

PUBLIC TRANSPORT MARKET INQUIRY

COMPETITION COMMISSION

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PRETORIA

Dear Yondela Mahlathi

TSHWANE WOMEN IN TRANSPORT (TWIT): SUBMISSIONS TO THE PUBLIC TRANSPORT MARKET INQUIRY

1. INTRODUCTION

Tshwane Women In Transport (TWIT) is pleased to be given the opportunity to make submissions in such a very important and long overdue public transport market inquiry. We view this process as allowing us to share the knowledge and experience of our members as well as our professional advisers to not only assist the Competition Commission to have a more informed view of public transport in South Africa but hopefully, to enable a long overdue overhauling of public transport regulation in the best interest of all South Africans.

2. WHO IS TSHWANE WOMEN IN TRANSPORT

Tshwane Women In Transport is a Tshwane Region structure of SANWIT (South African Network Women In Transport). This is a non-profit organisation that is made of women who are involved or interested in the transport value chain. In South Africa transport is generally associated with men despite the fact that there is no reason why women should not have a space equal to men in participating in the entire transport value chain. It is on the basis of this belief that we appear before you for the purposes of sharing our experience and perception about public transport in South Africa. So the submissions to be made by Tshwane Women In Transport represent a broader view than by businesses and associations that are the main beneficiaries of the current semi-formal arrangement that prevails to the exclusion of others, mainly women and possible new entrants that may include youth.

3. SUBMISSION PER THE MAIN FOCUS AREAS IDENTIFIED FOR PRESENTATION BY THE COMPETITION COMMISSION

3.1 TRANSPORT MODES

We note through the reference made to different modes that it is necessary to clarify what constitute modes in terms of the law (National Land Transport Act, 2009) so that when we deal with substantive matters there is no misunderstanding of what we are referring to.

- A. **Taxis**= In terms of the National Land Transport Act, 2009 there are two kinds of taxis, i.e. the minibus-taxi type service and the metered taxi service. The definition of a minibus-taxi type service includes the fact that the service is unscheduled and is operated by three kinds of vehicles, a motor car, minibus and midi-bus. The so-called 4+1 taxis are in fact part of the minibus-taxi type service and are not a separate category of service as the PPT 1 form created. The situation is the same with metered taxi service and the so-called “e-hailing services”. The definition of a metered taxi service in the NLTA is clear as it includes the hailing. Some confusion has been brought about by those who wanted the use of an application to define a new service that is not in the statute books of South Africa. The National Land Transport Amendment Bill before Parliament seeks to clarify the matter using today’s language as thus: ‘by the substitution for paragraph (c) of the definition of “metered taxi service” of the following paragraph:

“(c) ___ is equipped with a sealed meter, in good working order, for the purpose of determining the fare payable, that is calibrated for such fare or complies with any other requirements applicable to such meters as prescribed by the Minister under section 66(4) (d), or is equipped with an electronic hailing application or similar technology that complies with requirements the Minister may prescribe, or both such meter and application or technology, as prescribed;

This paragraph shows that a metered taxi and e-hailing service is one and the same thing and accordingly this enquiry should consider them as such.

- B. **Buses** = It is important for the inquiry not to confuse issues as there is no such service as “bus” in the National Land Transport Act and as such all the services that may be provided through the use of what is defined as a bus in the Act need to be addressed as those services . This approach will assist the inquiry to achieve its purpose. The listing associated with buses in the PPT 1 form has nothing to do with

the services as such. The easy access by the buses to operating licences compared to other modes of transport is one of the matters the enquiry must investigate.

C. **Rail** = There are many issues pertaining to rail that may need to be considered. Besides the closed industry despite very poor performance by PRASA, there is also downstream arising from these services. The feeder system that is controlled in the case of Gautrain as well as other value chain opportunities that could begin to open up the industry .

D. **All modes of public transport** = The National Land Transport Act lists many modes of public passenger road transport services and they are properly defined. It would be appreciated if each one of them could be investigated so as to establish accessibility to entry as well as the manner by which the regulatory bodies and planning authorities deal with this to the detriment of the new or prospective entrants.

