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<table>
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<th>Description</th>
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<tbody>
<tr>
<td>APM</td>
<td>Africa People Mover</td>
</tr>
<tr>
<td>BBBEE</td>
<td>Broad Based Black Economic Empowerment</td>
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<td>BEE</td>
<td>Black Economic Empowerment</td>
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<td>BOC</td>
<td>Bus Operating Company</td>
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<td>BOCA</td>
<td>Bus Operating Contract Agreement</td>
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<td>BRT</td>
<td>Bus Rapid Transit</td>
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<tr>
<td>DORA</td>
<td>Division of Revenue Act</td>
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<td>DOT</td>
<td>National Department of Transport</td>
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<td>DFDS</td>
<td>Dedicated Feeder &amp; Distribution Services</td>
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<td>DRD</td>
<td>Department of Rural Development</td>
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<tr>
<td>ETA</td>
<td>eThekwini Transport Authority</td>
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<tr>
<td>FNB</td>
<td>First National Bank South Africa</td>
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<tr>
<td>GABS</td>
<td>Golden Arrow Bus Services</td>
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<tr>
<td>GBTA</td>
<td>Greater Bloemfontein Taxi Association</td>
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<tr>
<td>GPG</td>
<td>Gauteng Provincial Government</td>
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<tr>
<td>GPS</td>
<td>Global Positioning System</td>
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<tr>
<td>GPRE</td>
<td>Gauteng Provincial Regulatory Entity</td>
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<tr>
<td>GMA</td>
<td>Gauteng Management Agency</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>HDIs</td>
<td>Historically Disadvantaged Individuals</td>
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<tr>
<td>IPTS</td>
<td>Integrated Public Transport System</td>
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<tr>
<td>ITP</td>
<td>Integrated Transport Plan</td>
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<tr>
<td>IRPTN</td>
<td>Integrated Rapid Public Transport Network</td>
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<tr>
<td>KZN</td>
<td>KwaZulu-Natal</td>
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<tr>
<td>MEC</td>
<td>Member of Provincial Executive Council</td>
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<td>MPLS</td>
<td>Mainline Passenger Services</td>
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<td>MRE</td>
<td>Municipal Regulatory Entity</td>
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<td>NTA</td>
<td>National Taxi Alliance</td>
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<td>NHTS</td>
<td>National Household Travel Survey</td>
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<td>NLTA</td>
<td>National Land Transport Act</td>
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<td>NLTIS</td>
<td>National Land Transport Information System</td>
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<td>NLTTA</td>
<td>National Land Transport Transition Act</td>
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<tr>
<td>NPTR</td>
<td>National Public Transport Regulator</td>
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<tr>
<td>NTA</td>
<td>National Taxi Alliance</td>
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<tr>
<td>OEM</td>
<td>Original Equipment Manufacturer</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>PFMA</td>
<td>Public Finance Management Act</td>
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<tr>
<td>PRE</td>
<td>Provincial Regulatory Entity</td>
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<tr>
<td>PRASA</td>
<td>Passenger Rail Agency of South Africa</td>
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<tr>
<td>PRASA CRES</td>
<td>Passenger Rail Agency of South Africa Corporate Real Estate Solutions</td>
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<tr>
<td>PTISG</td>
<td>Public Transport Infrastructure Systems Grant</td>
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<td>PTIG</td>
<td>Public Transport Infrastructure Grant</td>
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<td>PTNG</td>
<td>Public Transport Network Grant</td>
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<td>PTOG</td>
<td>Public Transport Operations Grant</td>
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<tr>
<td>PUTCO</td>
<td>Public Utility Transport Corporation</td>
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<tr>
<td>RSR</td>
<td>Railway Safety Regulator</td>
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<tr>
<td>RSA</td>
<td>Republic of South Africa</td>
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<tr>
<td>SABOA</td>
<td>South African Bus Operators Association</td>
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<td>SAMTA</td>
<td>South African Metered Taxi Association</td>
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<tr>
<td>SANCO</td>
<td>South African National Civic Organisation</td>
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<tr>
<td>SANTACO</td>
<td>South African National Taxi Council</td>
</tr>
<tr>
<td>SANSBOC</td>
<td>South African National Small Bus Operators Council</td>
</tr>
<tr>
<td>SATS</td>
<td>South African Transport Services</td>
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<tr>
<td>SMEs</td>
<td>Small and Medium-sized Enterprises</td>
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<td>SMMEs</td>
<td>Small, Medium and Micro Enterprises</td>
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<td>TAT</td>
<td>Transport Appeal Tribunal</td>
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<td>ToRs</td>
<td>Terms of Reference</td>
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<tr>
<td>TRP</td>
<td>Taxi Recapitalisation Programme</td>
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<tr>
<td>VOC</td>
<td>Vehicle Operating Company</td>
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1. On 10 May 2017, the Competition Commission (the Commission), in exercising its powers under Section 43B of the Competition Act No 89 of 1998 (the Act), published a notice that it would conduct a Market Inquiry into the land-based public passenger transport sector (the Inquiry). The Terms of Reference (ToRs) for the Inquiry were also gazetted on the same day. The Commission has identified the public passenger transport sector to include road and rail based public passenger transport, as relevant to this Inquiry. The modes of transport covered in the ToRs are buses (excluding cross-border services), taxis (minibus, metered taxis, e-hailing) and commuter rail (excluding tourist rail).

2. The Inquiry was initiated because the Commission was of the view that there are features, or a combination of features, in the passenger public transport sector that were distorting or inhibiting competition. The Commission made this assessment based on several complaints in the industry, as well as complaints lodged with the Commission by some stakeholders. In addition, the transport sector is one of the priority sectors of the Commission. South Africans spend a significantly high proportion of disposable income on public transport (over 20 per cent) against a benchmark of 10 per cent for developing countries. Over 73 per cent of rural workers spend more than 20 per cent of their monthly household income per capita on public transport, while in urban areas the percentage is 60.1 per cent, and in metros 54.7 per cent. The implication is that any resolution on identified impediments in the public transport sector may have benefits in the long run.

3. Public transportation is also key to sustainable economic growth in any country. Developing and maintaining transport infrastructure and providing an effective and efficient public transport system can create employment, improve efficiency across the economy, and ensure sustainable development by reducing carbon emissions from private vehicles in congested urban spaces.

4. Government has also dedicated Outcome 6 to promoting, “an efficient, competitive and responsive economic infrastructure network”. Transport-related infrastructure and mobility of commuters contribute to the achievement of Outcome 6. Different spheres of government play a role in pursuit of achieving Outcome 6, as will be elaborated in this report.

5. The ToRs identified the central role of public transport in providing meaningful mobility for most of the population, in pursuit of economic participation. The ToRs identified the following broad themes as the rationale for initiating the Inquiry:

5.1. Price setting mechanisms: Analysing different price setting mechanisms for all modes of public transport and their impact on competition;

5.2. Price regulation: Examining applicable price regulations and their impact on competition;

5.3. Route allocation, licensing and entry regulations: Assessing the impact of regulations, including route allocation, licensing and entry requirements on intermodal and intramodal competition;

5.4. Allocation of operational subsidies: Assessing the impact of operational subsidies on some modes of public transport, and its impact on both intramodal and intermodal competition;

5.5. Transport planning: Evaluating the impact of government’s transport planning framework on dynamism, efficiency and competition; and

5.6. Transformation: Assessing transformation issues, including ownership patterns in the public transport industry.
6. Following the publication of the ToRs, the Commission published the Stakeholder Participation Guidelines (the Guidelines) and Call for Submissions on 13 July 2017. The Commission also held public hearings across the 9 provinces, between June 2018 and August 2018. Oral and written submissions were received from over 200 stakeholders. All submissions and transcripts of public hearings are available on the Commission’s website (http://www.compcom.co.za/public-passenger-transport-market-inquiry/)

7. In February 2020, the Commission invited stakeholders to make submissions and provide comments on the provisional findings and recommendations. This report provides the final findings and recommendations of the Commission with respect to all modes of transport (except metered taxis and e-hailing services).

Rationale for separating the reports

8. This report (main report) focuses on the traditional markets, which are largely static in nature (i.e. minibus, bus and rail), whilst the second report has a specific focus on e-hailing and metered taxi services. The Commission is of the view that the dynamics of competition between the metered taxis and e-hailing services are driven largely by technological developments. The innovation and digitisation of the markets are referred to as the fourth industrial revolution (4IR or Industry 4.0). Competition assessment and regulatory scrutiny in these evolving technology or platform markets require special attention, given their dynamic nature. The Commission is not in any way downplaying some technological developments made in the traditional markets, but the innovations do not disrupt the way the industry generally operates, on a broader level.

9. For the purpose of this Inquiry, public transport implies land-based public passenger transport consisting of three main modes, namely; taxi, bus and rail. Public transport in South Africa includes buses (provincially contracted buses, unsubsidised buses, municipal buses), taxis (minibus taxis, metered taxis, e-hailing operators), and rail (Metrorail, Shosholoza Meyl and Gautrain).

10. Statistics South Africa (2015) highlights that minibus taxis are the most commonly used mode of public transport in South Africa, accounting for 66.5 per cent of households that use public transport. The bus and rail modes account for 23.6 per cent and 9.9 per cent, respectively.

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

11. The Constitution of the Republic of South Africa provides that public transport is a concurrent function between national and provincial spheres of government. Municipal public transport is assigned to local government. The 1996 White Paper on National Transport Policy indicated that land passenger transportation planning should be carried out in an integrated fashion covering all modes. This planning should be done at as low a level as possible, and by the relevant transportation authority. The same observations were made in the subsequent legislation – the National Land Transportation Transition Act, 2000 (Act No. 22 of 2000); and the National Land Transport Act, 2009 (Act No. 5 of 2009), which added details regarding the role of local government as planning authorities, and its interface with provincial and national government.

12. The NLTA defines an Integrated Public Transport Network (IPTN) as a system in an area that integrates public transport services between modes using various mechanisms such as ticketing systems, and network and infrastructure sharing with the ultimate objective of ensuring travel is done in a seamless manner. The Commission did not find any evidence of integration among various modes of transport, except for Gautrain buses which are coordinated with the Gautrain timetables. Integration is an integral part of any successful public transport network. With integration, competition between or among modes is eliminated, to achieve efficiencies.

13. Despite the NLTA coming into effect in 2009, a decade ago, public transport in South Africa is still not considered as a network or system that facilitates easy connection between different transport modes. This contrasts with experiences from developed countries, where public transport is integrated and commuters can connect seamlessly
between different modes. One of the reasons for lack of integration is the fragmentation in the roles of each sphere of government in the provision of public transport. While the NLTA clearly clarifies the roles of different spheres of government, ineffective intergovernmental relations have resulted in uncoordinated operations, creating inefficiencies. For instance, transport planning is the responsibility of local government, but provinces are the contracting authorities for subsidised bus contracts, and these buses operate within municipalities. In addition, some metropolitan municipalities also have metro bus services as well as Bus Rapid Transit (BRT), both serving different objectives. Duplication of transport services by various modes on some routes has also been identified as one of the inefficiencies arising as a result of the lack of coordination.

14. Despite the envisaged role of municipalities as planning authorities, public transport in general is not prioritised by local government; given its competing mandate of providing other basis services (a few metros are an exception). By extension, public transport planning is therefore not given adequate focus and attention, as most municipalities do not have dedicated units dealing with public transport. In circumstances where the municipality has people dealing with public transport, the skills in that department are not commensurate with the tasks required. For example, some municipalities have traffic enforcement officers attending to issues of transport planning. Some cities only started recruiting personnel when funding was made available during the roll out of the BRT system.

15. The lack of capacity is also a major inhibiting factor in transport planning and integration, with municipalities lacking the necessary human capital and skills. The Department of Transport (DOT) states, in its 2017 Revised White Paper, that the lack of capacity at the municipal level is a major inhibiting factor in municipalities preparing transport plans. The DOT has appointed some transport planning experts to assist a few municipalities to develop Integrated Transport Plans (ITPs), given the lack of capacity at local government level. Submissions from stakeholders indicate that there is lack of capacity in municipalities (and sometimes provinces) to prepare meaningful transport plans, thus leading to the slow or inadequate implementation of such plans – which effectively limits the prospect of integration. Some provinces lack capacity but can attract skills if resources are made available. Given the lack of priority for public transport and lack of capacity within local government, provinces or Provincial Transport Authorities should be better equipped to deal with these functions, if adequate resources are provided.

16. The Commission finds that the lack of integration in the public transport system is worsened by the persistent inequality between modes (i.e. minibus taxi and BRT) and within modes (i.e. Gautrain and Metrorail). The stark differences in infrastructure investment, service levels and quality standards in the modes is an impediment to integration. The differences in service levels further deepens the socioeconomic divide in the society, as public transport is now catering for different classes.

17. Another example of the lack of integration is in the provision of rail services by both Metrorail and Gautrain in Gauteng. This is not an efficient utilisation of limited government funding, as both services are subsidised. International experience suggests that rail operations exhibit natural monopoly characteristics, and therefore should not be duplicated. Metrorail is operated at a national level and Gautrain at a provincial level, and ideally commuter rail should be provided by one entity to derive economies of scale and foster integrated planning.

18. While Metrorail and Gautrain indicated that consultations between the two services do take place, this is not an efficient way of integrating public transport; as the outcomes of intergovernmental consultations may not have binding effect. International experience and policy documents from the DOT, such as the Revised White Paper on National Transport Policy, support the devolution of rail and public transport in general to lower levels of government. Devolution is envisaged to improve accountability, as well as effective response to local needs. Decentralisation of rail operations may improve decision making process and remove unnecessary bureaucracy.
19. Integration of transport modes has not yet been achieved in South Africa, and this is further exacerbated by the way subsidies are transferred to the different spheres of government. Consolidation of transport planning and public transport operations under a single transport authority may provide the necessary efficiencies.

Impact of spatial planning on public transport

20. The system of apartheid in South Africa left a legacy of social segregation which resulted in black people settling far away from economic hubs. Spatial planning problems are still lingering in the democratic South Africa, because of limited land available closer to economic opportunities. In order to promote mobility, governments across the world use public transport subsidies to achieve economic, social and environmental objectives. The apartheid government was no exception, as it made provision for public transport subsidies to ensure that blacks could access affordable public transport and participate in economic activities. The public transport subsidies in South Africa were then targeted at bus and rail operators, to ensure mobility between work and where people live.

21. This was the genesis of the urban public transport system that we see today, which relies on government subsidies to ferry people to and from places of work. Subsidies more broadly assist workers to reach places of work, and this has inherently created two peak periods in the day – morning and evening peak – with idle capacity during off-peak. Unfortunately, with respect to peak periods, nothing has changed from the apartheid period – the two peaks periods still exist for both bus and rail operations. The problem with only two peak periods in a day is that this results in inefficiencies in the subsidy framework, as the assets are idle during off-peak periods. What would have been ideal is if the mass movement of commuters by rail and buses during peak periods would be complemented by minibus taxis during off-peak. This would only happen if South Africa’s public transport system was integrated. The public transport system is not integrated in South Africa, as evidenced by duplication of routes by subsidised modes – for example, bus rapid transit (BRT) routes and Gautrain bus routes.

What informs the current subsidy regime?

22. Government currently does not have a subsidy policy which provides justification for some modes of transport being subsidised while others are not. It appears that the apartheid subsidy framework was simply taken over by the new government, with some adjustments. Government has been able to introduce new transport infrastructure grants in response to the transport needs. The introduction of the new subsidies may be considered as isolated intervention, without comprehensively reconfiguring the subsidy framework. The Commission notes the effort by government to change the subsidy framework in response to specific needs, but these interventions are still largely uncoordinated.

23. For example, the introduction of the Gautrain was premised on the need to induce a modal shift from private car usage to public transport – by providing an attractive offering in terms of travel time, cost savings over vehicle operating costs, and reduction in traffic congestion. Based on this need, government funded the construction of the Gautrain through a Public-Private Partnership. It is therefore clear that government responds to specific needs that arise, because of the absence of a formal subsidy policy that should be a guiding document to inform decisions on future infrastructure investment.

24. Different subsidies are allocated to different spheres of government and, given the intergovernmental coordination failures, value for money is compromised (from duplicated effort due to lack of integration), and economies of scale from a planning perspective is lost. Several subsidies have been introduced over time to cater for urban transportation needs and address new challenges, as highlighted above.

25. 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 allocated to different spheres of government and to different modes of transport. For example, there are designated subsidies for passenger rail services provided by Metrorail, a division of the Passenger Rail Agency of South Africa (PRASA), the 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, and BRT/ Integrated Rapid Public Transport Networks (IRPTN) provided by various private operators through contracting with local government.

26. Public transport integration has been a challenge, and this is further exacerbated by the way different subsidies are allocated to the different spheres of government. The subsidies are often stand-alone interventions. Consolidation of planning functions, and subsequently operating public transport under a single entity or transport authority, may provide the necessary efficiencies. Subsidies should ideally be allocated to this single entity, to promote integrated planning. The transport authority will determine the appropriate mode of transport to deploy, based on the needs and efficiency considerations.

The current subsidies

27. A total of 13 cities have implemented or are in the process of implementing BRT/IRPTN. The introduction of BRT/IRPTN was influenced by (i) the 2010 FIFA Soccer World Cup, (ii) availability of capital grants by national government to municipalities for infrastructure spending for IRPTNs of which BRTs were a significant component, (iii) the need to transform and empower the minibus taxi industry and (iv) the need to reduce travelling costs and time for commuters to offset inefficient apartheid spatial planning.

28. Given the availability of funding, many smaller cities did not conduct feasibility studies to identify the need for an IRPTN system in their respective municipalities. This is especially worrying where some IRPTNs are set to be implemented on routes where there are existing public transport providers. This results in duplication of services and inefficiencies, as experienced by the Cities of Johannesburg, Tshwane and Cape Town. The inefficiencies that have been identified with the current BRT/IRPTN model are: (i) increasing under-recovery of revenue leading to increasing subsidies, (ii) low ridership due to poor selection of routes, (iii) unnecessary (uneconomic) infrastructure roll out, and (iv) lack of capacity and mismanagement of the Bus Operating or Vehicle Operating Companies (BOC/VOCs).

29. The Commission finds that the IRPTN system in its current format has led to several inefficiencies, due to low passenger numbers. This results in under-recovery of revenue. In some instances, wrong corridors were chosen for the first phase of the implementation of the IRPTN system. The chosen corridors had low density routes, and low passenger volumes. In some cities, it is evident that no feasibility studies or needs assessments were conducted to justify the implementation of the system. The IRPTN system is therefore not the most suitable model to address South Africa’s public transport challenges, and if no review is conducted urgently, no tangible economic benefits will be derived.

30. For contracted commuter bus services, provinces are entrusted with the responsibility for managing the contracts. These contracts are administered based on conditions set out in the Division of Revenue Act (administered by National Treasury) and the Act provides for the equitable division of revenue among national, provincial and local government. During the transition from the apartheid regime, government continued with the bus contracts. As a provisional measure, before the finalisation of the contracting system, government signed interim contracts with bus operators that were already part of the subsidy system. These contracts were to serve as a bridging mechanism between the lifelong permit system (which existed during the apartheid era) and the tendered contracts (which were meant to be implemented). Government’s plan in this regard was to have all subsidised bus services on tendered contracts by the end of 2000. Given the purpose and circumstances that led to their introduction, interim contracts were meant to be effective for a period of one to three years. However, these contracts have now been in existence for over 21 years. Negotiated contracts were concluded (instead of tendered contracts) between 2000 and 2003 due to labour challenges (if an incumbent bus operator lost the tender, there was no clear way of dealing with employees and the assets, therefore a negotiated settlement was reached) and lack of adequate funding to implement a tender system.
31. As a result of this, no new contracts have been concluded since 2003. The bulk of interim contracts, which are now renewed on a short-term basis and account for more than 60 per cent of the subsidy budget, have not been converted to tendered contracts as per initial plans.

**Subsidies have limitations**

32. The roll out of subsidies encountered several challenges. For contracted bus services, the Commission finds that the commuter bus subsidy system, in its current form, prevents competition between commuter bus operators and serves as an artificial barrier to entry, especially for small bus operators. The extension of the current subsidy contracts in perpetuity has had unintended consequences of creating de facto monopolies on subsidised routes. The situation is exacerbated by the fact that competition in the provision of subsidised commuter bus services only exists at the contracting phase, and not on the routes (competition for the market). The lack of competition along some of the subsidised routes has created inefficiencies, to the detriment of commuters. While the Commission understands that competition for the market is important, the persistent lack of new, tendered contracts has resulted in the incumbent operators being inefficient. These inefficiencies include the provision of poor-quality services by some of the subsidised bus operators.

33. Subsidised routes, schedules and timetables are old and outdated, and consequently, do not adequately respond to the needs of commuters. While there is flexibility in some of the provinces, which allows for the review of schedules and timetables from time to time, this does not exist in all provinces (Gauteng is a prime example of this). This lack of flexibility compromises the quality of service provided to commuters.

34. Furthermore, the allocation of bus subsidies does not adequately consider challenges and costs incurred by bus operators, especially bus operators that service rural communities. In rural areas, poor road infrastructure serves as a major barrier in the provision of public transport. In this regard, rural communities appear to be neglected. Small bus operators have been relegated to providing commuter bus services in rural areas, where conditions are extremely bad.

35. Commuter rail is subsidised across the world for economic, social and environmental reasons. In South Africa, Metrorail services are considered a social service and are thus provided in the interest of the public. Metrorail is inefficient in the provision of urban rail commuter services. There are several challenges that constrain the quality of the service – including continuous breakdown of trains, unreliable services, and fare evasion by passengers. Metrorail has experienced a significant decline in passengers as a result of the poor performance, late arrivals and deteriorating service standards (even though its prices are the lowest in the industry). The system has been vulnerable to threats such as passengers who have been avoiding paying fares. Metrorail highlighted that the “open system” results in easy access to the railway, facilitating illegal activities – such as cable theft.

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

37. Commuter rail in most countries is viewed as a natural monopoly where duplication of the rail infrastructure is not ideal, given the high fixed costs. The high fixed costs include costs of laying tracks, building a network, as well as the costs of buying or leasing the trains. These costs are prohibitive and deter the entry of a competing or complementary rail service. South Africa is among a few unique examples in the world where two government-funded rail operators provide a commuter service in one geographic region, i.e. Gauteng. The question that arises, is whether it is socially desirable and efficient to have the two operations in Gauteng, even if the service offering is different? Consolidation of rail operations will yield efficiencies and economies of scale, over time. Planning for expansions would be better coordinated if only one entity was responsible for rail operations. The Department of Transport’s draft White Paper on National Rail Policy advances the position that rail
internationally is best served by local government, with clear understanding of the local dynamics and needs. However, given the interconnectedness of the metros in Gauteng province, it would be ideal for the entity to be run at a provincial level.

38. From a design perspective, the Gautrain and Metrorail operate on different gauges. Metrorail operates on a Cape gauge (1067mm between tracks) while the Gautrain operates on a standard gauge (435mm between tracks). It is therefore not technically feasible for the rail tracks to be used interchangeably by the different train sets. The draft White Paper on National Rail Policy concluded that South Africa will implement a standard gauge technology going forward, given its efficiencies compared to the Cape gauge. In addition, the African Union has also declared the standard gauge as the ideal technology for Africa.

39. Current subsidies in public transport respond to specific needs in an uncoordinated manner, as subsidies are distributed to all spheres of government. Consolidation of subsidies may provide the necessary efficiencies.

**Breakdown of subsidy allocation**

40. The minibus taxi industry accounts for approximately 66.5 per cent of commuters, buses 23.6 per cent, and rail 9.9 per cent. There is a skewed relationship between ridership levels and subsidy funding. Despite the investment by government in the form of subsidies, commuters still prefer the unsubsidised mode of transport (minibus taxis) for several reasons. The taxi industry has been resilient over time, despite limited support from government.

**Minibus taxis and unsubsidised bus services**

41. Given the shortcomings of the subsidised bus and Metrorail services, minibus taxis operators have managed to enter and expand in the market. On the other hand, unsubsidised bus operators in the commuter bus market find it difficult to compete effectively in the market without subsidies. In most instances these operators provide services in rural areas, where they often encounter challenges with poor road infrastructure, frequent breakdown of buses, and high maintenance costs. As a result, some unsubsidised bus operators have resorted to providing scholar transport – where they compete with other unsubsidised buses.

42. The minibus taxi industry is relatively informal and as a result, information on its size is difficult to find. However, it is estimated to be worth between R60 billion and R90 billion. There are 150 000 minibus taxi owners/operators operating an estimated 200 000 - 250 000 minibus taxis in the country. The minibus taxis are estimated to be conveying around 15 million commuters daily. The industry is responsible for employing 300 000 drivers, 100 000 rank marshals, 100 000 car washers, and 150 000 informal traders at taxi ranks.
43. Minibus taxis have proven remarkably effective and efficient in providing public transport services, particularly over shorter routes. They are the only mode of public transport that does not benefit from any form of operational subsidy, and only received 01 per cent of the total subsidy in the form of capital subsidy (taxi recapitalisation). The minibus taxi industry is responsible for transporting 66.5 per cent of households.

44. Given the significance of the minibus taxi industry to the entire public transport sector, any impediments, whether regulatory or competitive, have a detrimental impact on the proper functioning of the public transport sector. The minibus taxi industry is undoubtedly the major player in public transport. It is in this context that the Commission assessed the regulatory impediments to the minibus taxi industry and tried to find solutions to the issues – given the resilience of the industry.

*Regulatory failures compromising minibus taxi operations*

45. The top concern from the taxi industry is that subsidies skew competition in favour of the subsidised services. The Commission did not find enough evidence to conclude that subsidies impede competition, given the inefficiencies observed in the subsidised services. Despite some of the concerns by commuters, the minibus taxi industry is the preferred mode of transport by most of the commuters, due to its reliability and easy access to commuters.

*Route allocation*

46. Approval of operating licences on routes is primarily the responsibility of the Provincial Regulatory Entities (PREs) with the directives 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 on a particular route, based on its Integrated Transport Plans (ITPs). Various stakeholders submitted that municipalities take a long time to provide their directives to the PRE, resulting in a backlog of applications which has led to some operators being on the road illegally. Public transport function is not prioritised by planning authorities and is often not well capacitated. The backlog of applications in Gauteng can be traced back to 2007. The general time period for the issuing of operating licences is approximately 9 to 18 months in some provinces, as opposed to the 60 days stipulated in the National Land Transport Act No. 5 of 2009. PREs are empowered to make decisions on applications without the directives from planning authorities but are reluctant to do so.

47. One of the major challenges in issuing operating licences timeously is the heavy reliance of PREs on the National Land Transport Information System (NLTIS) for the processing and issuing of operating licences, prior to the adjudication of applications. The Gauteng PRE indicated that this system has not been functioning dependably for at least ten years, resulting in inefficiencies.

48. Conflict over routes has plagued the minibus taxi industry for many years. Submissions from the industry indicate that there is currently no framework to guide planning authorities and the PREs in the allocation of new routes arising from the development of new residential areas or shopping malls. Ordinarily, this should rest with the planning authorities. However, in instances where the new developments are adjacent to routes serviced by two or more taxi associations, problems are bound to arise, as it is difficult to assign routes. This lack of a framework results in inefficiency in the allocation of routes, and duplication of routes. In some instances, both the municipality and the PRE are not aware of the existence of these new routes, and the minibus taxi operators develop the routes based on identified needs. Submissions received indicate that in most cases, taxi operators deviate from the routes specified in the operating licence; to service demand experienced as a result of new developments. This has often led to conflict between taxi associations, in instances where the new routes overlap on existing routes operated by two associations.
49. Moratoria on operating licences occurs in instances where the routes are overtraded or oversaturated. Overtrading reduces profitability of routes, and normally escalates tensions within the industry. Four provinces have declared moratoria on new operating licences for minibus taxis. Illegal operations continue despite the moratoria, and it seems there is no credible plan by government to address illegal operations. Submissions received indicate that public transport law enforcement is very limited and not prioritised by municipalities and provincial governments.

Access to and cost of finance

50. Minibus taxi operators are of the view that the cost of finance is exorbitant. The minibus taxi industry has argued that SA Taxi Finance is the only developmental credit provider servicing the minibus taxi industry. As such, the minibus taxi industry is of the view that SA Taxi Finance is charging excessive interest rates. One of the reasons advanced for the high interest rate charged by developmental credit providers is that they access cost of capital at relatively higher rate, compared to commercial banks. The Commission has observed that the structure of the minibus taxi financing market is not conducive to promoting effective competition. SA Taxi Finance has no real competition, and the Commission has reason to believe the interest rates charged for the provision of credit to finance minibus taxis may be exploiting minibus taxi operators. The Commission is further concerned that potential competitors in the developmental credit market (commercial banks) have chosen not to participate effectively in this market, yet these same commercial banks extend credit to SA Taxi Finance.

Interprovincial bus services

51. Interprovincial bus services entail the provision of scheduled bus services linking all the major cities and towns in South Africa. The market for interprovincial bus services has seen some gradual expansion over the years, with new operators coming into the market. Among others, the new entrants face barriers including regulatory (objections from established operators) financial, and access to terminal facilities.

52. The Commission finds that certain practices in the provision of interprovincial bus services limit, distort and/or prevent competition between bus operators. These practices are enabled by, among others, ineffective implementation and application of the current regulatory framework. The current regulations relating to applications for operating licences are open to abuse and exploitation, as large established bus operators object to applications by new and existing players that try to expand. The abuse of this process creates an artificial barrier to entry and inhibits the ability of bus operators, especially small operators, to grow and expand. This practice also entrenches the position of bus operators that are prone to raising frivolous and vexatious objections. While any bus operator is entitled to object to applications for operating licences, the abuse of this process distorts and, in some instances, prevents effective competition in the provision of interprovincial bus services.

53. The depth and severity of this problem is best described by the Gauteng PRE, which indicated that most of the objections are meant to create barriers for new entrants. Incumbent operators have the financial resources to go through the litigation and appeal processes. Some applications get delayed by two to three years, and potential new operators do not enter the market.

54. Interprovincial bus services require access to terminal facilities. PRASA manages most of the terminals in the country, and provides access to these facilities through its division, PRASA CRES. The intermodal terminal facilities managed by PRASA CRES include Park Station (Johannesburg), Pretoria Station, Bloemfontein Station, Polokwane Station and the Cape Town Railway Station. PRASA is vertically integrated in that, over and above owning and managing most of the bus terminal facilities in the country, it is also active in the interprovincial bus services through its subsidiary Autopax Passenger Services (SOC) Ltd (Autopax). Autopax operates two brands, City to City and Translux.
55. PRASA’s presence in (both) the provision of intermodal terminal facilities and the provision of interprovincial bus services is undesirable. Interprovincial bus operators have expressed concerns over the fees charged by PRASA CRES at terminal facilities, especially at Park Station (pay-per-use system). Bus operators have raised the concern that Autopax is getting preferential treatment as it does not pay terminal fees and has been allocated exclusive loading and off-loading bays at Park Station. Though PRASA submitted that the only relationship between the two entities is that of a lessor and lessee and no preferential treatment is extended to Autopax, evidence gathered by the Commission shows the contrary.

56. Between March 2017 and July 2019, the Commission received five complaints from interprovincial bus operators concerning allegations of, among other things, excessive access fees charged by PRASA for access to loading bays at Park Station. The complainants also alleged that PRASA grants favourable trading terms to Autopax, by affording it extended payment terms for the use of bus terminal facilities and allocating it (Autopax) exclusive loading bays at Park Station. Such favourable trading terms create a competitive advantage for Autopax.

57. The Commission duly investigated the complaints and found that PRASA has contravened sections 8(1)(c), 8(b) and 8(a) of the Act. In particular, the Commission found that the bus access fee, which was introduced by PRASA through the Pay-On-Use System, is unreasonably high and has significantly increased the operating costs of interprovincial bus operators. The Commission also found that PRASA is reluctant to demand payment from Autopax for bus access fees and rentals, for leasing office space at Park Station. Furthermore, PRASA has allocated a large exclusive area to Autopax at Park Station, while not providing access to loading bays to several interprovincial bus operators that have applied for access to Park Station. Based on these findings, on 07 February 2020, the Commission referred the five complaints to the Competition Tribunal for determination.

58. Based on the information gathered during the Inquiry, the Commission finds that:

58.1. Autopax has the largest debt compared to other operators. While there are other bus operators that have defaulted in making payments, Autopax is a perennial defaulter with no concomitant action by PRASA CRES to recover the debt, other than issuing letters of demand. As of February 2019, Autopax owed PRASA CRES R2 million nationally. PRASA CRES has submitted that the reason Autopax has the highest debt is that it has the largest bus fleet, compared to other operators. However, during the Commission’s public hearings, Autopax pointed out that while it has 519 buses, only 160 buses were fully operational – and in November 2017 only 90 buses were running. Moreover, PRASA CRES does not seem to provide a convincing argument why no action was taken for non-payment of services for 19 months. Recently, PRASA CRES attempted to recover the outstanding amount from Autopax, but the effort was not supported by the PRASA Group EXCO. This indicates that the PRASA Group is involved directly in the affairs of the entities, even if these entities have separate boards.

58.2. The Commission has established that Autopax’s semi-luxury brand, City to City, has been allocated an exclusive loading area and ticketing office, by PRASA CRES, at Park Station. This arrangement commenced in 2000. City to City used the allocated space based on a developmental lease agreement that was entered by Autopax (when it was still part of Transnet) and PRASA CRES. PRASA submits that Autopax developed the leased area and effected numerous improvements using its own CAPEX. When Autopax leased the area, it was the only operator allowed to use this area at Park Station. The developmental lease agreement was continuously renewed until June 2018. Although the lease agreement has since terminated, Autopax continues to use the exclusive area. Given the importance of
access to terminal facilities by interprovincial bus operators, the exclusivity granted to Autopax is unjustified. Moreover, Autopax is not consistent in paying for the use of such facilities.

58.3. The Commission finds that PRASA constantly provides financial support and bailouts to Autopax. For example, when Autopax failed to pay salaries to its staff in April 2018, the PRASA Group CEO confirmed in a press release that PRASA had continuously supported Autopax as a business and would continue to do so. He further mentioned that at the end of March 2018, PRASA had forwarded Autopax a loan of R50 million. PRASA's provision of financial support to Autopax creates distortions in the competitive environment. Autopax has been a consistent underperformer (loss of R28.5 million, R212.5 million and R304.6 million for 2015/16, 2016/17 and 2017/18 respectively). Further losses are anticipated in the 2018/19 financial year. Evidence also shows that Autopax is technically insolvent and that its total liabilities exceed the entity’s total assets by (as at 30 April 2019). The most revealing observation is contained in both the PRASA Group and Autopax’s strategic documents, which highlight that Autopax’s underperformance is attributed to, among other things, personnel without relevant technical expertise (no core technical skills), and Autopax’s management team lacking relevant experience in the bus industry.

