport industry (per each mode).

#### **ToR 4: Allocation of operational subsidies**

- 37 The main objective of public transport subsidies is to ensure that all South Africans, including the poor and unemployed, have access to affordable public transport. In South Africa, different types of subsidies are given to the following modes of public passenger transport in varying degrees: passenger rail services provided by PRASA and Gautrain, municipal bus services provided by various metropolitan municipalities, contracted commuter bus services provided by private

operators who have entered into contracts with respective provincial governments; BRT provided by various private operators through contracting with the provincial and local government.

- 38 Submissions and stakeholder engagements revealed that all forms of taxis (minibus taxis<sup>3</sup>, metered taxis, and app-based services) and intercity buses<sup>4</sup> are not subsidised by government. Different spheres of government provide different subsidies to the bus industry. Municipal buses are subsidised by their respective municipalities as their operational costs are always above the revenue that they generate from commuter fares. With respect of contracted bus services, provinces get into contractual agreements with operators to provide services on specified allocated routes at a lower cost to commuters. The BRT systems, such as Rea Vaya, are subsidised both by national government and the City of Johannesburg. The national government is responsible for infrastructure funding. With respect to rail, the Inquiry has learnt that commuter rail system is funded by the DoT and receives subsidies in the form of current and capital subsidy for PRASA and ridership guarantee in the case of Gautrain.
- 39 The Inquiry has received submissions that allege that the lack of subsidies for minibus taxis affect their ability to compete effectively with other modes of public passenger transport, in particular rail and buses. For minibus taxis to be competitive, the industry sacrifices some services such as maintenance and insurance if the minibus taxi has been fully paid up. In turn, this impacts on the safety of commuters.
- 40 In instances where there are subsidised services as indicated above, the Inquiry has also learnt that there are different subsidy levels per each mode of public transport. In light of the above, the Inquiry still requires submissions on:
- 40.1 What is the motivation by the government for extending operating subsidies to other modes of transport and not the minibus taxis given that the latter constitute the biggest mode of transport?
  - 40.2 The effectiveness of subsidised modes of public passenger transport in provision of public passenger services to the poor and the majority of South Africans;
  - 40.3 Are subsidies benefiting the majority of the poor given that the subsidised services have limited accessibility compared to minibus taxis?
  - 40.4 What is the impact of subsidies on competition between different modes of public transport?

## **ToR5: Transport Planning**

- 41 The Inquiry has observed from various submissions and engagements with different stakeholders that the responsibility of transport planning for different land based transport modes is fragmented between different spheres of government and government entities. Therefore, transport planning occurs in all three spheres of government. Each sphere has distinctive roles and responsibilities, but they also have interdependent functions. In addition, national government has been engaged in a process to review the 1996 White Paper and on the 1<sup>st</sup> of March 2018 Cabinet approved the Draft Revised White Paper on National Transport Policy to be published for public comment. The government also published the National Land Transport Strategic Framework (“NLTSF”) in 2017.

---

<sup>3</sup> With the exception of the Taxi Recapitalisation Programme

<sup>4</sup> The only exception is Autopax which is a subsidiary of PRASA

- 42 The Inquiry has learnt that in terms of the NLTA, municipalities are assigned the role of transport planning authorities. However, submissions from stakeholders indicate that there is lack of capacity in municipalities (and sometimes provinces) to prepare meaningful and well researched transport plans thus leading to the slow or inadequate implementation of transport plans. In instances where local government is unable to undertake transport planning functions, the province may take up that role which would lead to the province being both a planning and issuing authority in terms of operating licences. This scenario has been identified by some stakeholders as a mechanism by some of the PREs enforcing moratoria on the issuing of operating licences with the municipalities playing no active role. Submissions to the Inquiry describe this scenario as the PRE playing the role of a referee and a player at the same time. From the submissions, it appears that the letter of recommendation required from the municipality for purposes of applying for an operating licence is redundant.
- 43 The introduction of the Integrated Rapid Public Transport Networks (“IRPTNs”) incorporating all modes of public transport services in large cities, appropriate district and local municipalities has been progressing and form part of municipality’s Integrated Transport Plan. Submissions to the Inquiry still allude to limited capacity at some of the municipalities to implement IRPTNs.
- 44 In relation to the above observations the Inquiry requires stakeholders to make submissions with regard to the following among other things:
- 44.1 What is the current status in terms of implementation of the proposed IRPTNs?
  - 44.2 What are challenges that have been encountered by stakeholders or by different spheres of government in the implementation of the IRPTNs and the development of ITPs?
  - 44.3 What measures can be put in place to ensure that capacity is developed for the successful implementation of the IRPTNs and the development of ITPs.

