

7. Non-Pricing Regulation

7.1. Market participants raised the regulatory environment as a key concern. This is due to perceived overlaps amongst different regulators operating in the sector. The perceived lack of regulatory certainty has been cited as a barrier to entry and/or expansion. Aspects like the licensing process and the various safety standards in place were highlighted in this regard.

Overview of regulation of LPG in South Africa

7.2. The LPG sector has a myriad of regulations and licensing requirements at different levels of the value chain. To be active at the different levels of the value chain, a firm has to adhere to the relevant regulations and licensing requirements. The main regulatory bodies in the sector are the DoE, the DoL and NERSA. Other bodies like the municipalities also play a role.

7.3. Non-pricing regulation covers a broad range of aspects like safety, environmental aspects, licensing and trading. Aspects like the construction and licensing of import facilities are also included. Various regulatory bodies regulate these aspects. Table 9 summarises the different regulators and their mandates in the LPG sector, followed by a detailed discussion.

Table 9: Overview of regulators operating in the domestic LPG sector

Regulator	Regulation mandate	Comments
Department of Energy	Petroleum controller licence, pricing regulation, policy formulation	The DoE is mandated to regulate the buying and selling of petroleum and petroleum products. In addition, the DoE also issues licences across the value chain such as wholesale and retail licences.
National Energy Regulator of South Africa (NERSA)	Tariff applications, LPG storage, handling and construction licences	It should be noted that NERSA is not involved at the retail level.
Transnet National Ports Authority (TNPA)	Port land licencing	Under its mandate, TNPA may also grant licences for the construction of facilities around port confines.
Department of Labour	Occupational health and safety	None

Regulator	Regulation mandate	Comments
Department of Environmental Affairs	Environmental authorisation	The DEA is mandated to conduct EIA studies. Although the Department of Environmental Affairs is largely responsible for EIAs, there are other licences and permits issued outside the DEA that form part of an environmental assessment. This would include, inter alia, water use licences from the Department of Water Affairs, a blasting permit from the Department of Minerals if necessary, and a heritage permit from the South African Heritage Resource Agency.
Municipalities	Emergency Services by-laws	Municipalities are mandated to ensure site plan evaluation and approval prior to installations; dangerous goods certification and general community safety adherence Emergency Services By-laws, 2003 in accordance with their respective municipality by-laws

Role of each regulator

7.4. The roles of the regulators operating in the sector are outlined:

The Department of Energy (“DoE”)

7.5. The DoE is mandated to regulate the buying and selling of petroleum and petroleum products.⁷⁸ This mandate also includes the pricing of petroleum and petroleum products, as stipulated in the Petroleum Products Act. LPG is included within the ambit of the Petroleum Products Act, as petroleum products are defined as “*any liquid petroleum fuel and lubricant, whether used or unused*”.⁷⁹ As both a policymaker and economic regulator for the liquid fuels sector, the DoE is responsible for the drafting, reviewing, implementation, monitoring and enforcement of policies and legislation in pursuance of energy security for the achievement of the country’s strategic objectives.⁸⁰

7.6. Some roles outlined in the Energy White Paper Policy include the development of the LPG sector, the transformation of the petroleum sector, ensuring the security

⁷⁸ Petroleum refers to crude oil and petroleum products.

⁷⁹ Information to assist licence applicants to file licence applications in terms of the Petroleum Pipelines Act, Act No. 60 of 2003. Dated November 2013.

⁸⁰ Refer to DoE Submission, p2, dated 15 June 2015

and diversity of petroleum product supply, monitoring LPG supply disruptions along the value chain, and recommending LPG importation conjointly with the International Trade Administration Commission of South Africa. Besides developing the LPG sector, the DoE is mandated to enforce several Acts along with regulating the prices charged at different levels of the value chain. The latter refers to the MRGP regulation of 2008, the MRP regulation of 2010 and wholesale licensing.⁸¹

National Energy Regulator of South Africa (“NERSA”)

- 7.7. NERSA’s specific mandate in the LPG sector is limited to the approval of applications for construction and operation licenses. It also approves the tariffs for using LPG storage and handling infrastructure. It is granted these mandates under the National Energy Regulator Act, the Petroleum Pipelines Act and the Gas Act.

Transnet National Ports Authority (“TNPA”)

- 7.8. The TNPA, under the National Ports Act, may grant concessions to infrastructure developers within port boundaries administered by the TNPA.⁸² The TNPA has 90 cargo terminals countrywide, of which 42 terminals are dedicated to liquid bulk. Not all liquid bulk terminals are exclusively used for LPG. The existing liquid bulk terminals are dominated by the handling of crude oil, petroleum products and other liquid bulk cargoes. The TNPA specifies, as part of the “use of premise” clause and in terms of the terminal operator licence, the “types of liquid bulk” to be handled at each terminal. Further, the TNPA imposes minimum throughput to develop and promote using liquid bulk terminals.⁸³

Department of Labour (“DoL”)

- 7.9. The DoL acts as the custodian of the Occupation Health and Safety Act, (“OHS Act”) and the Pressure Equipment Regulations of 2009. The OHS Act applies in the LPG sector in terms of the health and safety of a person at work, in general, and in connection with their operation of machinery, in particular. Regarding pressure equipment regulations, the OHS Act applies to the design, manufacture, operation, repair, modification, maintenance, inspection and testing of pressure equipment with a design pressure equal to or greater than 50 kilo Pascal.⁸⁴