59. PRASA’s ownership of Autopax creates perverse incentives, as PRASA always tries to safeguard and protect the interests of Autopax even in instances where it is not economically justifiable to do so. The interprovincial bus services market is competitive, and the continuous protection and/or bailing out of Autopax seems unjustifiable. This concern is exacerbated by the fact that Autopax is inefficient and has been underperforming for years. PRASA’s protection of Autopax distorts, limits and/or prevents fierce competition between Autopax and other bus operators.

Rural Transportation

60. South Africa is largely dominated by rural provinces such as the Eastern Cape, Limpopo, North West, Free State and Mpumalanga. Several factors contribute to the inadequate provision of public transport services in South Africa’s rural areas. The DOT’s Rural Transport Strategy (2007), together with the submissions received by the Commission, highlight several rural-specific characteristics as key challenges in rural public transport:

60.1. Rural areas in general are sparsely populated, which makes provision of public transport infrastructure costly and difficult;

60.2. High incidence of poverty and levels of unemployment in rural areas make the demand for public transport uneconomically viable for unsubsidised operators; and

60.3. Road conditions in rural areas are horrific, to the extent that buses can get stuck during rainy seasons. As a result, operators are faced with low economies of scale that lead to high operating costs, which are not catered for in the design of subsidised contracts for buses.

Violence in public transport distorts competition and impacts choice of passengers

61. Safety influences the choice by commuters of the mode of transport, irrespective of whether that mode is the most efficient and/or economic. Unsafe modes of transport with high incidences of crime, violence and conflict negatively affect consumer welfare in the transport sector. The safety and security challenges present in public transport are partly a result of bigger socio-economic problems, such as unemployment and lack of service delivery in South Africa. This leads to community protests and vandalism of public transport vehicles and infrastructure, which has a negative impact on the provision of safe and reliable public transport.
62. The fragmentation in law enforcement in public transport makes it difficult to have effective enforcement. Enforcement agencies include SAPS, Metro police, Rapid Rail Unit, provincial traffic police, municipal traffic officials, officers deployed by PRASA and the Gautrain, and other private security companies. A common strategy to deal with violence in the public transport industry is required.

**Transformation**

63. The ToRs have a specific objective, which is to track the extent of transformation in the land-based passenger transport industry. One of the objectives of the Competition Act is the promotion of a greater spread of ownership – in particular, of historically disadvantaged individuals (HDIs). In accordance with the ToRs, the Commission identifies, firstly, the critical inputs required by operators for the provision of transport services and, secondly, considers some of the initiatives put in place by government; and their impact on transformation.

64. The Commission’s findings in relation to transformation are:

64.1. There is no or limited transformation within the public transport industry across the value chain (financing, manufacturing, fuel supply etc). Upstream levels of the value chain, such as financing and manufacturing, are not transformed;

64.2. At an operational and ownership level, the minibus taxi businesses are majority Black-owned;

64.3. There are longstanding bus subsidy contracts between government and large commuter bus operators, that limit the ability of historically disadvantaged persons and small bus operators to participate competitively within the commuter bus industry, and this subsequently hampers transformation;

64.4. Frivolous objections to licence applications, made by established bus operators, is an impediment to transformation in the interprovincial bus industry – as it disadvantages small bus operators owned by HDIs; and

64.5. The roll out of the BRT/IRPTN was established to transform and empower the minibus taxi industry, by forming Vehicle Operating Companies (VOCs) or Bus Operating Companies (BOCs) which will run the BRT/IRPTN system. The implementation of the BRT/IRPTN system requires the elimination of any form of competition on the targeted routes. The affected modes of public transport (minibus taxis and commuter buses) were invited to form a single entity which would then take over the affected routes, under the auspices of the BRT/IRPTN system, for a period of 12 years. The requirement that minibus taxi owners forfeit their taxi operating licences when opting to be part of the VOCs/BOCs, without a guarantee of the continuation of their contracts, creates an uncertainty that impedes on the empowerment of these former taxi owners. Experiences from other VOCs/BOCs indicate that former taxi operators are not involved in the strategic management of the VOCs/BOCs, and there is limited skills transfer.

**PROVISIONAL RECOMMENDATIONS**

65. The Commission made provisional recommendations to address the identified impediments to competition. The provisional recommendations included the following:

65.1. To ensure effective competition in the interprovincial bus operations, Autopax be separated from the PRASA Group.
65.2. PRASA Cres, which currently operates as a division of the PRASA Group, be incorporated as a new and independent state entity outside of the PRASA Group; to eliminate conflict of interest and perverse incentives.

65.3. The perpetual extension of subsidised bus contracts, without going out on tender, inhibits competition and therefore contracting authorities should consider breaking some of the contracts into smaller contracts – in order to create opportunities for new entrants and smaller bus operators.

65.4. To promote the use of public transport as an integrated system and improve coordination, dedicated provincial transport authorities should be established and be the recipient of all public transport subsidies. National government, through the DOT, should only manage the Shosholoza Meyl grant funding.

65.5. To facilitate proper functioning of commuter rail services, foster coordination in the rail sector (especially in Gauteng), and improve efficiencies through economies of scale, the Commission recommended immediate devolution of rail operations to the provincial transport authorities in Gauteng and Western Cape Provinces (to be established). DOT should develop a devolution strategy and set out the criteria that provinces (KwaZulu-Natal and Eastern Cape) must meet for devolution to take place.

65.6. On backlogs at PREs, the Commission recommended an overhaul of the issuing of operating licence regime and removal of quantity restrictions and all pending applications should be processed and finalised expeditiously.

66. After the release of the provisional report, the Commission received comments from several stakeholders on various aspects of the provisional recommendations. The detailed submissions from the stakeholders are reflected in chapters 4 to 14. The provisional recommendations that received opposition are broadly highlighted below:

67. DOT is of the view that devolution is not the policy of the current government and it is costly to operate rail in a decentralised manner as functions will be duplicated across the four provinces; decentralisation promotes further fragmentation; decentralisation makes investment in the rail sector difficult as provinces may only consider narrow provincial interests as opposed to national policy and limited resources available to operate rail at provincial level. Similarly, DOT is also opposed to national government focusing only on Shosholoza Meyl as attainment of economies of scale is not possible and possibility of cross-subsidisation of services is eliminated defeating the social objectives of government.

68. The creation of Provincial Transport Authorities (PTAs) was supported by many stakeholders if its functions are only to manage and plan transport functions within the province. However, the transfer of all public transport related subsidies to the PTAs received opposition on the basis that it will lead to silo-mentality and duplicate activities between spheres of government which is not cost effective.

69. Separation of Autopax and PRASA Cres was considered as a matter best dealt with by government as configuration of State Owned Entities (SOEs) is a matter of government policy which should be done in the context of the review of (SOEs) being conducted by the Presidency in conjunction with Department of Public Enterprises (DPE).
70. Removal of area restrictions for e-hailing and metered taxis was not supported as it is an important intervention in managing the conflict in the industry. Stakeholders argued that self-regulation will not work given the history of violence.

71. Overhaul of licensing function and removal of quantity restrictions – stakeholders did not support the blanket approval of licences and removal of quantity restrictions as this will lead to violence.

FINAL RECOMMENDATIONS

72. Having considered the comments from stakeholders, the Commission’s detailed response to the issues are contained in the respective chapters 4 to 14. However, of all the objections received, the Commission finds merit in some of the objections. The Commission has identified final recommendations which will improve the functioning of the public transport system.

73. The relationship between PRASA CRES and Autopax raises several concerns for the interprovincial bus industry. It is recommended that the DOT must address the conflict of interest between PRASA CRES and Autopax. This can be achieved through, among others, a complete structural separation between the entities.

74. Furthermore, PRASA CRES should ensure that all bus operators are treated in a non-discriminatory manner.

75. The perpetual extension of subsidised bus contracts, without going out on tender, inhibits competition. Where contracts are put out on tender, government (provincial transport departments or the DOT) should consider breaking some of the contracts into smaller contracts – in order to create opportunities for new entrants and smaller bus operators. Small and local bus operators should be given preference, given the incumbency advantages enjoyed by the existing large bus operators.

76. To promote the use of public transport as an integrated system and improve coordination, the Commission recommends:

76.1. To improve coordination, dedicated transport authorities to be established at provincial or metropolitan or district or municipal level, where appropriate. Given the interconnectedness of the metropolitan municipalities in Gauteng, a provincial transport authority may be appropriate.

76.2. Government (national and provincial government) and SALGA to create capacity at local government level to ensure that transport planning is prioritised by municipalities.

77. The Commission notes that government, through the DOT, is currently in the process of developing the subsidy policy. The Commission recommends that the subsidy policy be finalised and consider the following:

77.1. Address fragmented subsidies in the public transport sector to improve coordination and correct the skewed distribution of subsidies between urban and rural areas.

77.2. Equitable allocation of subsidies to the taxi industry and rural bus operators.

77.3. Infrastructure grants should be prioritised (as opposed to operating grants), especially for improving access to marginalised areas. Resuscitation of previously decommissioned rail networks and expansion into high density corridors should be prioritised.

77.4. To support integration, the Department of Transport to fast-track roll-out of an integrated ticketing system for various modes of transport;

77.5. The DOT to promote the use of a card or electronic system in the public transport sector, in preparation for the use of an integrated ticketing system.
78. While the subsidy policy is being developed, and in order to ensure stability (especially in the commuter bus industry), the current contracts should only be extended on a short-term basis. Given the timeframe required to finalise the subsidy policy, in order to support and empower small bus operators in the interim, the subsidy policy should:

78.1. Prescribe the conclusion of negotiated contracts (as opposed to tendered contracts) with small bus operators in all the provinces. The negotiated contracts awarded to small bus operators should account for a minimum of 30 per cent of all contracts, and progressively increase over time; and

78.2. The subsidy policy under development by DOT should ensure equitable allocation of subsidies in the public sector and this also extends to the minibus taxi industry.

79. With respect to the BRT/IRPTN implementation, the Commission recommends the following:

79.1. Municipalities, with guidance from the DOT and National Treasury, should do a complete review of the BRT/IRPTN model considering the following:

79.1.1. long-term fiscal and financial sustainability;
79.1.2. suitability of the model in smaller cities; and
79.1.3. inclusion and participation of the minibus taxi industry.

79.2. The DOT should consider reviewing the 12-year BOC/VOC model, or undertake a study to evaluate if the 12-year model promotes transformation and empowerment.

80. To facilitate proper functioning of commuter rail services, foster coordination in the rail sector (especially in Gauteng), and improve efficiencies through economies of scale, the Commission recommends the following:

80.1. DOT to develop a policy that ensures efficiency and integrated planning in commuter rail services. This policy may include, among others, integration of Metrorail and Gautrain in Gauteng.

80.2. The DOT and National Treasury should explore alternative funding sources to deal with infrastructure backlogs and new rail infrastructure investments.

81. To deal with fragmented law enforcement in the public transport industry, the Commission recommends that a specialised division within SAPS be created, to deal with all public transport related matters.

82. To improve the state of public transport in rural areas, the DOT and National Treasury are recommended to create a dedicated funding for rural public transport.

83. On backlogs at PREs, the Commission recommends the following:

83.1. The Commission recommends that capacity at PREs and planning authorities be increased to deal with the backlogs.

83.2. Furthermore, the Commission recommends that all pending applications for operating licences, must finalised within six months from the date of publishing a report of the inquiry in the Gazette.

83.3. The Commission recommends retaining the separation of planning and licensing functions and where appropriate, Provincial Transport Authorities and PREs enter into memoranda of understanding (MoUs) to jointly exercise their respective powers and functions, as contemplated in Section 12 of the NLTA.
1. MARKET INQUIRY PROCESS

1.1. On 10 May 2017, the Competition Commission (the Commission), in the exercise of its powers under Chapter 4A of the Competition Act 89 of 1998, published a notice in the Government Gazette that it would conduct a Market Inquiry into the land-based public passenger transport (Market Inquiry). The Commission initiated the Market Inquiry in order to understand the general state of competition in the land-based public passenger transport industry, and to determine whether there are any features that lessen, prevent or distort competition within the industry.

1.2. The Terms of Reference (ToRs) identified the following broad themes as the rationale for initiating the Market Inquiry:

1.2.1. Price setting mechanisms: Analysing different price setting mechanisms and their impact on competition in the land-based public passenger transport industry;

1.2.2. Price regulation: Examining applicable price regulations and their impact on competition in the land-based public passenger transport industry;

1.2.3. Route allocation, licensing and entry regulations: Assessing the impact of regulations – including route allocation, licensing and entry requirements – on intermodal and intramodal competition in the land-based public passenger transport industry;

1.2.4. Allocation of operational subsidies: Assessing the impact of operational subsidies granted to commuter buses, Metrorail and the Gautrain on intramodal and intermodal competition in the land-based public passenger transport industry;

1.2.5. Transport planning: Evaluating the impact of government’s transport plans on dynamism, efficiency and competition in the land-based public passenger transport industry; and
1.2.6. **Transformation**: Assessing transformation issues, including ownership patterns in the land-based public passenger transport industry.

1.3. The discussion sets out a summary of the process followed in conducting the Market Inquiry.

**Launch of the Market Inquiry**

1.4. The Commission engaged with key stakeholders such as the National Department of Transport (DOT), South African National Taxi Council (SANTACO), South African Bus Operators Association (SABOA) and other stakeholders, as part of the pre-launch consultations. The purpose was to inform the stakeholders about the Market Inquiry and solicit views on the scope of the Market Inquiry. The pre-launch consultations were held between March 2017 and April 2017.

1.5. On 10 May 2017, the Commission published a notice in the Government Gazette announcing the launch and scope of the Market Inquiry. Following the publication of the ToRs, the Commission published the Stakeholder Participation Guidelines (the Guidelines) and Call for Submissions on 13 July 2017. The Guidelines essentially provided a fair opportunity and a transparent process for all stakeholders to participate effectively in the Market Inquiry. The guidelines outlined (i) who could participate in the Market Inquiry and how they could submit information; (ii) the treatment of confidential information; (iii) the activities of the Market Inquiry; and (iv) the powers available to the Commission, among other issues.

1.6. The call for submissions was an initial invitation to all stakeholders to respond to the issues raised in the ToR. The response was to be made through formal written submissions, which allowed further engagements with stakeholders. The call for submissions was also important, for the Market Inquiry to assess if there were additional issues that may be considered.

**Phase 1: Evidence gathering**

1.7. In collecting information for the Market Inquiry, the Commission received over 200 submissions from stakeholders operating across the public transport industry value chain. Interactions with stakeholders occurred in different forms, namely (i) Meetings; (ii) Site visits; (iii) Teleconferences; (iv) Responses to calls for submissions; (v) Information requests and (vi) Oral submissions from the public hearings. Details of each type of interaction, and a list of the respondents, follow.

1.8. **Calls for submissions**: The Commission published a call for submission document, inviting all interested stakeholders to make formal submissions. The initial call for submissions, published on 7 July 2017, provided a list of questions related to the issues identified in the ToR as the rationale for the Market Inquiry. Stakeholders were advised that their responses need not be limited to those issues but could extend to other matters that might be relevant to the Market Inquiry – including the impact of the identified issues on the state of competition in the public transport sector.

1.9. Based on the information received by way of the responses to the initial call for submissions, the Commission identified specific factors that could have an impact on competition.

1.10. **Meetings, teleconferences and site visits**: The Commission engaged in face-to-face meetings across all provinces – with key engagements with the Provincial Departments of Transport, selected municipalities, taxi associations and bus operators. The purpose of the meetings was to obtain a broader understanding of functions and responsibility of each stakeholder (regulatory aspects) as well as the functioning of the public transport sector in general. These engagements also served to encourage stakeholder participation across the value chain. Tables detailing the stakeholders contacted are included in Annexures A to C.
1.11. **Information requests:** After receiving submissions from the initial call, the Commission issued a first round of information requests to selected market participants, from August 2017. The purpose of the information requests was to obtain detailed information from the various market participants, within each mode of transport and across the value chain, in the public transport sector. Information canvassed through the requests covered business operations, regulatory issues, state of competition, and identifying key suppliers to the sector, among others. The information submitted by stakeholders assisted the Commission in understanding pertinent issues in the public transport sector, the interactions between or among market participants, and the regulatory environment and impact of government policies (transport planning and subsidies) on competition (both intramodal and intermodal).

1.12. From October 2017, the Commission issued a second round of information requests to a narrower selection of market participants. These information requests focused on key issues identified by the Commission as warranting further examination. The minibus taxis were probed on issues relating, *inter alia*, to the influence of bus subsidies on price setting mechanisms, and the nature of conflicts arising from route allocation and moratoria in the industry. Stakeholders in the bus industry were requested to provide pricing information contrasting peak and off-peak periods (and the justification thereof), details about the procurement of buses and the number of routes operated by some of the large long-distance buses, types of subsidised bus contracts, its scope and views about the contracting system. With respect to rail, information requested revolved around the underlying reasons for decline in passenger numbers, and challenges faced by PRASA in providing a safe and reliable service to commuters. Regulators such as the Provincial Regulatory Entities (PREs) were questioned about the regulatory requirements in place for the public transport sector, and the rationale for implementing various regulations. The role of the spheres of government was also interrogated.

**Phase 2: Information Gathering – Public hearings**

1.13. Phase 2 of the Market Inquiry was continuation of evidence gathering, through oral submissions in public hearings. The Commission appointed three panel members and two evidence leaders from its staff, to preside over the public hearings. The Commission had public hearings in all the 9 provinces, which were conducted over 24 days between June and August 2018. Over 200 submissions were received during the inquiry. The Market Inquiry held additional hearings at the Commission offices in October 2018, to cater for some of the stakeholders who could not participate during the first round of public hearings. The complete list of the stakeholders who made oral presentations in the nine provinces, and at the Commission’s offices, are provided in Annexures A to C. The Market Inquiry has also received several submissions from stakeholders who elected not to make oral presentations. A range of analytical techniques, both qualitative and quantitative, was applied to understand and draw conclusions on the nature of competition in the sector, and the impact of any feature or conduct observed within the sector.

1.14. The Commission’s activities in this phase involved receiving submissions on: (i) Evidence on how the public transport sector operates; (ii) Competitive dynamics on intramodal and intermodal competition; (iii) Impact of subsidies on competition; (iv) Impact of the implementation of BRT/IPTNs on the minibus taxis and broad transformation objectives; and (iv) Addressing the Market Inquiry on any matter relevant to its ToRs.

**Phase 3: Assessment of the state of competition**

1.15. Phase 3 of the Market Inquiry involved an assessment of the state of competition in the transport sector, based on the information received from market participants. A range of analytical techniques, both qualitative and quantitative, was applied to understand and draw conclusions on the nature of competition in the sector, and the impact of any particular feature or conduct observed within the sector.
1.16. The Commission’s activities in this phase included: (i) Establishing a competition assessment framework for the different modes of public transport; (ii) Describing the historical perspective of transport in South Africa; (iii) Describing relevant product and geographic markets to the possible extent; (ii) Assessing competitive dynamics in the defined markets; (iii) Assessing whether regulations and broader government policy act as an impediment to competition; and (iv) Drawing conclusions regarding the state of competition in the public transport market.

Phase 4: Reporting – preliminary findings and recommendations

1.17. Following the assessment referred to above, the Commission published its preliminary findings and proposed remedies and invite interested stakeholders to provide input on the recommended solutions and/or actions. The input received from stakeholders was assessed and incorporated into the analysis to enhance the outcomes of the Market Inquiry process. The final phase of the Market Inquiry involved the drafting of the final report on the state of competition in the transport sector and publishing the report in the Gazette, as per Section 43B of the Act. Table 1 summarises the milestones.

Table 1: Key milestones during the Inquiry

<table>
<thead>
<tr>
<th>Key milestones</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gazetted Terms of Reference</td>
<td>10 May 2017</td>
</tr>
<tr>
<td>Stakeholder participation guidelines</td>
<td>07 July 2017</td>
</tr>
<tr>
<td>Inquiry commenced</td>
<td>June 2017</td>
</tr>
<tr>
<td>Published call for submissions</td>
<td>07 July 2017</td>
</tr>
<tr>
<td>Received responses to call for submissions</td>
<td>21 July 2017</td>
</tr>
<tr>
<td>Introductory stakeholder engagements and site visits</td>
<td>July 2017 to August 2017</td>
</tr>
<tr>
<td>Issued first round of information requests</td>
<td>August 2017</td>
</tr>
<tr>
<td>Analysis of responses to first round of information requests</td>
<td>August 2017 to October 2017</td>
</tr>
<tr>
<td>Issued second round of information requests</td>
<td>October 2017</td>
</tr>
<tr>
<td>Ongoing consultation with market participants</td>
<td>August 2017 to March 2018</td>
</tr>
<tr>
<td>Published statement of Issues</td>
<td>May 2018</td>
</tr>
<tr>
<td>Conducting public hearings</td>
<td>June 2018 to August 2018</td>
</tr>
<tr>
<td>Review of the Information from public hearings for follow-ups</td>
<td>September 2018</td>
</tr>
<tr>
<td>Targeted meetings with additional stakeholders</td>
<td>October 2018</td>
</tr>
<tr>
<td>Drafting report and consultations with stakeholders</td>
<td>January 2019 – November 2019</td>
</tr>
<tr>
<td>Preliminary findings and recommendations for public comment</td>
<td>19 February 2020</td>
</tr>
<tr>
<td>Review and analysis of feedback from stakeholders</td>
<td>April to October 2020</td>
</tr>
<tr>
<td>Finalisation of the Market Inquiry</td>
<td>31 March 2021</td>
</tr>
</tbody>
</table>
1.18. During the Market Inquiry, the Commission placed several documents on its website. These included the ToR, participation guidelines, a statement of issues (SOI), submissions from stakeholders, and transcripts from the oral evidence from public hearings.

Chapter outline in relation to the ToRs

1.19. The ToRs identified the following scope for the Market Inquiry: impact of price setting mechanisms, price regulation, route allocation, licencing and entry regulations, allocation of operational subsidies, and transport planning on competition dynamics in the public transport industry.

1.20. Given the peculiar differences among the modes of transport (taxis, buses, rail), the Commission decided to have separate chapters focusing on each mode of transport, where possible. This approach provides a clearer understanding of the dynamics within each mode of public transport. An assessment of competition dynamics within each mode (intramodal competition) is conducted in the respective chapters. The assessment of competition dynamics between or among modes (intermodal competition) is conducted in one chapter, to minimise repetition. The intermodal competition assessment is conducted after the discussion of each mode of public transport. Cross-cutting themes such as subsidisation, transport integration and transformation are considered under a single chapter.

1.21. The report is broadly organised in themes. Firstly, it deals with subsidised public transport (commuter rail and contracted bus services). Historically, this was the genesis of public transport in South Africa, arising from the apartheid system. The second theme focuses on the emergence of private players in public transport (minibus taxis and unsubsidised buses) to cater to the shortcomings of the subsidised system. Interprovincial bus services are then considered, followed by cross-cutting themes such as transport integration and transformation. Table 2 demonstrates how the ToRs have been addressed in each chapter of the report.

Table 2: Linking the ToRs to Chapter layout

<table>
<thead>
<tr>
<th>Terms of Reference</th>
<th>Mode of Transport</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Taxi</strong></td>
<td><strong>Buses</strong></td>
</tr>
<tr>
<td>Price setting mechanism</td>
<td>Chapters 10</td>
</tr>
<tr>
<td>Price regulation</td>
<td>Chapter 10</td>
</tr>
<tr>
<td>Route allocation, licensing and entry regulations</td>
<td>Chapters 3 and 8</td>
</tr>
<tr>
<td>Allocation of subsidies</td>
<td>Chapter 5</td>
</tr>
<tr>
<td>Transport planning</td>
<td>Chapter 4</td>
</tr>
<tr>
<td>Transformation</td>
<td>Chapter 14</td>
</tr>
<tr>
<td>Competition dynamics - intermodal</td>
<td>Chapter 12</td>
</tr>
</tbody>
</table>
2. BACKGROUND TO THE PUBLIC TRANSPORT SECTOR IN SOUTH AFRICA

Introduction

2.1. This chapter provides a background and overview of public transport in South Africa. For the purpose of this Inquiry, public transport implies land-based public passenger transport consisting of three main modes, namely; taxi, bus and rail. The chapter begins by providing an overview of the key features of public transport, and then provides a discussion of the main public transport modes in South Africa, and the commuter trends in each transport mode. In addition, the chapter outlines the proportion of income spent on public transport, by comparing rural and urban areas. The chapter concludes by highlighting waiting times for various modes of public transport; as a proxy for quality of service.

Overview of South Africa’s public transport modes

2.2. Public transport in South Africa includes buses (contracted buses, unsubsidised buses, municipal buses); minibus taxis, metered taxis, e-hailing; and rail (Metrorail and Gautrain). Statistics South Africa (2015) indicated that taxis are the most commonly used mode of public transport in South Africa, accounting for 66.5 per cent of households that use public transport. The bus and rail modes account for 23.6 per cent and 9.9 per cent respectively. Figure 1 below shows the different types and modes of public passenger transport.

Figure 1: Modes of land-based public passenger transport in South Africa

![Figure 1: Modes of land-based public passenger transport in South Africa](source: Commission’s own research)

Rail industry

2.3. The railway sector was established to facilitate the country’s industrial revolution, and to accelerate economic growth and development by rapidly networking significant places through the fastest, most reliable freight and passenger transport.¹ Thereafter, it largely focused on servicing the mining and agricultural sectors.²

2.4. Over the past years, the rail sector has been under government control and shielded from competition. In the late 1980s, the deregulation of the road public transport system introduced competition to the rail industry.³ A total deregulation of road transport was implemented through the promulgation of the Transport Deregulation Act in 1988, and this led to rail losing market share.⁴ Subsequent to the Transport Deregulation Act, 1988 (Act No.

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80 of 1988), the Legal Succession Act of 1989 (Legal Succession Act) was introduced. This Act replaced the South African Transport Services (SATS) dispensation and corporatised what is today called Transnet. PRASA was established in terms of Section 22 of the Legal Succession to the South African Transport Services Act, 2008 (Act No. 38 of 2008) (as amended).

2.5. The White Paper on National Transport Policy, 1996, proposed, among others, to improve the safety, security, reliability, quality, and speed of transporting people. The White Paper seems to have led to the introduction of the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002). Prior to 1994, there was no explicit policy governing the rail industry and in 2017, the government developed the National Rail Policy – with the intention of placing rail on a sound footing to collaborate and compete against the other modes of public transport.

2.6. Rail has been identified as the backbone of public transport in South Africa, and operates in four provinces. Metrorail transports over 2 million passengers per day in these four provinces, and in the Western Cape over 40 per cent of the population use rail.

2.7. The National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002), established the Railway Safety Regulator (RSR). The primary legislative mandate of the RSR is to oversee and enforce safety performance by all railway operators in South Africa, including those of neighbouring states whose rail operations enter into South Africa. All operators are, in terms of National Railway Safety Regulator, 2002 (Act No. 16 of 2002), primarily responsible and accountable for ensuring the safety of their railway operations.

2.8. PRASA, previously known as the South African Rail Commuter Corporation (SARCC) was established in terms of Section 22 of the Legal Succession to the South African Transport Services Act of 2008 (as amended).

2.9. The passenger rail sector consists of two types of rail services, namely Metrorail and the Gautrain. Metrorail is a conventional rail transport service which is operational in Gauteng, the Eastern Cape, KwaZulu-Natal and the Western Cape. The Gautrain is an 80km-long mass rapid transit railway system that links Johannesburg, Pretoria and the OR Tambo International Airport. The Gautrain provides two types of services: (1) General Passenger Services (GPS) and (2) Airport Passenger Service (APS). The Gauteng Legislature approved the Gautrain Management Agency Act, 2006 (Act No. 5 of 2006) and it was promulgated in December 2006. The objective of this Act includes, inter alia, to provide for the establishment of a Gautrain Management Agency as a provincial public entity, to manage and oversee concession agreements for the Gautrain Rapid Rail Link Project.

2.10. Detailed discussion of the rail industry is reflected in Chapter 6.

Bus industry

2.11. The bus sector comprises various types of bus services such as commuter bus, interprovincial, cross-border, tour and charter, scholar bus, special hire or private hire bus, and commercial contract bus services. Commuter, scholar and interprovincial buses make up the largest portion of the industry.
2.12. The commuter bus industry's roots can be traced back to the apartheid era, during which successive pre-1994 governments used public transport, and more specifically commuter bus services, as a policy instrument to give effect to separate development. Spatial planning was a mechanism used to expedite segregation, and the commuter bus system was seen as intrinsically linked to the policy of separate development. Subsidised commuter services were introduced, to lessen the financial burden borne by the majority – who incurred high transport costs as a result of being forced to travel long distances (from their places of residence to their places of employment). Commuter buses, by definition, are buses that are assigned for short distance travel, and are mainly utilised by the working population.

2.13. When the 1996 White Paper was accepted, which legalised the 16 seat minibus taxis, commuter bus operators began to make losses, and the commuter bus subsidy system was thus developed to incentivise commuter bus operators. As the minibus taxi industry grew, there was a greater need for the financial intervention of government in the commuter bus industry. As a result of many bus operators failing, competitive tendering was introduced, but was later suspended due to lack of funding.

2.14. The post-1994 policy initiatives embedded in the 1996 White Paper were to transform the commuter bus industry. The recommendation of the White Paper, in as far as the subsidised commuter bus services were concerned, was to reinstate the process of competitive tendering. The adoption of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) (NLTTA) gave a legal status to the contracting, and the acceptance of negotiated contracts of commuter buses under specific circumstances.

2.15. In 1997, interim contracts with subsidised commuter bus operators were entered into, as a transition mechanism to competitive tendering. There were, however, challenges with the competitive tendering system – and the second-best option was for the government to enter into negotiated contracts. A number of these interim contracts were concluded between 2000 and 2003, and when these contracts reached their ends-of-term they were extended on the same conditions.

2.16. There was a further development in 2009, when the contracts were converted to kilometre-based. Although interim contracts were foreseen to be a three-year transition mechanism, some of these contracts have continued to this day. Even though it remained the government's policy, under the NLTTA, to tender and negotiate subsidised commuter transport services, there have been no significant changes in subsidised commuter bus contracts.

2.17. There are approximately 25 000 buses in South Africa, of which 19 000 are involved in formal public transport activities, while the other 6 000 are found in commerce and industry and government institutions – where they are mostly used for in-house purposes. Furthermore, buses that are involved in public transportation provide direct employment to about 34 200 people throughout the country, with about 171 000 people being indirectly dependent on the industry (or directly related to employment in companies). The industry also supports a large number of suppliers, such as bus and chassis manufacturers, and fuel and tyre companies; that are in some way dependent on the industry for employment. Commuter bus operators undertake approximately 912 million passenger trips per annum.

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16 Ibid.
19 Ibid.
22 Ibid.
23 Ibid.
2.18. Commuter buses provide scheduled services travelling a short distance of around 100kms or less, on a particular route, in accordance with a timetable prescribed by government. The provinces manage, subsidise and determine the fares of commuter bus services. Public Utility Transport Corporation (PUTCO) which operates about 1 307 buses on subsidised bus contracts,\(^\text{24}\) is the biggest commuter bus operator in the country – operating mainly in the Gauteng and Mpumalanga (Kwa Mhlanga) regions. Golden Arrow Bus Services (GABS) is the second largest bus operator in the country, with a fleet of 1 100 buses servicing 2086 routes in the Western Cape.\(^\text{25}\) The other large commuter bus operators include North West Star SOC Ltd (Gauteng and North West), Algoa Bus Company (Pty) Ltd (Nelson Mandela Bay), Great North Transport SOC Ltd (Limpopo), Buscor (Pty) Ltd (Mpumalanga), Interstate Bus Lines (Pty) Ltd (Free State) and Metro Group of Companies (Pty) Ltd (eThekwini and Zululand).

2.19. Within the commuter bus industry there are also several small bus operators, who either operate subsidised or unsubsidised bus services. Most small bus operators belong to the South African National Small Bus Operators Council (SANSBOC) which also has provincial structures in all nine provinces.

2.20. The City of Johannesburg (Metrobus), Tshwane Municipality (Tshwane Bus Service), eThekwini Municipality (People Mover) and Buffalo City Metropolitan Municipality also own and operate commuter bus services. In Gauteng, the Gautrain’s bus services cater mainly to the commuters who use their train services, as a feeder system.\(^\text{26}\) The Gautrain buses operate on certain routes between the Gautrain stations.

2.21. The coach operators are active in long distance scheduled services between cities (interprovincial or intercity), cross-border services, as well as charter services in the country. These services are unsubsidised, and the government does not prescribe routes to the operators of these services.\(^\text{27}\) The biggest players in the coach service market segment include Intercap, Translux, City to City, Greyhound, Citiliner, Eldo Coaches, Eagle Liner, Africa People Mover, Nozulu Enterprise and others. These long-distance coaches differ from conventional buses in that they provide comfort amenities such as toilets and air conditioning, among others.

2.22. The newest bus service in South Africa is the bus rapid transit (BRT) system which was approved by government in 2007, through the adoption of the Public Transport Strategy.\(^\text{28}\) This strategy proposed, among others, the implementation of Integrated Rapid Public Transport Networks (IRPTNs) in various phases; in order to achieve sustainable, equitable and uncongested mobility in cities and districts.\(^\text{29}\)

2.23. The Institute for Transportation and Development Policy defines BRT as a high-quality bus-based transit system that delivers fast, comfortable, and cost-effective services at metro-level capacities.\(^\text{30}\) BRT buses operate in dedicated lanes, with busways and iconic stations typically aligned to the centre of the road, off-board fare collection, and fast and frequent operations. Furthermore, the BRT system has features like those of a light rail system, which makes it much more reliable, convenient and faster than regular bus services.

