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## COMPETITION COMMISSION RESPONSES

### SECTION A- BUSES

**A3. Section 57 of the National Land Transport Act of 2009 (“NLTA”) sets out a process for objecting as part of the operating licence application process. In your experience, what are the main reasons raised by operators during the objection process**

The process for objecting is set out in section 59 of the National Land Transport Act of 2009 and not section 57. In terms of section 59, the GPRT is mandated to publicize applications in the government gazette with a view to give interested parties the opportunity to comment or object to the applications. Interested parties are usually operators who conduct public transport services in the routes or facilities applied for. The main and most common reasons raised by **Objecting Operators (OO)** are as follows:

- The OO and other operators hold operating licenses to render services on the routes applied for and there is no demand for additional services.
- The applicant has not properly completed the standard application form in as far as it requires him/her to state why passengers cannot utilize the existing transport services and why the proposed services is necessary.
- The OO object to the granting of operating licenses in the circumstances where there is no need for the service on the route/s applied for and where public transport requirements are sufficiently serviced.
- The granting of the application will be contrary to public interest in that the market is oversaturated and further service will cause infrastructure breakdown because the market is already adequately serviced.
- The applicant failed to demonstrate his/her ability to operate the service for which an operating license is sought, in a manner satisfactory to the public.
- **A4. How widespread is the practice of objecting to new applications especially by large bus operators? Provide key statistics over 3 years.**

The practice of objecting to new applications interprovincial/ long distance applications is so prevalent that no application is processed without having gone through the objection process. All applications received and adjudicated by the Provincial Regulatory Entity (PRE) -since 2016 could not be concluded due to delays caused by objections hearings and subsequent appeals and other litigations against the PRE’s decision to grant applications.

**Statistics over a period of 3 years:**

The following information is relevant: APPLICANT	APPLICATION DATE	OBJECTOR	NUMBER OF APPLICATIONS APPROVED BY PRE	STATUS
1. David Bus Service		Intercape Ferreira Mainliner & Unitrans Passengers.	5	PRE-approved applications after objection hearing. The matters are still pending at Transport Appeals Tribunal
2. K2014		Intercape Ferreira Mainliner & Unitrans Passengers	6	Same as above
3. African Charter and Tours		Intercape Ferreira Mainliner, Unitrans Passengers and Autopax passenger services	23	Same as above
4. David Bus Service		Intercape Ferreira Mainliner & Unitrans Passengers	05	Same as above
5. Africa People Mover		Unitrans Passengers	21	PRE-approved applications subsequent to objection hearing. Applications are currently being processed. No appeal lodged.

**A5.** The table above reflect that all applications which were objected against but the PRE-granted. by the PRE-but the applications are still pending and that extends the period of finalization way beyond the legislated period, which is 60 days. (Refer to regulations 8 of the National Land Transport Regulations of 2009). In some cases, it takes more than a year to issue operating licenses and finalize applications.

**A6.** The PRE- is dealing effectively and decisively. See attached example of PRE- decision following a previous objection hearing. **See attached example of PRE decision following a previous objection hearing.)**

**A7.** Identify ways that can be utilized to balance the legal provisions in the NLTA (of objecting) with potential abuse of the objections process by the larger operators.

Section 2 of the National Land Transport Act of 2009 defines the purpose of the Act and among other things, it provides that the purpose of the Act is to further transformation in land transport. The Act does not however, provide specific regulations as guidelines towards the implementation of the transformation agenda in public transport. Instead, the same Act which advocate for transformation provide leeway for previously advantaged operators to create barriers against the entrance of competitors falling within the

previously disadvantaged group. With the market power and financial muscle, they possess, the objecting operators are readily empowered to frustrate the applicants and wear them off financially by exposing them to costly litigations.

Section 59 must be amended to include exception clauses which will assist giving effect to section 2 of the Act. The National Public Transport Regulator (NPTR) is mandated by section 21 to regulate interprovincial public transport, the function which is currently performed by the Provincial Regulatory Entities. If the NPTR was performing its function, it would be in a position to investigate the state of interprovincial public transport in terms regulations 9, and make a proper determination relating to allegations of market saturations as one of the arguments raised by the objecting operators. Without that NPTR taking over its responsibility, the current 'barrier imposing challenges' will not be effectively resolved, particularly because the PREs are operating under limited resources and are not well positioned to carry out interprovincial public transport investigations.