81 Refer to DoE submission, para 2.2, p2, dated 01 June 2015

82 Refer to NERSA submission, para 2.1, p3, dated 12 May 2015

83 TNPA model liquid bulk terminal operator licence, para 14.1., dated 14 December 2015

84 Refer to DoL submission, para 2.2., dated 19 April 2015

- 7.10. As stated above, the DoL is mandated to regulate equipment pressure to ensure the safe use of LPG.⁸⁵ The schedule of incorporated standards includes SANS 347, 10019, 10087, 1539, 1237 and 329. The DoL also provides guidelines to specific LPG associations to assist them in implementing its mandate. The SAQCC is authorised to register LPG installers, whereas the LPGSASA is authorised to perform the verification and acceptance of all LPG appliances.
- 7.11. The DoL appoints inspectors to undertake the enforcement and monitoring of the OHS Act and its regulation. The duties of these inspectors include gas station audits, physical inspections and ensuring the compliance of stakeholders with the regulations. There have been instances where the DoL imposed penalties for non-compliance amounting to R500 000 of the legal fees accrued.⁸⁶

South African Qualification and Certification Committee ("SAQCC")

- 7.12. The SAQCC is a non-profit company officially appointed and mandated by the DoL to establish a central database of registered and authorised gas practitioners working on gas and gas systems in terms of Regulation 17 (1) of the Pressure Equipment Regulations. The following gas industry bodies founded the SAQCC: the LPGSASA, the Southern Africa Compressed Gases Association, the South African Refrigeration and Air Conditioning Contractors Association and the Southern African Gas Association.⁸⁷ SAQCC Gas's main function in the LPG sector is to register competent installers trained under the LPGSASA ITCC.
- 7.13. Membership is conferred after completing and passing the required theory course for the particular type of installation and then registering as a temporary installer to prepare a portfolio of evidence for full registration with the SAQCC. The temporary installer will undergo a mentorship programme for 12 months. After the installer has compiled a portfolio of evidence under the guidance of a mentor, the SAQCC LPG Committee evaluates the portfolio for registration. Once registration is confirmed, it applies for three years. The SAQCC has 928 accredited installers from the LPGSASA.

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Ibid.

86 Refer to DoL submission, para 7.5, p2, dated 19 April 2015

87 Retrieved from <http://saqccgas.co.za/> [Accessed: 18 November 2015]

Department of Environmental Affairs (“DEA”)

- 7.14 The DEA’s role is to develop and ensure implementation of national environmental policies, strategies, plans and laws for key prioritised environmental issues to protect the environment and ensure that developments are sustainable.⁸⁸ The National Environmental Management Act, Act No. 107 of 1998 (“NEMA”) is the main legal framework, supported by the specific Environmental Management Acts. Any activity conducted by the LPG sector that poses a specific regulated environmental threat will require a permit, a licence or authorisation from the DEA.
- 7.15. For the LPG sector, the environmental impact assessment (“EIA”) process involves the identification, prediction and evaluation of actual and potential impacts on the environment, socio-economic conditions and cultural heritage sites. The process pinpoints risks and consequences along with alternatives and options for the mitigation of environmentally damaging activities, with the intention to minimise the negative impacts, maximising the benefits, and promoting compliance. The assessment is executed under Section 240 of the NEMA, and includes a basic content assessment report, a scoping report and an environmental impact report.⁸⁹

Municipalities

- 7.16. Municipalities participate in the LPG sector through the mandate outlined by the emergency services by-laws⁹⁰, the National Building Regulations and Building Standards Act with the Occupational Health and Safety Act. Its primary role in the LPG sector is to ensure site plan evaluation and approval prior to installations, recommend and process dangerous goods certification where necessary and to ensure the general community safety adherence to Emergency Services By-laws (2003) under with their respective municipality by-laws.⁹¹
- 7.17. Other departments provide supporting roles in the processes undertaken by the regulators listed. These include the Department of Water Affairs and the Department of Mineral Resources.

88 Refer to the DEA submission, para 3.1., p1, dated 11 December 2015

89 Refer to DEA submission, para 3.1., p1, dated 11 December 2015

90 Such as the bylaws related to community safety - City of Cape Town March 2015 submission, p2.

91 Refer to City of Ekurhuleni March 2015 submission (pp3-7), City of Cape Town March 2015 submission (pp2-7)

Concerns arising from the non-pricing regulation framework

Wholesale licensing requirements

- 7.18. The requirements for a wholesale licence include⁹²: (i) The payment of licence fee of R1 000 (ii) The provision of a list of all storage and distribution facilities intended to be used, including shared storage and distribution facilities, and (iii) A business plan outlining investment plans.
- 7.19. The key concern regarding the wholesale licensing process is the requirement for a business plan outline future investment plans in the necessary infrastructure to operate LPG activities. Specifically, market participants argued that many rogue traders do not undertake this investment⁹² and the DoE does not perform the necessary inspections on businesses after they are granted a license to determine whether or not the investment has taken place.⁹² In some instances, these rogue traders operate without a licence.
- 7.20. Market participants are of the view that the DoE issued several wholesale licences with the bulk of the licensees not having effective operational activities on the ground.
- 7.21. The licence requirements discussed above are meant to reduce barriers to entry for smaller players, however, if not properly monitored and verified after issuing the license, do not sufficiently encourage the level of investment required in the sector.
- 7.22. The Commission also found the holders of DoE wholesale licences owning storage facilities, as defined in the Petroleum Pipelines Act (“PPA”), also require licensing by NERSA. This creates an additional burden to wholesalers to approach multiple regulators that might act as a disincentive to investment. NERSA is also involved in licensing import, loading and storage facilities for market participants including wholesalers. It would appear that these licensing requirements could be housed under one regulator ensuring streamlined services and reduced delays.