#### **ToR6: Transformation**

- 45 The Inquiry has gathered information that indicates that there may be lack of transformation in most parts of the value chain in the public passenger transport industry. In particular, it has been submitted that transformation in the industry has not reached the desired levels as envisaged by government.
- 46 In the bus industry, it has been submitted that the main impediment to transformation has been the lack of progress in the tender system for bus contracts. Because no contracts have been put to tender from 2002, no new operators, particularly small and medium black operators, have been able to compete for that market. This has a bearing on transformation as the large incumbent operators continue to benefit from long term contracts while small operators are prevented from participating in the contracting system. In addition, most of the inputs such as chassis and bus bodies are being provided by entities that have low levels of transformation. Due to high capital expenditure, some of the items are imported. The rail industry exhibit the same characteristics as most of the significant inputs in the value chain are imported.
- 47 In the taxi industry (inclusive of minibus, metered and app-based), while the operators are largely black Africans, the ownership across the value chain has not yet transformed, for instance, in the procurement of inputs (financing of vehicles, vehicle dealerships, spare parts suppliers, fuel suppliers).

- 48 The Inquiry requires stakeholders to make submissions with respect to the following among other things:
- 48.1 Identify the top 5 critical inputs for each mode of transport including the suppliers (for taxis, buses and rail);
  - 48.2 What are the existing bottlenecks for transformation across the value chain? How best can meaningful participation of historically disadvantaged individuals be achieved in the industry?

## **OTHER EMERGING ISSUES**

### ***The implementation of BRT and its effect on the renewal of taxi operating licenses***

- 49 The introduction of the BRT system in some municipalities has presented a number of challenges, especially for taxi operators. The introduction of BRT was approved by government in March 2007 through the adoption of the Public Transport Strategy. Municipalities were required to implement the BRT system as part of their ITPs, which would ultimately lead to the integration of different modes of public passenger transport. The BRT system has features similar to those of light rail system, which makes it much more reliable, convenient and faster than regular bus services. These features include dedicated lane and busway alignment, off-board fare collection and platform-level boarding. The Inquiry has learnt that in the planning phase of the BRT, section 41 of the NTLA requires municipalities to engage or negotiate with affected taxi operators with a view of integrating them into the BRT system. To achieve this, various metropolitan/ district municipalities, notably the City of Johannesburg, the City of Cape Town, Nelson Mandela Bay Metropolitan Municipality, eThekweni Municipality and the George Municipality, have engaged in negotiations with minibus taxi operators and privately owned bus operators operating on routes earmarked for the operation of BRT/ IRPTN buses. These negotiations have culminated into the conclusion of 12 year contracts in terms of which the affected operators have been given shares in companies that operate BRT/ IRPTN buses, and those who have refused to accept the contracts have been compensated in exchange for exiting their routes. Operators who have refused to accept compensation and 12 year contracts have been advised that their operating licenses will not be renewed once they expire.
- 50 Stakeholders have indicated that the main problem with the implementation of BRT is that it prevents taxi operators (who do not wish to be part of the BRT operating company) from competing with the BRT system as PREs are refusing to renew or grant operating licenses to operators intending to operate on routes covered by the BRT. In addition, stakeholder engagements have also revealed that the BRT system is costly, inefficient and does not attract enough passengers. In this regard the Inquiry requests submission that address the following issues:
- 50.1 Implications of Government's policy with respect to BRT on competition;
  - 50.2 The suitability of BRT in smaller cities;
  - 50.3 What options are available to promote integration between BRT and taxis?

### ***Access to finance for taxi operators***

- 51 The Inquiry has received a number of submissions stating that financiers that provide vehicle finance for minibus taxi operators are charging high interest rates thereby abusing their dominance in contravention of the Competition Act. To this end, the Inquiry will consider submissions indicating the impact of such interest rates to the sustainability of the taxi businesses.
- 52 In addition to the high interest rates, submissions should outline the process followed by the minibus taxi operator to access financing, the choices operators have in the financing market, the insistence by financiers for operators to take on additional ancillary services (such as insurance) and the likely impact of such ancillary services to the operators' ability to repay debt. In other words, submissions should include all the major hindrances imposed by the financiers to the operators.