2.24. Detailed discussion of the bus industry is reflected in Chapters 7, 9 and 11.

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\(^\text{26}\) http://join.gautrain.co.za/Buses.aspx
\(^\text{27}\) Meeting with Unitrans Passenger. 5 September 2018.
Taxi industry

2.25. Taxis\textsuperscript{31} in the form of sedan cars have been commonplace in the black townships since at least the 1930s, although they had a minimal impact on the bus and rail sector during the period; acting as feeders to bus and rail termini.

2.26. Despite subsidies being provided to bus and rail modes, commuters increasingly began to switch to taxis during the 1970s. The taxi industry was still small in comparison to bus and rail services. The increase in the passenger numbers encouraged taxi operators to increase their vehicle capacity, ultimately leading to the passing of the 1977 Road Transport Act, 1977 (Act No. 74 of 1977) allowing for the current form of the taxi industry that currently exists.

2.27. Like other developing countries, the minibus taxi industry in South Africa caters for the majority of public transport commuters and witnesses “sporadic taxi violence” or “taxi wars” between competing taxi operators and other public transport operators such as bus operators.\textsuperscript{32} Despite the sporadic taxi violence and operational flaws such as lack of safety and comfort, unreliability, unpredictability and erratic driving, minibus taxis remain the preferred mode of transport in South Africa.\textsuperscript{33}

2.28. There have been several attempts by regulators of the transport industry to formalise the taxi industry. In response to the taxi industry's plea for financial assistance, the 1996 National Transport Task Team recommended some degree of formality in the taxi industry – before financial assistance could be made available to the taxi industry – through a standard constitution and formal registration of operators and their associations. The definition of formalisation in the 1996 White Paper on National Transport Policy implied regulated competition, so the minibus taxis would have to form legally registered businesses – where they operate in terms of permission by the Provincial Transport Board (currently known as the Provincial Regulatory Entity) to operate on a route or network based on the demand determined by transport plans, and that minibus taxis may compete for the awarding of contracts by transport authorities. The 1996 White Paper indicated that, subject to these changes, financial and technical assistance would be offered to minibus taxis to improve their economic viability, and to enable them to obtain permission and/or contracts – either in partnership with bus operators or on their own.

2.29. The NLTA defines various taxi types as follows:

2.29.1. **Minibus taxi** – means unscheduled public transport service operated on a specific route or routes, or where applicable, within a particular area, by means of a motor car, minibus\textsuperscript{34} or midibus\textsuperscript{35}; and it can carry 16 to 35 passengers.\textsuperscript{36}

2.29.2. **Metered taxi** – is a public transport service operated by means of a motor vehicle contemplated in Section 66 which –

(a) is available for hire by hailing while roaming, by telephone or otherwise;

(b) may stand for hire at a rank; and

(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.\textsuperscript{37}

\textsuperscript{31} For ease of reference, by the term taxis we refer to the minibus taxis in this chapter. The other types of taxis such as metered taxis and app-based services are explicitly differentiated by their respective full definitions.


\textsuperscript{34} A motor vehicle designed or modified solely or principally for conveying more than nine but not more than 16 seated persons, including the driver.

\textsuperscript{35} A motor vehicle designed or modified solely or principally for conveying more than 16 but not more than 35 persons, including the driver, and for the purposes of the National Road Traffic Act is a type of sub-category of bus.


2.29.3. The National Land Transport Amendment Bill [B7 D-2016] defines e-hailing services as:

“1(c) ‘electronic hailing service’ or ‘e-hailing service’ means a public transport service operated by means of a motor vehicle, which—

(a) is available for hire by hailing while roaming;

(b) may stand for hire at a rank, and

(c) is equipped with an electronic e-hailing technology-enabled application, as contemplated in Section 66A;”

2.29.4. **Tuk-tuk** – These are small three-wheeled vehicles that can carry up to three passengers. They are considered an inexpensive alternative to metered taxis or e-hailing services. Tuk-tuks have grown steadily in popularity with commuters travelling short distances through the suburbs of Johannesburg. They are not subject to price regulation and charge a minimum of R20 for a trip which increases with distance. Section 50, 55, 54 and 70 (1) of the NLTA provides that tuk-tuks may be used for public transport services where relevant transport plans allow for this. Where a tuk-tuk is to be used, the operating licence must stipulate the urban route, road network or area on or within which it must operate.\(^{38}\)

2.29.5. **4+1 Sedan** – These are sedan vehicles designed or modified solely or principally for transporting not more than 4 seated persons, including the driver, offering unscheduled public transport services operated on a specific localised route or routes, often in townships. The 4+1 sedan taxis were the originators of what became the minibus taxi industry, and they operate in a similar way to the minibus taxis. Passengers are charged a specific fare for a trip.

2.30. Minibus taxi operators are required to apply for a route-type operating licence, which allows operators to provide services only along a certain route between two points or areas. Metered taxi operators and e-hailing operators are required, in terms of Section 66 of the NLTA, to apply for area-based permits. A detailed description of the route or routes (or radius) as well as allocated taxi ranks, terminal, and pick-up and drop-off points must be specified before obtaining the operating licence. Detailed discussion of the taxi industry is reflected in Chapter 10.

**Trends in public transport usage by mode**

2.31. According to Statistics SA’s National Household Travel Survey (2013), 10.1 million of the 14.2 million South African households used public transport as their main mode of travel, while approximately 3 million households used private transport, and 306 000 households used non-motorised transport as their main mode of transport. Further findings were: 66.5 per cent of the South African households use taxi services daily, 23.6 per cent make use of bus services, while 9.9 per cent make use of rail operations. **Figure 2** shows that most households frequently use public transport when going to work and attending school.

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2.32. Minibus taxis remain the dominant mode of transport, compared to buses and trains. The trend of usage of taxis has been increasing over time from 2013 to 2016, both for work and attending school. The use of buses has declined over time. The use of rail as a mode of public transport has shown a positive increase in 2016, for commuters travelling to work, but declined with respect to learners travelling to school.

2.33. According to a Public Opinion Survey known as “The State of Transport Opinion Poll South Africa”, about 73.1 per cent of the polled people used taxis 4-7 times a week, and 85.4 per cent of the polled people revealed that they never used the Gautrain. The results are summarised below.

Table 3: Public transport usage

<table>
<thead>
<tr>
<th>Public transport usage</th>
<th>Taxi (%)</th>
<th>Gautrain (%)</th>
<th>Train (%)</th>
<th>Bus (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4-7 times a week</td>
<td>73.1</td>
<td>1.0</td>
<td>8.4</td>
<td>17.5</td>
</tr>
<tr>
<td>2-3 times a week</td>
<td>57.9</td>
<td>4.8</td>
<td>14.4</td>
<td>22.9</td>
</tr>
<tr>
<td>Once a week</td>
<td>39.2</td>
<td>5.4</td>
<td>17.5</td>
<td>38.0</td>
</tr>
<tr>
<td>Once every two weeks</td>
<td>27.1</td>
<td>7.0</td>
<td>27.1</td>
<td>38.8</td>
</tr>
<tr>
<td>Once a month</td>
<td>16.7</td>
<td>13.0</td>
<td>24.3</td>
<td>46.1</td>
</tr>
<tr>
<td>Less than once a month</td>
<td>10.1</td>
<td>19.4</td>
<td>32.1</td>
<td>38.4</td>
</tr>
<tr>
<td>Never use</td>
<td>13.8</td>
<td>85.4</td>
<td>64.8</td>
<td>40.2</td>
</tr>
</tbody>
</table>

Source: Public Opinion Survey (2012), known as The State of Transport Opinion Poll South Africa (STOPSA) 39

Table 3 shows that of all the public transport users, taxis are clearly the most dominant mode of transport, followed by buses. The same trends on the usage of different transport modes discussed above can be observed at a provincial level. The usage of taxis is high in Gauteng province, followed by Limpopo province as shown in Figure 3. The Western Cape has the highest usage of trains, compared to other provinces. After taxis, buses are dominantly used in Mpumalanga, and least used in the Eastern Cape.

2.35. Figure 3 also shows that 36.6 per cent of South African households had at least one household member who used a minibus taxi/sedan taxi/bakkie taxi during the week preceding the survey. Provinces with the highest levels of use of minibus taxis were Gauteng at 44 per cent, Mpumalanga at 39.3 per cent, North West at 36 per cent, and KwaZulu-Natal at 36 per cent. It is notable that 17.1 per cent of households in Mpumalanga used the bus. The use of trains was most common in the Western Cape, at 10.5 per cent, and Gauteng 7.7 per cent.

Money spent by each consumer on public transport

2.36. Transport expenditure indicators are one of many instruments that can be used to measure the performance of a transport system over time. This can be helpful to inform decisions on subsidisation. Studies suggest that transport spending represents between 10 and 20 per cent of total household spending worldwide.40 In developing countries, high transport expenditures are of concern because they can compromise a poor household’s ability to access services and livelihood-enhancing opportunities.41 The poor are the most vulnerable to transport cost shocks, and this suggests that an increase in the cost of transport may lead to low income households becoming socially and economically excluded from opportunities.

2.37. The South African Government uses a household spending benchmark of 10% of income spent on public transport, as an indicator of transport affordability.42 This is informed by the 1996 White Paper, which envisaged that less than 10% of the commuters’ disposable income should be spent on transport. The 10% benchmark rationale can be traced back to the 1987 World Bank Technical Paper by Alan Armstrong-Wright and Sebastien Thiriez. The authors conducted a study on bus services and concluded that in developing countries, the reasonable level of household expenditure on bus travel should not exceed 10% of household income.43 This has been the generally acceptable benchmark across all modes in South Africa.44 Based on the World Bank Household Consumption Survey that was...
conducted in 2010, Brazil and South Africa spend significantly more on transport, compared to other developing countries, as shown in Figure 4.

2.38. Countries with the highest expenditure on transport are Brazil and South Africa, whose households spend 24 per cent and 18 per cent of their total household income on transport respectively. Other developing countries range between 5 and 12 per cent, which is not significantly above or below the 10 per cent benchmark.

2.39. In Europe, the 28 EU member countries in 2010 had an average of 12.8 per cent, and this increased slightly to 13 per cent in 2017.

Figure 4: Spending as a share of total household spending (selected countries)

2.40. According to the Measuring Household Expenditure on Public Transport Report, more than 66.6 per cent of South Africans spend more than 20 per cent of their monthly household income per capita on public transport. These percentages can be as high as 31 per cent in the rural areas. The average per capita monthly household travel cost is higher for the households in the highest income quintile, at R404, and R136 for the households in the lowest income quintile. Taxis are the most expensive mode of travel, with an average per capita monthly cost of R254, followed by trains at R248, and buses at R231.

2.41. Figure 5 shows that 73.4 per cent of rural workers spend more than 20 per cent of their monthly household income per capita on public transport, while in urban areas the percentage is 60.1 per cent of workers, and in metros 54.7 per cent. This provides a basis for a critical examination of the rural public transport dynamic, given the high proportion of households spending more money on public transport.

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45 http://datatopics.worldbank.org/consumption/detail
2.42. The NHTS (2013) reveals that in many cases poorer households pay more (in absolute terms) for public transport – due to their poor location in the urban periphery, and a high dependence on informal transport modes with unsubsidised fares.\textsuperscript{48}

2.43. Figure 6 shows that 69.6 per cent of informal workers were more likely to spend more than 20 per cent of their monthly household income per capita on public transport, compared to 56.7 per cent of formal workers.

\textbf{Figure 6: Monthly household income per capita spent on public transport to work, analysis by sector}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure6.png}
\caption{Monthly household income per capita spent on public transport to work, analysis by sector}
\end{figure}

Waiting times for public transport

2.44. Waiting times for public transport may be used as a measure for reliability, efficiency and quality service. NHTS 2013 findings in relation to the workers’ waiting times for their first transport varied between provinces and per mode. Nationally, at least 58.6 per cent of workers waited 5 minutes or less. In the Eastern Cape (75.7 per cent), Western Cape (63.5 per cent) and Northern Cape (58.4 per cent), workers were the most likely to wait for 5 minutes or less. Only 10.3 per cent of workers waited for more than 15 minutes for the first public transport, nationally. Meanwhile, workers who waited for more than 15 minutes were higher in Gauteng (13.0 per cent) and KwaZulu-Natal (11.8 per cent), but lower in the North West (9.2 per cent).

2.45. In terms of waiting times per mode of transport, NHTS 2013 shows that the waiting times for taxis was much higher in Gauteng and KwaZulu-Natal than in all other provinces. At least 39.7 per cent and 27.5 per cent of the commuters using taxis, in Gauteng and KwaZulu-Natal respectively, waited for longer than 15 minutes. In contrast, only 28.0 per cent of the users of bus services in Gauteng and 12.7 per cent in KwaZulu-Natal waited for longer than 15 minutes. The waiting times for trains are higher than other public transport modes, with 73.7 per cent of train commuters in Gauteng, and 18.0 per cent in the Western Cape waiting for more than 15 minutes for their trains to arrive. The waiting times are largely influenced by the two peak periods.

Comparison to other countries

2.46. In comparison to other countries, South Africa’s waiting times are within the norm. In Rio de Janeiro, Brazil commuters wait 19 minutes at a stop or station for their Light rail, Metro, Train, Bus, Ferry, Gondola & Funicular line on a weekday. At least 35 per cent of commuters wait for over 20 minutes on average for their transport line every day, to and from work. In Hong Kong, commuters wait 14 minutes at a stop or station. In Moscow, Russia the average waiting time at a stop or station is 11 minutes on a weekday, and at least 11 per cent of commuters wait over twenty minutes for their transport to and from work. In Berlin, Germany commuters wait for 10 minutes at a stop or station, and at least 10 per cent of commuters wait for over twenty minutes for their transport to and from work. In Barcelona, Spain commuters wait for 10 minutes on a weekday, and at least 9 per cent of commuters wait for over twenty minutes for their transport to and from work.

2.47. South Africa has a lower average waiting time than the countries mentioned above, but the difference is that most public transport in South Africa is unscheduled. The popularity of the minibus taxi in South African led to a reduction in the average waiting time, as the minibus taxis carry more people to and from work than the available scheduled services. However, the average waiting time for scheduled services is higher in South Africa than in the countries mentioned above.

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50 Ibid.


3. REGULATORY FRAMEWORK

Introduction

3.1. This chapter provides an overview of the regulatory framework for public transport in South Africa. The chapter begins by providing the historical context of regulatory framework, and then introduces the regulatory entities, their mandate and the empowering legislation. The key features of the regulatory framework are then discussed, with focus on the NLTA.

Evolution of regulatory framework post-1994

3.2. The 1996 White Paper played a crucial role in initiating the process of transforming South Africa’s land-based public transport sector. The 1996 White Paper introduced various changes in the regulation of public transport in the country, which culminated in some of its policy pronouncements forming part of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) (NLTTA) and the NLTA, respectively.

3.3. The NLTTA came into force in 2000 but it was transitional in nature and had to be implemented for a period of five years while the NLTA was being put in place. The NLTA was promulgated in 2009 and repealed the NLTTA. While the 1996 White Paper remains relevant, the main policy behind the NLTA is the Public Transport Strategy and Action Plan approved by Cabinet in 2007. The strategy has two major thrusts: (i) modal upgrading – the current initiatives to improve public transport system; and (ii) implementing high quality, integrated, mass rapid public transport networks. These thrusts formed the basis of the NLTA, which is the current legislation governing all key aspects and players in the public transport sector.

Regulators in the public passenger transport sector

3.4. Public transport is a function that is legislated and executed by all three spheres of government, i.e. national, provincial and municipal government. In addition to the three spheres of government, there are other regulatory bodies that assist in giving effect to some of the legislative provisions and regulations. Table 4 summarises the various regulatory bodies, and their mandate in the public transport sector.

Table 4: Overview of the regulators in the public passenger transport sector

<table>
<thead>
<tr>
<th>Regulator</th>
<th>Regulation mandate</th>
<th>Enabling legislation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provincial government</td>
<td>Planning, coordination and facilitation of land transport functions in the province, co-ordination between municipalities with a view to ensuring the effective and efficient execution of land transport in the province</td>
<td>National Land Transport Act, 2009 (Act No. 5 of 2009).</td>
<td>The provincial government is tasked with formulating provincial transport policy and strategy within the national policy and strategy framework; and planning, coordinating and facilitating of land transport functions in the province. Section 23(1) of the NLTA requires MECs of transport, within their jurisdiction, to establish Provincial Regulatory Entities which must then carry out the powers assigned to them in terms of Section 24 of the NLTA.</td>
</tr>
</tbody>
</table>
### Regulator | Regulation mandate | Enabling legislation | Comments
--- | --- | --- | ---
Local government | Promulgating municipal by-laws, managing the movement of persons and goods on land within its area, developing land transport policy and strategy within its area based on national and provincial guidelines. | National Land Transport Act, 2009 (Act No. 5 of 2009). Municipal Systems Act, 2000 (Act No. 32 of 2000). | Municipalities are mandated to promulgate municipal by-laws, manage the issuing of permits and operating licences. The specific powers are in terms of Section 11 of the NLTA |
National Regulator for Compulsory Specifications | The NRCS’ mandate includes promoting public health and safety, environmental protection and ensuring fair trade. NRCS’ stakeholders include the South African government industry and citizens. | National Compulsory Regulator for compulsory Specifications Act, 2008 (Act No. 5 of 2008). | NRCS is appointed by the national department of transport as the inspectorate of manufacturers, importers and builders in terms of the National road Traffic Act, NRCS administers compulsory specifications for the fitness of vehicles offered for sale for use on public roads, as well as off-road and specialised vehicles. |

3.5. As summarised above, the regulatory entities that are legislated by the NLTA are mainly the three spheres of government, which include: The national sphere (the DOT), National Public Transport Regulator (NPTR); the provincial sphere (PRE); and the municipal sphere (MRE). The NLTA allocates functions to each of the regulators as summarised below:

**The National Department of Transport (DOT)**

3.6. The functions of the DOT are set out in Section 11 1(a) of the NLTA. Some of key functions include:

3.6.1. formulation of national transport policy and strategy;

3.6.2. national strategic transport planning and coordination;

3.6.3. coordination between provinces and to address arrangements between the three spheres of government and public entities, with a view to ensuring the effective and efficient execution of the land transport function;

3.6.4. capacitating and monitoring provinces and municipalities that lack capacity or resources to perform their land transport functions;

3.6.5. regulating interprovincial road transport;

3.6.6. assigning functions to the most appropriate sphere of government; and

3.6.7. acting as contracting authority for subsidised service contracts, interim contracts, current tendered contracts and negotiated contracts concluded in terms of the transition Act.

3.7. Over and above these functions, the NLTA requires the establishment of a NPTR, whose functions are also set out in Section 21 of the NLTA. The key functions of the NPTR include:

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3.7.1. monitoring and overseeing public transport in the country and the activities of the Provincial Regulatory Entities and municipalities, in relation to their land transport functions;

3.7.2. receiving and deciding on applications relating to operating licences and related accreditations; and

3.7.3. overseeing fares charged for public transport services throughout the country.

3.8. The NPTR currently only deals with receiving and deciding on the granting, renewal, amendment or transfer of operating licences for tourist transport services, contemplated in Section 21(1) (b) (ii) of the NLTA, and applications for accreditation of operators of tourist transport services in terms of Section 82(1) of the NLTA read with Section 21(1)(b) of the NLTA. Through the National Land Transport Amendment Bill of 2017, the duties of the NPTR have been expanded to include receiving and processing complaints and input from interested parties on public transport matters.

**Provincial government**

3.9. The NLTA assigns the responsibility for formulating provincial transport policy and strategy within the national policy and strategy framework to provincial government. The provincial government is also empowered to facilitate planning, coordinating and facilitating of land transport functions in the province.

3.10. The functions of the provincial government are set out in Section 11 1(b) of the NLTA and these functions include:

3.10.1. planning, coordination and facilitation of land transport functions in the province and; preparing the Provincial Land Transport Framework in terms of Section 35;

3.10.2. formulation of provincial transport policy and strategy;

3.10.3. coordination between municipalities, with a view to ensuring the effective and efficient execution of land transport in the province, and promoting provincial legislation with a view to promoting the objects of the NLTA;

3.10.4. liaising with other government departments in the national and provincial spheres with responsibilities that impact on transport and land use planning issues, and bringing together key players;

3.10.5. ensuring that municipalities that lack capacity and resources are capacitated to perform their land transport functions;

3.10.6. building capacity in municipalities to monitor the implementation of the NLTA, ensuring implementation of the provincial integrated development strategy and public transport strategy with due attention to rural areas (with the focus on less capacitated municipalities or those that do not fulfil their responsibilities in respect of transport service delivery), and performing the other provincial functions assigned to the MEC.

3.11. In addition, Section 23(1) of the NLTA makes provision for every member of the provincial executive councils responsible for transport to establish a PRE, which must then fulfil the functions granted to it in terms of Section 24 of the NLTA. One of the functions granted to the PRE is that of deciding on applications relating to operating licences where no municipality exists to which an operating licence function has been assigned. One of the policy principles underlying the NLTA is that routes should be controlled by planning authorities and not by operators, as was the case in the past.

**Municipal government**

3.12. The NLTA enables local government to take over the transport regulatory and contracting functions. The functions of the municipal sphere of government are set out in Section 11 (1) (c) of the NLTA, and they include *inter alia*:

3.12.1. developing land transport policy and strategy within its area based on national and provincial guidelines;

3.12.2. promulgating municipal by-laws and concluding agreements, as appropriate in the municipal sphere;
3.12.3. managing the movement of persons and goods on land within its area by coordinating such movement;

3.12.4. encouraging and promoting the optimal use of the available travel modes to enhance the effectiveness of the transport system, and reducing travelling time and cost; and

3.12.5. determining concessionary fares for special categories of passengers in the prescribed manner, among others.

The salient features of the regulatory framework for public transport

3.13. Much of the discussion in this Section will focus on the NLTA, as it is the overarching legislation in the public transport sector. The purpose of the NLTA is to, inter alia, provide for the transformation and restructuring of the national land transport system. Some of the key features are discussed below.

Processing of operating licences

3.14. In broad terms, there are two types of operating licences to operate road based public transport service, namely; contracted and non-contracted operating licences. Contracted services are those services where the operator has concluded a subsidised service contract, negotiated contract or commercial service contract with the relevant contracting authority, as defined in Section 1 of the NLTA. Subsidised municipal and commuter bus operators are the types of services falling under the contracted services category.

3.15. Non-contracted services are those road-based public transport services that are provided without any contract having been concluded with a transport authority. There are various types of non-contracted services, such as minibus taxis, metered taxis, charter services and tuk-tuk services. These services can further be sub-divided into route-based services – where the operator is permitted to operate only on a specified route or routes, such as minibus taxis, and secondly, area-based – where the operator is permitted to operate within a set radius (for example metered taxis and e-hailing services such as Uber and Bolt (formerly Taxify) fall within that category).

3.16. In terms of Section 50 (1) of the NLTA, no person may operate a road-based public transport service unless they are in possession of an operating licence. Municipal, commuter and inter-provincial bus operators are also required to have valid operating licences. Applications for operating licences (excluding inter-provincial tourist transport services) are considered and approved by the PREs, while applications for operating licences to operate inter-provincial tourist transport services are considered by the NPTR through an accreditation process. Whilst the function of issuing operating licences for inter-provincial bus services primarily resides with the NPTR, whose functions are also set out in Section 21 of the NLTA, this function is performed by the PREs because the former is currently not capacitated to consider these applications. An operating licence is valid for a maximum period of seven years, but where a negotiated contract has been awarded to an operator (under Section 41 of the NLTA) for more than seven years, such an operating licence must be issued for the period of the contract (in terms of Section 56 of the NLTA).

3.17. Once applications are received by the PRE, the PRE gives notice in the Government Gazette – inviting members of the public, including other operators, wishing to submit comments or make representations within 21 days of the date of the publication. Where objections have been raised regarding a particular application, the PRE is required to convene a hearing and adjudicate on the objection. Before the PRE can consider the application, it must, by notice in the prescribed manner, inform all planning authorities in whose areas the services will be operated, with the request to give directions with regard to the application – based on the planning authority's integrated transport plan (ITP).
3.18. It appears as though the role of the PREs is merely a technical one, with municipalities playing a dominant role in the process since, should the planning authority direct the PRE to refuse the application, the PRE must abide by that decision.\textsuperscript{58} It therefore appears that, based on the proper construction of the provisions of Section 55 of the NLTA, the PRE has no discretion in this regard. The only discretion the PRE has is in instances where the planning authority has failed to respond after being notified of the application for an operating licence. In the latter circumstances, the PRE may consider the application for an operating licence without directives from the planning authority, in terms of Section 55(6) of the NLTA.

3.19. Even in circumstances where the PRE is considering the application of an operating licence without the planning authority’s input, Section 57(3) (a) of the NLTA seems to limit the discretion of the PRE because, if the granting of the operating licence would be contrary to the directions of the relevant planning authority based on its ITP, the PRE must refuse the application. The technical nature of the role played by the PRE was also acknowledged by the Gauteng PRE.\textsuperscript{59} If any of the parties are dissatisfied with the ruling of the PRE, an appeal can be lodged with the Transport Appeal Tribunal (TAT). A decision of the TAT can be appealed to the High Court.

3.20. Municipalities in terms of Section 18 of the NLTA are granted powers to declare a moratorium in respect of the issue of operating licences and this is only applicable to municipalities that have been assigned the operating licencing function. As far as the PREs are concerned, they derive their powers to issue a moratorium from Section 39 of the NLTA, which confers the power to planning authorities responsible for issuing of operating licences. The challenges faced by operators when it comes to the issue of the moratoria will be discussed in Chapter 10 below.

### Assignment of transport functions to municipalities

3.21. The NLTA provides that the operating licences function can be assigned from the provincial sphere of government to a relevant municipality, subject to Sections 99 and 156(4) of the Constitution and Sections 9 and 10 of the Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA). Section 99 of the Constitution states that assigning a function to a municipality must be agreed with the municipal council. Sections 9 and 10 of the MSA extend consultations required to the Minister of Finance, Provincial Member of Executive Council for Finance, organised local government, the Financial Fiscal Commission, and the Minister of Cooperative Government and Traditional Affairs. The cited Sections also refer to the need for appropriate funding and capacity in the municipality concerned.\textsuperscript{60} The municipality seeking to be assigned a transport function must also comply with the above-mentioned entities’ requirements.

3.22. The assignment of functions to municipalities envisages a greater role for municipalities in the issuing of operating licences. The Municipal Regulatory Entity (MRE), once established, will play two distinct roles – the first one as a planning authority, and the second one as a licencing authority. Once the issuing of operating licence function has been assigned, the responsibility of issuing operating licences will shift from the PRE to the MRE, which must then deal with applications relating to operating licences for services within its area.\textsuperscript{61} Where an MRE is established, the municipality must establish a special division in its administration to perform the operating licence function and ensure the appointment of specialised officials with the necessary knowledge, training or experience. It must also arrange or reorganise its administration, so that transport functions are integrated with each other and with land use planning (horizontal integration).

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\textsuperscript{58} Department of Roads and Transport. 2018. Oral submission by Ms Smith, Gauteng hearings. 6 June 2018. Page 28
\textsuperscript{60} National Department of Transport. Oral submission by Mr Patel, Gauteng hearings. 7 June 2018. Page 51 - 54
\textsuperscript{61} Ibid.
3.23. The powers of municipalities to promulgate bylaws are important and have far-reaching implications. Certain municipalities have promulgated certain bylaws that regulate, *inter alia*, fares to be charged by metered taxis (this is discussed more fully in the e-hailing and metered taxi services which will be issued separately). Section 14 of the NLTA summarises the municipalities’ role as planning authorities, which includes, *inter alia*, the preparation of ITPs as contemplated in Section 36 of the Act, and supplying directions to the entities responsible for granting, renewal, and amendment or transfer of operating licences. These ITPs are crucial in that when municipalities, as planning authorities, consider an application, they must consider whether there is a need for the service on the route(s) or in the area(s) in terms of their ITPs.

3.24. In terms of Section 55(2)(a) of the NLTA, if there is a need for the service, the municipality or planning authority must direct the PRE to grant the operating licence – and make recommendations it considers appropriate regarding conditions to be attached to the operating licence, having due regard to its ITP. If the ITP is not yet finalised or is inadequate, it must take a decision based on due inquiries and investigations carried out by it. In circumstances where the public transport requirements for the particular route or routes are adequately served by an existing public transport services of a similar nature, standard or quality provided in terms of a commercial service contract or subsidised service contract, or in terms of an operating licence as shown by its ITP, the planning authority must direct the NPTR or the PRE to refuse the application. In disposing of an application, the NPTR or PRE must act in accordance with the relevant ITP and directions of the planning authority, and must not grant an operating licence contrary to the directions of the ITP and planning authority. In circumstances where the planning authority has failed to respond to the request for directives, the NPTR or PRE may dispose of the application without any input from the planning authority.

3.25. The NLTA requires land public transport planning to be integrated with land development and land use planning processes. Among the Land Transport Plans are the following: a national land transport strategic framework prepared by the Minister; provincial land transport frameworks prepared by the MECs; and integrated transport plans prepared by planning authorities.

3.26. Every planning authority must develop an ITP and make it available to the NPTR and the relevant PRE, in terms of Section 36 of the NLTA. The planning authority, based on its ITP, makes recommendations to licencing authority for issuance of operating licences. The ITP identifies the need for transport services. In instances where there is no need for an additional service, the Act makes provision for rationalisation of public transport services. Section 39 of the NLTA makes provision for rationalisation of public transport services, which include imposing a moratorium on the issuing of new operating licences on those routes that the planning authority concludes to be overtraded; based on their integrated transport plans. The Minister is responsible for making regulations on the procedures that ought to be followed by the planning authority when imposing a moratorium.

3.27. Planning authorities, however, seem to be inadequately capacitated to develop these integrated transport plans. The failure of planning authorities to carry out their legislative responsibilities, in relation to transport planning, has led to land-based public passenger transport inefficiencies. This will be discussed in Chapter 4.

3.28. Section 40 of the NLTA makes provision for provinces and planning authorities to integrate bus services, subject to contracts as well as appropriate non-contracted services, into the larger public transport system – in terms of relevant integrated transport plans. These may be in the form of contracts, subject to Sections 41, 42 and 43 of the NLTA. A negotiated contract

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62 Bylaws are laws that are passed by the council of a municipality to regulate the affairs and the services the municipality provides in its area of jurisdiction.

concluded in terms of Section 41 of the NLTA, in terms of the NLTA regulation on contracting for Public Transport Services, should not preclude the contracting authority from concluding similar contracts with other operators in similar areas and/or routes.  

3.29. Where a municipality is establishing an IPTN as contemplated in Section 40, it must make reasonable efforts to involve existing scheduled bus and unscheduled minibus taxi operators, particularly on the relevant routes in the proposed negotiated contracts. The regulation further requires municipalities to make an offer, in writing or by notice in the press, to such operators. Where the offer has been rejected or the operators have failed to provide a response within 21 days, the municipality may enter into one or more negotiated contracts with other operators in terms of Section 41 (1) of the NLTA.

3.30. Regulation 2 Subsection 5 seems to suggest that, if there are disputes concerning the establishment of IPTN and contracting for public transport services, these should be resolved in terms of the procedures set out in regulations 6 to 9. However, regulation 6 makes provisions for the contracting authority to continue with its activities of establishing the IPTNs and concluding contracts with other operators – in the interests of improving public transport in the relevant area.

3.31. The NLTA’s regulation 4 contemplates a situation where there is action taken by the municipality no later than one year before the anticipated expiry of a contract concluded in terms of Section 42 (2) of the NLTA.

“... the contracting authority must commence arrangements for inviting tenders for subsidised service contracts or commercial service contracts which must, among other things, involve evaluating the services for compliance with the relevant ITP and redesigning them if necessary.”

Developments in policy and legislation in public passenger transport

3.32. Since the promulgation of the NLTA, there has been some developments on legislative frameworks, policies and legislation governing the public passenger transport sector. These include, inter alia, National Transport Policy (Draft and revised White Paper), Proposed Single Transport Economic Regulator, National Rail Policy Draft White Paper, and the National Land Transport Act Amendment Bill. The main features of the National Land Transport Amendment Bill and the Economic Regulation of Transport Bill (2018) are discussed below.

The National Land Transport Amendment Bill

3.33. The NLTA Amendment Bill is discussed for purposes of ascertaining whether the regulatory challenges uncovered by the Commission are addressed by the Amendment Bill. The NLTA is currently under review, with the National Land Transport Amendment Bill of 2015 still under parliamentary processes. In broad terms, the Amendment Bill clarifies, inter alia, the functions of the three spheres of government, revises some of the contracting arrangements for public transport, streamlines various administrative arrangements for operating licences, and makes provision for electronic hailing (e-hailing) services.

Contracting for public transport services

3.34. Insofar as contracting in provinces is concerned, the Amendment Bill gives Provinces powers to conclude new contracts (negotiated, tendered and commercial) in municipal areas where municipalities lack capacity. At present, municipalities may conclude new contracts as part of the policy to consolidate public transport functions at the local level. The contracts must be designed in terms of the ITPs of the municipality, or if there is no ITP, the Province must design them in collaboration with the municipality.

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65 Any dispute with regards to the matters contemplated in this regulation must be resolved in terms of the procedures set out in regulations 6 to 9.
3.35. There is also a proposed amendment of Section 41 of the NLTA, to streamline the provisions on negotiated contracts, and the requirement that negotiated contracts may be concluded “once only”. The Amendment Bill clarifies that different contracts can be done for different routes or operators. These proposed provisions are currently found in the Regulations on Contracting for Public Transport Services, 2009 that were made under the NLTA.

3.36. Currently the NLTA provides that provinces must continue to manage the existing subsidised bus contracts until the function is assigned to a municipality. The Amendment Bill will change this to a requirement that the municipality must meet the prescribed requirements, that is, the contracting function will no longer have to be formally assigned.

Relationship between the NPTR, PREs and MREs

3.37. The Amendment Bill provides that the NPTR may issue directives to the PREs, MREs and planning authorities that are not performing their functions adequately. The Amendment Bill also clarifies that the PREs only report to the Head of the Provincial Department on administrative matters and may not be dictated to on operating licence applications.

Transport planning

3.38. On transport planning, the Amendment Bill proposes a deletion of the requirement that provincial land transport frameworks (PLTFs) must be updated every two years, and instead proposes that they must be redone every five years.