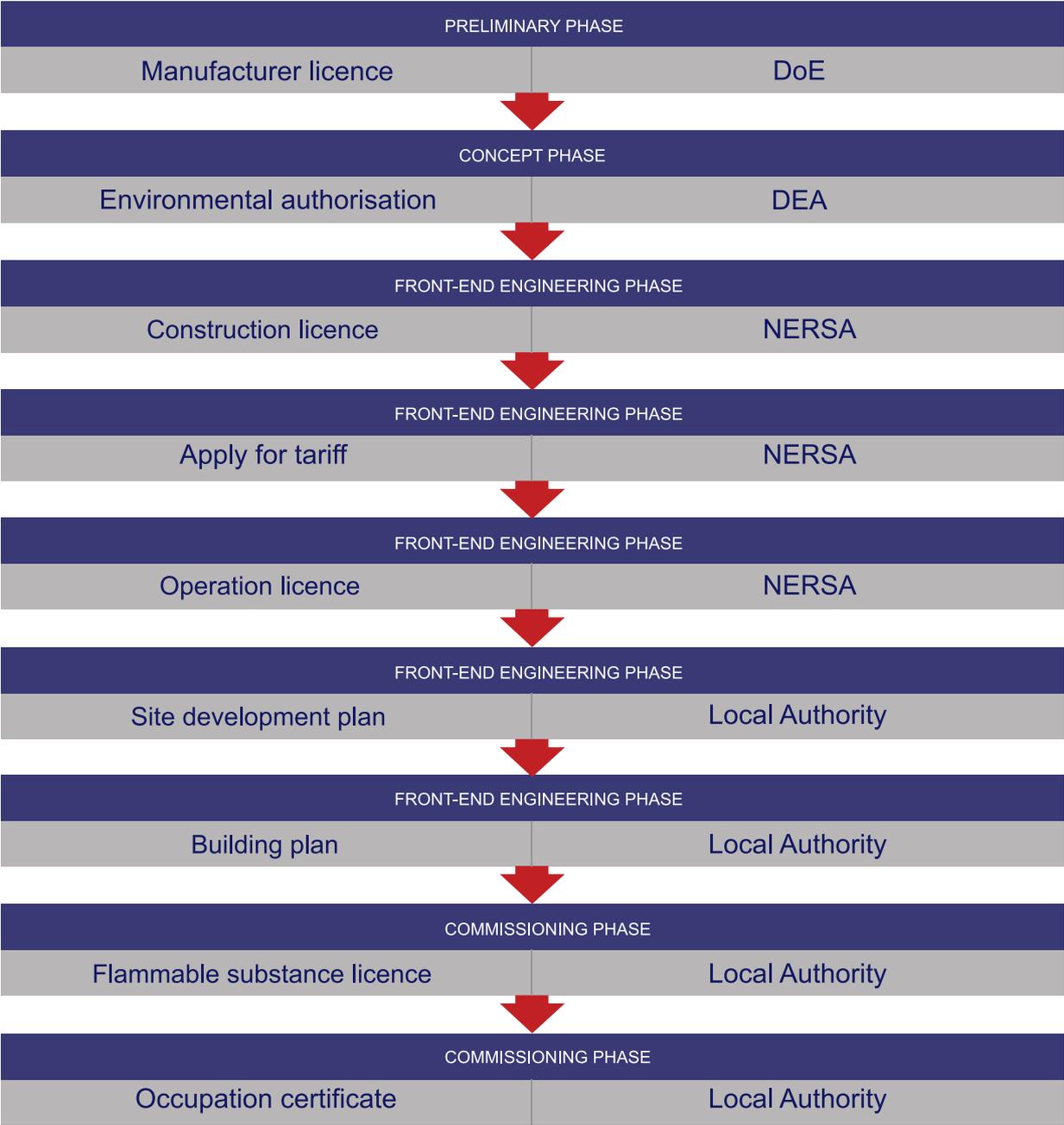
Infrastructure related licensing

- 7.23. A key concern highlighted by a few market participants is that the regulatory framework in place in the LPG sector acts as an additional “burden” to investors and may be a contributing factor to the lack of investment observed in the sector. This particularly applies to infrastructure licencing because of a high number of regulators involved in the sector that may have overlapping jurisdictions, leading to projects being stalled. For example:
- 7.23.1. The tariff approved by NERSA as part of its mandate to grant construction and operating licences does not constitute an element in the MRGP pricing build-up calculated by the DoE.
 - 7.23.2. The TNPA may grant concessions to infrastructure developers within port boundaries administered by the TNPA. These concessions may conflict with the tariffs approved by NERSA in its licensing applications, leading to the projects being stalled due to a mismatch between the two regulators.
- 7.24. [X] states, even though the sector is subject to many regulations, these regulations “do not create an insurmountable barrier to entry” as all market participants are subject to them. [X] Notwithstanding [X] view, the Commission considers the overlapping jurisdictions as a potential barrier to entry.