### ***Access to infrastructure and terminal facilities***

- 53 Stakeholder engagements suggest that access to infrastructure could be a barrier to entry into the provision of public passenger transport services. The nature and the importance of access to infrastructure differs per mode. In relation to buses it is alleged that PRASA is refusing to provide access to its bus terminals to other bus operators. It is also alleged that PRASA charges higher prices to bus operators for accessing its bus terminals. Furthermore, it is alleged that Autopax, a division of PRASA is not required to pay for using the said terminals and this affects the competitiveness of other bus operators in the provision of intercity bus services.
- 54 In relation to minibus taxis, the most important facility or infrastructure required to operate as a minibus taxi is the taxi rank. The information at the Inquiry's disposal indicates that the taxi ranks in South Africa are owned by municipalities. However, access to these facilities by emerging taxi operators is influenced by the other taxi operators (or taxi association).
- 55 Having considered all of the above, the Inquiry still has to assess issues relating to access to taxi ranks and their effect on entry in the minibus commuter taxi services. Furthermore the issues relating to access to infrastructure owned by State and infrastructure controlled/owned by private companies still needs further probing. The Inquiry will therefore require further submissions on how these issues impact operator's competitiveness and how the practise can be remedied.

### ***Long term contracting between government and bus operators***

- 56 The White Paper of 1996 envisaged that the principle of "competition for the market and not in the market" be implemented through the contracting system in the commuter bus industry. However, the Inquiry has established that there has been a moratorium on competitive tendering since 2002, which has meant that contracts are negotiated with incumbent operators or simply allowed to run past their expiry dates on a month to month basis. In some instances, it appears that these contracts are with the same operators who had life-long permits to operate bus services in the previous dispensation. Since 1996, there have been no new contracts that have been entered into. It has been alleged that this limits the participation of small bus operators in the formalised subsidised regime. It thus appears that the provision of commuter bus services has been characterised by long term contracts which are likely to restrict entry in the market and restrict other operators from expanding in the market. This issue requires further probing by the Inquiry and submissions relating to the impediments faced by government in reforming this

procurement practice are required. Further submissions on the impact of these long-term contracts on potential entry and its impact on the overall competition will be required.

57 The Inquiry has also received submissions from stakeholders alleging that the current contracting system is unfair and discriminatory. It is alleged that government allocates a higher subsidy to urban areas and provinces whilst operators operating in rural areas are funded by the provincial governments' budget at a lower rate. It is submitted that the negotiated commuter transport contract is divided into urban (economic) and rural (socially motivated) contracts. The regularity, sustainability and value of subsidy contract are therefore materially and substantially different between the two. The Inquiry requests submissions on the following:

57.1 What are the impediments to the competitive bidding process by government?

57.2 The impact of the lack of competitive bidding on entry and expansion of bus operators, especially the small operators.

### **Commuter experiences**

58 The Inquiry has received a number of submissions from members of the public highlighting their challenges with public transport. Specifically, the following issues were raised: extended waiting time (especially for rail); cost of public transport being exorbitant, excessive walking distance to access public transport (especially for buses in rural areas), extended periods of time spent on the road due to unreliability of some modes of transport. The Inquiry requests submissions that reflect commuter experiences from both rural and urban areas.

## **SUBMISSION GUIDELINES**

The deadline for all written submissions is **25 May 2018**. The deadline for expression of interest to participate in the public hearings is **18 May 2018 (complete form PPT1 available on the link [www.compcom.co.za/public-passenger-transport-market-inquiry/](http://www.compcom.co.za/public-passenger-transport-market-inquiry/))**

**All submissions should be directed to:**

**Email: [PPT@compcom.co.za](mailto:PPT@compcom.co.za) OR**

|  |  |
|--|--|
| <b>Postal address:</b><br>Public Passenger Transport Market Inquiry,<br>Private Bag x23,<br>Lynwood Ridge,<br>Pretoria<br>0040 | <b>Physical delivery:</b><br>Public Passenger Transport Market Inquiry,<br>Block 2B, 4 <sup>th</sup> Floor<br>Trevenna Campus,<br>55 Meintjies Street,<br>Sunnyside, Pretoria, |
|--|--|