Operating licences

3.39. On operating licences, the Amendment Bill provides that they can be withdrawn or suspended where traffic laws are transgressed, or where the operator transgresses the code of conduct (if the Minister prescribes such a code). In terms of the NLTA, the operating licences function can be assigned to municipalities, and this is still the case. Applications for operating licences for contracted service are contemplated in Section 56, the renewal of operating licence under Section 58, applications to replace a vehicle under Section 73. Temporary operating licences contemplated in Section 60 are streamlined, in that regulatory entities are no longer required to publish these applications in the Government Gazette.

3.40. The Amendment Bill also provides that before rationalising services on a route, a planning authority must first negotiate with operators on the route, eliminate illegal operations, and take steps under Section 78 of the NLTA to cancel operating licences and permits that are not in use. Section 35 of the NLTA is also amended to require the planning authority to first consult with affected operators, before taking those actions.

Registration of associations

3.41. The registration of associations and operators was a transitional measure for minibus taxis in the NLTTA. The NLTA does not make registration compulsory. However, registrations can be provided for in provincial laws – for example in the Western Cape, where this is still the case. The Registrars’ functions are now covered by regulatory entities (i.e. the NPTR, PREs and MREs) in the NLTA. The Amendment Bill, however, makes provision for regulatory entities to keep information on operators, associations and their routes.

Relationship between PRASA and municipalities

3.42. In terms of Section 23 of the Legal Succession Act, PRASA must provide passenger rail services at the request of municipalities, as well as at the request of the DOT, subject to agreements to be concluded between PRASA and the relevant municipality.

The Economic Regulation of Transport Bill

3.43. The purpose the Economic Regulation of Transport Bill (ERTB) is to give practical effect to government plans for consolidating the economic regulation of transport within a single legal framework. The ERTB provides for the establishment of a single regulator (the Transport Economic Regulator) and the Transport Economic Council, ending the role of specialised industry-specific regulators in price control.
3.44. The Transport Economic Regulator will subsume the Ports Regulator and regulate the following entities: National Ports Authority, Transnet Ports Terminals, Transnet Freight Rail, Airports Company of South Africa, Air Traffic and Navigation Services Company, Passenger Rail Agency of South Africa and South African National Roads Agency Limited. Any person adversely affected by a decision, determination or ruling issued or made by the Transport Economic Regulator may appeal, or apply for a review, to the Transport Economic Council.

3.45. The primary form of intended regulation focuses on price control. Price control has been defined as a method for setting the maximum price that can be charged, or revenue that can be earned, by a regulated entity for the use of or access to its assets, facilities or services. Each regulated entity would be required to submit a proposal to the regulator, requesting approval of its tariffs on services and facilities offered.

3.46. The Minister of Transport may however, in consultation with the Regulator, by notice in the Gazette, declare that this Act applies to any market, or any entity, facility or service, irrespective whether privately or state owned, within the transport sector. Such a determination by the Minister occurs if any of the following circumstances apply:

3.46.1. the facility or service is provided by only a single operator; or

3.46.2. the entity, market, facility or service is not functioning competitively; and

3.46.3. economic regulation can adequately address the economic consequences resulting from the non-competitive nature of the market.

3.47. The Passenger Rail Agency of South Africa and its associated entities, such as PRASA Cres, fall within the definition of regulated entities in the ERTB. PRASA Cres (manages the real estate business of PRASA and intermodal terminals) has different tariffs across its properties, and the Transport Economic Regulator will have powers to regulate its fees or tariffs. As such, PRASA would be required to submit a proposal to the Transport Economic Regulator, requesting approval of its tariffs on services and facilities offered. The ERTB will not currently apply to minibus taxis, e-hailing services and metered taxis, as none of them are defined as regulated entities in terms of the ERTB. However, should the Minister establish that economic regulation can address some concerns in any market, the ERTB may apply to all transport modes.

3.48. In terms of National Assembly Rule No. 241(1) (b) the Minister of Transport announced his intention to introduce the ERTB in Parliament during 2020. The ERTB and its Explanatory Memorandum were published for comments in the Government Gazette No. 41437, Notice Number 632 of 12 February 2018, and further published on Government Gazette 41992, Notice 1135 of 24 October 2018.

3.49. Given the time required to fulfil all parliamentary processes, it is unlikely that the ERTB will have an immediate impact on the outcomes of the inquiry. Rather, the inquiry may provide valuable information to the Minister of Transport, to assess if economic regulation is necessary on specific transport modes.
4. PUBLIC TRANSPORT AS AN INTEGRATED SYSTEM

Introduction

4.1. This chapter focuses on outlining the fundamental principles involved in public transport. An effective public transport is considered as a system providing seamless commuter experience. The chapter commences by providing key features of an effective public transport system (integrated public transport), and then reviews international experiences on integration – with a focus on which level of government is most appropriate, to provide such a service. An overview of the regulatory framework governing transport planning in South Africa is discussed, followed by an evaluation of the extent of integration in South Africa. The subsequent sections assess the impediments to transport integration and lastly, proffer findings and recommendations.

4.2. Public transportation systems include a variety of transit options such as buses, rail, and various forms of taxis. These systems should be readily available to the general public for a fare and may run on both scheduled and unscheduled times (metered taxis). To function as a seamless system, integration of the various modes is necessary. Integration involves movement from one place to another, via commuter-friendly intermodal facilities, and with options for interconnections. Improved integration between the public transport modes helps people to move around more easily and reduces the costs and inconveniences of travel. From a commuter perspective, public transport should have the following characteristics: convenience, easy access, comfort, frequent service, rapid journey, safety and security, customer service and affordability.

4.3. A public transport system focuses on connecting different transport modes – to facilitate transfer of commuters between the modes in a safe, smooth and efficient manner. This requires a unified design and planning process that incorporates regulation, provision/management of transportation infrastructure, and the use of that infrastructure by all operators of public transportation and private commuters. For public transport integration to take place, unified planning is paramount across public transport modes, and all role players, such as planning and licencing authorities and operators, must be involved.

4.4. Integration of transport modes and systems would ideally result in having the best suitable transport mode catering to the transport needs of commuters. For example, mass transportation would be catered for by rail, trunk routes by buses, and feeder service by minibus taxis. Ideally, for such integration to occur, government should play a significant role in the public transport system – either as an efficient operator (or contracting the service to efficient private sector players) or have effective planning authorities to undertake transport planning.

4.5. Public transport in developed countries is designed as a system which is inclusive of scheduled services operating on scheduled routes, using buses and trains among other modes. Various modes in the public transport system differ in terms of cost, capacity, and technology. Commuters access these public transport systems by walking to the stations, or by using feeder systems that link them with these main systems.

4.6. A classic public transport system is viewed as an integrated system, with various modes providing complementary services. The rationale for integration in the public transport system is to derive efficiencies and minimise infrastructure duplication, where possible. Integration therefore raises questions about the feasibility of fostering competition in public transport systems. Competition for the market typically suits public transportation, as opposed to competition in the market. The question of whether integration distorts competition depends on two perspectives, the first being competition for the market (which requires the implementing authority to put the operation of public transport out on competitive tender). In this way, competition is given effect, in the sense that all operators are given a fair chance to compete. The other perspective would be for competition in the market. Competition in the market arises when integrated planning by the relevant authorities has inefficiencies or has to a larger extent failed.

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4.7. The key question is, with transport integration, should modes of transport compete? The City of Cape Town is of the view that there should be no competition in public transport, if the planning authority manages to achieve integration of the transport modes. Initial plans for the BRT in Cape Town involved the elimination of taxis and replacing them with buses. This position has since changed, and minibus taxis are going to form part of the BRT by providing a feeder service. City of eThekwini has indicated that the IRPTN system is not going to be implemented throughout the city. This creates room for the minibus taxis to play a meaningful role.

4.8. The implementation of IPTN in the City of George resulted in the complete displacement of minibus taxis, supporting the notion that competition is unlikely in fully integrated systems. This approach created several problems, as the minibus taxi industry does not fully support this approach. The intention of the provincial and local government in the implementation of IPTN in George entailed developing an integrated transport plan for the Eden District Municipality, which made a provision for the provincial operating licence board to reject all applications for operating licences for services that may operate in competition with the subsidised public transport. This is an indication that competition might have to be dispensed with, where there is integration.

4.9. Central to the municipalities’ functions as a planning authority is the determination to use the best mode, whether it is taxi, rail or bus. In the development of IPTNs, the City of Cape Town and the City of Johannesburg indicated that their IPTNs were developed with rail as the backbone of public transport – with BRT and minibus taxis providing additional capacity. Rail service was envisaged to cater for peak demand periods, but the unreliability of the service is now putting pressure on the other modes; leading to traffic congestion. Commuter rail service is run by Metrorail, which reports to the DOT, and the Gautrain, reporting to the Gauteng provincial government.

4.10. From a planning authority perspective, integration will only foster competition for the market through the competitive tender process. However, the removal of minibus taxis in favour of the BRT resulted in competition on some routes, especially from some of the minibus taxis that did not form part of the Vehicle Operating Companies (VOCS)/BOCs.

4.11. Overall, there is limited or lack of integration, which has resulted in some form of competition or duplication along certain routes across the different transport modes. Pertinent questions that are always raised are: “Why could Metrobus not be aligned with the Gautrain buses? Why do we have a bus feeder system specifically for the Gautrain? Why do we have a BRT system on certain routes (and sometimes why not)? Was it necessary to have the Gautrain feeder system, or could we have relied on the existing services?” The answer to these questions is that, “we don’t have that integrated concept around the thinking in public transport in South Africa”. The contributing factor for such lack of integration is the fragmentation of operations across different modes. For example, rail is operated at a national level (Metrorail) and provincial level (Gautrain), and bus services at both local and provincial government levels. This will be discussed in detail below and contrasted with international experience.

Features of an integrated public transport system

4.12. Core elements of an integrated public transport system encompass several elements, which include network integration, integrated information system, transfer stations, integrated fares and ticketing, coordinated timetables, and real-time information about the public transport network.
4.13. *Network integration* – this involves integrated planning encompassing all modes of transport (buses, commuter rail and taxis) to reduce wasteful duplication of services; thus improving the utilisation of transport resources.

4.14. *Comprehensive information system* – this enables commuters to quickly find and compare different routes and select the most suitable one. Coordination of different transport modes brings about reduced congestion on the road, and convenience to commuters. The relevant information includes timetables, tariff information, route maps, and maps of the surrounding, area at stations and stops.76

4.15. *Transfer stations* – to optimise travel time and for the comfort of passengers, transfer and waiting times should be as short as possible. The stations should be planned to allow for commuters to walk for short distances. Stations should be easily accessible and provide adequate protection in all climatic conditions.

4.16. *Integrated fares ticketing* – Integrated fares and ticketing removes the burden of commuters buying separate tickets for each mode of transport. Besides making it more convenient for passengers, it enables the transport operators involved to optimise their processes.77 The public transport system in South Africa currently requires each operator to collect its own fares.

4.17. *Coordinated timetables* – timetables are particularly important if services are infrequent, which is more likely during off-peak and in less-populated areas. In such cases, timetables between modes must be coordinated.78

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Netherlands

4.21. There are three levels of government in the Netherlands: national government, regional government (12 provinces) and local government (393 municipalities). Public transport functions are devolved to the provinces and some city-regions. Fourteen regional authorities are responsible for local and regional public transport, of which twelve are provinces and two are transport regions. Their responsibilities include both local public transport services and some regional train services, operated mainly on branch lines of the national train network. National government is the transport authority responsible for national rail services and intercity services. The devolution in the Netherlands was meant to ensure public transport integration, among other factors.

London, UK


New York City, United States

4.23. The New York City Transit Authority is a public authority in the U.S. State of New York, that operates public transportation. It operates the New York City Subway, a rapid transit system in Manhattan, The Bronx, Brooklyn, and Queens, Staten Island Railway, New York City Bus, and an extensive bus network serving all five boroughs (managed by MTA Regional Bus Operations).

Bologna, Italy

4.24. SRM (Reti e Mobilità Srl) is the agency that acts as the public transport authority for the Province of Bologna, spanning across 60 municipalities. SRM is publicly owned by the partnership between the municipalities and the Province of Bologna, with delegated powers to manage and operate public transport.

Transport planning regulatory framework in South Africa

4.25. Public transport in South Africa is a concurrent function between the national and provincial spheres of government, with municipal public transport as a responsibility of local government. The 1996 White Paper indicates that “land passenger transportation planning should be carried out in an integrated fashion covering all modes. This planning should be done at as low a level as possible and by the relevant transportation authority.” The same observations were made in the subsequent legislation (National Land Transportation Transition Act, 2000 (Act No. 22 of 2000); and the National Land Transport Act, 2009 (Act No. 5 of 2009), which added details regarding the role of local government as planning authorities; and its interface with provincial and national government.

4.26. The NLTA defines an Integrated Public Transport Network (IPTN) as a system in an area that integrates public transport services between modes, using various mechanisms such as ticketing systems and network and infrastructure sharing, with the ultimate objective of ensuring travel is done in a seamless manner. The NLTA prescribes national principles, requirements, guidelines, frameworks, and national norms and standards that must be applied uniformly in the provinces – in order to consolidate land transport functions and locate them in the appropriate sphere of government. National government is responsible for, among others; the formulation of national transport policy and strategy; national strategic transport planning and coordination; and preparing a National Land Transport Authority.
Transport Strategic Framework, as set out in Section 11(1)(a) of the NLTA. The responsibilities of provincial governments are set out in Section 11(1)(b) of the NLTA and include, among others; the formulation of a provincial transport policy and strategy, in accordance with national policy. Municipalities are planning authorities, and responsible for preparing transport plans for their area; developing land transport policy; and encouraging the optimal use of the available travel modes (to enhance the effectiveness of the transport system and reduce travelling times and costs).

4.27. Municipalities utilise several instruments to foster transport planning, and these include bylaws (regulation), land use management strategies, and integrated public transport network with intermodal planning committee, as envisaged in Section 15 of the NLTA. Given the different roles by the spheres of government, the NLTA provides for assignment of functions (devolution) from either national to local government, or provinces to municipalities, to facilitate better coordination. However, such assignment is subject to ministerial approval, and applicable where such a municipality has an acceptable ITP. Submissions received during the public hearings indicate that only the City of Cape Town has requested the Minister of Transport to assign such powers, but no decision has been made up to now.

4.28. The overriding principle of transport planning is to ensure that a planning authority can rationalise public transport services in its area. The integrated transport plan should be able to identify if there is a surplus or deficit of a transport service on a route. Once such a determination is made, and in instances where a surplus is identified on a particular route, the planning authority must; where possible (a) offer the operator an alternative service; or (b) allow the operator to continue providing the service and impose a moratorium on the issuing of new operating licences on that route.

4.29. Different ways in which integration takes place, especially in the urban areas, have been identified, both in literature and in practice. These include integration of different modes of public transport; integration of public and individual transportation; integration of transportation policy with other policies concerning spatial planning and town planning; spatial integration based on the application of efficient land use strategies (e.g. multimodal terminals and interchange platforms, shared lanes for means of public transportation), organisational integration (e.g. coordinated timetables), and joint ticketing for different transportation modes.

4.30. The implementation of different transport integration solutions may result in the following benefits: reduction of travel times; optimising transportation costs; traffic congestion reduction; and mitigation of environmental pollution. Ultimately, integration promotes efficient transport flow, which improves the overall competitiveness of the city/area, and better utilisation of different transportation modes and infrastructure.

Devolution or creation of regional planning authorities to support system integration

4.31. The NLTA provides for assignment of functions (devolution) from either national to local government, or from provinces to municipalities, to facilitate better coordination. Devolution is based on the premise that lower levels of government are best suited to manage and integrate public transport with services. Devolution, or assignment of functions, is subject to ministerial approval; and having an acceptable ITP is a pre-requisite.

4.32. The Revised White Paper on Transport Policy of 2017 alludes to the need for the DOT to develop a devolution strategy. No devolution strategy has been developed by the DOT, despite devolution being advocated for in the White Paper of 1996. There is an urgent need for the DOT to provide guidance to lower levels of government, on what criteria the DOT will consider in dealing with devolution applications.

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87 Solecka, K. and Zak, J. 2014. Integration of the urban public transportation system with the application of traffic simulation. 17th Meeting of the EURO Working Group on Transportation, 2-4 July 2014, Seville, Spain.
4.33. Both the White Paper on National Transport Policy of 1996, and the Revised White Paper of 2017, recommended that some of the transport functions be devolved to the lowest appropriate level of government – to support integrated planning. This observation was further reinforced in the National Land Transport Strategic Framework 2017-2022 (NLTSF) which indicated that feasibility studies for the devolution of passenger rail services to the metropolitan municipalities should be carried out.\textsuperscript{89} Devolution of functions to a single planning authority – to achieve integration, operational efficiency and economies of scale – was further highlighted in the NLTSF (in instances where it may not be ideal to consolidate functions within a metropolitan municipality, due to the interconnectedness of the municipalities).

4.34. The revised White Paper on Transport Policy of 2017 further sets out the strategic objectives of devolution, which include the creation of a Transport Authority – or an equivalent coordinated and accountable structure – at a Municipal, Provincial, or Mega-City/City Region level. The interconnectedness of the cities of Johannesburg, Tshwane and Ekurhuleni supports the creation of a city-region or provincial devolution of rail, as opposed to individual metropolitan municipalities.

4.35. There are advantages in establishing a public transport authority, including the integration of land use, and urban and regional planning, with public transportation.

State of public transport Integration

4.36. This section provides an evaluation of whether public transport in South Africa can be considered as an integrated system, based on the discussion above. Integration is broadly considered when there is multimodal coordination, organisational coordination, and alignment between land use management, town planning and transport planning.\textsuperscript{90} Some of these factors are considered below:

Multimodal coordination

4.37. The existing urban public transportation system in South Africa largely consists of buses, minibus taxis, metered taxis and rail networks. These modes of transport are managed and operated by several operators, which vary from government to private operators. The fragmentation in ownership and operators poses a challenge, with regard to integrating these modes for seamless commuter experience.

4.38. Rail is run by Metrorail and the Gautrain (national and provincial government respectively), buses by municipal and contracted services, and minibus taxis by private operators). The cities that have all the modes of transport are Johannesburg, Tshwane, Ekurhuleni, Cape Town, Durban, Port Elizabeth and East London. These cities will be used to demonstrate the lack of public transport integration.

4.39. City of Johannesburg (CoJ) – The city is currently serviced by buses (BRT, municipal buses, and contracted bus services), minibus taxis, rail (Metrorail and the Gautrain), and metered and e-hailing taxi services. The city, as the planning authority, indicated that there is a joint planning committee – to coordinate the activities of public transport.\textsuperscript{91} The city submitted that it has begun with integrating different modes of transport.\textsuperscript{92} While a planning committee exists, it is not apparent that there is integration, as indicated by overlaps between certain routes operated by the Gautrain feeder buses and Metrobus. The Gautrain operates feeder buses and some midibus contracts, operating per schedule from various stations. These buses are part of the Gautrain system. There seems to be an overlap and duplication, in relation to these bus services and the Rea Vaya bus services from Park Station. The city has indicated that they subsidise the BRT, and the province subsidises the Gautrain bus feeder services. These buses to some extent

\textsuperscript{89} Department of Transport – National Land Transport Strategic Framework, 2017-2022
\textsuperscript{90} Solecka, K. and Zak, J. 2014. Integration of the urban public transportation system with the application of traffic simulation. 17th Meeting of the EURO Working Group on Transportation, 2-4 July 2014, Sevilla, Spain
\textsuperscript{91} City of Johannesburg – oral submission by Mrs. Seftel, Gauteng Province Hearings, 05 June 2018.
\textsuperscript{92} City of Johannesburg – oral submission by Mrs. Seftel, Gauteng Province Hearings, 05 June 2018. Page 135.
service the same, almost identical routes. The services overlap because the Gautrain is of the view that the BRT is not reliable, and that the BRT schedule/timetable is not aligned to the Gautrain service, notwithstanding the fact that the Rea Vaya operates a frequent service. Gautrain further indicated that Rea Vaya starts and terminates the trips, in some instances, more than 500 meters away from the train station – which is not ideal for Gautrain commuters. With respect to rail, the City has no influence on the operations of Metrorail and the Gautrain, including the coordination of the timetables.

4.40. City of eThekwini – Public transport in the city is currently serviced by buses, contracted bus services, minibus taxis, and Metrorail. The city has indicated that they have monthly engagements with the other stakeholders, as part of their public transport planning functions. While it appears that there is no apparent evidence of integration, the city has indicated that the city’s integrated public transport plan was developed together with PRASA and rail as the backbone of public transport in eThekwini, and that the level of service required for rail has been jointly developed together with PRASA. Despite the joint planning committees, there appear to be overlaps and competition between the modes of transport.

4.41. City of Cape Town – The modes currently servicing the city include mainly minibus taxis, rail, and buses (BRT and the contracted bus operations). Since it also appears that there is no integration of public transport in the city, bus routes overlap with those of minibus taxis.

4.42. City of Tshwane – like the CoJ, the City of Tshwane is currently serviced by buses (BRT, municipal buses, and contracted bus services), minibus taxis, and rail (Metrorail and the Gautrain). While there appears to be no integration of public transport in the city, there is some interaction between the city, the province and the different transport operators. The city has also submitted that they have established a steering committee with PRASA, meeting on a quarterly basis; to discuss planning and all the other related issues, as regulated by the NLTA.

Organisational integration

4.43. Organisational integration involves the systematic coordination of activities at an operational level, by different entities. These activities may vary, including unified ticketing, traffic management, and control of timetables. In most cities of South Africa, well-coordinated timetables for different modes of transport is non-existent. The Gautrain indicated that an integrated ticketing system will enhance the use of public transport. The Gautrain has indicated their intention to expand the existing Gautrain feeder minibus taxis to Rosebank and Hatfield.

4.44. An integrated ticketing system will enhance commuter experience. GABS for instance has rolled out its smart card, known as GABS Gold Card, but this is only used in GABS buses and cannot be used on the MyCiTi or Metrorail, for instance. Similar cases occur in Johannesburg, with the Metrobus, Reya Vaya, Gautrain, PUTCO and Metrorail using different ticketing systems. In Tshwane, A Re Yeng, Tshwane Bus Services, PUTCO and Metrorail have different tickets which are not usable for various modes. The Gautrain on 31 October 2019 introduced technology that utilises bank cards (contactless cards) for the use of commuters, to tag in and out of Gautrain stations as well as the Gautrain buses. The acceptable bank cards include: debit cards, credit cards, cheque cards, and National Department of

93 City of Johannesburg – oral submission by Mrs. Seftel, Gauteng Hearings, 05 June 2018. Page 140.
94 City of Johannesburg – oral submission by Mrs. Seftel, Gauteng Hearings, 05 June 2018. Page 141.
99 City of eThekwini – oral Submissions by Mr. Lentlonkane, Hearings held at the Competition Commission, 10 October 2018. Page 93.
100 Democratic Alliance – oral submission by Mr. De Freitas, Western Cape Hearings, 21 June 2018. Page 86.
Transport (NDoT) cards (such as Areyeng Card, Rea Vaya and My CiTi PayPasses). This is an indication that some effort is being made to integrate the public transport ticketing system, but this is occurring at a limited scale, and applicable to too few transport modes. The minibus taxi industry, that transports the most passengers daily, is not yet integrated – which negatively impacts the current efforts being made.

4.45. The above discussion suggests that the public transport sector in South Africa is not yet fully integrated. The modes of transport across the cities are not systematically coordinated, and there is no evidence of joint ticketing and collaborative timetables (in case of scheduled services). From the examples presented above, there is significant fragmentation in interdependent transport operations, both within modes and across modes. Given that close to 35 per cent of public transport commuters use subsidised transport, some form of state intervention is required to promote system integration. System integrity (service interconnections, integrated ticketing) is perceived to result in positive externalities for commuters.

**Impediments in transport planning**

4.46. As discussed above, public transport integration involves the coordination of transport planning, optimisation of transport modes, and synchronised timetables, among others. Integration achieves timely and seamless transfer among modes, resulting in the decrease of journey time. The barriers to integration include (i) institutional capacity constraints (ii) fragmented regulatory environment (iii) misaligned objectives of providers of public passenger transport (iv) lack of integration of networks and timetables (v) the informal nature of some transport modes (taxi industry) and (vi) fragmentation between spatial and transport-planning functions. Each factor will be discussed briefly below.

4.47. The development of the ITPs is a function assigned to local government. The devolution of transport functions to local government has wide support, given its peculiar position – to plan, implement and manage public transport operations. The lack of capacity is a major inhibiting factor in transport integration, with municipalities indicating limited human capital, skills and capacity to deliver a project at municipal level. The DOT, on behalf of the Vhembe District Municipality in Limpopo Province, and Nkangala District Municipality in Mpuumalanga Province, appointed external consultants to develop IPTN plans for the municipalities.

4.48. The Mpuumalanga Department of Public Works, Roads and Transport has indicated that the lack of personnel dedicated for public transport is not only observed in the Mbombela Municipality, but also in all the municipalities in the province. In the Northern Cape, the Department of Transport, Safety and Liaison indicated that local municipalities have capacity constraints, and therefore the province has assumed responsibility for assisting in the development of ITPs.

4.49. Despite the capacity constraints at local government level, public transport in general (and transport planning in particular) is not prioritised by local municipalities. Most municipalities do not have transport-related dedicated capacity (divisions of units), and no expertise in transport planning; prompting the provincial department of transport to assist municipalities in developing ITPs.

4.50. As an interim measure, most planning authorities have resorted to the use of external consultants, to develop and update transport plans. The lack of human resource capacity has resulted in the Mangaung Metropolitan Municipality appointing spatial planners who are not transport planners – to take over the responsibility of developing the IRPTN

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106 Government Tender Bulletin, 29 March 2019 No.3053 available at [www.gpwonline.co.za](http://www.gpwonline.co.za)
– as well as appointing external consultants. The current over-reliance on consultants to develop these plans does not provide long-term stability, nor does this develop capacity for the longer term. When the consultants withdraw or upon expiry of the contract, momentum is lost, which leads to plans not being implemented.

4.51. Submissions received during the public hearings also indicated limited capacity at provincial government level. However, provinces are better placed to recruit qualified transport planners, compared to local government. While the intention for planning authorities to be responsible for transport planning is logical, capacity limitations create room for provinces to play an active role in public transport. This raises questions about whether provinces should take over planning functions in instances where the planning authorities are failing, as is the case in most municipalities.

Fragmented legislative and regulatory environment

4.52. The set-up of the legislative and regulatory framework is such that public transport is legislated at three different spheres of government, resulting in fragmentation. By way of illustration, no public transport may be operated without a vehicle operating licence. These operating licences are issued at provincial level by the PRE. Municipalities are then supposed to advise the PRE within 30 days if they can issue the operating licence. The key decision therefore lies with the municipalities, which in this case are the planning authorities, and currently most municipalities do not have capacity to develop ITP. Their directions to the PRE in terms of the Act must be based on the ITPs. So, in the absence of the ITPs they are not able to give directions to the PRE. As a result, the PRE rely on section 55(6) which empowers the PRE to proceed with disposing of the application without their direction.

4.53. However, the DOT submits that consultations between PRASA, Gauteng Province and the DOT occurred before the rollout of the Gautrain, including the expansion plans for the Gautrain. Furthermore, the Gautrain also submits that the design of the Gautrain system and the requirements of PRASA were continuously discussed and agreed with PRASA / Metrorail.

4.54. Also compounding this problem is how the municipalities and the PREs are structured. For example, in Tshwane there is a separate unit that plans and looks at Tshwane Bus Service, and another unit responsible for IRPTN. These services could easily have been administered under one dedicated structure, to foster integration.

Providers of public passenger transport

4.55. Public transport in South Africa is both owned and operated by both the private and public sectors. Rail (Metrorail and the Gautrain) have public sector involvement, while buses are largely privately owned (though some are contracted by provinces). Minibus taxis, which carry most of the commuters, are privately owned and run. Government currently is not effectively coordinating the activities of rail and contracted bus services, and it is therefore unlikely to succeed in bringing private operators to collaborate with the public sector. The lack of enforcement of regulations has often resulted in overtrading, especially of minibus taxis, which makes integration problematic. Planning and

115 Department of Transport – Response to information request dated 8 July 2019, page 5.
implementation are rather fragmented, with each mode being differently planned. This results in some instances, in duplication and overlap of public transport services. A case in point is the Gautrain feeder buses and the Rea Vaya BRT.  

4.56. The Tshwane area is serviced by Tshwane Bus Service, BRT under A Re Yeng, PUTCO, North West Star and Gautrain buses. There is duplication in some of these services, especially of infrastructure, and integrating these services is important to minimising wastage of money.  

Informal taxi industry

4.57. The minibus taxi industry is rooted within the informal sector, yet it is responsible for around 66.5 per cent of all commuters using public transport. The informal nature of the industry has made negotiations with cities problematic, in the implementation of IRPTNs. While the taxi industry understands the rationale for integration, the way government intended to implement the IRPTNs (for purposes of integration) has resulted in the taxi industry raising many issues, such as lack of proper consultation and sufficient buy-in. The taxi industry is of the view that unless government sees them as a strong strategic collaboration partner, these challenges will continue to linger.  

4.58. The BRT system in the City of Johannesburg led to over 600 taxis being removed from operation, and operators incorporated in the BOCs as shareholders. This is a drastic change to the way taxi operators used to function, and hence collaboration and buy-in is important.  

Commuter choices

4.59. Planning authorities are responsible for determining the best mode of public transport within their jurisdiction. The determination is made based on the infrastructure capabilities, affordability, reliability and safety. Despite the planning authorities’ best intentions, commuters may exercise their right to choose their preferred option. For example, minibus taxis are preferred due to their ability to provide a door to door service. Commuters can queue for a long time to wait for minibus taxis while the Rea Vaya buses are not full. Commuter choices impact negatively on the plans for municipalities to foster and promote integration.

4.60. Commuter choices of the mode of transport are also influenced by historical context in South Africa, where there is a clear separation between races, and social standing/status. Although minibus taxis are the most efficient mode, there is general hesitation to explore this alternative due to several factors. For transport integration to take place, society should be willing to integrate first and be able to accept one another. Social and racial polarisation will not foster any successful transport integration.  

Integration of transportation policy with spatial and town planning

4.61. The determination of appropriate transport mode should be informed by spatial and town planning policies, based on anticipated densities. Given the legacy of apartheid, the spatial framework dictated that black people live far away from economic opportunities and migrate daily. This led to limited integration between the existing transportation and the spatial and town planning policies. In addition, municipalities tend to have separate transport and town planning departments, which introduces some coordination challenges. In order to rectify these coordination challenges, the City of Cape Town established the Transport and Urban Development Authority, which deals with the spatial and transport issues more holistically.

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120 SANTACO – oral submission by Mr. Molelekwa, Gauteng Hearings 04 June 2018 page 29.  
121 City of Johannesburg- oral submission by Ms. Sefel Gauteng Hearings 05 June 2018. Page 137.  
123 City of Johannesburg – oral submission by Ms Seftel, Gauteng Public hearings, 5 June 2018, page 179.  
125 City of Cape Town – oral submission by Mr. Bosch, Western Cape Hearings, 21 June 2018. Page 12.
4.62. Land transport planning must be integrated with the land development and land use planning processes, and the integrated transport plans required by the NLTA. However, it appears that the integration of transport planning and land development is far from reaching the objectives of the NLTA. Currently, authorities responsible for human settlement do not seem to take transport into account in their planning, resulting in lack of integration between the two. The North West Department of Community Safety and Transport Management has pointed out that there are inconsistencies between transport and land use planning practice.126

4.63. Currently, there is no transport authority which has control and decision-making powers over all transport in a local jurisdiction, resulting in fragmented and conflicting interests of multiple transport authorities. Different modes fall under different management. Rail, which has been hailed by the local government as the core of public transport, is currently not under the management of any local authority and is managed by a different entity, PRASA. This situation poses a problem for municipalities in carrying out their functions as planning authorities, with the City of Cape Town stating that a city cannot resolve its transport problems without rail being fundamentally part of its management.127

Findings

4.64. The Commission makes the following findings in so far as integration is concerned:

4.64.1. Public transport is currently not considered as a network or system to facilitate easy integration between different modes. This results in lack of integration in public transport in South Africa.

4.64.2. Public transport in general is not prioritised by local government, given the latter’s competing mandate of providing other basic services (a few metros are an exception). By extension, public transport planning is therefore not given adequate focus and attention, as most municipalities do not have dedicated units dealing with public transport. Some cities rolling out BRT use external consultants to assist with infrastructure development.4.64.3. The lack of capacity is a major inhibiting factor in transport planning and integration, with municipalities lacking the necessary human capital and skills. The DOT states, in its 2017 Revised White Paper, that the lack of capacity at the municipal level is a major inhibiting factor in municipalities preparing transport plans. Several provinces also lack capacity but can attract skills if resources are made available.

4.64.4. The fragmentation in the roles of each sphere of government in public transport, and ineffective intergovernmental relations, have resulted in uncoordinated operations creating inefficiencies. For instance, provinces are the contracting authorities for subsidised bus contracts, and these buses operate across municipalities. In addition, some metros also have bus services as well as BRT. Duplication on routes has been identified across modes of transport.

4.64.5. Spatial planning and land use management at local government level is not taking due consideration for public transport provision, resulting in lack of integration between transport planning and land development. The functional separation of human settlement and transport departments at local government level exacerbates this misalignment.

4.64.6. The DOT has not developed a devolution strategy which sets out the criteria to guide the devolution of public transport functions to lower levels of government. The reliance on Ministerial approval, without a devolution strategy, is not ideal.

127 City of Cape Town – oral submission by Mr. Bosch, Western Cape Hearings, 21 June 2018. Page 15.
Provisional Recommendations

4.65. Based on the findings above, the Commission recommended the following:

4.65.1. To improve coordination, dedicated transport authorities at provincial level (Provincial Transport Authorities) to be established in each province. This is premised on the lack of priority for public transport and lack of capacity at local government level. Dedicated transport authorities at provincial level can attract skills and can service local municipalities effectively. An example is the Gauteng Transport Authority, which was set up to improve coordination and amalgamate transport-related functions for Gauteng. Such dedicated transport authority could provide the long-term stability within the planning framework for public transport. The revised 2017 White Paper proposes that transport authorities, or an equivalent structure, be established in order to facilitate the integration of all public transport services. The dedicated transport authorities should consider spatial planning.

4.65.2. The DOT to promote an integrated public transport ticketing system. The DOT, in its revised 2017 White Paper, indicated that this integrated ticketing should comprise a single system with inter-operability across modes, facilitating participation by all banks and cardholders.