Licensing and regulatory clearance process

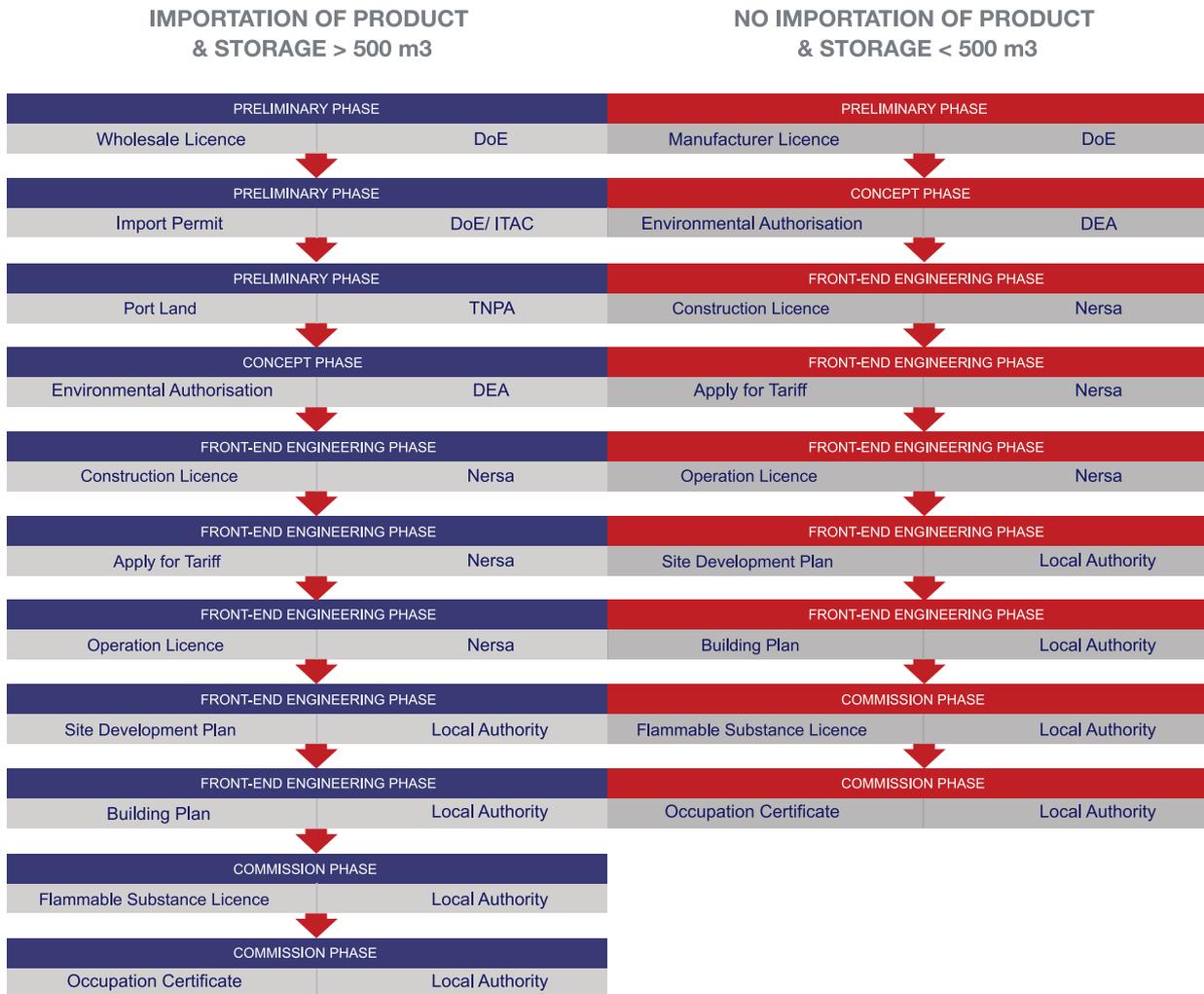
- 7.25. Several market participants alluded to the time it takes to acquire key licences and regulatory clearance (particularly for operating licences across the value chain) as a potential barrier to entry.
- 7.26. The Commission estimated where a manufacturing licence is required, it could take up to 46 months to obtain regulatory clearance through all the licences and permits required for LPG manufacturers. Figure 18 provides an illustrative example of the steps required to obtain a manufacturing licence.

Figure 18: Main regulatory steps to acquire a manufacturing licence



7.27. A wholesale licence and an import permit are critical for wholesalers to operate effectively in this sector. Figure 19 depicts the process that a wholesaler has to follow to be licensed.

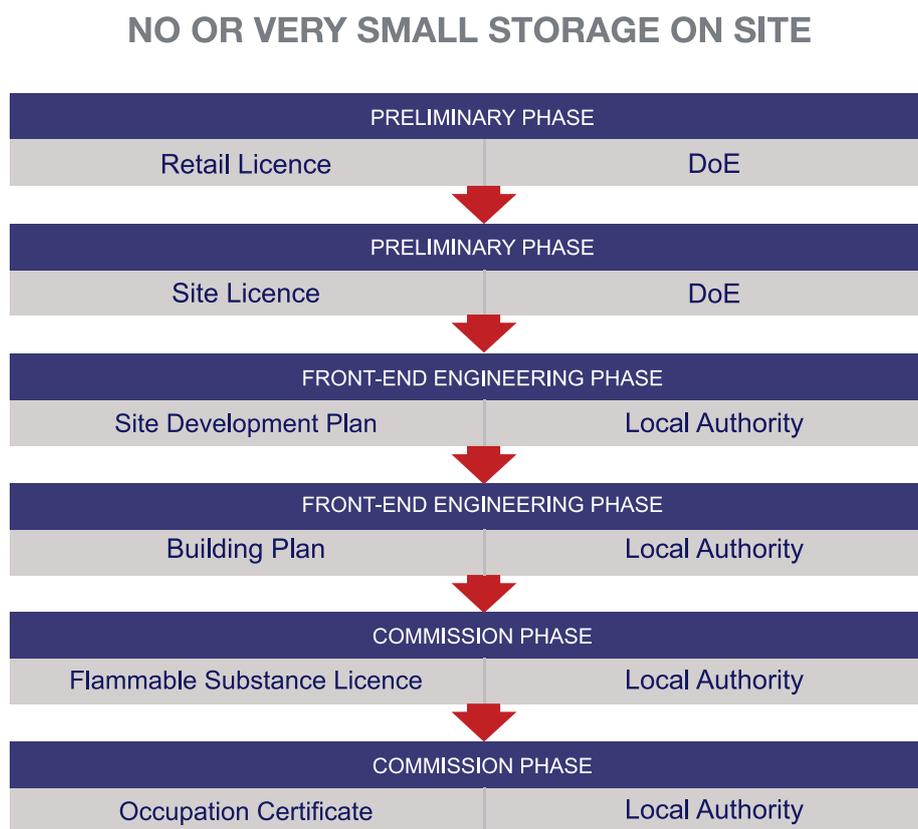
Figure 19: Main regulatory steps to acquire a licence and permit for LPG wholesalers