3.2 SUBJECT MATTER AS PER STATEMENT OF ISSUES

3.2.1 Licencing, route allocation and entry regulations- operating licences, moratorium in operating licences

The matters raised in this section go to the heart of anti-competitive behaviour in public transport that is aided or abetted by government in the form of the licensing authorities, planning authorities and policy makers at provincial and national spheres. Despite the existence of the laws that provide clear processes in practice things do not operate as per the laws. In order for one to obtain an operating licence for certain modes the approval of an association is required. The approval is normally linked to payment of huge sums of money that have nothing to do with the legislated process but for one to join the association and be allocated route by the association instead of the entities empowered to do so by the law. The very licensing entities are part of the schemes that makes it impossible for a non-aligned business person to be allocated a route and granted an operating licence to operate. The regulations appear to be straight forward and simple but in practice the regulations are a lesser part of the entry process. These challenges are further exacerbated by the lack of planning and active role of the planning authorities. One only needs to review the Integrated Transport Plans of the municipalities just to have an idea of what planning authorities do. During the presentation we will show by way of example just how the regulatory environment is more of a farce than reality. Most municipalities, who are planning authorities in terms of the National land Transport Act do not seem to know of the existence of the Act and its regulations including the Minimum Requirements for the Development of ITPs, the latest being of 2016.

Operating licences are not only a challenge to obtain and enforce but the licensing authorities appear to be sleep walking through their responsibilities. Even where moratorium on the issue of operating licences is concerned, same does not appear to be an initiative of licensing authorities but that of the operators who are already inside so as to block any possible new entrants. This situation we will show during the presentation the failures of regulating that lead to the associations to practical run public transport.

3.2.2 Price regulation and price setting mechanisms for all modes of public transport

Our experience tells us that the prices are generally determined by operators and associations. In most instances the pricing is arbitrarily determined according to an area. An example is a minibus taxi type service in Tshwane that is far more expensive than you find to be the case in Johannesburg. This even under the same national taxi association.

The metered taxis are also in the same situation as the industry in some regions or provinces has agreed on same charges per area despite this not legally allowed by law. This situation has led to instances where some metered taxi services operators no longer see the need for a taximeter as same is not being used. The absence of a taximeter in a vehicle operating a metered taxi service makes that operator illegal but both the associations and regulatory entities do not seem to do much to protect the public.

Part of what the inquiry needs to look at is how the BRT system works to remove or reduce competition whilst government seem to be the main source of funding instead of the operations that are priced based on operational costs. The same applies to the subsidised services that are not only favouring the incumbents to remain indefinitely but the model contracts are structured so as to make it impossible for less complicated operators to even participate. In this case we invite the inquiry to review the model contracts as against the provisions of the National Land Transport Act, 2009 that make it appear that these contracts are accessible to any operator who wants to participate. It will be important to investigate the design and implementation of the subsidised contracts so as to expose how they are designed to favour the incumbents despite the digital age making it easier to provide

monitoring of operations without the cumbersome processes required to be complied with in subsidised contracts.

3.2.3 Allocation of operational subsidies and its impact on competition

Despite the minibus taxi-type being proven to be the champion of public passenger transport service in South Africa government has still seen it fit that it be discouraged as much as possible. Instead, busses and commuter rail enjoy subsidies despite not being sufficiently accessible to the very public that needs the service. The minibus taxi type service is relatively more expensive as it is not being subsidised but the buses remain expensive despite being subsidised. The subsidised commuter rail offered by PRASA is legendary in making people late from work and end jobs. The current subsidy system favours certain modes without regard to the passengers meant to benefit. It is definitely an unfair and anti-competitive government system applied regardless of its impact on competition.

3.2.4 Transport Planning – challenges in the implementation of Integrated Rapid Public Transport Networks

Transport planning is a key component of transport operations. The quality and content of Integrated Transport Plans that are meant to inform planning authorities' contribution to the system are either non-compliant with the Minimum Requirements for the Preparation of ITPs , 2016 Regulations or alternatively do not exist in the form that will enable the planning authorities to play their role.

In considering the effect of the BRT system and operations on competition , one will have to start with the business concept, the funding model and the implementation that is a clearly anti-competitive conduct of the private sector funded by government for the teething years of operations , if not longer.

3.2.5 Transformation in the public transport – assessment of the transformation level across the value chain

I dealing with transformation in the public transport across the value chain is a challenge. It does not appear like there is an industry centred transformation plan that talks to issues across the value chain and levels.

The Department of Transport (National) is said to be having a National Road Based Public Transport Transformation Plan. One is not sure if this was developed with the citizens or it was just something that was done by consultants and department adopted for the sake of ticking the box or not. This needs to be raised because a transformation plan that involves government needs to have a way of including the public. It would be short sighted to talk about transformation whilst you leave out the very people that would be the evidence of such transformation. It is a known fact that public transport is dominated by the historically privileged with the exception of the taxi industry. The taxi industry has its own issues including the fact that it is mainly a men's club. Transformation agenda needs to include honest introspection whilst allowing the excluded to raise their hands on what it would mean.