## **SECTION B – MINIBUS TAXIS**

### **B1. Please indicate the challenges that have been encountered by stakeholders or by different spheres of government in the implementation of the Integrated Rapid Public Transport Networks (“IRPTNs”) and the development of integrated transport plan (“ITPs”)?**

The process is governed by section 55 of the National Land Transport Act of 2009 which mandates the PRE- receive and refer intra/interprovincial bus applications, minibus taxi, meter taxi and certain other applications to the relevant municipalities/ planning authorities for their directions. Section 55 places a mandate on the municipalities to make determinations on the availability of routes, terminals and other facilities based on their integrated transport plans and provide PREs with directions on referred applications, for the PRE- to approve or reject them. Such directions are meant to assist the PRE- in appropriately dealing with the applications as mandated by section 55(5) and section 57. The function of identifying new routes therefore lies with the municipalities as the planning authorities and it is not a shared function with PREs. The PRE is indeed obliged to finalize the application where the municipality fails to provide responses to the PRE and that is in terms of section 55(6) of the Act. The PRE has faced myriad of lack of responses challenges from most of the municipalities and that led to accumulation of application backlog in cases where the PRE decided to avoid the risk of market saturation and exercise caution instead of disposing off applications. Applications were deferred for the purpose of engaging with municipalities with a view to solicit their directions and although this process is often helpful, it delays the finalization of the applications.

The purpose of the NLTA is to give municipalities a more essential role in shaping land transport. All state institutions are bound by the provisions of the Integrated Transport Plans for the respective areas. It is common practice in the minibus-taxi industry for associations to go out on recruitment drives to attract new members despite routes being overtraded. New members are often charged exorbitant membership fees and this creates the concomitant expectation that an operating license or permit will be issued to them. In fact, these newly recruited members are in most cases given permission by the association to provide the service without holding the required permit or operating license. This kind of parallel regulation is a direct contravention of section 50 of the NLTA, which states that an operating license is a prerequisite for the provision of a road-based public transport service

No municipality may support an application for the granting, renewal, amendment or transfer of an operating license in terms of section 55 of the National Land Transport Act (Act 5 of 2009) unless the applicant is registered with the Registration and Monitoring Directorate

In the case of a new residential or business development, there should be a commission established for a public transport impact assessment/apply the assessment tool developed for new minibus-taxi routes.

## **B.2 What would be the optimal process that needs to be followed by taxi operators to get new routes allocated to them?**

The optimal process would be in terms of section 54, where municipalities make determination in terms of new routes availability and invite applicants to apply for such routes instead of applicants starting with the PRE- and have their applications referred to municipalities by the PRE. That process is implemented by the Western Cape Municipalities and it lead to efficient management of applications. Municipalities have been advised to adopt that best practice but they are unwilling.

## **B.3 Underlying reasons and/or justification for the PRE- to issue a moratorium, and the effectiveness of the moratoria in deterring entry into the taxi industry?**

The duty to issue a moratorium lies with Municipalities in terms of section 36 and this applies in instances where the municipality established that the market is saturated in relation to certain routes/facilities.

A municipality may request the PRE- to impose a moratorium on new applications in certain areas or on certain routes applying the provisions of section 39 of the NLTA. This is subject to the condition that the municipality has an acceptable Integrated Transport Plan that contains a comprehensive analysis of, e.g. minibus Taxi members should furthermore not be allowed to lodge new applications. Similarly, the lack of proactive planning in respect of new residential and commercial developments has further resulted in turf battles over new lucrative routes. The opening of the Mall of Africa is a case in point. The NLTA (Section 38) now requires that a public transport impact assessment be done where any changes or intensification of land use are being undertaken.

We need to stop the recruitment campaigns and instead create a more effective balance between public transport supply and demand.

## **B.4 What mechanisms did the PREs and the municipality put in place to enforce these moratoria?**

The PRE- often advise GP municipalities, verbally and in writing, to consider implementing section 36 moratorium but they are unwilling.

Municipalities must supply directions to the entities responsible for the granting, renewal, amendment or transfer of operating licenses in terms of their integrated transport plans in the prescribed manner;

- The Registrar's Administration System (RAS) and the Operating License Administration System (OLAS) should be interoperable to generate the collective number of permits/operating licenses held by members of an association;

- Municipalities to provide demand figures for routes or network of routes served by associations. In other words, the municipality must work out how many vehicles are required on each route to cater for passenger demand. This must be captured in RAS;

#### **B.5 What are the underlying causes for backlogs at PRE- and how can they be remedied?**

Backlog is essentially caused by the following factors:

- Delay of responses/directions from municipalities.
- Advertisement of applications is costly and sometimes leads to budget depletion which often result to the deferring of applications. Applications would then be advertised at a later stage when funds are availed.
- The delay of applicants to submit relevant documents sometimes leads to backlog accumulation.
- The system of issuing operating licenses lies with the National Department of Transport and the current system is not effective in that it is usually down and that results in backlog accumulation.
- The PRE- relies heavily on the National Land Transport Information System (NLTIS) for the processing and issuance of Operating Licenses prior to adjudication of applications. This system has not been functioning consistently for the better part of ten years, resulting in the unavailability and slowness of operation over many hours or even days. To this extent, some Provinces have gone on to have their own systems improved over that of DoT, and have found their performance improving significantly.

#### **C. METERED TAXIS**

##### **C.1 Do 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**

The Amendment Bill makes provision for the regulation of e-hailing services and that will provide a clear distinction between the two types of services.