7.28. The Commission estimates that it can take over three years for a wholesaler to start operating from scratch, as heavy administration and long reviews hinder the process.

7.29. A retail licence applicant will face a significantly reduced infrastructure scale. Consequently, a shorter timeline is required to start operating as a retailer. The Commission estimates if all procedural matters were handled within the statutory periods, a retail licence applicant with a very small storage on site could be operational within seven months of submitting its application. Figure 20 depicts the application procedure for a licence and permits for potential LPG retailers.

Figure 20: Main regulatory steps to acquire a licence and permits for LPG retailers



Regulatory Overlaps and Misalignment

- 7.30. The Commission examined the extent to which the LPG sector is marred with regulatory overlaps and misalignment of regulations given the numerous regulatory authorities mandated to operate in the sector. There are several overlaps particularly related to infrastructure development. These overlaps and misalignments contribute to regulatory uncertainty, threaten security of supply and act as a bottleneck for expansion and growth of the LPG sector.

- 7.31. The Commission obtained the views of the relevant regulatory authorities on the perceived regulatory overlaps in the LPG sector. The DoE believes that the current legislative and regulatory frame is clear and there are no overlaps with any other government body for implementing its policy.⁹³

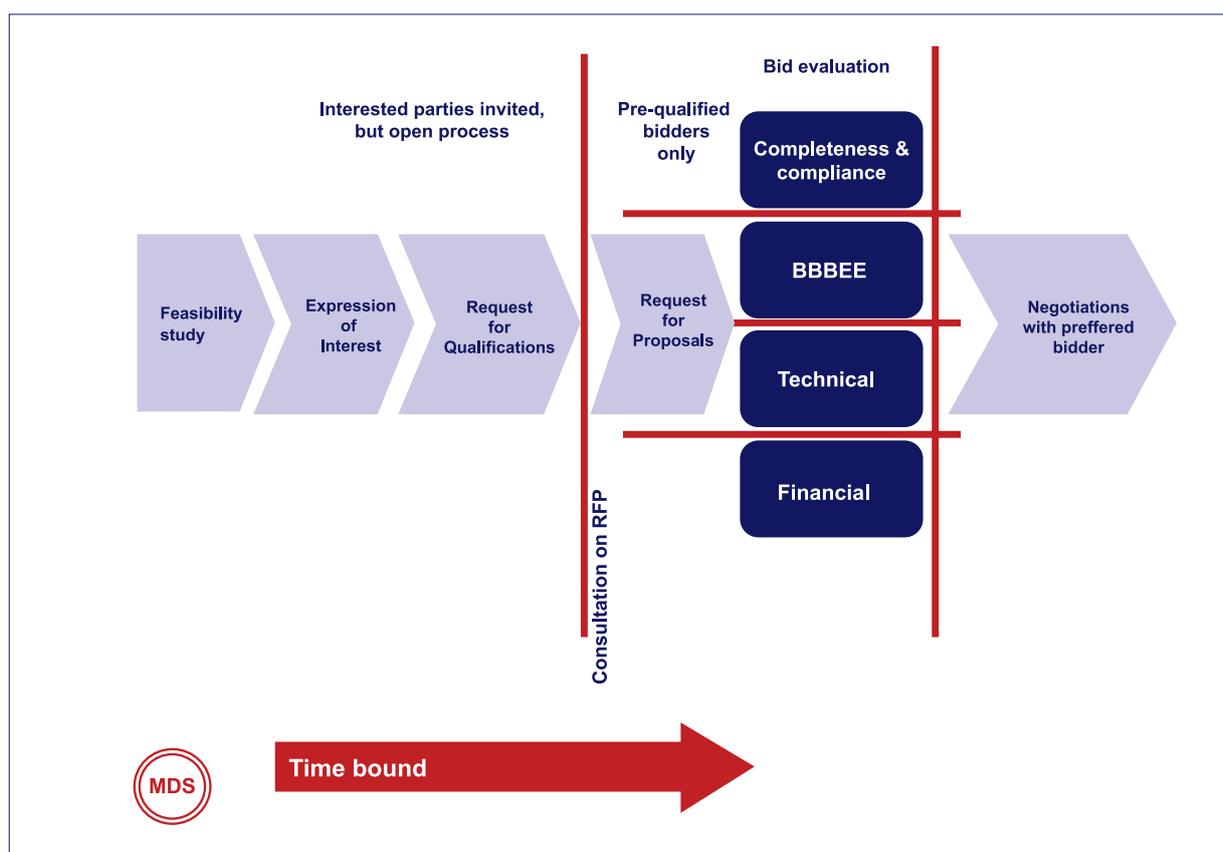
- 7.32. There is an overlap with the activities of NERSA, in its enforcement of the National Energy Regulator Act, the Petroleum Pipelines Act, and the Gas Act and the legislation governing the activities of the TNPA. The sequencing of approvals in the importation process is not aligned, throwing the application process into disarray.