4.65.3. The DOT to urgently develop a devolution strategy within 12 months, to guide the devolution process. Devolution of functions currently undertaken at national level, such as rail, to lower levels of government will promote integration of public transport services.

Stakeholders Submissions to the provisional report

Recommendation on improving transport coordination by establishing dedicated transport authorities at provincial level (Provincial Transport Authorities)

4.66. The recommendation is supported by the Free State Provincial Department of Transport with the only concern being the cost associated with staffing such an entity. DOT partially supports the recommendation as long as it only relates to transport planning functions but disagrees with the channelling of subsidies to the PTAs as DOT is concerned about the creation of silo-mentality.

4.67. The City of Cape Town expressed their reservations with this recommendation and stated that the recommendation is contrary to various national policy positions on the need to bring transport authorities closer to the users i.e. to local government. The City further argue that it is unconstitutional for Province to operate transport functions (except for provincial public transport). The City is of the view that transport function should be delivered in conjunction with the spatial planning function which is a responsibility of municipalities and not provinces.

Commission’s response to stakeholder submissions

4.68. Based on the submissions received, the Commission considered few options to deal with the issues raised. Firstly, it is constitutional for provinces to run public transport as it is a concurrent function assigned to all spheres of government and national government may devolve functions to provinces, for example, the Gautrain. Secondly, it is feasible for transport function to be consolidated at a provincial level without necessarily taking the spatial planning role. However, the interface between public transport planning and spatial planning is crucial and could be addressed by improving intergovernmental coordination by having
municipalities form part of the planning committees in the Provincial Transport Authority. Section 24 (1) of Spatial Planning and Land Use Management Act (Act 16 of 2013) (shortened SPLUMA) states that a municipality must adopt one land use scheme for an entire area covering land within its authority and land use schemes must amongst others, be aligned with integrated transport plans.

4.69. Section 34(1) of SPLUMA states that the council of two or more municipalities may, in writing, agree to establish a joint Municipal Planning Tribunal, to exercise the powers and perform functions of a Municipal Planning Tribunal in terms of this Act. This is clearly intended to avoid fragmentation in planning, especially where a decision taken by one municipality has the effect of affecting an adjacent municipality, e.g. Ekurhuleni Municipality, City of Johannesburg and City of Tshwane. The establishment of a Municipal Tribunal to determine land use applications and oversee land use planning in two or more municipalities has similar effect to the Provincial Transport Authority. The establishment of a Provincial Transport Authority has the benefit of having one authority overseeing transport planning under one authority, SPLUMA on the other hand provides for a uniform, effective and comprehensive system of spatial planning and land use management. In practise, SPLUMA has not achieved the desired effect, hence, the establishment of PTA is unlikely to impede the spirit of SPLUMA and the two can thus coexist harmoniously.

4.70. The scope of the inquiry focused on public transport, which is inherently linked to spatial planning, land use management, human settlements, among others. The scope of the proposed recommendation is therefore limited to public transport without considering fully the spatial planning and land use management responsibility of municipalities. If the Provincial Transport Authority only focuses on public transport based on spatial plans from local government, there is a possibility of intergovernmental coordination failure but this is better addressed by having committees in the PTAs that include municipalities.

4.71. However, the Commission notes that the establishment of PTAs should not be a “one size fits all” approach given the capacity differences between the provinces. The Commission is of the view that this recommendation be amended to remove the “one size fits all” approach initially recommended and provide opportunities for well capacitated municipalities to establish transport authorities.

Final Recommendations

4.72. Based on the submissions received from stakeholders, the Commission’s final recommendations are:

4.72.1. To improve coordination, dedicated transport authorities to be established at provincial or metropolitan or district or municipal level, where appropriate. Given the interconnectedness of the metropolitan municipalities in Gauteng, a provincial transport authority may be appropriate.

4.72.2. Government (national and provincial government) and SALGA to create capacity at local government level to ensure that transport planning is prioritised by municipalities.

4.72.3. The DOT to promote an integrated public transport ticketing system as outlined in its revised 2017 White Paper to facilitate inter-operability across transport modes.
5. SUBSIDIES IN THE PUBLIC TRANSPORT SECTOR

Introduction

5.1. Subsidies are part of traditional public transport systems in most countries. The genesis of South Africa’s formal public transport system was supported by subsidies. Subsidised rail and buses were and still are a key feature of South Africa’s public transport, and the inefficiencies observed in these subsidised modes led to the growth of private operators such as minibus taxis. This chapter briefly discusses the rationale of public transport subsidies in South Africa, followed by the approaches for allocating subsidies, and the different funding arrangements. This chapter seeks to examine the broad spectrum of public transport subsidies, and their implication regarding intermodal and intramodal competition in South Africa. In addition, key challenges are highlighted. Later, findings and recommendations are presented.

Rationale for public transport subsidies

5.2. The system of apartheid in South Africa left a legacy of social segregation, which resulted in separation of residential areas and places of work.\(^{128}\) The segregation meant that certain racial groups were settled far away from economic hubs, and public transport subsidies were provided to ensure that workers were able to access affordable public transport and participate in economic activities.\(^{129}\) Public transport subsidies were initially targeted at bus operators, and then extended to rail.\(^{130}\) However, in 1986 the minibus taxis entered the market and acted as a feeder to buses and rail. As a result, competition emerged and modes like buses and rail lost market share, because of some of the inefficiencies and inflexibility in the subsidised services. In order to keep bus operations viable, the government increased the level of subsidies, and this scenario continued even after 1994, as explained in detail in Chapter 7.

5.3. Public transport subsidies in South Africa are provided to commuter buses and rail, with limited support for minibus taxis. This has led to allegations of government favouring other modes of transport, which has resulted in some hostility among operators. Several challenges, such as the fragmented and uncoordinated funding arrangements in the industry, continue to pose a threat to the efficiency, effectiveness and sustainability of the subsidies in the industry.

5.4. The literature makes arguments for the provision of subsidies which include the following:\(^{131}\)

5.4.1. **Equity**: This is to ensure that public transport is accessible for all. Subsidies assist low income earners to use public transport, and prevent social exclusion;

5.4.2. **Congestion**: The effective use of public transport usage brings positive externalities by reducing congestion, air and noise pollution, parking needs and accidents. While tolling can be a way to charge private vehicles for the externalities they cause, it may be undesirable for other reasons, in which case providing subsidies to public transport may produce similar effects;

5.4.3. **Environmental factors**: Switching from private to public transport improves the urban environment by reducing greenhouse emissions; and

5.4.4. **Urban development**: Subsidies can be used to promote a pattern of land use or urban development.

5.5. 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. The 1996 White Paper on National Transport Policy identifies subsidies as a “necessary” social service seeking to ensure that transport is a system which will, “provide safe, reliable, effective, efficient and fully integrated transport operations and infrastructure which will

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best meet the needs of passengers and customers at improving levels of services”. 132

5.6. The 1996 White Paper on National Transport Policy outlines the three primary purposes for public transport subsidies, which are aligned to the observations made in the literature: 133

5.6.1. To improve affordability of fares, which is intended to attract ‘new’ passengers and increase access to important socio-economic activities of current passengers;

5.6.2. To curb traffic congestion by incentivising modal shift from private vehicle-use to public transport use; and

5.6.3. Public transport users should be supplied with a public transport system that is accessible, cost effective, time efficient and reliable, and safe and secure. 134

5.7. Public transport in South Africa has two elements: economic and social good. This means that public transport generates a significant return within the economy, while providing important social benefits. 135 From a social perspective, government intervention through subsidies is for welfare considerations (assistance to the poor) and to provide incentives for increased efficiency in transport operations. The social objectives of subsidies are aligned to the argument put forward by the World Bank, which argues for social and distributive dimension of public transport subsidies for efficiency, and to compensate for externalities. 136

5.8. The World Bank further argues that, regardless of what objectives transport subsidies are supposed to achieve, subsidies should exhibit the following core elements: 137

5.8.1. Efficiency – the administrative cost of implementing the subsidy is not greater than the cost of production per unit;

5.8.2. Effectiveness – the subsidy must meet the policy objective for which it was set up; and

5.8.3. Sustainability – the impact of the subsidy on government finances must be sustainable.

Classification of subsidies – demand side vs supply side approach

5.9. In developed countries, subsidies mitigate high costs of private vehicle usage by low income households, which is in direct contrast to developing countries – where the focus is on reducing transport costs for low income households who have no access to private vehicles. 138 The common objective for the provision of public transport subsidies is to lower the cost of providing public transport services, and further improve the quality of the services provided.

5.10. There are two approaches for the provision of subsidies, and that is the demand-side approach, and the supply-side approach. A supply-side subsidy is directed to public transport operators, while the demand-side subsidy targets commuters. Generally, supply-side subsidies are in the form of capital or infrastructure, and operating grants, while the demand-side subsidies are in the form of vouchers or monetary transfers (which are normally allocated to the direct users of the services).

Advantages and disadvantages of supply-side subsidies (an international perspective)

5.11. One of the advantages associated with supply side subsidies is lower administrative costs, as they are cheaper to implement. There are fewer third parties involved, and very limited screening mechanisms need to be set up, before their adoption. It has also been argued that, under certain conditions, supply-side subsidies help reduce road congestion. 139


5.12. On the other hand, supply-side subsidies have been criticised for being less targeted, when compared with demand-side subsidies. This is premised on the fact that operators will not discriminate between different types of users. When there are many poor households who do not use a subsidised service, or when consumption of the service increases with income, it has been argued that supply-side subsidies’ benefits will not be particularly targeted to poor households.

5.13. A study conducted in greater Buenos Aires, Argentina showed that the share of subsidies accruing to the middle and high income households is increasing, and therefore not targeting the poor households more effectively. A similar picture was observed in Mexico City, where a study of supply-side subsidies on the same mode revealed that they are not particularly pro-poor. Similarly, a study in Santiago, Chile, shows that supply-side subsidies are not pro-poor. In Mumbai, India, two supply-side subsidies covering buses and rail were analysed, and the results show that these subsidies were not pro-poor – as the significant subsidy was accruing to middle-and-higher-income households. In the Indian example, it appeared that for poverty alleviation, it was best to move away from supply-side subsidies and integrate the transport subsidies within the existing welfare system, thereby empowering households to prioritise how and where to spend money.

Advantages and disadvantages of demand-side subsidies (an international perspective)

5.14. There are various kinds of demand-side subsidy schemes that exist, and they include traditional socio-demographic subsidies (i.e. targeting specific groups such as the elderly or students); employer-based subsidies (which generally exclude the informal sector); (iii) spatial subsidies (e.g. subsidies for trips that begin or end within certain pre-determined stations); and (iv) schemes that target the poor directly (means test).

5.15. Demand-side subsidies have a higher targeting potential if a specified eligibility criterion to qualify has been met. The criteria screens poor and non-poor households. However, there is no guarantee that such a screening mechanism will be well-targeted and implemented. As such, potential abuse of the subsidy, such as transferring the subsidy to unintended recipients, and large errors of exclusion or inclusion of the target population, exist. For example, geographically-targeted utility subsidies in Colombia are not well-focused, although the central government gives instruction to each municipality on how to determine the socio-economic category of each dwelling.

5.16. Demand-side subsidies can also level the playing field in that they can create mode neutrality among the modes of transport, because consumers will be able to make choices considering access, availability and affordability. In addition, they can also address social and equity problems in the transport industry.

5.17. The evidence of targeting a specific group of people through demand-side subsidies also has its own challenges. For example, in Madrid, Spain, preferential fares for groups such as the elderly or the young are not related to income. Although in Sofia, Bulgaria, access to preferential passes is to some extent correlated with income, the targeted group cannot be considered satisfactory.
5.18. There is also very little evidence on the impact that such subsidies have on the lives of target beneficiaries. In addition, there is no guarantee that any screening mechanism will target the poor.\(^{149}\) Furthermore, their implementation can also result in administrative challenges insofar as determining who should benefit, and on which basis, and what would be the best policing system to ensure monitoring and compliance. Lastly, they can have a massive impact on the fiscus.

**Approaches utilised to effect demand-side subsidies (an international perspective)**

5.19. This section discusses the various approaches used to distribute demand-side subsidies.

5.20. **Means test transfer** – involves the process of measuring how much income a person has, in order to decide if they should receive such subsidy from government. In Santiago, Chile, the most common beneficiaries of this transfer were partly individuals receiving some other welfare payment, and eligibility for these payments was based on a sophisticated means-testing procedure.\(^{150}\) This was achieved through direct monetary transfers, which were used to compensate for rising transport costs; and this was wholly funded from general tax sources. The case for Chile showed how the use of direct money transfers yielded a positive distribution impact.

5.21. **Categorical subsidy** – this method has been implemented in the United Kingdom, Spain (Madrid), Sofia (Bulgaria), and Mexico City – where a special category of passengers such as students or young children, the elderly, unemployed or war veterans travel free, or at least at a lower price than the standard fare.\(^{151}\) While acknowledging the success of this type of subsidy targeting, it has been argued that it is important to target concessionary fares to those population segments who really need the subsidisation.\(^{152}\)

5.22. **Transport vouchers** – a mixture of a categorical subsidy (because it only benefits formal workers) and means test. It was implemented in Vale, Brazil. The subsidy mechanism was introduced in 1985 and works as follows: employers retain 6 per cent of formal workers earnings, and in return these workers receive transport vouchers from their employers – for the home-to-work and return trips required during a month. Workers can opt out of the system, and higher income earners have the incentives to do so; since 6 per cent of their salaries will generally be higher than what they spend on commuting. Thus, workers with higher incomes will usually opt out of the system, helping to reduce leakages to higher income groups.\(^{153}\)

5.23. **Geographical subsidy** – this method involves a flat rate charged for trips of varying distances. As a result, short distance commutes are relatively costlier than long commutes (in effect, travellers on shorter trips are subsidising longer trips). Mexico provides a flat fare tariff structure for all other transport modes (metro, trolley buses, state-owned buses, and the new buses operating in a bus rapid transit (BRT) corridor) have a flat tariff, except for minibuses.

**The current subsidy framework in SA**

5.24. In South Africa, there is no formal subsidy policy that outlines the government’s criteria for the allocation of public transport subsidies to some modes. The current model is based on historical practice from apartheid, a system that subsidised certain commuter buses. Post-apartheid, subsidies were extended to other modes of public transport for social and economic benefit to the public. Several stakeholders have raised concerns about the disparity between ridership volumes and allocations, and how other modes of transport are placed at a competitive advantage over others.\(^{154}\)
5.25. In 2017, the DOT awarded a tender for a development of a subsidy policy to address some of the challenges in the public transport industry. Based on the ToRs for the tender, it appears that DOT’s focus will be user or demand-side subsidies, as the current subsidies are supply-side oriented, targeted at bus and rail operators. Minibus taxis are not included, even though they do receive some form of capital subsidy.

5.26. Although demand-side subsidies are theoretically the right approach, they have high administrative costs, and the process of determining eligibility may be costly and time consuming. There are between 200 000 to 250 000 minibus taxis in the country, and over 19 000 buses ferrying more than 15 million daily commuter trips, so the administrative burden of paying operators timeously might be a challenge. Given the informal nature of the minibus taxis, the lack of an integrated ticketing system for various modes of transport – and the huge number of taxis making daily trips – more time would be required, as demand-side subsidies are not easy to implement.

5.27. It is apparent that supply-side subsidies, which are provided through the operator, should be avoided – because they usually have a neutral or regressive impact and are less targeted, when compared to demand-side subsidies. Although demand-side subsidies have disadvantages as discussed above, the Commission is of the view that theoretically, they are the best way of subsidising public transport. The challenges identified above are real, and unlikely to be addressed timeously for the user subsidies to be rolled out soon. In the interim, a suite of interventions (based on the classification of subsidies) may be appropriate, and this will be discussed later.

The funding mechanisms for public transport in South Africa

5.28. The public transport subsidy allocations are guided by the principles established in the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), Public Finance Management Act, 1999 (Act No. 29 of 1999) (PFMA), and the annual Division of Revenue Act (DoRA). The section below provides a summary of funding per mode, in the public transport sector.

Rail industry

Metrorail and Shosholoza Meyl

5.29. In South Africa, rail transport is considered a mass transportation mode, and is regarded as playing a pivotal role in the provision of public transport. Metrorail services are considered a social service, provided for public benefit. The subsidy to Metrorail seeks to achieve social (affordability) and economic benefits for passengers. The DOT provides transfer payments to PRASA, for capital and operational subsidies, for the services provided.

5.30. The operational subsidy allocated to Metrorail is meant to subsidise over 500 million passenger trips per year in 6 metropolitan cities, and 700 000 long distance passengers. Table 5 below shows transfer payments to Metrorail between 2014/15 and 2018/2019.
Table 5: Transfers and subsidies to PRASA from 2014/15 to 2018/19

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Metrorail - operations</td>
<td>R3 458 925</td>
<td>R3 618 036</td>
<td>R3 809 769</td>
<td>R3 666 839</td>
<td>R4 565 538</td>
<td>R19 119 107</td>
</tr>
<tr>
<td>Mainline passenger services - operations</td>
<td>R428 417</td>
<td>R448 124</td>
<td>R471 897</td>
<td>R1 370 932</td>
<td>R1 648 943</td>
<td>R4 368 313</td>
</tr>
<tr>
<td>Metrorail - capital</td>
<td>R11 058 959</td>
<td>R14 155 887</td>
<td>R14 608 601</td>
<td>R9 368 189</td>
<td>R8 362 232</td>
<td>R57 553 868</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>R14 946 301</strong></td>
<td><strong>R18 222 047</strong></td>
<td><strong>R18 890 267</strong></td>
<td><strong>R14 405 960</strong></td>
<td><strong>R14 576 713</strong></td>
<td><strong>R81 041 288</strong></td>
</tr>
</tbody>
</table>

Source: The National Treasury

5.31. In 2018/19, government allocated R6.2 billion in operational subsidies for Metrorail and Mainline passenger services. Between 2017/18 and 2018/19, the growth rate of the transfer to Metrorail was 24.5 per cent, whereas for Mainline Passenger Services (MPL) the funding increased by 20.3 per cent in the same period. In 2018/19, R6.2 billion was allocated and subsidised approximately 438 million passenger trips on Metrorail and 644 000 passengers on the long - distance mainline passenger services over the period. The transfer payments for operations have been increasing over time, from 2014/15 to 2018/19.

5.32. Government allocations on capital subsidies were over R8.3 billion in 2018/19, for Metrorail and Mainline passenger services. In 2018/19, the transfer for capital decreased by 10.7 per cent from 2017/18. Between 2014/15 and 2018/19, government has spent over R57.5 billion for financing the railway networks infrastructure, maintenance of infrastructure, rolling stock fleet renewal programmes, signalling, and refurbishment of coaches.

5.33. The increase in operational and capital subsidy has not been sufficient, given the growing passenger numbers. Expenses related to the old rolling stock and railway infrastructure have caused financial pressure on PRASA. Inefficiencies in PRASA’s operations have been cited by many stakeholders as a major concern. Metrorail has lost passengers to other modes of public transport, due to challenges encountered. These issues will be expanded on in Chapter 6.

Gautrain Management Agency (Gautrain)

5.34. The Gautrain is a concession between the Gauteng Provincial Government (GPG) and the Bombela Concession Company (Pty) Ltd (Bombela). It is a Public/Private Partnership project between GPG and Bombela which is operated by the Gautrain Management Agency (GMA). The main objective of the Gautrain was to reduce traffic congestion in Gauteng, thus providing an alternative for private motor vehicle users. Since the initial implementation of the project, in 2015, it has been reported that congestion was reduced to 21 300 fewer car trips per day, resulting in a reduction in accidents – and the carbon footprint reduced by 52 per cent.

5.35. Gautrain services have been provided for economic benefit, and reduction of emissions and environmental degradation. The Gautrain project receives a patronage guarantee (ridership guarantee) to incentivise performance until the end of the concession agreement. A patronage guarantee is a ridership guarantee, granted to the Gautrain to ensure that the services of the Gautrain are effective, efficient and sustainable, both in the short and long run. The model is designed to compensate for ridership when the mode is underutilised – for a certain period.


163 Patronage guarantee – the difference between the Minimum Required Total Revenue (MRTR) and fare box and other revenues on the system, approximately 46% of the Minimum Required Total Revenue is ascribed to the capital and asset related costs and 54% to operational costs.
5.36. Patronage guarantees payable to GMA increased from R1.1 billion to R1.6 billion, between 2014/15 and 2017/18. The ridership level was 14.9 million in 2014/15 and decreased to 13 million passenger trips in 2017/18; showing a varying growth rate in passenger numbers. In 2017/18 the ridership declined by 588 710 passengers (approximately 3.9 per cent of the passenger trips annually). Nevertheless, this shows that a slow growth in services since June 2010 was evident. In 2018/19 passenger numbers further declined which led to the increase in the patronage to R1.6 billion. Table 6 shows transfer payments to PRASA and Gautrain.

Table 6: Transfer payments to Gautrain from 2014/15 to 2017/18

<table>
<thead>
<tr>
<th>Subsidy Transfers (R’000)</th>
<th>2013/14</th>
<th>2014/15</th>
<th>2015/16</th>
<th>2016/17</th>
<th>2017/18</th>
<th>2018/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gautrain</td>
<td>R1 031 732</td>
<td>R1 109 464</td>
<td>R1 201 674</td>
<td>R1 350 680</td>
<td>R1 571 858</td>
<td>1 648 843</td>
</tr>
<tr>
<td>Passengers</td>
<td>13 639 059</td>
<td>14 909 939</td>
<td>15 465 526</td>
<td>15 612 070</td>
<td>15 023 312</td>
<td>13 966 482</td>
</tr>
</tbody>
</table>

Source: Gautrain Management Agency

5.37. During the construction of the Gautrain project between 2006/07 and 2010/11, national and provincial government contributed and the concessionaire contributed through loans and through equity (a total of ). GMA argues that since the implementation of the project in 2014, at least 46 per cent of the transfer payment to Gautrain is allocated to capital and asset related costs and not exclusively used to fund operations.

Comparison of operational subsidy between Metrorail and Gautrain

5.38. Comparison of the operational subsidies allocated to Metrorail and Gautrain reveals that Gautrain receives a greater proportion of subsidy per passenger, compared to Metrorail. Table 7 shows the operational subsidy per passenger for both Metrorail and the Gautrain in 2017/18.

Table 7: Urban rail commuter operating subsidy per passenger 2017/18

<table>
<thead>
<tr>
<th></th>
<th>Annual subsidy (“R000”)</th>
<th>Annual passengers</th>
<th>Operating subsidy per passenger</th>
<th>Fares charged: Pretoria to Centurion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metrorail</td>
<td>R3 666 839</td>
<td>269 460 035</td>
<td>R13.61</td>
<td>R7.50</td>
</tr>
<tr>
<td>Gautrain</td>
<td>R1 571 858</td>
<td>15 023 312</td>
<td>R104.63</td>
<td>R32 (single trip)</td>
</tr>
</tbody>
</table>

Source: Commission’s own compilation

5.39. Table 7 shows that during 2017/18, the subsidy per passenger for Metrorail was R13.61 while the Gautrain subsidy per passenger was R104.63 during the same period. GMA submits that the total allocation of R1.57 billion includes a component of capital subsidy and therefore it is not directly comparable to the Metrorail’s operating subsidy per passenger. GMA estimates that only 56 per cent of the allocated funds is for operational costs. Taking this into consideration, Gautrain’s operating subsidy per passenger will be R59 which is more than 4 times than that of Metrorail. The disparity in the subsidy transfers between the Gautrain and Metrorail have been cited as perpetuating class divisions in society. The Gautrain is targeted for the middle class.

165 Ibid. The figures for 2018/19 as shown on table 6 are unaudited numbers.
168 The fare benchmark for Metrorail is based on the fare structure published in 2014. The Commission is in the process of acquiring recent data from Metrorail Gauteng regional office.
and yet receives much higher subsidy per passenger, compared to Metrorail which is normally used by the working class. Several stakeholders are concerned that this practice of allocating more funding to Gautrain per passenger is not socially, morally and economically justified, and resembles apartheid exclusionary practices.

Minibus taxi industry

5.40. The minibus taxi industry has an estimated 300 000 individual operators, and transports over 70 per cent of passengers in South Africa.\(^{170}\) The majority of minibus taxi users are low-income earners. The industry receives a capital subsidy from the government under the Taxi Recapitalisation Programme (TRP) which commenced in 2006. The programme is discussed briefly in detail below.

Taxi Recapitalisation Programme (TRP)

5.41. In 1995, the National Taxi Task Team (NTTT) was set up to address problems in the industry, and one of the resolutions was the replacement of old vehicles with new ones.\(^{171}\) Government intervened by launching the TRP\(^{172}\) to replace ageing fleet within the transportation system, and also created opportunities in the manufacturing downstream activities.\(^{173}\) The TRP was implemented as a subsidy to an operator to scrap an old vehicle and use the money as a deposit for a new vehicle which complied with the standards set by the public transport regulator.\(^{174}\)

5.42. Section 49(2) of the NLTA outlines that the holder of a permit or operating licence for a vehicle authorising minibus taxi type services may apply in the prescribed manner for recapitalisation of the vehicle, and may choose either to:

5.42.1. Leave the industry, in which case the DOT must cancel the permit or operating licence; or

5.42.2. Acquire a new compliant vehicle that has the same passenger capacity as the vehicle specified in that permit or operating licence, or not more than a 20 per cent variance, in which case the operator shall be entitled to an operating licence for the new vehicle, authorising the same service, on submission of a valid tax clearance and such operating licence must specify in detail the route or routes to be operated, which must be those operated by the operator for the period of 180 days prior to the date of application;

5.42.3. Acquire a new, compliant vehicle with more capacity on approval by the planning authority in writing, and the holder must submit the existing permit or operating licence to the Department for cancellation, provided that the Minister may prescribe that more than one permit or operating licence held by that holder must be surrendered for cancellation, to make up for the increase in capacity of the new vehicle. SANTACO Limpopo submits that one of the objectives of the TRP was to increase vehicle capacity to 22 seaters, particularly for interprovincial services.\(^{175}\) Although the Act makes a provision that operating licence for 22 seater vehicles can be obtained by surrendering more than two 15 seater permits; SANTACO submitted that this has not been implemented in practice.\(^{176}\)

5.43. With specific regard to recapitalisation provisions above, the recapitalisation of the minibus taxis is tied to the replacement of the indefinite permits. In its initial form, TRP included deadlines for operators to recapitalise their vehicles, and permits were only converted to operating licences on the condition that an operator applies for an operating licence for a new compliant vehicle.

\(^{172}\) SA Taxi Finance. Op cit.
\(^{173}\) Ibid.
5.44. The main objective of the TRP is to replace the old taxi vehicles (OTV) with the new taxi vehicles (NTV), designed to provide public transport services in the taxi industry. The TRP introduced the compulsory requirements for the new taxi vehicles to ensure that:

5.44.1. Safety requirements for passengers, as set out by South African Bureau of Standards (SABS), were met,

5.44.2. Comfort for passengers and accessibility is realised, by insistence on the size and number of seats, and

5.44.3. There is colour coding of taxi vehicles, to improve the ease with which illegal operators can be distinguished from the legal ones. This objective was never achieved.

5.45. All taxi operators with valid operating licences linked to a legally registered taxi qualify to participate in the TRP. The taxi vehicles undergoing scrapping are required to be registered and recognised as valid taxi vehicles on the current database of the department of transport. The Taxi Scrapping Agency (TSA) uses information on age profile of minibuses to predict the number of registered (particularly unroadworthy and unsafe) vehicles. This information is also used by the TSA to target and prioritise vehicles for scrapping. Although there is no specific age that qualifies the taxis for recapitalisation, older vehicles receive priority.

5.46. With the launch of TRP, the operators that operated unsafe or old vehicles were given preference to register and subsequently replace these vehicles. The operators that operated fairly new vehicles were given a 7-year period to replace their vehicles, failing which the law would be enforced. The operators were also required to be registered as taxpayers, to qualify for TRP participation.

5.47. The initial participation rate by minibus taxi operators was low, as the details of the compensation model were not explicitly known. While the objective of TRP was clear, implementation was poor given the concerns raised by the industry about the scrapping subsidy not being sufficient to pay for the deposit of new vehicles. For example, SANTACO submitted that the allowance is not equivalent to the deposit required to purchase a vehicle. As such, participation declined over time, and thus limited the government’s intervention in addressing the problem of unroadworthy minibus taxis.

5.48. The stringent credit approval processes by financial institutions, and the exorbitant repayments, were contributing factors for the low uptake of taxi recapitalisation. The scrapping allowance, once approved, does not guarantee that funding from banks for a new vehicle will be approved (due to adverse credit profile) which meant that operators would lose a vehicle that was operational (though old) and not be able to replace it. This acted as a disincentive for operators to participate effectively in the programme. The National Taxi Alliance submitted that the exclusion of very old vehicles hampers the progress of minibus tax operators.

5.49. The participation rate on the Taxi Recapitalisation Programme has been slow since 2009/10, and the bulk of the minibus taxi fleet have been continuously ageing, requiring replacement in order to meet the safety standards set out. The initial target for the Taxi Recapitalisation Programme was to scrap 100 000 old vehicles, and was later adjusted to 135 894 in 2007. A total of 72 653 minibus taxis have been scrapped, and a total amount of R4.4 billion had been paid, in scrapping allowances by the end of September 2018.
5.50. To support the TRP, the DOT has made several changes. The initial amount paid to minibus taxi operators for scrapping a vehicle was R50 000 and adjustable in line with inflation (CPI), and was later increased to R95 000. In April 2019, the DOT announced the Revised TRP, with the appointment of the new service provider responsible for the administration and management of the programme. From 2019/20, the scrapping allowance is R124 000, which is equivalent to almost 20 per cent of the current cost of a minibus taxi.

5.51. **Figure 7** shows the participation rate in the Taxi Recapitalisation Programme by minibus taxi operators, between 2006/07 and 2018/19.

**Figure 7: TRP participation rate by minibus taxi operators from 2006/07 to 2018/19**

![Bar chart showing TRP participation rate by minibus taxi operators from 2006/07 to 2018/19.](image)

Source: Department of Transport

**Bus industry**

5.52. The commuter bus industry participates in tendered and negotiated contracts, as will be discussed in much more detail in Chapters 7 and 8. The contracts are currently administered by provinces, guided by the conditions set by DoRA. The DoRA seeks to make provisions for the equitable division of revenue among all spheres of government. In terms of DoRA, there are two grants that facilitate the operations of commuter buses: The Public Transport Operational Grant (PTOG) and the Public Transport Network Grant (PTNG) which are summarised below.

*The Public Transport Operational Grant*

5.53. The PTOG subsidises commuter bus operations, and dates back to the apartheid regime. In the apartheid era, these subsidies were allocated to provincial administrations on behalf of national government, to private contracted buses such as PUTCO. The purpose of the grant is to provide supplementary funding (subsidies) towards public transport services contracted by provincial departments. 186 The PTOG is based on kilometres travelled by operators, and the contracting authority must supervise, monitor and verify the correctness of distances covered. 187

5.54. Out of 25 000 bus operators in the industry, only 7 500 operators are subsidised by the government. 188 Chapter 7 will cover the different categories of contracts existing in the nine provinces.

5.55. **Figure 8** shows PTOG expenditures from 2014/15 to 2018/19, and projected estimates for 2020/21. PTOG is increasing gradually, year to year, in line with inflation.

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5.56. KwaZulu-Natal, the Western Cape and Gauteng receive 80 per cent of the grant, while Limpopo, the Eastern Cape and the North West, all of which are former homelands, receive the lowest allocations. Provinces supplement the PTOG from their own equitable share.\footnote{Inter State Bus Service. 2018. Submission by Inter State Bus Service. 30 August 2018. \textit{Ibid.}} The smaller rural provinces are not prioritised in terms of funding for public transport, because of their population size.\footnote{National Treasury. 2018. Oral submission by Ms Britton, Gauteng hearings. 10 October 2018. Page 24-25.} For instance, in Nelson Mandela Bay, funding is alleged to be insufficient with Algoa Bus Company limited to within the metro and commuters from rural areas or townships are not funded.\footnote{Nelson Mandela Metropolitan Municipality. 2018. Submission by Ms Jawa. 13 August 2018.}

\textbf{The Public Transport Integrated Network Grant}

5.57. As will be discussed in \textit{Chapter 8}, the Public Transport Network Grant originated in 2006, as an effort to prepare for the 2010 Soccer World Cup. The grant later transitioned to focus on Integrated Rapid Public Transport Networks (IRPTNs) and is currently transferred to 8 metros and 4 municipalities.\footnote{The National Treasury. 2018. Oral submission by Ms Britton. Gauteng hearings. 10 October 2018. Page 1} The grant is not meant for BRTs only, but to create an integrated public transport network, of which BRTs form a part, as per the IRPTNs. The strategic goal of the PTNG is to support the provision of accessible, reliable and affordable integrated public transport services.

5.58. The total funding for the PTNG increased from R5.9 billion to R6.1 billion between 2015/16 and 2017/18.\footnote{The National Treasury – Estimates of National Expenditure 2019. \url{http://www.treasury.gov.za/documents/national%20budget/2019/ene/FullENE.pdf} (Accessed on 05 June 2019.)} A substantial amount of the funding is allocated to the eight metros, and the rest is allocated to local municipalities. However, the grant has been underspent by all the cities for the 2016/17 and 2017/18 financial years.\footnote{The National Treasury. \textit{Ibid.}} Some of the reasons highlighted for under-expenditure include the inefficiency and unsustainability of the current IRPTN system, which resulted in delays.\footnote{Western Cape Department of Transport and Public Works. 2018 Oral submission by Mr Collins, Western Cape hearings. 20 June 2018. Page 9 and 20.} Some of the cities lack the requisite skills and expertise to carry out public transport functions.\footnote{The National Treasury. \textit{Ibid.}}

5.59. \textbf{Figure 9} shows the allocation and spending of the PTNG in 12 municipalities.
5.60. The minibus taxi industry accounts for approximately 66.5 per cent of commuters, buses 23.6 per cent, and rail 9.9 per cent.\textsuperscript{197}

5.61. Figure 10 shows the ridership relative to the allocation of subsidies across the different modes of public transport. Ridership for minibus taxis is 66.5 per cent, while the TRP subsidy is 1 per cent of the total government transport subsidy for 2017/18.\textsuperscript{198} Misalignment between ridership volumes and the allocation of subsidies is evident across the different modes of public transport. Despite the quality differences provided by each mode of transport, these disparities cannot be socially justifiable.