The value chain including the downstream businesses remain largely untouched. It would be interesting to determine who owns what in the downstream value chain. We cannot say we have done a scientific assessment of transformation in the industry but the anecdotal evidence shows a picture that should not be of South Africa in 2018.

3.2.7 Access to finance for taxi operators

Our members experience on this subject is not a good one. Besides the difficulty to find finance mainly because of the media reported reputation of mini-bus taxi type service operators there may also be a racial bias. You hear stories of where a Black person approaches a dealership for a minibus purchase you are told of deposits up to 30% required. You get a sense that it is a way of saying we do not want to sell you the vehicle because you are probably a taxi operator. When a white person approaches a dealership for the same vehicle type, then it is assumed that the vehicle will be used as family or staff transport and the deposit becomes the normal one required for a private vehicle. The truth is that these stories are making rounds and it is not easy to find funding by taxi operators. Of course some of the challenges with obtaining funding may be linked to how many taxi operators have been managing their businesses leading them to be unable to get credit. Part of the challenges may be based on the experience of some of the funders where vehicles get financed but the operator is refused to routes because of taxi association gate keeping.

3.2.8 Access to infrastructure and terminal facilities

Access to infrastructure and terminal facilities is very crucial for accessing transport operations, especially the taxi and bus operations. This is one of the questions that need to be responded to positively before the licensing authorities grant you an operating licence. In the minibus taxi-type service environment, the ranking facilities are controlled by the taxi associations. Government in all spheres is complicit in closing entry to the industry despite positive statements made in public platforms that government support growth and development of public transport. This inquiry cannot be able to address public transport challenges without zooming –in at this very crucial aspect of the entry requirements to the industry.

3.2.9 Contracting relating to bus operations- long term contracts which have not been subjected to competitive bidding for a long time

This is a very concerning matter as since before 1994 the same companies that benefited during apartheid continue to have a closed market of mainly Black South Africans. We would recommend the inquiry to read the article, *Problems With The Implementation of Bus Transport Contracting In South Africa* written by Prof. Jackie Walters & Gert Heyns published in *Journal of Transport and Supply Chain Management*, 2012. We believe that for most South Africans who are in the transport sector or who want to enter the sector continue to be disadvantaged under the circumstances that should be part of this investigation.

Whilst dealing with this contracting , it may help South Africa going forward that the investigation include how the contracting authorities are planning to or are implementing the other types of contracts that are provided for in the National Land Transport Act, 2009. It is also the opportune time for the Competition Commission to review the model contracts for all the different types of contracts published by government for public passenger transport services. See also the Model Tender and Contract Documents For Public Transport Services published on 5 June 2013 (GN 568 of 2013, GG No. 36524).

We believe that it is not sufficient for the law to provide for eligibility to these contracts whilst the very opening is closed with burglar bars in the form of cumbersome contracts that would make it impossible for an average operator to bid for the contracts.

3.2.10 Commuter experiences – waiting times, cost of public transport, walking distances to public transport facilities

As a general comment, we need to start by saying that public transport in South Africa is its own enemy number one. With the exception of Gautrain, time does not appear to have meaning in as far as operators are concerned. It is not just waiting times but the quality of vehicles and systems used by the operators. In Gauteng Province it is normal to see a subsidised bus in the form of PUTCO or ABS blocking one lane of the road. That clearly indicate that arriving on time going to work or for whatever other purpose you use the bus for is a 50/50 chance. PRASA trains seem to have time scheduling for the purposes of getting authorisations to operate otherwise the trains are not only always late but have become an imminent threat to anyone using them. The minibus taxis, more specifically Toyotas are also a common sight in the Gauteng Province roads having lost a wheel not just a tyre problem.

The cost of public transport has become so much and arbitrary it is difficult to understand what the passengers are paying for sometimes. As indicated on the paragraph dealing with pricing, every association seem to be testing the tolerance levels of the population other than determining appropriate pricing as informed by all the relevant factors to arrive at cost of service. Price setting and public transport costing may need to have its own inquiry as this is a serious problem affecting public transport access.

CONCLUSION

We thank you for the opportunity to make this submission and also to make oral representations on these very important matters in our country. We will prepare a Power Point Presentation for the appearance date.

Yours sincerely

TSHWANE WOMEN IN TRANSPORT

Per: Ms Mavis Mhlanga-Mochadibane
Chairperson