93 Refer to DoE submission, para 2.3.2., p4, dated 01 June 2015

- 7.33. The National Ports Act empowers the TNPA to own, manage, control and administer ports to ensure their efficient, economic, safe and secure functioning. The regulatory functions of the TNPA are performed in the exercise of its control over port facilities, port services and other activities in the ports. The TNPA enters lease agreements with users of ports and issues licences and permits.
- 7.34. In terms of Section 56 (1) of the National Ports Act, the TNPA:
“... may enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of the agreement, is authorised to—design, construct, rehabilitate, develop, finance, maintain or operate a port terminal or port facility, or provide services relating thereto; ...”
- 7.35. The Petroleum Pipelines Act empowers NERSA to issue licences for the construction and operation of petroleum pipelines, petroleum storage facilities and petroleum marine loading facilities. The Petroleum Pipelines Act also instructs NERSA to set tariffs to be charged for using petroleum pipelines as well as approve tariffs to be charged for the use of petroleum storage facilities and petroleum marine loading facilities. ‘Petroleum’ is defined in the Petroleum Pipelines Act to include LPG.
- 7.36. Where the TNPA enters a Section 56(1) agreement with another entity for the latter to design, construct, rehabilitate, develop, finance, maintain or operate a port terminal or port facility, where the facility in question is a petroleum pipeline, storage facility or loading facility, the owner of such a facility (this could either be the TNPA or the other entity, depending on the agreement) will have to apply for a construction licence and an operation licence before such construction or operation can commence.
- 7.37. A NERSA licence recipient is prohibited by the Petroleum Pipelines Act from charging a tariff for using the facility other than that approved or set by NERSA. The NERSA tariff is a crucial element to consider when decisions on investment in petroleum facilities in ports are made.
- 7.38. Parties to these types of agreements must be mindful of Section 34 of the Petroleum Pipelines Act according to which any agreement that contravenes its provisions, conditions of a licence issued by NERSA, regulation, rule or directive issued under the Petroleum Pipelines Act, is void. Any agreement entered by the TNPA in terms of the Ports Act, must – if it involves the construction and operation of a port facility subject to regulation under the Petroleum Pipelines Act comply with the Petroleum Pipelines Act.

- 7.39. In terms of the National Ports Act, the TNPA may grant concessions to infrastructure developers within the port boundaries administered by the TNPA. The Transnet Board has decided to that all such concessions endure for a period of 20 years. The infrastructure developed at ports requires licensing under the Petroleum Products Act, with an element of overlapping jurisdiction. There are instances in which the TNPA has granted 20-year concessions through bidding rounds where the tariff to be charged was not part of the bidding process. TNPA focussed on the rent it could earn and when NERSA had to approve the tariffs, some of the tariff levels failed to meet investor expectation leading to projects being stalled.
- 7.40. There is also a mismatch between TNPA 20 year concession agreements and the Petroleum Pipelines Act regulations where the former incentivises recoupment in 20 years whereas the Petroleum Pipelines Act regulations only allow depreciation over the useful life of the asset. In most cases, the assets concerned have a useful life of longer than 20 years. NERSA licences are valid for 25 years in terms of the Petroleum Pipelines Act as opposed to TNPA's 20 year concessions. This misalignment can become a tariff issue, since the period to recover the investment differs. Each authority has its own licensing process and the sequencing of applications is important. Investors/developers ultimately need regulatory certainty.
- 7.41. Similarly, [redacted] identified that the infrastructure developments for LPG require licensing under the Petroleum Products Act, leading to a jurisdictional overlap with NERSA. Section 56 of the National Ports Act outlines the concession process that needs to be followed by the TNPA for infrastructure developments. Figure 21 outlines the process.

Figure 21: TNPA section 56 process



Source: TNPA September 2015 submission

- 7.42. The TNPA estimates the process in Section 56 should take three months. There are overlaps in the application process, as NERSA is mandated to approve import licences within 30 days, whilst the internal process of the TNPA may take up to 90 days.
- 7.43. In summary, the process is designed such that NERSA issues the licence and the TNPA is supposed to implement the recommendations. Due to a misalignment, the TNPA and NERSA processes deviate from each other, in that the TNPA confers terminals following a tender-based process, whereas NERSA issues licences following an application-based process.
- 7.44. The Commission found evidence of regulatory overlaps in the LPG sector. These overlaps in regulation may serve to increase regulatory uncertainty for potential entrants, as entering the industry would require approval from two or more authorities whose processes may be at odds with one another. Diagram 1 provides an illustrative example of the effect of these regulatory overlaps, based on observations made at the Saldanha Bay import facility developments.