\textbf{Analysis of subsidy allocation versus transport usage}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure9}
\caption{Public Transport Network Grant from 2016/17 to 2017/18 (R'000)}
\end{figure}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{figure10}
\caption{Ridership 2015 vs subsidy allocation 2017/18}
\end{figure}

Minibus taxis are the most expensive mode of public transport, and yet transport most of the commuters who prefer minibus taxis because of the expansive route network, easy access to commuters and reliability compared to subsidised buses and Metrorail. Minibus taxis have been resilient, with no sign of decline, and government must consider supporting this industry; given the inefficiencies in other subsidised modes. The budget allocated to TRP is inadequate to replace all the old vehicles on the road. Adequate funding through the TRP will have both economic and social benefits safe vehicles on the road.

Analysis of the grants – infrastructure vs operational grants

Typically, subsidies for public transport are classified as follows:

5.63.1. **Capital subsidy**: considers maintenance and replacement costs of an asset. The subsidy is mainly aimed at keeping the general level of fares low, so that passengers do not bear the additional cost, and they also ease the financial pressure on respective operators;

5.63.2. **Loss/operating subsidy**: compensates the difference between an operator’s total costs and total revenue/income;

5.63.3. **Input subsidies**: compensate for certain elements of the total cost or operating cost. The supplier of the subsidy normally sets certain prerequisite efficiency ratios and standards for the subsidy allocated, in order to avoid inefficiencies and larger subsidy amounts over time;

5.63.4. **Output subsidy**: is paid for the output of the operator, such as the number of passengers served, and the number of kilometres driven;

5.63.5. **Tariff subsidy**: compensates the commuter when he/she cannot pay the full economic fare of the service. It is the difference between the actual transport fare charged and the economic transport fare (the real economic cost of the trip).

These subsidies may further be categorised more broadly as either infrastructure-related subsidies or operational subsidies. The infrastructure or capital subsidy is largely meant for subsidising the development and maintenance of public transport infrastructure and networks, whilst the operational subsidy support daily operations. Table 8 shows the share of allocation for public transport subsidies between infrastructure and operational subsidies.

Table 8: Share of public transport funding for infrastructure vs operations, 2018/19

<table>
<thead>
<tr>
<th>Public transport subsidies</th>
<th>Transfers: sphere of government</th>
<th>Allocation (“000”)</th>
<th>Percentage share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operation/current subsidy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metrorail/Shosholoza Meyl – operations</td>
<td>National entity</td>
<td>R 7 416 736</td>
<td>25%</td>
</tr>
<tr>
<td>Public Transport Operation Grant (PTOG)</td>
<td>Provinces</td>
<td>R 5 990 298</td>
<td>20%</td>
</tr>
<tr>
<td>Gautrain Patronage Guarantee</td>
<td>Gauteng Province</td>
<td>R 1 648 843</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td></td>
<td><strong>R15 055 877</strong></td>
<td><strong>50%</strong></td>
</tr>
<tr>
<td>Infrastructure/capital</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metrorail – capital</td>
<td>National entity</td>
<td>R8 362 232</td>
<td>28%</td>
</tr>
<tr>
<td>Public Transport Network Grant (PTNG)</td>
<td>Local government</td>
<td>R 6 253 669</td>
<td>21%</td>
</tr>
<tr>
<td>Taxi Recapitalisation Programme (TRP)</td>
<td>National entity</td>
<td>R 411 605</td>
<td>1%</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td></td>
<td><strong>R15 027 506</strong></td>
<td><strong>50%</strong></td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td></td>
<td><strong>R30 116 383</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Source: Commission’s compilation
5.65. For 2018/19, 29 per cent of the funding was allocated to Metrorail as a form of capital subsidy, and this is targeted at rolling stock fleet renewal, signalling, and refurbishment of coaches for both Metrorail and Shosholoza Meyl. Almost 22 per cent of the funding is allocated to Metrorail and Shosholoza Meyl operations, which are largely focused on rail commuter services in four provinces, and long-distance passenger services in South Africa. Metrorail/Shosholoza Meyl account for almost half of the public transport subsidies (summation of operational and capital subsidies).

5.66. For the 2018/19 financial period, approximately 20 per cent of the public transport funding was allocated to municipalities, as PTNG. PTNG is targeted at accelerating construction, improvement of public and non-motorised transport infrastructure that form part of a municipal integrated public transport network, and to support the planning, regulation, control, management and operations of financially sustainable municipal public transport network services.

5.67. Provincial subsidised commuter buses account for 20 per cent of the funding for the 2018/19 financial period. The Gautrain receives a patronage guarantee as a form of an operational subsidy, which accounts for 6 per cent of the total subsidies. There is no capital subsidy for the Gautrain at the moment. However, the DOT and National Treasury allocated 40 per cent of the capital costs of the Gautrain in the period 2006 to 2012 (“the development period”). Future expansion of the Gautrain will require further capital subsidies from government.

5.68. Over the past five years (2014 to 2019 financial years), infrastructure-related subsidies received the greatest proportion of funding, compared to operational subsidies. For the five year period, average split in funding was 60 per cent for infrastructure subsidies and 40 per cent for operational subsidies, as shown in Table 9.

5.69. Despite the substantial investment in infrastructure, the outcomes in terms of expansion of services to marginalised areas have not yet been achieved. Most of the infrastructure investments are limited to urban areas. Government has also attempted, through provinces, to allocate additional funding targeted at improving provincial road infrastructure as discussed below.

5.70. Despite the disparities in the subsidy transfers and service quality offered by the Gautrain and Metrorail, a recent study commissioned by the GMA shows that the Gautrain project has not only changed the perception of public transport in Gauteng, but most has in a tangible way changed the lives of the public commuters. According to the study since inception in 2006, Gautrain has contributed positively to the Gauteng economy and society at large. For example, the Gautrain managed to create at least 35 000 direct construction jobs, and 10 900 direct operational jobs. The project has also attracted foreign direct investment into Gauteng which increased to over R44 billion in 2016 the highest recorded since 2003. The Gautrain system has not only influenced transport choice but also managed to integrate the region and its communities with over 70 per cent of all trips on Gautrain cross city boundaries whilst reinforcing development nodes across the province.

## Table 9: Public transport related subsidies 2014/15 to 2018/19

<table>
<thead>
<tr>
<th>Allocation (&quot;000&quot;)/Percentage share</th>
<th>2014/15</th>
<th>%</th>
<th>2015/16</th>
<th>%</th>
<th>2016/17</th>
<th>%</th>
<th>2017/2018</th>
<th>%</th>
<th>2018/2019</th>
<th>%</th>
<th>5 year average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure/capital</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital: Metrorail</td>
<td>R11,058,959</td>
<td>41%</td>
<td>R14,155,887</td>
<td>46%</td>
<td>R14,698,601</td>
<td>46%</td>
<td>R9,368,189</td>
<td>33%</td>
<td>R8,362,232</td>
<td>28%</td>
<td>39.1%</td>
</tr>
<tr>
<td>Public Transport Network Grant (PTNG)</td>
<td>R5,870,848</td>
<td>22%</td>
<td>R5,953,090</td>
<td>19%</td>
<td>R5,592,691</td>
<td>18%</td>
<td>R6,107,057</td>
<td>22%</td>
<td>R6,286,669</td>
<td>21%</td>
<td>20.2%</td>
</tr>
<tr>
<td>Taxi Recapitalization programme (TRP)</td>
<td>R300,063</td>
<td>1%</td>
<td>R248,402</td>
<td>1%</td>
<td>R359,352</td>
<td>1%</td>
<td>R233,542</td>
<td>1%</td>
<td>R411,605</td>
<td>1%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>R17,229,870</td>
<td>64%</td>
<td>R20,357,379</td>
<td>66%</td>
<td>R20,650,644</td>
<td>65%</td>
<td>R15,708,788</td>
<td>56%</td>
<td>R15,060,506</td>
<td>50%</td>
<td>60.4%</td>
</tr>
<tr>
<td>Operation/current</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operation: Metrorail and Shosholoza Meyl</td>
<td>R3,887,342</td>
<td>14%</td>
<td>R4,066,160</td>
<td>13%</td>
<td>R4,281,666</td>
<td>14%</td>
<td>R5,037,771</td>
<td>18%</td>
<td>R7,416,736</td>
<td>25%</td>
<td>16.7%</td>
</tr>
<tr>
<td>Public Transport Operation Grant (PTOG)</td>
<td>R4,832,709</td>
<td>18%</td>
<td>R4,939,448</td>
<td>16%</td>
<td>R5,400,292</td>
<td>17%</td>
<td>R5,722,871</td>
<td>20%</td>
<td>R5,990,298</td>
<td>20%</td>
<td>18.2%</td>
</tr>
<tr>
<td>Patronage guarantee</td>
<td>R1,109,464</td>
<td>4%</td>
<td>R1,201,674</td>
<td>4%</td>
<td>R1,350,680</td>
<td>4%</td>
<td>R1,571,858</td>
<td>6%</td>
<td>R1,648,843</td>
<td>5%</td>
<td>4.7%</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>R9,829,515</td>
<td>36%</td>
<td>R10,201,728</td>
<td>33%</td>
<td>R11,032,638</td>
<td>33%</td>
<td>R12,332,500</td>
<td>44%</td>
<td>R15,055,877</td>
<td>50%</td>
<td>39.6%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>R27,059,385</td>
<td>100%</td>
<td>R30,564,661</td>
<td>100%</td>
<td>R31,683,282</td>
<td>100%</td>
<td>R28,041,288</td>
<td>100%</td>
<td>R30,116,383</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Commission’s compilation based on National Treasury and DOT reports
Other public transport-related subsidies

5.71. **Provincial Roads Maintenance Grant (PRMG)** this is a conditional grant allocated to provinces; to supplement provincial budgets for the repair and maintenance of road network and infrastructure, and to improve road safety with a special focus on pedestrian safety in rural areas. About 49 000 kilometres of the South African paved road network remain under the control of provincial transport departments. The bulk of maintenance operations carried out on provincial roads are funded through the PRMG. Allocation for 2018/19 amounted to R11 billion.202 The condition of roads, weather patterns and traffic volumes are factors that guide funding allocations for the maintenance of provincial roads.

5.72. **Rural Road Asset Management Systems (RRAMS):** this is a current subsidy (operational grant) transferred by the DOT to district municipalities, to assist in the setting up of rural Road Asset Management Systems (RAMS). RAMS assist to collect road, bridges and traffic data information on municipal road networks, in line with the Road Infrastructure Strategic Framework for South Africa (RISFSA).203 Allocation for 2018/19 totalled R108 million.204

5.73. **South African National Road Agency (SANRAL): Non-toll network** – this grant assists SANRAL to carry out upgrades, maintenance, and strengthening programmes of the non-toll portfolios on roads. Non-toll roads constitute approximately 85 per cent of the national roads portfolio and are funded through transfers to SANRAL from the DOT. The 2018/19 allocation equated to R6.9 billion for capital subsidy.

Analysis of the fragmented public transport subsidies

5.74. As discussed above (see Table 8), public transport subsidies are transferred to all spheres of government, as well as different entities which account to these spheres of government. The set-up of the current subsidy framework is resulting in fragmentation which compromises the delivery of the public transport services. Fragmentation arises due to failures in intergovernmental coordination, despite the existence of planning committees as envisaged by the NLTA. By way of illustration, subsidies are transferred to provinces for contracted bus services (PTOG) and these buses operate across municipal boundaries. The 13 cities receive PTNG for bus operations within their jurisdiction. Theoretically, with proper coordination, public transport services within these 13 cities may be provided adequately. However, the benefits in economies of scale, in negotiations and efficiencies derived from integrated planning are compromised. Outside of the 13 cities that receive PTNG, contracted bus services are managed by the provinces.

5.75. Commuter rail services are provided by Metrorail and the Gautrain (in Gauteng only). In Gauteng, based on the principles of the integrated public transport system, Metrorail and the Gautrain should be run by the same entity (see Chapter 6). It is also inefficient for Metrorail services to be managed by an entity which is accountable to national government. In its policy documents, the DOT highlights the urgent need to devolve commuter rail to local government – to foster integration, cater for local needs, and improve accountability. In terms of international experience, devolution of rail has different benefits and opportunities, which include:205

5.75.1. **Boosting economic growth and productivity** – as devolution gives local authorities powers over economic enablers such as housing, transport, skills and infrastructure, they will be able to boost economic growth and productivity locally.

5.75.2. **Reforming public services** – devolution offers the chance to better consolidate public services at a local level, gaining efficiencies from closer working between public services.

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202 National Treasury, 2019 budget – Department of Transport Budget Vote, page 741
203 The National Treasury expenditure estimates has categorized this grant as a current subsidy.
204 National Treasury, 2019 budget – Department of Transport Budget Vote, page 741
5.75.3. Increasing innovation – devolution could both provide a greater number of opportunities to try new ways of working, and lead to smaller, more localised services that are able to fail and adapt with fewer consequences than large, uniform national systems.

5.76. Devolution of rail from national government to provincial transport authorities is discussed in detail in Chapter 6.

5.77. As discussed in Chapter 4, international experience also suggests that the devolution of public transport functions (all transport modes) in general to metros, city-regions or provinces was motivated by the need to foster coordination in planning, decision making, and to encourage an integrated and comprehensive urban transport system. In addition, amalgamation of previously fragmented government entities and funding is a common trend, given the efficiencies that would be derived. It is argued that public transport should be considered as an integrated system, and that therefore interventions should be provided in an integrated manner.

5.78. Given the principles outlined above, to promote integration, subsidies should be transferred to the most appropriate level of government to minimise intergovernmental coordination failures. In the South African context, as argued in Chapter 4, local government does not prioritise public transport and there is lack of capacity, therefore provinces, through the Provincial Transport Authorities with additional capacity, may be better placed to manage the subsidies.

Potential challenges of consolidating subsidies under Provincial Transport Authorities

5.79. The Commission notes that the consolidation of subsidies under the Provincial Transport Authorities will not be without challenges. Based on international experience, likely challenges include the following:

5.79.1. Building capacity to take on new powers, especially managing and operating rail by provinces (further details in Chapter 6) may take time. New systems need to be established, to ensure that subsidised transport is available to majority of the people. Highly skilled capacity to manage expanded budgets and mandate must be in place, or sourced.

5.79.2. Transfers of subsidies to the Provincial Transport Authorities results in the reallocation of financial resources from national and local government to provinces. This might cause intergovernmental friction, especially in instances where approval for specific activities from national government is required. Based on international experiences, national governments are reluctant to lose control of the budget despite strong and credible motivation for consolidating subsidies to ensure effective planning.

5.79.3. Labour related matters must be considered, to reduce redundancies and standardise working conditions, in case some personnel are moved from local government to the Provincial Transport Authority. Protracted engagements with the labour unions has slowed the formation of transport authorities in other countries.

5.80. Financial management has been identified as a challenge in some of the provinces, and additional budget allocations may worsen the situation unless this is prioritised. The Auditor General (“AG”) has noted a general culture of non-compliance in procurement processes, with lack of consequences for transgressing provinces.206

5.80.1. In the Free State, the province’s audit outcomes significantly regressed over four years, as noted by the AG’s audit report for 2017/18. The Police, and the Roads and Transport department were highlighted as having regressed from an unqualified audit opinion with findings, to a qualified audit opinion in 2017/18 with irregular

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expenditure of R1.6 billion. Gauteng province was commended by the AG for improving its audit outcomes over the past 4 years. However, R 2.1 billion was highlighted as irregular expenditure in the Department of Roads and Transport, as a result of extension of the bus subsidy legacy contracts.

5.80.2. In the Western Cape, the AG noted a culture of accountability and sound management practices and noted that the Department of Transport is running efficiently, with sound financial management.

5.80.3. In KwaZulu-Natal, the AG noted that the Department of Transport received qualified opinions for the past 4 years, with significant amounts of irregular expenditure. The Department of Transport was one of 4 departments that accounted for 94 per cent of the irregular expenditure flagged in the province, to the sum of R10.68 billion.

5.80.4. In the Eastern Cape, the AG has expressed concerns about the culture of non-compliance, which led to irregular expenditure of R5.26 billion in the province. The AG commended the province for spending nearly 99% of its allocated conditional grants for the 2017/18 financial year. However, issues relating to project planning, project management, increase in variation orders and limited oversight are still concerning.

5.80.5. In the North West, overall audit outcomes regressed over the last four years, with only 32% of the auditees obtaining financially unqualified opinions in 2016/17, compared to 46% in 2015/16. The provincial department of Community Safety and Transport Management was among the five government departments which were placed under administration in 2017/18, in terms of section 100(1) (b) of the Constitution. In 2017/2018, the department of Community Safety and Transport Management was among the three departments that contributed to 76 per cent of irregular expenditure in the province.

5.80.6. In the Northern Cape, the AG noted a slight regression in audit outcomes due to internal control weaknesses, the culture of non-compliance with applicable legislation, and lack of accountability.

5.80.7. In Mpumalanga, the AG noted that the province remained stagnant, with no significant improvement in the audit outcomes, as there were still widespread weaknesses in the internal control environment. Supply chain management continued to be a challenge, and weaknesses in this area contributed to 94 per cent of the total irregular expenditure of R3.2 billion incurred in 2017/18.

Findings

5.81. The Commission reviewed the evidence and has made the following findings:

5.81.1. Government does not currently have a subsidy policy for public transport. The Commission is aware that the DOT recently awarded a tender for the development of a subsidy policy.

5.81.2. The current public transport subsidy regime is highly fragmented, with minimum coordination. The current subsidies are focused on transfers to different spheres of government, with minimal consideration to promote integration. Current subsidies seem to be stand-alone interventions with limited coordination, given the involvement of all spheres of government in public transport. The DOT, in its 2017 Draft White Paper, submits that the problem of fragmented subsidies can be solved by having a dedicated funding source for public transport.

5.81.3. Gautrain’s operating subsidy is between R59209 to R104210 per passenger compared to R13.61 per passenger for Metrorail.

5.81.4. Public transport in general is not prioritised by local government, and therefore public transport grants to local government must be reviewed.

5.81.5. The minibus taxi industry transports the largest proportion of passengers and is not subsidised. This misalignment between ridership volumes and the allocation of subsidies requires attention and is not socially justifiable.

Provisional Recommendations

5.82. The Commission notes that government, through the DOT, is currently in the process of developing the subsidy policy. The Commission recommends that the subsidy policy be finalised and consider the following:

5.82.1. The subsidy policy should address some of the fragmented subsidies in the public transport sector.

5.82.2. The subsidy policy should address the skewed allocations between urban and rural areas.

5.82.3. The subsidy policy should create incentives for infrastructure investment in marginalised areas. This may assist in attracting transport services by private players.

5.82.4. The subsidy policy should incentivise expansion of rail in high density corridors.

5.82.5. Subsidisation of the minibus taxi industry to address the misalignment between ridership volumes. Taxi Recapitalisation Programme may be considered as an interim measure while DOT is finalising its subsidy policy.

5.83. To improve coordination and minimise subsidy fragmentation, dedicated transport authorities at provincial level (Provincial Transport Authorities), after being established, will be the recipient of all public transport-related subsidies. Subsidies that will be transferred to Provincial Transport Authorities include: PTNG, PTOG, Metrorail operational subsidies (after devolution), Provincial Road Maintenance Grant (PRMG), and the Taxi Recapitalisation Programme. Provincial Transport Authorities may then enter into subcontracting arrangements with metros, to ensure current IRPTN/BRT contracts or services are not compromised during the transition phase; or until the contracts come to an end.

5.84. Provincial governments to ensure that Provincial Transport Authorities are established, and well capacitated, to undertake these additional functions. The DOT, in its revised 2017 White Paper, proposes that transport authorities or an equivalent structure be established in order to facilitate the integration of all public transport services. Provincial Transport Authorities will determine the appropriate mode of transport, based on the subsidy received from national government.

Stakeholder Submissions to Provisional Recommendations

Recommendation 1: Finalisation of the subsidy policy by the DoT and consider subsidisation of the minibus taxi industry, through increased funding for the Taxi Recapitalisation Programme

5.85. DOT is currently developing a subsidy policy and views the Commission’s recommendation as premature. DOT’s subsidy policy is likely to be finalised in March 2021 and then taken through the Cabinet process. DOT is of the view that subsidisation policy is a matter of government policy subject to approval by Cabinet.

5.86. Subsidisation of the minibus taxi industry, through increased funding for Taxi Recapitalisation Programme was supported by several stakeholders. For instance, the Western Cape Department of Transport and Public Works suggested that the recommendation must include a subsidy model that will provide financial incentives targeted at improved levels of service for passengers. City of Cape Town submits that the need for increased government funding to the Taxi Recapitalisation Program needs to be assessed against the evolving role that the minibus taxi industry will play in a fast changing and evolving public transport market. SA Taxi Finance argued that government should look at subsidising

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209 GMA estimates that only 56 per cent of the allocated funds is for operational costs, 44 per cent is allocated for capital expenditure.

210 Assuming all the operational subsidy is used to fund operational expenses.
the industry in the same way as it subsidises rail and bus transport and/or made provision for the supply of the vehicles to be zero-rated in terms of the VAT legislation and/or made cheaper funding available.

5.87. The DOT also supports the recommendation to subsidise the minibus Taxi industry and confirmed that it is working with the Taxi industry to ensure formalisation.

5.88. Taxinomics, CODETA and Free State Police, Road and Transport Department highlighted that in addition to the increased Taxi Recapitalisation Programme other incentives should be provided to the industry. Taxinomics submitted that an increase in the Taxi Recapitalisation Programme seems insufficient. Taxinomics submits that a subsidy should not only bring relief in terms of a taxi recapitalisation, but commuters should also be subsidised. CODETA and SANTACO argued that government should design a subsidy model catering for both capital and operating expenditure.

**Recommendation 2: To improve coordination and minimise subsidy fragmentation, all public transport-related subsidies should be channelled to dedicated transport authorities at provincial level (Provincial Transport Authorities).**

5.89. The recommendation is supported by the Free State Provincial Department of Transport with the only concern being the cost associated with staffing such an entity.

5.90. The DOT does not support the channelling of subsidies to the Provincial Transport Authorities on the basis that this will create silo-mentality.

5.91. DOT has committed to eradicate subsidy fragmentation by revising its Public Transport Funding Model to maximise the benefit of public transport users.

**Commission’s Response to stakeholder comments**

5.92. In consideration of the submissions made in respect to the subsidy policy and subsidising the minibus taxi industry through Taxi Recapitalisation Programme, the Commission is of the view that the role players within the minibus taxi industry generally accept this recommendation pending the finalisation of the subsidy policy by DOT. However, the Commission now takes a view that the subsidy mechanism should be determined by DOT considering the need for equitable allocation of subsides to the minibus taxi industry.

5.93. The channelling of all public transport-related subsidies to the Provincial Transport Authorities (PTAs) will foster much integration as long as the PTAs have committees that include local government to minimise the problems of silo-mentality advanced by the DOT. However, the Commission notes that the establishment of the PTAs should not be a “one-size-fits-all” approach given the capacity differences between the provinces.

**Final Recommendations**

5.94. The Commission notes that the DOT is currently developing a subsidy policy. The Commission recommends that the subsidy policy consider the following:

5.94.1. Address fragmented subsidies in the public transport sector to improve coordination.

5.94.2. Address the skewed allocations between urban and rural areas.

5.94.3. Create incentives for infrastructure investment in marginalised areas to attract transport services by private players.

5.94.4. Incentivise expansion of rail in high density corridors.

5.94.5. Equitable allocation of subsidies to the taxi industry and rural bus operators.
6. THE RAIL SECTOR

Introduction

6.1. This chapter focuses on the commuter (passenger) rail sector, and firstly provides the regulatory framework in the industry. The subsidy framework and challenges in the industry are discussed. The chapter later discusses the assessment of the state of intramodal competition and concludes with findings and recommendations.

Regulatory framework, policy and strategies for rail transport


6.3. The other legislation that governs the passenger rail sector includes the National Railway Safety Regulator Amendment Act, 2002 (Act No. 16 of 2002 as amended) which provides for the establishment of the Railway Safety Regulator (RSR), which is an independent body enforcing and improving the level of operational railway safety.

6.4. In June 2017, the DOT produced a Draft White Paper on the National Rail Policy, which aims to guide developments in the rail sector. One of the interventions identified is the need to achieve rapid urban transport, with provincial governments encouraged to develop business plans for regional rapid transit to foster integration between heavy metro and low capacity sub-modes. The intention is to maximise connectivity between urban and regional rail systems, as well as minimise the number of motor cars that traverse urban areas; by providing affordable, convenient, safe, and secure rail service.

Industry role players

6.5. The DOT is responsible for the development of sustainable rail transport policies, rail economic and safety regulations, and infrastructure development strategies in order to improve public transport systems, reduce operational costs, and enhance customer services. The DOT oversees state-owned entities and agencies such as PRASA and RSR. The RSR is an agency of the DOT that ensures safety and quality standards in rail public transport, oversees railway public transport operators, and issues safety permits on annual basis.

6.6. In South Africa, commuter rail has largely been the responsibility of the national government, through PRASA. PRASA’s main responsibility is to deliver commuter rail services, long distance (intercity) rail services between the metropoles of South Africa, and from the borders of the Republic of South Africa. In delivering the services, the entity is supported by Metrorail in four regions (Western Cape, Eastern Cape, Gauteng and KwaZulu-Natal).

6.7. In addition to PRASA, the GMA and Bombela Concession Company (Pty) Ltd are in public/private partnership with the Gauteng Provincial Government, for the provision of urban rail commuter services through the Gautrain. In terms of the Gauteng Transport Infrastructure Act of 2001, Bombela agreed that it would design, partly fund, construct, operate and maintain a rapid link under a 19 and a half year concession, while the Gauteng provincial department owns the system assets. The GPG contributed 50 per cent of the capital costs of the Gautrain project, through

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6.8. Provincial governments are involved in the formulation of provincial policy and oversight. Municipalities are planning authorities, responsible for the preparation of the public transport plans at local level. Municipalities are responsible for spatial planning, transport integration, and the development and implementation of ITPs and IPTNs for all modes of public transport; including rail. However, eThekwini municipality indicated that it plays a minimal role in planning for rail, and only incorporates input developed by PRASA in the public transport plans. Coordination is required, to minimise misalignment of plans between the planning authorities and rail operators. In other municipalities such as Buffalo City, Metrorail coordinates its planning with the municipality.

Funding arrangement in the rail industry

6.9. This section discusses the funding arrangement in the rail sector, with specific reference to PRASA and the Gautrain. Detailed discussion on the subsidy framework is in Chapter 5.

6.10. The National Treasury allocates capital and operational grants to the DOT, and the funds are then transferred to PRASA. The funding for Gautrain is allocated directly from the Gauteng Province to the GMA. The spending of funds is guided by the annual Appropriation Act and the PFMA.

6.11. There are three different types of subsidies that are dispersed to the rail sector, and these include operational, capital and the patronage guarantee. The operational subsidy is allocated to PRASA for operations, and to ensure that fares are affordable. The capital subsidy is for infrastructure upgrades, refurbishments, and procurement of new rolling stock. The capital subsidy is allocated to PRASA Tech and Intersite, according to their mandates, as subsidiaries of PRASA.

6.12. The operational subsidy is allocated to Metrorail and MLPS. The Gautrain receives a patronage guarantee from the Gauteng Provincial Government. The patronage guarantee is a “ridership guarantee”, which guarantees the Gautrain a “minimum required total revenue”. If the Gautrain does not reach its projected revenue, the government makes provision for the shortfall (the difference between the expenditure stream and the income stream).

6.13. Metrorail receives the higher operational subsidy, compared to the Gautrain. However, GMA submits that the “operational subsidy” is inclusive of around 44 per cent that is used for capital and asset related costs. In 2017/18, the Gautrain received its highest patronage guarantee, as a result of a decline in passenger numbers. Figure 11 shows subsidy transfers to Metrorail, Mainline Passenger Service (MPLS) and GMA.

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219 Gautrain Management Agency and Bombela Concession Company (Pty) Ltd – Joint submission by Ms Judy Mackay, dated 24 August 2017 Page 16.
Figure 11: Subsidy transfers for Gautrain and Metrorail from 2015/16 to 2018/19 (R’000)

Source: National Treasury 2019

**Rail public transport offering**

6.14. Rail public transport is considered as a mass transport mover, and currently operates heavy rail commuter networks in metros. PRASA also provides long distance (intercity) rail services through Mainline Passenger Services, which operates the Shosholoza Meyl. The Gautrain provides urban regional rapid transit in the Gauteng region.

6.15. Gauteng: Metrorail services the largest metropoles in the country. In Gauteng, Metrorail operates the North, East and West of Gauteng, and the services cut across three metropolitan municipalities, which are City of Johannesburg, City of Ekurhuleni and City of Tshwane. The services connect to the intermodal transport nodes, including Johannesburg’s Park Station and Pretoria Station. In Gauteng, Metrorail operates sixteen rail corridors, of which six corridors are around Tshwane (North Gauteng) and ten corridors in the Witwatersrand (commonly known as South Gauteng). The main hub in Gauteng North is Pretoria Station, and Germiston in South Gauteng. Park Station is an intermodal facility with feeder systems between Metrorail, minibus taxis, long distance bus services, and the Gautrain. In Gauteng, 38 per cent of commuters have access to rail within a walking distance.

6.16. The Eastern Cape: Metrorail provides services in Nelson Mandela Municipality (between Port Elizabeth and Uitenhage), and Buffalo City Municipality (where it operates between East London and Berlin). In East London, rail is accessible to only 6 per cent of commuters as the railway line was designed for transporting cargos. Similarly, in Port Elizabeth only a few communities have access to rail services, due to the location of the network (which is largely a problem related to infrastructure).

6.17. KwaZulu-Natal: Metrorail services Kelso, Stanger, KwaDukuza, Pietermaritzburg, Cato Ridge and Crossmoor. Priority routes are KwaMashu, Bridge City, Umlazi and Isipingo, as well as Greenwood Park and Effingham. The railway network cuts across several areas, and thus covers most areas in the region. In KwaZulu-Natal, approximately 22 per cent of the residential areas have access to the rail network.

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230 Ibid
6.18. The Western Cape: Metrorail operates in six municipalities, including City of Cape Town, and covers 75 per cent of the residential areas.\(^{239}\) There are three active lines in the Western Cape, namely; the mainline, suburban and central line.

6.19. PRASA owns a total of 426 railway stations, with 214 trains in four provinces. The Western Cape and Gauteng have the largest networks. However, due to several challenges, commuters are relying less on rail and have switched to buses and minibus taxis. Figure 12 shows passenger numbers per province.

Figure 12: Metrorail annual passenger numbers per region

![Metrorail annual passenger numbers per region](image)

6.20. Between 2014/15 and 2017/18, there was a drastic annual decline in passengers using rail in all provinces. Gauteng has the highest number of passengers using rail, followed by the Western Cape, KwaZulu-Natal, and the Eastern Cape. Despite Metrorail being the cheapest mode of transport, passengers’ volumes declined by more than 100 per cent in Gauteng and the Western Cape, between 2014/15 and 2017/18.

6.21. The Eastern Cape has limited reliance on commuter rail, and most of the province’s commuters use minibus taxis. In Nelson Mandela Bay, rail has 2.9 per cent market share, buses 30.4 per cent, and minibus taxis 66.7 per cent.\(^{240}\) In Buffalo City, (East London) market share of rail is 11.5 per cent, while buses have 6.1 per cent, and minibus taxis 82.4 per cent.\(^{241}\)

6.22. The demand for rail public transport is different per region, with access, reliability and availability playing a major role.\(^{242}\) However, there have been several service disruptions across the regions which resulted in unreliable and erratic service, translating into declining passenger numbers. The system has also been vulnerable to threats such as cable theft and fare evasion, which in turn has affected the reliability and availability of the service in all the regions.\(^{243}\)

6.23. International experience in Europe, Asia and the USA demonstrates that rail is a most efficient and effective mode, when deployed on routes with high population densities.\(^{244}\) In South Africa, rail networks are positioned to serve the poor in high

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\(^{239}\) Metrorail – Oral submission by Mr Walker, Western Cape Hearings dated 20 June 2018. Page 83.


\(^{244}\) Emeran, H. Sander, S. Dyer R and Heyns, W. 2013, PRASA: Delivering the national strategic plan. Available at: https://repository.up.ac.za/bitstream/handle/2263/33246/Heyns_Prasa%20%282013%29.pdf?sequence=1&isAllowed=y [Accessed on 05 June 2019].
density corridors. However, given the two peak periods, the levels of usage vary ranging from 50,000 passengers per hour (Mabopane and Khayelitsha) to under 2,000 passengers (Pinetown and Springs). The current system has operational challenges, and is not modernised to meet customer needs.

High density corridors, such as the Moloto Road between Mpumalanga and Gauteng, are not currently serviced by rail; due to lack of funding. This has led to passengers relying on minibus taxis and buses, causing congestion and road accidents along that busy route. In addition, the current funding for railway networks is not sufficient to expand to new areas that are developing. Inefficiencies in the current service offering have resulted in passengers shifting to other modes, and the prospects for expansion, given the limited investment, are slim. Other challenges, related to alleged corruption, are beyond the scope of this Inquiry.

**Shosholoza Meyl**

6.25. Shosholoza Meyl is a division of PRASA, operating long distance passenger rail services. Shosholoza Meyl was a brand of Spoornet until April 2008, when its rolling assets were transferred to SARCC. Shosholoza Meyl offers services in two classes, Economy and Tourist. Shosholoza Meyl passenger trips have dropped from 2.8 million in 2009/10 to 465,647 in 2017/18 and there has been a slight increase to 644,000 passenger trips in 2018/19. The long distance passenger rail service has shown an average decline in fare revenue of 8 per cent per annum, over the last five years. Rail infrastructure used by Shosholoza Meyl is jointly owned by PRASA and Transnet, and the relationship is governed by the Interface Agreement. Table 10 shows the main routes (cities) operated by Shosholoza Meyl.