Example of regulatory failure leading to significant delays

7.45. In 2010, the TNPA issued an invitation to interested parties to submit an expression of interest (“EOI”) for the funding, construction, installation, maintenance and operation of an LPG import facility at Saldanha Bay.⁹⁴ Avedia and Sunrise each submitted an EOI.⁹⁵ Thereafter, in December 2010, the TNPA issued a request for proposals (“RFP”), which was subsequently amended and re-issued in February 2011. In June 2011, Sunrise re-submitted its proposal to the TNPA for constructing the loading facility, comprising a central buoy mooring located offshore, which was to be connected to an undersea pipeline and LPG storage facility. This was done after Sunrise obtained a licence⁹⁶ from NERSA on 23 February 2011. Avedia did not submit a proposal, and it was only granted the two licences⁹⁷ by NERSA on 1 July 2014.

94 See Case No. 8267/2015

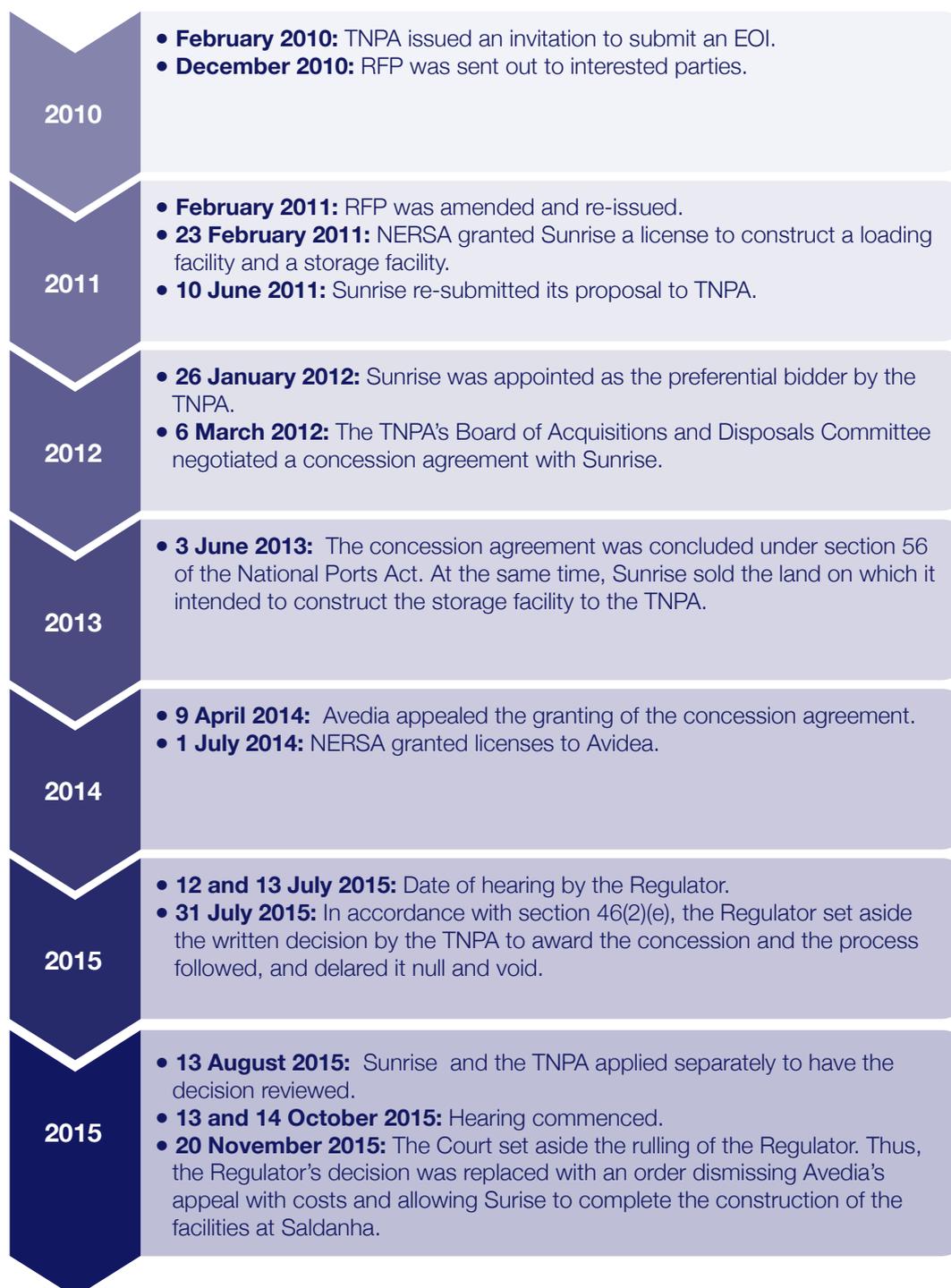
95 See Case No. 8267/2015

96 To construct a loading facility and a storage facility at the Port of Saldanha Bay

97 The first license was for the construction of a petroleum storage facility and second licence was for the construction of a petroleum pipeline.