<table>
<thead>
<tr>
<th>From</th>
<th>Destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johannesburg</td>
<td>Cape Town</td>
</tr>
<tr>
<td>Johannesburg</td>
<td>Durban</td>
</tr>
<tr>
<td>Johannesburg</td>
<td>Port Elizabeth</td>
</tr>
<tr>
<td>Johannesburg</td>
<td>East London</td>
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<tr>
<td>Johannesburg</td>
<td>Komatipoort</td>
</tr>
<tr>
<td>Johannesburg</td>
<td>Musina</td>
</tr>
<tr>
<td>Cape Town</td>
<td>Bloemfontein</td>
</tr>
<tr>
<td>Cape Town</td>
<td>East London</td>
</tr>
</tbody>
</table>

Source: [http://www.shosholozameyl.co.za/train-routes.html](http://www.shosholozameyl.co.za/train-routes.html)

6.26. Figure 13 illustrates the routes operated by Shosholoza Meyl, including the various stops along the route. This is done to check if Shosholoza Meyl can be used for daily commuting within each city. In other words, can a commuter travel from Johannesburg to Pretoria, either on Metrorail or using Shosholoza Meyl, in transit to another destination.

6.27. On the Johannesburg - Cape Town route, Shosholoza commences the trip from Johannesburg Park Station, and the next station is Krugersdorp, and then Potchefstroom, Klerksdorp, Bloemhof and Christiana (North West). In the Northern Cape Province, the train stops in Warrenton, Kimberley, De Aar and Hutchinson. In the Western Cape it stops in Beaufort West, Lainsberg, Matjiesfontein, Worcester, Wellington, Huguenot, and Bellville; ending in Cape Town.

6.28. The Johannesburg - Port Elizabeth route starts at Johannesburg Park Station, the next stop is Germiston, Vereeniging, Koppies, Kroonstad, Hanneman, Virginia, Theunissen, Brandfort, Bloemfontein, Springfontein, Noupoor, Hesperus, and Addo; ending in Port Elizabeth.

Table 10: Long distance routes operated by Shosholoza Meyl

6.24. High density corridors, such as the Moloto Road between Mpumalanga and Gauteng, are not currently serviced by rail; due to lack of funding. This has led to passengers relying on minibus taxis and buses, causing congestion and road accidents along that busy route. In addition, the current funding for railway networks is not sufficient to expand to new areas that are developing. Inefficiencies in the current service offering have resulted in passengers shifting to other modes, and the prospects for expansion, given the limited investment, are slim. Other challenges, related to alleged corruption, are beyond the scope of this Inquiry.

6.25. Shosholoza Meyl is a division of PRASA, operating long distance passenger rail services. Shosholoza Meyl was a brand of Spoornet until April 2008, when its rolling assets were transferred to SARCC. Shosholoza Meyl offers services in two classes, Economy and Tourist. Shosholoza Meyl passenger trips have dropped from 2.8 million in 2009/10 to 465,647 in 2017/18 and there has been a slight increase to 644,000 passenger trips in 2018/19. The long distance passenger rail service has shown an average decline in fare revenue of 8 per cent per annum, over the last five years. Rail infrastructure used by Shosholoza Meyl is jointly owned by PRASA and Transnet, and the relationship is governed by the Interface Agreement. Table 10 shows the main routes (cities) operated by Shosholoza Meyl.

245 Emeran, H. Sander, S. Dyer R and Heyns, W. 2013, PRASA: Delivering the national strategic plan. Available at: [https://repository.up.ac.za/bitstream/handle/2263/33246/Hayns_Prasa%20%282013%29.pdf?sequence=1&isAllowed=y](https://repository.up.ac.za/bitstream/handle/2263/33246/Hayns_Prasa%20%282013%29.pdf?sequence=1&isAllowed=y) [Accessed on 05 June 2019]


250 National Department of Transport – National Transport Master Plan 2050 dated June 2009.


252 PRASA Annual report 2017/18, page 13

253 PRASA – response to information request dated 31 July 2019
Rossmead, Cradock, Cookhouse, Alicedale and then Port Elizabeth. But when it reaches Springfield, there is a connecting train to East London, stopping at Bethule, Burgersdorp, Molteno, Sterkstroom, Queenstown, Sutherland, Berlin, and ending in East London.

6.29. The Johannesburg - Durban route starts at Johannesburg Park Station, the next stop is Germiston, Standerton, Newcastle, Ladysmith, Pietermaritzburg and ends in Durban. The Johannesburg - Musina route commences at Johannesburg Park Station, the next stop is Pretoria, then on to Pyramid, Hammanskraal, Bela, Naboomspruit, Mokopane, Polokwane, Soekmekaar, Louis Trichard, Mopane and ending in Musina. The Johannesburg - Musina route is currently not operational, due to infrastructure challenges.

6.30. The Johannesburg - Komatipoort route starts at Park station, the next stop is Pretoria, Witbank, Middleburg, Waterval Boven, Nelspruit, Kaapmuiden, Malelane and then ends in Komatipoort. The Johannesburg - Komatipoort route is currently not operational, due to infrastructure challenges.

Figure 13: Shosholoza Meyl route network

6.31. Figure 13 demonstrates when the train departs from Park Station, which is in Johannesburg. It will not stop anywhere in Johannesburg again in other words, there are no stops within the City of Johannesburg. In KwaZulu-Natal there are only four stops, namely Ladysmith, Newcastle, Pietermaritzburg and Durban. In Limpopo there are about eight stops, Bela Bela, Naboomspruit, Mokopane, Polokwane, Soekmekaar, Louis Trichard, Mopane and Musina. In the Northern Cape there are only four stops, these being Warrenton, Kimberley, De Aar and Hutchinson. In general, the trend suggests that there is one stop per town.

6.32. The route and stops for Shosholoza Meyl does not provide viable alternatives for daily Metrorail commuters, for the following reasons:

6.32.1. Frequency – Shosholoza Meyl does not operate daily between the major towns. For example, Shosholoza Meyl operates only on Friday and Sunday for the Johannesburg to Cape Town trip. Metrorail commuters between Johannesburg and Krugersdorp would therefore not consider the Shosholoza Meyl as an alternative. In East London, the commuters travelling
between East London Station and Berlin may theoretically consider both Metrorail and Shosholoza Meyl, but Shosholoza has only two trips in a week, which will not make it viable for daily commuters.

6.32.2. Departure and arrival – In instances where the travel days are aligned between Metrorail and Shosholoza Meyl, there are significant departure differences. Metrorail departs every hour, from as early as 5am, whereas Shosholoza Meyl departs once in the selected two days of operation. In East London the train departs at 14:15pm from East London Station, and departs from Johannesburg Park Station at 12:30pm. The Shosholoza Meyl seems to depart during off-peak periods, as compared to Metrorail.

6.32.3. Duration of travel – The Shosholoza Meyl train on average takes 39 minutes from Johannesburg Park Station to Krugersdorp station, and from Berlin to East London it would take, on average, 46 minutes. Metrorail on the other hand takes longer, due to the number of stops along the route.

6.32.4. Fares – The fare between Shosholoza Meyl from Johannesburg Park Station to Krugersdorp is around R80, compared to Metrorail, which is between R7 and R12 depending on whether it’s a daily, weekly or monthly ticket. Between East London Station and Berlin, Shosholoza Meyl costs around R80, compared to between R12 and R16 for Metrorail.

6.33. The above analysis suggests that the long-distance train services offered by Shosholoza Meyl do not offer a viable alternative to Metrorail, for daily commuting, in instances of overlaps between the two services within the same city.

Gautrain

6.34. The Gautrain provide two types of rail urban commuter services; General Passenger Service (GPS) and Airport Passenger Service (APS). The GPS is for passengers travelling on day to day basis around Gauteng, and the APS is specifically meant for passengers travelling to and from the O.R. Tambo International Airport. The system is supported by Station Park and ride facilities, together with dedicated feeder and distribution (Bus) services (DFDS). The buses operate on business days and provide some services for special events over weekends. They assist the train operating system whenever there is a problem in operating a full end-to-end rail service. Gautrain is an 80km rapid transit railway system linking Johannesburg, Pretoria and OR Tambo International Airport. Figure 14 shows routes that are currently operated by the Gautrain.

Figure 14: Corridors serviced by Gautrain

6.35. There has been steady growth of passenger volumes for both the Gautrain General Service (GPS) and Airport Passenger Service (APS) in the past two years, but there are other factors that have turned the steady growth of passenger trips from June 2010 into a decline; for both train and bus services in 2017/18.

6.36. Figure 15 shows the steady increasing number of passengers from 2010 to 2018 on the airport services and the general services.

6.37. Gautrain ridership declined in 2018 partly as a result of lack of capacity during peak times – which caused congestion on platforms, violent rivalry between metered taxis and e-hailing services at train stations, and the inability of the Gauteng Provincial Government to use e-tolls to punish motorists for driving instead of using trains.\textsuperscript{255} Despite the decline in ridership from 2016, the Gautrain provides a quality service, with over 98 per cent of trains arriving on time.\textsuperscript{256}

**Figure 15: Annual passenger trips for the GPS and APS from 2010 to 2018**

Source: Gautrain Management Agency

**Table 11: Railway network coverage per region**

<table>
<thead>
<tr>
<th>Provinces</th>
<th>Railway network coverage</th>
<th>Ownership of the railway tracks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gauteng</td>
<td>Gauteng railway network is dense and complex, runs for 3500km.</td>
<td>The railway tracks used by Metrorail are jointly owned by PRASA and Transnet.</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>East London corridor is 42km and 35km for Port Elizabeth</td>
<td>The railway networks in Eastern Cape region belongs to Transnet.\textsuperscript{260}</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>KwaZulu-Natal rail track extends for 605 km.</td>
<td>In KwaZulu-Natal railway track is shared between Transnet and PRASA.</td>
</tr>
<tr>
<td>Western Cape</td>
<td>Western Cape track is 489 kilometres.</td>
<td>In City of Cape Town, the railway tracks belong to PRASA and Transnet.</td>
</tr>
</tbody>
</table>

*Source: Submission Metrorail regional offices*


\textsuperscript{256} GMA Annual report 2018/19.

\textsuperscript{257} Metrorail – Oral submission by Mr Stolts, Eastern Cape hearings dated 27 August 2018. Page 8.

\textsuperscript{258} Manny de Freitas: Member of Parliament in Western Cape – Submission dated 14 June 2018. Page 4.

\textsuperscript{259} Manny de Freitas: Member of Parliament in Western Cape – Submission dated 14 June 2018. Page 4.

\textsuperscript{260} Metrorail – Oral submission by Mr Stolts, Eastern Cape Hearings dated 27 August 2018. Page 8.
6.39. Coordination issues have arisen in the management and operation of the rail infrastructure. For example, the signalling system and track equipment are dependent on the turn-around time of Transnet Freight Rail to attend to repairs.\textsuperscript{261} Transnet is currently under the Department of Public Enterprises while PRASA reports to the National Department of Transport. The current set up comprises accountability and constrains the turn-around time for dealing with technical challenges in the system.\textsuperscript{262} The dual ownership partially results in poor performance of the system due to slow decision making and ineffective administration.\textsuperscript{263}

Devolution of commuter rail

6.40. This section discusses the various models of operating rail in various countries. The objective is to benchmark the South African experience with international experience and draw some lessons where possible.

6.41. Ownership of rail infrastructure, and how rail services are operated for commuter rail, have undergone major changes across the world. In the early 1990s, countries like Britain underwent structural reforms in the rail sector – which included privatising rail operations and railway infrastructure.\textsuperscript{264} Despite rail reforms in several countries, cross-country evidence shows that the government is still the main provider of commuter rail, and manages the railway infrastructure facilities; but the rail operations are being devolved to cities.

6.42. Rail operations in the past have traditionally been operated by central governments; but the need to improve efficiency, attend to local dynamics, and foster integrated planning has led to the devolution of public transport functions (including rail operations) to the lower levels of government. Central government involvement in rail operations resulted in little or no coordination with local government, resulting in inefficiency and poor transport services. International experience suggests that devolution to lower levels of government has been effective in addressing inefficiencies and improving coordination. A fundamental belief supporting devolution is that local needs are best served by local decisions, rather than those taken centrally by national government.

6.43. Most cities (as will be explained below) are involved in the management and delivery of commuter rail. The devolution of public transport function to metros was done to ensure coordination in decision making and encourage an integrated and comprehensive urban transport system. In addition, international experience shows that amalgamation of previously fragmented government entities within the public transport sector is a common trend, given the efficiencies that would be derived.

Sao Paulo, Brazil

6.44. Historically, commuter rail is the responsibility of the Brazilian Company of Urban Trains (CBTU) a subsidiary of Federal Railway (RFFSA). In 1971, all railways were under the control of the State Government of S\lowercase{ão} Paulo, which formed the Ferrovia Paulista S.A. Later, the metropolitan government was mandated with managing passenger transport within the jurisdiction of the State of S\lowercase{ão} Paulo. In mid-1992, S\lowercase{ão} Paulo Metropolitan Trains Company (CPTM) was developed as a result of the privatisation process of other lines in the network, but commuter transport remained under the responsibility of the state. The S\lowercase{ão} Paulo devolution model involved transferring the management of the rail services, from the state to regional government and local government. This process was meant to address challenges at the local level, and deal with urban sprawl.

Malmo, Sweden

6.45. Between 1999 and 2010, the national state agency, Rikstrafiken, was responsible for tendering processes for rail across the country. Later, the state agency was expanded, and currently railway passenger services are managed by the transport board of regional government. Municipalities

\textsuperscript{261} Metrorail – Oral submission by Mr Stolts, Eastern Cape hearings dated 27 August 2018. Page 8.

\textsuperscript{262} Manny de Freitas: Member of Parliament in Western Cape – Submission dated 14 June 2018. Page 4.

\textsuperscript{263} Manny de Freitas, Member of Parliament in Western Cape – Submission dated 14 June 2018. Page 4.

\textsuperscript{264} Andrew Haylen Louise Butcher (2017), Rail structures, ownership and reform, Article: https://researchbriefings.files.parliament.uk/documents/CBP-7992/CBP-7992.pdf [Accessed on 04 July 2019].
have exclusive rights to formulate and adopt land use plans. The devolution strategy for Malmo, Sweden involved transferring railway functions from national agencies to local and regional tiers, to ensure modal shift and public transport integration.

Netherlands

6.46. There are three levels of government in the Netherlands: national government, regional government (12 provinces) and local government (393 municipalities). Public transport functions are devolved to the provinces and some city-regions. The city-regions are municipal co-operations in the urban areas of Amsterdam, Rotterdam, Hague, Utrecht, Rotterdam, Eindhoven, Arnhem/Nijmegen and Hengelo/Enschede. These city regions were abolished by law in 2015, and their responsibilities returned to the provinces. Two exceptions remain: in the Amsterdam and in the Rotterdam/The Hague areas, the responsibility for public transport is now allocated to new ‘transport regions’, as successors to the city regions in these two metropolitan areas.

6.47. In the Netherlands, fourteen regional authorities are by law responsible for local and regional public transport in the Netherlands: twelve provinces and two transport regions. Their responsibilities include both local public transport services and some regional train services, operated mainly on branch lines of the national train network while national government is the transport authority responsible for national rail services, including both intercity services. The devolution in the Netherlands was meant to ensure public transport integration, among other factors.

London, United Kingdom


Cairo, Egypt

6.49. In Cairo, the railway network and operations are the responsibility of the state parastatal, Egyptian National Railways (ENR). The devolution of public transport functions has not yet taken place, but there are ongoing reforms. For example, government is in a process of restructuring the management and operation of the system. The government is considering separating infrastructure ownership and operation of rail services.

Addis Ababa, Ethiopia

6.50. In Addis Ababa, Ethiopia, rail is operated by a consortium of two companies, China Railway Group (CREC) and the China Civil Engineering Construction Corporation (CRCC), together with the Ethiopian Railway Corporation (ERC). The ERC is a national railway operator of Ethiopia, under the Ministry of Transport. Rail is a national competence, with limited intervention from regions or cities.

Casablanca, Morocco

6.51. Railway public transport is operated by the National Office of the Railroads of Morocco (ONCF) under the administrative supervision of the Ministry of Infrastructure, Transport and Logistics (METL). The ONCF is tasked with the exclusive operation and management of the Moroccan rail public passenger transport and network. In Morocco, rail is operated at national level, and there is no devolution of public transport functions from national tier to the regions or respective cities.

Selected cities in North America

6.52. In New York City – The New York City Transit Authority is a public authority in the U.S. State of New York, that operates public transportation in New York City. It operates the following systems: New York City Subway, a rapid transit system in Manhattan, The Bronx, Brooklyn, and Queens, Staten Island Railway, New York City Bus – an extensive bus network serving all five boroughs, and managed by MTA Regional Bus Operations.

6.53. In Washington D.C – Public transport services fall under the Washington Metropolitan Area Transit Authority (WMATA). Its mandate includes rapid transit service (MetroRail), fixed-route bus service (MetroBus), and para-transit service (MetroAccess).

6.54. In Toronto – Public transport is under the Greater Toronto Transportation Authority (GTTA), running commuter heavy rail, bus, and light rail. Its mandate is to develop a regional transportation plan that is responsive to a growing region’s needs, to improve and expand bus and railway transit as the backbone of regional transit, and to promote an integrated public transport transit system.

6.55. Several countries have undergone the devolution of public transport from national to regional or local tiers of government. The basic rationale for devolution is to foster integrated planning and improve rail services (local government will become accountable, as poor service may affect electoral outcomes).

6.56. In terms of the UK experience, devolution comes with different benefits and opportunities, which include:

6.56.1. Boosting economic growth and productivity – devolution gives local authorities powers over economic enablers such as housing, transport, and skills and infrastructure. Thus, they will be able to boost economic growth and productivity locally.

6.56.2. Reforming public services – devolution offers the chance to better consolidate public services at a local level, gaining efficiencies from closer working between public services.

6.56.3. Increasing innovation – devolution could both provide a greater number of opportunities to try new ways of working, and lead to smaller, more localised services that are able to fail and adapt with fewer consequences than for large, uniform national systems.

Devolution as a solution for South Africa

6.57. Both the White Paper on National Transport Policy of 1996, and the Revised White Paper of 2017, recommended that some of the transport functions be devolved to the lowest appropriate level of government. This observation was further reinforced in the National Land Transport Strategic Framework 2017-2022 (NLTSF), which indicated that feasibility studies for the devolution of passenger rail services to the metropolitan municipalities should be carried out. Devolution of functions to a single planning authority to achieve integration, operational efficiency and economies of scale was further highlighted in the NLTSF, in instances where it may not be ideal to consolidate functions within a metropolitan municipality due to the interconnectedness of the municipalities.

274 https://en.wikipedia.org/wiki/New_York_City_Transit_Authority
277 Department of Transport - National Land Transport Strategic Framework 2017-2022
The revised White Paper on Transport Policy of 2017 further sets out the strategic objectives of devolution and these include:

6.58.1. instil a clear understanding of the transport functions and powers of each level of government, to reduce uncertainty in relation to responsibilities and requirements;

6.58.2. capture the advantages of devolution facilitate improved transport services, and bring government responsibility and public accountability down to the site of the citizen interface; and

6.58.3. creation of a Transport Authority, or an equivalent coordinated and accountable structure at a Municipal, Provincial, or Mega-City/City Region level.

6.59. The Fiscal and Financial Commission (FFC) has been in support of devolution for several years and indicated that devolving some of the transport functions to the cities is desirable for better coordination and planning. The FFC states that:

“It is clear that creating a governance framework that places effective planning and prioritising commuter rail at the city level or, in the case of the Wits and Tshwane regions, in combination with Johannesburg, Ekurhuleni and Tshwane within a rational fiscal framework is a priority, even if more substantial devolution in line with stated policy intentions will take longer.”

6.60. The interconnectedness of the cities of Johannesburg, Tshwane and Ekurhuleni supports the creation of a city-region or provincial devolution of rail, as opposed to individual metropolitan municipalities. Devolution in this manner is also supported by the DOT policy documents.

6.61. The same principle applies to other provinces, such as the Western Cape and KwaZulu-Natal. Metrorail in the Western Cape largely operates in Cape Town and neighbouring municipalities, extending to Worcester (which is more than 120km from Cape Town). In KwaZulu-Natal, Metrorail services extend to Stanger and Cato Ridge, which are 75km and 50km away from Durban, respectively. In such instances, devolution of rail is more appropriate at a provincial level, to facilitate coordination across the municipalities.

6.62. Devolution of rail operations to provinces will ensure effective deployment of capital expenditure, due to decentralised decision making. There will be limited bias on how the PRASA Head Office allocates funding to the regional offices. Decentralisation is likely going to induce some creativity and innovation among provinces, which might be beneficial to commuters. Furthermore, devolution improves the level of accountability for delivering transport services, thereby providing the taxpayer with better value for money. Theoretically, devolving functions to lower levels of government is likely to allow transport to be customised, in order to become compatible with the rest of the built environment managed by municipalities.

Proposed criteria to be met for devolution

6.63. The Revised White Paper on Transport Policy of 2017 alludes to the need for the DOT to develop a devolution strategy. No devolution strategy has yet been developed by the DOT, despite devolution being advocated for in the White Paper of 1996. There is an urgent need for the DOT to provide guidance to lower levels of government – on what criteria the DOT will consider in dealing with devolution applications. The DOT highlights that devolution should occur when the lower levels of government have capacity, but this assertion is not supported by any form of detailed criteria.

6.64. Devolution is based on the premise that lower levels of government are better able to manage and integrate public transport, with other infrastructure and services. The devolution of responsibilities must be supported with appropriate capacity development.

6.65. The FFC highlights that devolution should not result in merely transferring existing problems to lower levels of government; for example, devolving without necessary adequate funding and technical capacity. While it is desirable to consolidate transport functions at city level or city-region level, or provinces, the management of financial risks associated with the devolution must be addressed.
6.66. From the review of international case studies, various principles and conditions for effective devolution have been considered. The Commission proposes that the devolution strategy being developed by the DOT should consider the following criteria:

6.66.1. Demonstrated experience and competence in operating rail operations, or proven ability to assemble technical skills for the rail project. Competency relates to whether the relevant level of government has sufficient capacity to administer rail. Devolved transport powers and functions may either be exercised exclusively, or concurrently with a higher level of government for a limited time, whilst the lower level of government is gaining experience (transitional arrangement).

6.66.2. Development of a sound business case to operate commuter rail operations;

6.66.3. Demonstrate enough financial resources to set up a rail project management office, to draw up plans for devolution;

6.66.4. Political support from both local government and provincial government for the commuter rail function; and

6.66.5. Commitment from political leadership to absorb employees from the respective Metrorail regional offices. Precautionary mechanisms for labour disputes must be in place, to minimise job losses.

6.67. Once devolution occurs, the principle of “funding follows function” should be activated. In other words, the DOT and National Treasury should provide provinces with enough resources to take over commuter rail operations.

**Evaluation of the provinces to operate commuter rail**

6.68. An analysis of the provinces’ readiness to operate commuter rail, based on the proposed criteria highlighted above, indicates the following:

6.68.1. **Gauteng Province** – Gauteng meets all the proposed criteria: it runs an efficient Gautrain service, skills and capacity are already in place, and (based on public statements made by the Premier) the province seems to have the political support to take over Metrorail in Gauteng. Gauteng Premier David Makhura has said that, “the provincial government would soon take over the running of trains from PRASA, and the province is now going to operate not just the buses, it is also going to operate the Metrorail system, integrated with the Gautrain”. 279

6.68.2. **Western Cape** – the province currently does not run any rail service but has expressed willingness to take over the function for several years – because of the inefficiencies of Metrorail in the province. In 2017, Cape Town announced it intended to take over the management of commuter rail, to avert the “total collapse” of rail services in the city. Rail is considered the backbone of public transport in Cape Town. 280 The province seems to be in a position to get the necessary skills to operate commuter rail, and the City of Cape Town has already issued a tender to appoint a multi-disciplinary team of rail professionals – to help it prepare to take over passenger rail in the metro.

6.68.3. **KwaZulu-Natal** – the province currently does not have experience of running rail, and no public pronouncements by elected officials have been made to support rail devolution. The province may have to wait and learn from the experiences of the Western Cape and Gauteng before the functions are devolved exclusively to the province. Another option would be for the province and Metrorail to run the service concurrently, in preparation for the exclusive devolution at a later stage.

6.68.4. **Eastern Cape** – the province currently does not have experience of running rail. The province may have to wait and learn from the experiences of the Western Cape and Gauteng before the functions are devolved.

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exclusively to the province. Another option would be for the province and Metrorail to run the service concurrently, in preparation for the exclusive devolution at a later stage.

**Potential challenges of devolution process**

6.69. The Commission notes that devolution of functions often results in challenges. Based on international experience, challenges brought about by devolution include the following:

6.69.1. Building capacity to take on new powers new systems and institutions need to be built to ensure that new powers are effectively managed, and this takes time. Devolution should not mean simply transferring problems to another sphere of government but improving the system overall.

6.69.2. Developing effective and accountable institutions for the devolved functions may be complex in the beginning, especially in provinces that do not currently operate commuter rail.

6.69.3. Devolution results in the re- allocation of financial resources from national government to provinces and adapting to the new fiscal environment may be a challenge for national government. Based on international experiences, national governments are reluctant to lose control of the budget despite strong and credible motivation for devolution.

6.69.4. The fear of job losses and changes in employment conditions is a major challenge in the devolution process. The pressure of pricing to external stakeholders that devolution works, results in top leadership changes which may have an impact on staff morale. In Gauteng for instance, consideration of the different working conditions for the Gautrain and Metrorail may be a cause for concern, among other problems. Protracted engagements with the labour unions has slowed the devolution process in other countries.

6.69.5. Lack of interest from national government, to either assess the devolution readiness of another sphere of government (because of loss of fiscal power) or prepare and share experiences with lower levels of government (perceived sabotage) in instances where national government was reluctant to devolve the functions. The devolution and negotiation process tend to be time-consuming, given vested interests and the fiscal politics involved.

6.69.6. Incompatibility of infrastructure and technology this challenge applies to the Gautrain and Metrorail, which currently operate on different infrastructure and use different technology. An investment in understanding the Metrorail system will be required.

**Lack of integration between Gautrain and Metrorail (Gauteng)**

6.70. In South Africa, rail operations and infrastructure are owned and managed largely by national government, except for the Gautrain service. Gautrain is a public/private partnership and, at the end of the concession agreement, provincial government will retain the infrastructure. Keeping rail operations at national government level is inconsistent with the international experience discussed above.

6.71. The DOT indicated that lack of railway integration in South Africa has been largely attributed to a non-existing policy framework for rail, and inappropriate and insufficient investment over many years. For example, in terms of regulations, the mandate for Metrorail and Gautrain are derived from two different pieces of legislation. Metrorail, a division of PRASA, is mandated by the NLTA to provide rail commuter services in the public interest. PRASA operates heavy rail commuter networks in metropolitan areas (Metrorail), which offers valuable high capacity rapid transit access to inner cities. Gautrain’s mandate is derived from the Gauteng Transport Infrastructure Act. Table 12 shows the features of the Gautrain and Metrorail systems.

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282 Department of Transport’s National Rail Policy, Draft White Paper, first draft June 2017.
Table 12: Properties of railway operations and railway infrastructure

<table>
<thead>
<tr>
<th>Metrorail</th>
<th>Gautrain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy objective – social service and subsidised</td>
<td>Policy objective – address economic, environmental and congestion issues and subsidised</td>
</tr>
<tr>
<td>Mandated by National DOT</td>
<td>Mandated by provincial government</td>
</tr>
<tr>
<td>Infrastructure is owned by government and operated by PRASA, a state-owned entity</td>
<td>Infrastructure is owned by government and operated by Bombela Concession Company and GMA, on public/private partnership through a concession agreement.</td>
</tr>
<tr>
<td>Operates a traditional railway network system in four regions</td>
<td>Operates a high-speed railway system in Gauteng</td>
</tr>
<tr>
<td>Metrorail system is 2 228 kilometres</td>
<td>Gautrain is an 80-kilometre operation</td>
</tr>
<tr>
<td>National railway network (Metrorail) in South Africa uses the 1 067 mm Cape gauge.</td>
<td>Gautrain is built on an international standard gauge of 1 435 mm.</td>
</tr>
</tbody>
</table>

Source: Gautrain Management Agency and Metrorail

6.72. Metrorail and the Gautrain service different market segments or income groups, and this has been viewed as perpetuating inequality and classification. The differences in the gauges for the Metrorail and Gautrain have negative implications for integration, because the train sets cannot operate on both rail tracks.

6.73. Based on international experience, it is uneconomic to duplicate rail infrastructure, given the high fixed costs. In South Africa, commuter rail is viewed as a two-tier system; which is not the norm in other countries. Ideally, coordination in planning new routes and expansion is required. Figure 16 shows the routes operated by Metrorail and the Gautrain.

Figure 16: Metrorail and Gautrain routes

6.74. The Gautrain route is depicted in grey and covers 80 kilometres. It operates between Hatfield, Pretoria, Centurion, Midrand, Marlboro, Sandton, Rosebank and Johannesburg Park Station. The airport passenger services run between Marlboro, Sandton, Rhodesfield and OR Tambo International Airport.

6.75. Metrorail on the other hand has multiple routes. Of importance is the Tshwane and Johannesburg route (Tshwane - JHB Business Express) depicted in yellow and blue, starting at Johannesburg Park Station and heading east, towards Doornfontein, Ellis Park, Jeppe, George Goch, Denver, Tooronga, Cleveland, Geldenhuis, Driehoek, President until it reaches Germiston. From Germiston, it takes a north-easterly direction stopping at Knights, Ravensklip, Elandsfontein, Isando, Rhodesfield, Kempton Park, Van Riebeeck Park, Birchleigh, Kaalfontein; and then heads towards the north, stopping at Oakmor, Olifantsfontein, Pinedean, Irene, Centurion, Sportspark, Kloofsig, Fonteine, and Pretoria.

6.76. The Gautrain was not intended to compete with but complement Metrorail. The Gautrain was meant to encourage private motorists to use the train.\(^\text{284}\) The Gautrain was rolled out after the existence of Metrorail, and it appears that it was not planned with Metrorail in mind. The implementation of the Gautrain was also questioned by several stakeholders. The South African Communist Party indicated that: “Gautrain was driven provincially, and the province by-passed the spirit of the law and of national policy by setting up the Gautrain as a separate public company, which meant that the three major metros in Gauteng had to accommodate it retroactively, prejudicing their own plans and potentially compromising funds available for more pressing priorities.”\(^\text{285}\) However, the DOT submits that consultations between PRASA, Gauteng Province and the DOT occurred before the rollout of the Gautrain, including the expansion plans for the Gautrain.\(^\text{286}\) Furthermore, the Gautrain submits that the design of the Gautrain system and the requirements of PRASA were continuously discussed and agreed with PRASA / Metrorail, including the three metros.\(^\text{287}\)

6.77. At first glance it appears that there is duplication between the Metrorail and Gautrain routes. However, duplication exists only between Centurion and Pretoria. But from a planning perspective, it appears that Gautrain and Metrorail were planned independently of each other. They only interlink in four out of the ten stations (Hatfield, Pretoria, Rhodesfield and Park Station).\(^\text{288}\)

6.78. Gautrain submits that it intends to expand its operations and has done some feasibility studies. A feasibility study for the expansion of the Gautrain network identified the following main links and stations:\(^\text{289}\)

- 6.78.1. Jabulani via Cosmo City and Samrand to Mamelodi: stations include Roodepoort, Little Falls, Fourways, Sunninghill, Olievenhoutsbosch, Irene, Tshwane East and Hazeldean;
- 6.78.2. Sandton and Cosmo City: station in Randburg;
- 6.78.3. Rhodesfield and Boksburg: station at East Rand Mall;
- 6.78.4. Cosmo City to Lanseria Airport.

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\(^{284}\) Gautrain Management Company – oral submission by Mr. Van der Merwe, Gauteng Hearings, 06 June 2018. Page 84.


\(^{286}\) Gautrain Management Company – oral submission by Mr. Van der Merwe, Gauteng Hearings, 06 June 2018. Page 84.


6.79. The expansion project is perpetuating the *status quo* of a two-tier rail transport system; one for the working class and one for the middle class. The approach may deepen mobility-related exclusions, as it essentially creates a two-tier system based on geographically distinct areas of the province. The DOT submits that there is an existing working group in all expansion plans consisting of the GMA, Metrorail, local authorities and the DOT.

**Price setting mechanisms in the rail sector**

6.80. In South Africa, rail is unregulated and therefore not subjected to independent economic regulation, despite some monopolistic features. The Department of Transport published the Economic Regulation of Transport Bill on 24 October 2018, for public comment. The Bill seeks to:

6.80.1. consolidate the economic regulation of transport within a single framework and policy;
6.80.2. establish the Transport Economic Regulator to deal with price regulation, among other functions;
6.80.3. establish the Transport Economic Council; and
6.80.4. make consequential amendments to various other Acts, and to provide for related incidental matters.

6.81. Gautrain prices are determined within the context of the Concession Agreement. Fares on the General Passenger Services are increased in line with CPI each year. Prices for parking and Dedicated Feeder and Distribution Services (DFDS) are increased below inflation, with a view to incentivising the use of the DFDS rather than private car usage. The Gautrain fares are subject to discount rates on monthly and weekly products, permitting trips between specific stations at a lower rate than the same number of single fares.

The Gautrain is a recipient of a ridership grant, as discussed above.

6.82. Fares charged by Metrorail are meant to ensure affordability to the commuters. Metrorail’s fare determination considers the following factors: market analysis, customer profile and inflation, other cost drivers, competitors and policy considerations. Several role players are engaged before fare increases are affected, and include commuter forums, labour, business and planning authorities (municipalities). Final approval of fares is done by the Minister of Transport. The lack of

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independent economic regulation has led the DOT to explore the possibility of economic regulation in the rail sector, and a policy paper was issued for public comment in 2018.

Assessment of competition

6.83. The assessment of competition in public passenger is done using a point of origin/point of destination (O&D) approach. According to this approach, every combination of a point of origin and a point of destination is potentially a separate market, from the customer’s viewpoint, unless viable options in the form of indirect routes are feasible. To establish whether there is competition on an O&D market, the Commission looked at the different routes in that market firstly from rail services, and then other alternatives to the extent that they are substitutable for rail public transport.

6.84. These alternatives may be direct rail services, indirect rail services between the stations concerned, or other means of transport such as minibus taxis and buses (intermodal competition). Whether the alternatives are viable depends on a multiplicity of factors, such as the overall travel time, frequency of services, and the price of the different alternatives. The section below assesses the state of competition between Metrorail and Gautrain (intramodal competition). Intermodal competition is discussed in Chapter 10 together with the other modes of transport.