7.46. Diagram 1 highlights some of the issues that resulted in the construction delays at Saldanha.

Diagram 1: Timeline illustrating delays in construction of Saldanha import facilities



- 7.47. In January 2012, the TNPA announced that Sunrise was the preferred bidder. As indicated in Diagram 1, Avedia did not submit a proposal, since its business model did not cater for such a process; rather, it operated based on the “build, own, operate, transfer” (“BOOT”) model.⁹⁸ Avedia did not intend to construct a berthing facility. It had intended building an LPG storage facility near the port.⁹⁹
- 7.48. On 3 June 2013, TNPA awarded an exclusive tender (concession agreement) to Sunrise based on the process outlined in Section 56 of the Ports Act. At the same time, Sunrise sold the land on which it intended to construct the storage facility to the TNPA, and NERSA amended Sunrise’s construction licence.
- 7.49. In opposition to the awarding of the concession agreement, Avedia complained that the exclusivity agreement signed by Sunrise and TNPA constrained any other market players that wanted to establish operations at Saldanha’s port terminal. In effect, it maintained that, this import facility was destined to operate as a regulated import terminal monopoly. Avedia appealed to have Sunrise’s terminal operating licence set aside by the Port Regulator, based on Sections 20(1)(e), (j), (k), (l) and (n) of the Petroleum Pipelines Act, under which common user access was allowed to the loading facility and pipeline in addition to uncommitted capacity for storage facilities, interconnection with the facilities of other licensees based on technical feasibility and costs paid by the user. Considering this, the Port Regulator found that the Section 56 concession TPNA had granted to Sunrise contravened the National Ports Act and the Petroleum Pipelines Act, and declared their agreement null and void. Consequently, Sunrise had to delay its construction process at Saldanha.
- 7.50. In August 2015, Sunrise and the TNPA separately applied for the Port Regulator’s decision to be reviewed by the High Court of South Africa (“the Court”). The Court found that the Port Regulator had failed to apply the principles of interpretation to interpret the meaning of ‘port user’ in the National Ports Act.¹⁰⁰ The Court noted that the Port Regulator was not supposed to have considered Avedia’s licences in its ruling, as NERSA only granted Avedia the licences after the ruling had been delivered. The issue of where the inter-connection was to take place was to be dealt with by NERSA in the exercise of its mediation and/or arbitration powers. Avedia was unaffected by the concession agreement concluded as it had not competed in the relevant tender process and NERSA had not granted any licences at the time. In light of the above, the Court dismissed the ruling of the Port Regulator and ruled in favour of Sunrise and the TNPA on 20 September 2016.¹⁰¹

98 The BOOT model entails that at the end of the project, the operator is obliged to hand over a fully functional and operating service to the State.
99 See Case No. 8267/2015.
100 See Case No: 8267/2015.
101 *Ibid.*

Key lessons emanating from the Saldanha Bay experience

- 7.51. The Saldanha Bay import facility developments illustrates the impact of the regulatory barriers and the lack of synchronisation of the TNPA and NERSA processes which led to protracted legal challenges. Due to legal challenges, it has taken almost seven years for the Sunrise port terminal development in Saldanha Bay to be completed. This indicates that the bidding process can be lengthy and can lead to delays in constructing port terminals. In addition, it appears that the regulatory hurdles create an environment not conducive to the effective and efficient construction of an import terminal and/or loading facilities. The necessary processes are not synchronised amongst the regulators in terms of jurisdictions and this creates uncertainty in the market. This matter requires immediate intervention to resolve the challenges highlighted above.

Regulatory overlaps in cylinder management

- 7.52. The Commission also considered the extent to which there may be perceived regulatory overlaps in the governing and monitoring of aspects relating to safety in the LPG sector. In particular, the Commission received several submissions expressing confusion about the relevant body mandated to monitor safety in the management of cylinders.
- 7.53. The DoL believes its mandate is clear as it concerns itself strictly with the safety of persons using LPG. In the DoL's view, concerns arising from safety issues in the sector do not necessarily require the intervention of only the DoL but that of all the stakeholders involved. The DoE stated there has been a perceived misinterpretation of the role of the DoE in cylinder management safety due to its promulgation of the cylinder deposit. To identify any complexities that might arise from the matter, the DoL (primarily responsible for cylinder management safety), has a strategic consultation with the DoE every quarter about cylinder management and other policy considerations.
- 7.54. The DoL provided an example of such a consultation by referring to a *le kgotla* organised in September 2015 to identify matters around the safe handling, storage, distribution and maintenance of LPG cylinders.

Commission's findings

Wholesale licensing

- 7.55. Holders of DoE wholesale licences owning storage facilities as defined in the Petroleum Pipelines Act also require licencing by NERSA. This creates an additional burden to wholesalers to approach multiple regulators that might act as a disincentive to investment. NERSA is also involved in licensing import, loading and storage facilities for market participants including wholesalers.

Infrastructure licensing

- 7.56. The LPG sector is fraught with a myriad of regulators, regulations and licensing requirements at different levels of the value chain. The regulatory environment is acting as an additional “burden” for investors. This is attributed to the high number of regulators involved in the sector that may have overlapping jurisdictions, leading to projects being stalled.✂ The stalling in the development of the much-needed import facilities provides an example of regulatory failure.
- 7.57. The misalignment in the duration of the TNPA concessions (20 years) and the NERSA licences (usually valid for 25 years) creates uncertainty for investors. In addition, TNPA could award a concession to a licensee and NERSA could refuse to grant the winner a licence to operate the facility. There are no existing legislative means to resolve such an impasse.
- 7.58. The length of time required to acquire key licences and pass all the necessary regulatory clearances is also found to act as a potential barrier to entry. The lack of effective monitoring by the regulators acts as a hurdle in the development and growth of the LPG sector.

Recommendations

- 7.59. The Commission recommends the following:
- 7.59.1. NERSA must be the regulator responsible for issuing wholesale licences and the monitoring thereof. NERSA is also involved in licensing import, loading and storage facilities for market participants including wholesalers.
 - 7.59.2. NERSA and the TNPA's adjudication processes should be aligned to avoid delays in the construction of import and storage facilities and resolve the issues identified. As an MOU has been signed between the two entities, the Commission recommends that it be used as a mechanism to give effect to this recommendation. In addition, there should also be a sequencing of legal processes.