Intramodal competition

6.85. According to the Gautrain Management Agency, Gautrain was not designed to compete with the existing modes of public transport. Its primary function was to induce a modal shift from private car usage to public transport; by providing an attractive offering in terms of travel time and cost savings over vehicle operating costs. Furthermore, the railway networks operated by the Gautrain are totally different to that of Metrorail – trains operating on Gautrain cannot use Metrorail railway and vice versa.

6.86. Gautrain fares are substantially higher compared to Metrorail, and the subsidies’ model applicable to the two modes is different, as discussed in Chapter 4. GMA is of the view that the services are sufficiently priced and are meant to create a sustainable shift from car users to the Gautrain. Gautrain fares had to be perceived as less than the cost of motoring. GMA submits that the Gautrain and Metrorail target different customer groups, and do not operate on similar routes. A working paper titled “Gautrain Rapid Link” states that:

“Gautrain is not a stand-alone project, but part of a total holistic transport system in Gauteng. It therefore does not in principle compete with other public transport services, [. . .] such as Metrorail services. At four stations there will be direct coordination with the current commuter rail system and services, namely at Johannesburg Park Station, at Pretoria Main Station, at Hatfield and at Kempton Park”.

6.87. Table 13 shows the fares charged, and the travel times by Gautrain and Metrorail Business Express for commuters travelling from Pretoria to Kempton Park (Rhodesfield). Gautrain fares are approximately 120 per cent more than those of Metrorail on the identified routes.

293 Gauteng Management Agency – Oral submission by Mr Van Der Merwe, Gauteng hearings dated 06 June 2018. Page 14.
295 Evan der Merwe et al “Gautrain Rapid Link report”.
Table 13: Metrorail business express vs Gautrain – travel times and fares

<table>
<thead>
<tr>
<th>To and from</th>
<th>Price</th>
<th>Travel time</th>
<th>Price difference</th>
<th>Travel time difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gautrain</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rhodesfield/Pretoria</td>
<td>R66</td>
<td>39 minutes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metrorail business express</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rhodesfield (Kempton Park station)/Pretoria</td>
<td>R30</td>
<td>90 minutes</td>
<td>120%</td>
<td>50 minutes</td>
</tr>
</tbody>
</table>

Source: Commission’s own compilation

6.88. The Commission concludes that there is no competition between Metrorail and the Gautrain, even though there are limited areas where the services overlap. Gautrain focuses mainly on higher LSM groups, compared to Metrorail. This is further supported by the differences in fares and travel times, where the services overlap.

Challenges in the rail industry

6.89. There are inefficiencies in the rail public passenger transport industry, especially Metrorail, which have compromised commuters.

Inefficient service by Metrorail

6.90. Rail transport does not seem to be responding to changes in settlement patterns. The capital subsidy from government is not being utilised to expand or develop new railway lines to be closer to the settlements, resulting in the services offered not being optimal. An example cited is in East London, where the railway line is on the outskirts of major residential areas as the network was designed to transport cargo. The apartheid spatial planning constrained the market share for commuter rail in certain regions, particularly East London.

6.91. Metrorail has aged rolling stock, sometimes in excess of 50 years, operating on outdated technology; which makes repairs and sourcing of spares difficult. For example, 85 kilometres in KZN need urgent replacement, and that replacement requires very heavy, expensive on-track machinery. Old rolling stock has caused extensive service delays in respective regions, and commuters are opting for other modes of public transport which are more reliable and much safer, compared to rail.

The misalignment in the ownership of infrastructure

6.92. As discussed above, there is misalignment in the ownership of rail infrastructure. Currently the Public Rail Agency of South Africa (PRASA) and Transnet share infrastructure that is governed by various lease agreements, with the two entities charging each other for the use of this infrastructure. The largest portion of the infrastructure is owned and managed by Transnet, thus reliability on the rolling stock is mainly dependent on Transnet Freight Rail. Vandalism and cable theft affect the signalling system and track equipment, which must now be attended to by Transnet Freight Rail, in instances where the infrastructure belongs to Transnet. In such cases, the maintenance of the infrastructure seem to be heavily reliant on a third party. This arrangement causes delays in fixing faults, leading to compromised quality of the service. The steady decline in passenger numbers every month is attributed to unreliability of the rolling stock.

Fare evasion and encroachment

6.93. High levels of fare evasion by commuters is being experienced because of loopholes in the system, leading to free ridership. According to Metrorail, fare evasion has increased over time, as evidenced...
by unaccounted revenue and passenger numbers. Trains are overcrowded, and passengers use that as a justification to evade fares.  

6.94. Encroachments by informal dwellers on the rail infrastructure is becoming an increasingly massive problem, particularly on priority corridors. For example, areas like KwaMashu and Umlazi have been experiencing vandalism. Between January and June 2018, there was a high rate of cancellation of trains, averaging between 24 to 25 train service cancellations per month, and affecting peak services. The failure of the rolling stock, with an average age of 41 years, has been cited as a contributing factor.

6.95. The unreliability of rail has led to increased congestion on roads daily, as commuters have opted to use minibus taxis and buses. Commuters are prepared to pay more to get to work on time, rather than use the cheaper but unreliable Metrorail service.

Transport planning and integration

6.96. Alignment of rail public transport to the ITPs and human settlements plan for the respective municipalities has been cited as a challenge. Many of the country’s human settlements have far lower population density than in other countries that use urban rail intensely. Hence it is necessary to actively align human settlements and transport modes, to maximise the role of rail; and hence to shift traffic from road to rail. This is a function that planning authorities should undertake. In addition, rail public transport remains a competence of the national government and PRASA, supported by the respective Metrorail regional offices. Further discussion on transport planning is in Chapter 4.

Efforts by government to address some of the challenges

6.97. The Commission recognises some of the recent interventions undertaken by government to stabilise PRASA. In August 2019, a “Ministerial War Room” was established by the Minister of Transport to improve the efficiency of PRASA. The War Room was meant to address the continued decline of the quality of services that PRASA provides to the commuting public. It focused on service recovery and getting operations back on track at acceptable service levels.

6.98. An organisational assessment conducted by the Government Technical Advisory Centre (GTAC), flagged critical systematic issues that caused bottlenecks in the achievement of the War Room Targets. These include collapse of internal systems and controls, dysfunctional supply chain management processes, hollowed-out project management capability, and a business model that requires urgent review. These were further compounded by incidents of theft and vandalism, and prevalent crime. The findings by GTAC meant that despite the War Room’s success in energising management and mobilising human resources, the intervention was inadequate in addressing its targets due to the extent of systematic challenges faced by PRASA.

6.99. In December 2019, the Cabinet approved the dissolution of PRASA’s interim board. PRASA was further placed under administration, with an administrator appointed for a period of 12 months. The intervention followed an announcement by the Auditor General (AGSA) that PRASA regressed on its audit outcomes from a qualified audit in 2017/18 to a disclaimer of audit opinion. The disclaimer was due to non-compliance with legislative processes, especially in supply chain management.

6.100. The appointment of an administrator seeks to address the following key priorities:

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305 Metrorail – Oral submission by Mr Matampi, Gauteng hearings dated 08 June 2018. Page 86.
308 Department of Transport, 2018/19 Annual report.
6.100.1 Address matters raised in the Auditor General's report and ensure that there are no repeat findings; and

6.100.2 Facilitate PRASA's turnaround plan, which focuses on speeding up interventions to improve operational performance, expediting implementation of the modernisation programme, ensuring security interventions across all corridors, developing capacity to manage PRASA's capital programme (working with other state entities in the short term), and reviewing the organizational design and business model.\textsuperscript{309}

6.101 The administrator has also recently appointed a team of technical advisors, to assist in fostering the turnaround strategy and stabilising PRASA operations during the 12-month tenure.

Findings

6.102 Considering the discussions above, the Commission has identified the following findings:

6.102.1 Rail services in Gauteng (Gautrain and Metrorail) are not integrated, leading to some duplication on routes. The reason advanced is that Metrorail and the Gautrain serve different classes of commuters. The provision of commuter services based on social status perpetuates class divisions.

6.102.2 The provision of rail services by both Metrorail and Gautrain in Gauteng is not an efficient utilisation of limited government funding. International experience suggests that rail operations exhibit natural monopoly characteristics, and therefore should not be duplicated. Rail should be provided by one entity, to derive economies of scale and foster integrated planning.

6.102.3 National government, through PRASA, is better positioned to operate long distance passenger rail services; through its Shosholoza Meyl brand. In the same vein, National government is not an appropriate sphere to operate Metrorail commuter services within metropolitan areas.

6.102.4 Gautrain's operating subsidy is between R59\textsuperscript{310} to R104\textsuperscript{311} per passenger compared to R13.61 per passenger for Metrorail.

6.102.5 Metrorail service is inefficient in the provision of urban rail commuter services there are several challenges that constrain the quality of the service; including continuous breakdown of trains, unreliable services, fare evasion by passengers and encroachment due to operating an open system.

6.102.6 High density corridors (which are economically feasible to be serviced by rail) are not currently covered – high density corridors are not serviced by Metrorail due to capacity challenges and poor performance of the system.

6.102.7 In terms of ownership of railway infrastructure, the dual ownership of railway infrastructure between PRASA and Transnet is negatively affecting efficiency in responding to technical challenges.

Provisional Recommendations

6.103 To facilitate proper coordination, the Commission recommends immediate devolution of rail operations (based on preliminary assessment of readiness) as follows:

6.103.1 To Gauteng: the Gauteng province (through the Gauteng Transport Authority) in conjunction with the metros, will be responsible for both Gautrain and Metrorail. This function will be carried out as part of the Gauteng Transport Authority, which will amalgamate transport planning functions.

6.103.2 To the Western Cape: the province, in conjunction with City of Cape Town and other municipalities, will be responsible for Metrorail after the devolution of the rail functions from National government.


\textsuperscript{310} GMA estimates that only 56 per cent of the allocated funds is for operational costs, 44 per cent is allocated for capital expenditure.

\textsuperscript{311} Assuming all the operational subsidy is used to fund operational expenses.
6.104. The DOT to develop a rail devolution strategy within 12 months and set out the criteria that provinces (KwaZulu-Natal and the Eastern Cape) must meet for devolution to take place.

6.105. The DOT and PRASA will be responsible for long distance passenger rail services, through its Shosholoza Meyl brand, as Metrorail commuter services will be devolved to the respective provinces.

6.106. The DOT and National Treasury should explore alternative funding sources and potential private sector participation, to deal with infrastructure backlogs in the rail sector.

6.107. The DOT and National Treasury must incorporate new rail expansion in the grant framework, to target high density corridors in addition to the refurbishment of existing infrastructure.

Stakeholder Submissions to Provisional Recommendations

**Recommendation 1:** To facilitate coordination and integration, the Commission recommends immediate devolution of commuter rail operations to Provincial Transport Authorities.

6.108. The recommendation was supported by Western Cape Provincial Department of Transport, Gauteng Transport Authority, Gautrain and Gauteng Department of Transport. Gauteng Department of Transport further submitted that Gauteng already has a provincial transport authority in place for immediate devolution of commuter rail operations.

6.109. However, City of Cape Town and DOT did not support the recommendation. City of Cape Town argues that planning and operational control should reside at a competent and capacitated level of government (i.e. the City). Furthermore, the City indicated that the Financial and Fiscal Commission had already recommended that the function of rail should be devolved to Cities.

6.110. The DOT is of the view that devolution has the following challenges:

6.110.1. it is costly to operate rail in a decentralised manner as functions will be duplicated across the four provinces;

6.110.2. decentralisation promotes further fragmentation which is contrary to national government policy which seeks to have rail as the backbone of the public transport sector;

6.110.3. decentralisation makes investment in the rail sector difficult as provinces may only consider narrow provincial interests as opposed to national policy;

6.110.4. limited resources available to operate rail at provincial level;

6.110.5. decentralisation seem to contradict the objectives of the Commission’s Market Inquiry which seeks to consolidate and streamline services; and

6.110.6. additional funding to Gautrain through the province is seen as servicing the elite as opposed to the poor.

**Recommendation 2:** The DOT and PRASA will be responsible for long distance passenger rail services, through its Shosholoza Meyl brand, as Metrorail commuter services will be devolved to the respective provinces.

6.111. The DOT is also opposed to national government focussing only on Shosholoza Meyl as attainment of economies of scale is not possible. The possibility of cross-subsidisation of services is eliminated defeating the social objectives of government. National Treasury highlighted that the Commission should evaluate the need for this service given the low usage over time and only receive substantial number of passengers during major public holidays.

**Recommendation 3:** The DOT to develop a rail devolution strategy within 12 months and set out the criteria that provinces (KwaZulu-Natal and Eastern Cape) must meet for devolution to take place.

6.112. City of Cape Town, Western Cape Provincial Department of Transport and City of Tshwane supported the recommendation. National Treasury supports devolution and advised the Commission to check the constitutionality of devolution to provinces as opposed to municipalities.
Recommendation 4: DOT and National Treasury should explore alternative funding sources and potential private sector participation to deal with infrastructure backlogs in the rail sector.

6.113. Gauteng Transport Authority, Gautrain, Gauteng Department of Transport and DOT supported the recommendation of exploring alternative funding sources and potential private sector participation to deal with infrastructure backlogs in the rail sector.

6.114. National Treasury cautioned that rail expansion should be considered when the current services offered by PRASA have reached efficient levels. National Treasury argues that expanding an inefficient service will add to more operational challenges at PRASA and be counterproductive in the long run.

Commission’s Response to stakeholder submissions

6.115. Having considered the submissions received from various stakeholders with respect to immediate devolution of commuter rail operations to Provincial Transport Authorities and address the concern raised by City of Cape Town and DOT, the Commission’s response is as follows:

6.115.1. Devolution of commuter rail to cities as proposed by City of Cape Town is unlikely to work because of the interconnectedness of the metros in Gauteng and the daily movement of commuters across cities. Metrorail in KZN and Western Cape also cut across several municipal boundaries and therefore planning and operations are best dealt with at a provincial level. However, the Commission notes that a one-size-fits-all approach is not appropriate and DOT has to consider this in the devolution strategy.

6.115.2. Both the White Paper on National Transport Policy of 1996, and the Revised White Paper of 2017, recommended that some of the transport functions be devolved to the lowest appropriate level of government. This observation was further reinforced in the National Land Transport Strategic Framework 2017-2022 (NLTSF), which indicated that feasibility studies for the devolution of passenger rail services to the metropolitan municipalities should be carried out. It therefore appears that government has considered devolution as a way of fostering integration. The only difference is whether devolution should be done at municipal level (metros) or provincial government level.

6.116. The Commission is of the view that devolution of commuter rail services to provincial authorities will promote public transport integration. Furthermore, the revised White Paper on Transport Policy of 2017 further set the strategic objectives of devolution which include the creation of a Transport Authority or an equivalent coordinated and accountable structure, at a municipal, provincial or regional level.

6.117. Regarding DOT and PRASA solely responsible for long distance passenger rail services, the Commission notes the potential loss of economies of scale in rail operations. However, the Commission is of the view that dedicated effort is required to resuscitate long distance rail operations given the significant decline in passengers numbers from 2.8 million in 2009/10 to around 644 000 in 2018/19.

6.118. In relation to DOT and National Treasury exploring alternative funding sources and potential private sector participation to deal with infrastructure backlogs and new rail infrastructure investments, the Commission notes that the Economic Recovery Plan tabled in Parliament by the President on 15 October 2020 supports private sector participation in commuter rail through public private partnerships (PPPs). The Economic Recovery Plan also identifies rail infrastructure investment as a strategic intervention to contribute to the resuscitation of the economy.

6.119. The recommendation on DOT developing a rail devolution strategy within 12 months attracted no opposition from the stakeholders and will be retained.

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312 Department of Transport - National Land Transport Strategic Framework 2017-2022
Final Recommendations

6.120. To facilitate proper transport planning and coordination, the Commission recommends the following:

6.120.1. DOT to develop a policy that ensures efficiency and integrated planning in commuter rail services. This policy may include, among others, (i) integration of Metrorail and Gautrain in Gauteng and (ii) rail devolution strategy setting out the criteria for devolution of commuter rail services.

6.121. The DOT and National Treasury should explore alternative funding sources including private sector participation to deal with infrastructure backlogs and new rail infrastructure investments.
7. SUBSIDISED BUS CONTRACTS IN URBAN AREAS

Introduction

7.1. This chapter assesses the current commuter bus subsidy system in South Africa, with a focus on urban areas. Urban areas have significant numbers of daily commuters, and the dynamics of urban commuting are different to those of the rural areas. In order to give context to the status quo, the chapter begins by tracing the origins of the bus subsidy system, tracing the historic circumstances that led to the introduction of the system in South Africa. The chapter then shows how the bus subsidy system has evolved over the years to its current form, and highlights challenges experienced in different provinces as far as the implementation of the bus subsidy system is concerned. This chapter also identifies competition distortions arising from the bus subsidy system and concludes by making findings and recommendations.

The origins of the commuter bus subsidy system

7.2. As indicated in Chapter 5, subsidies are a common feature in a public transport system. The origins of the subsidy system in the South African bus industry dates as far back as the 1940s. The introduction of this system was necessitated by, among other things, the pre-1994 governments’ adoption of policies and legislation, notably; the Bantustan Policy, the Black Urban Areas Act of 1923, and the Group Areas Act of 1950, which resulted in, among other things, the mass removal of Africans from White-proclaimed areas. This historical event contributed to the rapid growth of the bus industry, which, until at least 1982, was the key and dominant mode of public transport in South Africa.

7.3. The segregation policy also resulted in the establishment of several bus companies that operated largely in homelands or independent states, some of which still operate. These companies included the following:

7.3.1. Bophuthatswana Transport Holdings;
7.3.2. Maluti Bus Service;
7.3.3. Ciskei Transport Corporation;
7.3.4. Transkei Road Transport Corporation;
7.3.5. Lebowa Transport (now trading as Great North Transport);
7.3.6. Gazankulu Transport (now trading as Great North Transport);
7.3.7. KwaZulu Transport Holdings;

7.4. The formation of these companies had a detrimental effect on black entrepreneurship, in that it resulted in many existing small black bus operators being removed from the market through merger activities. As demonstrated later in this chapter, the demise of small black bus operators was cemented by the manner in which the bus subsidy tender system has been implemented over the years.

7.5. Bus subsidies were initially introduced as a temporary measure (in 1944) to avert bus boycotts that ensued between 1939 and 1945. Some of these boycotts were triggered by PUTCO’s increase of bus fares in Johannesburg and Pretoria. This, together with other effects arising from the implementation of the Group Areas Act, forced the state to agree to subsidise transport costs incurred by Africans. It appears that PUTCO, which was formed in 1945 following the merger of several entities, was the first entity to be allocated subsidies and was the largest, if not the only bus operator responsible for ferrying Africans in Johannesburg and Pretoria in the 1940s.

316 PUTCO operated largely in Johannesburg and Pretoria.
318 When PUTCO was formed, it charged low fares and had a low income base. It then received subsidies from large entities until this function was taken over by government. See Naude, L.J., 1999. An evolution of the impact of the South African public transport policy on the restructuring of the commuter bus industry. Doctorate Thesis. Johannesburg: Rand Afrikaans University, 165.
7.6. In subsequent years, measures were taken to make bus subsidies a permanent feature. These included the extension of subsidies to African women, Indians and coloured people. Such measures were necessary because bus subsidies were also used as a policy instrument to segregate Africans to the urban periphery. Khosa explains:

"Without bus subsidies, South Africa would have manifested a different urban morphology. The Group Areas Act, and to some extent both Bantustan policy and decentralisation legislation, would have been unworkable, and the shortcomings of these policies would have been exposed earlier".319

7.7. Furthermore, bus subsidies were subsequently used as a mechanism to protect large bus operators against competition from the minibus taxi industry, which had emerged and showed significant growth in the late 1980s. Consequently, inefficient large bus operators were also subsidised, while some of the services that they provided were not responsive to the needs of commuters.320

7.8. The bus subsidy system was initially based on coupons of tickets sold by an operator over a specific distance, and claims were made based on tickets sold by the operator over its network of services. Furthermore, bus operators were granted permits of indefinite duration. This, too, served as a barrier to entry for new entrants.

7.9. Given the wide scope and application of the bus subsidy system and government’s limited resources, employers were also required to contribute towards bus subsidies. For example, in 1982 the government contributed 74 per cent, while employers contributed 26 per cent.321

7.10. The 1986 White Paper introduced the tender system in the South African commuter bus industry. In order to give effect to this policy position, bus services were put out to tender in 1987 as demonstration projects, in order to assess the effectiveness of this method of procuring bus services.322 The services that were first subjected to the tender system were those that were rendered by bus operators who could not continue running the services due to inadequate funding.323

7.11. When the democratic government took over in 1994, proactive measures were taken to address some of the distortions and challenges observed in the public transport industry.324 Key among these measures was the adoption of the 1996 White Paper, which, among other things, cemented the use of the bus tender system as a method of procuring commuter bus services. In this regard, the 1996 White Paper proposed that a competitive bidding process be followed.325

7.12. In order to give effect to the 1996 White Paper, the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) (Transition Act) was promulgated. The Transition Act gave legal recognition to the bus subsidy system. Section 47 (2) of the Transition Act empowered provincial departments to enter into subsidised service contracts, after a tender process. Section 47(3) made provision for negotiated contracts and specified the circumstances under which the

Minister of Transport could enter into or authorise the conclusion of negotiated contracts. For example, under the Transition Act, a negotiated contract could be concluded if such a contract would promote the economic empowerment of small business, or persons disadvantaged by unfair discrimination.326

7.13. Prior to the Transition Act coming into effect, government signed interim contracts with bus operators that were already part of the subsidy system. These contracts were to serve as a bridging mechanism between the lifelong permit system and the tendered contracts. Government’s plan in this regard was to have all subsidised bus services on tendered contracts by end of 2000. Interim contracts were therefore put in place, pending the introduction of the bidding system. Given the purpose and circumstances that led to their introduction, interim contracts were meant to be effective for a period of one to three years. However, these contracts have now been in existence for over 21 years.327

7.14. In order to manage labour issues in the transition from interim contracts to tendered contracts, government, labour and the bus industry concluded a Tripartite Heads of Agreement. The first set of tendered contracts came out in 1998 and most of these contracts were issued in Gauteng and KwaZulu-Natal. The tender system was, however, halted in 2001 because of labour challenges, lack of adequate funding and court action taken by Golden Arrow Bus Services regarding noncompliance with a requirement in the Transition Act, that there had to be transport plans in place before services could be put out to tender.328 As a means to address labour concerns, negotiated contracts were concluded (instead of tendered contracts) between 2000 and 2003.329

The current status of the commuter bus subsidy system

7.15. No new contracts have been concluded since 2003. The bulk of interim contracts, which are now renewed on a short-term basis and account for more than 60 per cent of the subsidy budget, have not been converted to tendered contracts as per initial plans. In its presentation to Parliament in 2013, the DOT noted the following inefficiencies which characterise interim contracts:

7.15.1. Outdated routes;
7.15.2. Lack of service level and quality specification (reliability, cleanliness, information, punctuality);
7.15.3. Lack of monitoring;
7.15.4. No value for money;
7.15.5. No fleet recapitalisation; and
7.15.6. Annual escalations.

7.16. Furthermore, in 2009 the DOT decided to convert interim contracts from passenger volume-based contracts to kilometre-based contracts, in order to cap claims from bus operators. This conversion meant that each subsidised bus operator would be allocated specific maximum kilometres to service or cover, on its network for subsidised services. Subsidised bus operators would not be paid if they exceeded their allocated kilometres. According to the DOT, the decision to convert from volume-based contracts to kilometre-based contracts was also triggered by the fact that the DOT was facing a deficit of R1.2 billion on the subsidy budget in 2009, because of cumulative shortfalls experienced since 2005.330 Table 14 depicts the current status regarding bus subsidy contracts in South Africa.

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326 Section 47(3)(a)(i) of the NLTTA.
327 Presentation by the Department of Transport to the Portfolio Committee on Transport, 05 November 2013. See also SABOA – Presentation by Mr Walters, GAUTENG hearings, dated 06 June 2018. Page 7.
328 Presentation by the Department of Transport to the Portfolio Committee on Transport, 05 November 2013.
330 National Department of Transport – written submission dated 24 May 2019, paragraph 3.4.3.
Table 14: Current status of bus subsidy contracts

<table>
<thead>
<tr>
<th>Type of contract</th>
<th>Estimated Number of buses</th>
<th>Number of contracts</th>
<th>% of the subsidy budget</th>
<th>Contract characteristics</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim contracts</td>
<td>3 849</td>
<td>39</td>
<td>68%</td>
<td>Foreseen as a transition arrangement in 1997. Interim Contracts are now over 21 years old</td>
<td>3 years originally. Contract extensions are between 1 and 3 months.</td>
</tr>
<tr>
<td>Tendered contracts</td>
<td>1 834</td>
<td>66</td>
<td>28%</td>
<td>Based on a standard contract document. Mostly “stand alone” services in rural/urban areas</td>
<td>5 years originally. Contract extensions are between 1 and 3 months.</td>
</tr>
<tr>
<td>Negotiated contracts</td>
<td>1 300</td>
<td>10</td>
<td>4%</td>
<td>Mostly applicable to state-owned and operated bus companies</td>
<td>5 years originally. Contract extensions are between 1 and 3 months</td>
</tr>
</tbody>
</table>

Source: SABOA

7.17. In terms of Section 46 of the NLTA, where there are existing interim contracts, tendered contracts or negotiated contracts in the area of the relevant contracting authority (i.e. provincial government), such a contracting authority may allow the contract to run its course, negotiate with the relevant bus operator to amend the contract to provide for inclusion of the operator in an integrated public transport network, or make a reasonable offer to the operator.

The roles of national and provincial governments in the administration of the commuter bus subsidy system

7.18. All the three types of the contracts discussed above are now governed by the NLTA. Section 1 of the NLTA recognises the DOT, provinces and municipalities as contracting authorities. Section 42, read with Sections 11(1) (c) (xxvi) and 12(1), empowers these contracting authorities to enter into ‘subsidised service contract’ with operators, provided a public tender process is followed. Subsidised service contracts envisaged in Section 42 can be entered into after the expiry of, among others, interim contracts, negotiated contracts, current tendered contracts, or subsidised contracts concluded in terms of the Transition Act. Thus, from the reading of Section 42 it appears that both the DOT and provinces are empowered to conclude contracts with bus operators for the provision of subsidised public transport.

7.19. The Minister of Transport is further empowered to prescribe requirements for tenders and documents to be used for subsidy contracts. The Minister is also required to determine the model tender and contract documents for subsidised service contracts. These functions are to be performed in consultation with the MECs.

7.20. Contracting authorities are also empowered to enter into negotiated contracts. Section 41 (1) identifies three instances upon which negotiated contracts may be entered into:

7.20.1. integrating services forming part of integrated public transport networks in terms of their integrated transport plans;

7.20.2. promoting the economic empowerment of small business or persons previously disadvantaged by unfair discrimination; or

7.20.3. facilitating the restructuring of a parastatal or municipal transport operator, to discourage monopolies.

7.21. In practice, the bus subsidy system is largely administered by provinces. The main responsibility of provinces in this regard is to distribute subsidies to contracted bus operators and to monitor adherence to the terms of contracts concluded with bus operators. Prior to 1996, this function was performed by national government and was devolved to provinces in 1997.

331 SABOA – Presentation by Mr Walters, GAUTENG hearings, dated 06 June 2018.
332 Section 42(5) of the NLTA.
7.22. Recently, provinces seem to have also assumed the role of acting as contracting authorities for new subsidised bus contracts (though no new contracts have been awarded as yet) and work closely with municipalities in whose jurisdiction the subsidised bus services are rendered.\footnote{334} For example, in Gauteng, the Department of Roads and Transport advertised subsidised bus contracts on the tender bulletin and various newspapers, in November 2017.\footnote{335}

7.23. Despite this development, it appears that the contracting process for some of the subsidised bus contracts will still be led and handled by national government under certain circumstances. National government also determines escalations that subsidised bus operators receive annually.

### Funding for subsidy contracts

7.24. As indicated above, provinces are entrusted with the responsibility to manage commuter bus subsidy contracts. These contracts are administered based on conditions set out in the annual Division of Revenue Act, which identifies the Public Transport Operational Grant as a source of funding for subsidised commuter bus services discussed in this chapter. Details on the mechanics of this grant are provided in Chapter 5 which discusses various government subsidies provided to the public transport sector.

7.25. \textbf{Table 15} and \textbf{Table 16} show the allocation of funds for bus subsidy contracts per province. These allocations include both allocations from national government (PTOG) and provincial contributions from its own equitable share.

#### Table 15: Allocation of funds per province, 2015/16

<table>
<thead>
<tr>
<th>Province</th>
<th>2015/16</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of subsidised kilometres operated</td>
</tr>
<tr>
<td>Gauteng</td>
<td>97 208 974</td>
</tr>
<tr>
<td>Western Cape</td>
<td>37 495 646</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>42 071 471</td>
</tr>
<tr>
<td>Limpopo</td>
<td>41 525 331</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>16 252 325</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>26 654 741</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>1 466 990</td>
</tr>
<tr>
<td>North West</td>
<td>28 600 410</td>
</tr>
<tr>
<td>Free State</td>
<td>11 985 646</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>303 261 534</strong></td>
</tr>
</tbody>
</table>

\textit{Source: Provincial annual reports 2017/18}

\footnote{334} It is important to note that provinces can only assume the responsibility of a contracting authority for new contracts if done in terms of Section 12(1) of the NLTA.

\footnote{335} Gauteng Department of Roads and Transport – oral submission by Mr Rendani Marunga, Gauteng Hearings, dated 06 June 2018. Page 13.
### Table 16: Allocation of funds per province, 2016/17

<table>
<thead>
<tr>
<th>Province</th>
<th>Number of subsidised kilometres operated</th>
<th>Number of routes subsidised</th>
<th>Final appropriation (R'000)</th>
<th>Average subsidy per km (Rands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gauteng</td>
<td>95 134 951</td>
<td>3 476</td>
<td>2 458 461</td>
<td>25.8</td>
</tr>
<tr>
<td>Western Cape</td>
<td>38 315 171</td>
<td>2 520</td>
<td>1 097 000</td>
<td>26.6</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>41 599 563</td>
<td>1 709</td>
<td>1 268 034</td>
<td>30.5</td>
</tr>
<tr>
<td>Limpopo</td>
<td>37 023 838</td>
<td>882</td>
<td>719 487</td>
<td>19.4</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>18 418 911</td>
<td>2 635</td>
<td>469 250</td>
<td>25.5</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>27 446 939</td>
<td>154</td>
<td>567 683</td>
<td>20.7</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>1 716 501</td>
<td>65</td>
<td>50 348</td>
<td>29.3</td>
</tr>
<tr>
<td>North West</td>
<td>28 852 734</td>
<td>841</td>
<td>867 325</td>
<td>30.1</td>
</tr>
<tr>
<td>Free State</td>
<td>11 954 262</td>
<td>2 808</td>
<td>296 555</td>
<td>24.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>300 462 870</strong></td>
<td><strong>12 282</strong></td>
<td><strong>7 917 380</strong></td>
<td><strong>34.1</strong></td>
</tr>
</tbody>
</table>

Source: Provincial annual reports 2017/18

7.26. Gauteng province has the largest budget for bus subsidies compared to all the other provinces, followed by KwaZulu-Natal and the Western Cape. The three provinces also rank the highest in terms of the number of routes and kilometres subsidised. However, in terms of average subsidy rate per kilometre, KwaZulu-Natal, the North West and the Western Cape seem to rank the highest.

**Provincial perspective on the implementation of the commuter bus subsidy system**

7.27. This section discusses how each province implements the bus subsidy system, and the major challenges experienced by different stakeholders regarding provision of subsidised commuter bus services.

**Gauteng**

7.28. As indicated above, in Gauteng the Department of Roads and Transport is responsible for the administration of the subsidised bus contracts in the province. According to the Department, it inherited 34 subsidised bus contracts from national government, which are shared among 13 bus operators.336

7.29. Gauteng consists of three metropolitan municipalities and two district municipalities, which are further divided into six local municipalities. Subsidised commuter bus services are largely rendered in the City of Tshwane, the City of Ekurhuleni, Sedibeng District Municipality, and the City of Johannesburg. **Figure 18** depicts the geographic location of these municipalities.

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7.30. PUTCO is the largest commuter bus operator in Gauteng, and has enjoyed this position since the 1940s. Currently, it operates a fleet of about 1,307 buses, on subsidised bus contracts.337 Below are some of the popular commuter bus routes in Gauteng:

**Mpumalanga/Tshwane routes** – these routes operate from areas in the district of Inkangala in Mpumalanga, to the suburbs of Tshwane;

**Soweto/Johannesburg routes** – these routes operate from areas in Soweto to Johannesburg, Sandton, Midrand and other northern suburbs of Johannesburg;

**Soshanguve/Tshwane routes** – these routes operate from the township of Soshanguve to the suburbs of Tshwane.

**Hammanskraal/Tshwane routes** – these routes operate from Hammanskraal and the surrounding areas to the suburbs of Tshwane.

7.31. Since 1997 there have been no new subsidised bus contracts awarded in Gauteng. The current contracts held by bus operators are largely interim contracts, and these have been in place for more than 21 years.338 National government issued a directive to provinces in 2018, that the contracts be extended by three more years, to 2021.339

7.32. Fare increases in Gauteng are usually implemented on an annual basis. However, in 2018, PUTCO went against this tradition by adjusting its fares twice, which caused public outcry.340 When determining a fare increase, each bus operator must follow the process stipulated in its contract with government. In this regard, the operator is required to consult with commuter associations, and obtain approval from the Gauteng Department of Roads and Transport. Consultations with commuter associations are to commence at least five months before the proposed date of the fare increase. According to PUTCO, these consultations are not meant to be negotiations for fare increases. Instead, these consultations are meant to explain to commuters why there is a need for fare increases.341

7.33. When determining fare increases, bus operators consider their operational costs, subsidies received from government (including revenue escalations), the likely impact of the price increase on competition between different modes of public transport, and whether the fare increase would be affordable to commuters. The fare increase must be approved by the Department of Roads and Transport.342

7.34. Subsidised commuter bus operators in Gauteng have raised concerns about underfunding and receiving low annual increases from government. According to North West Investment (NWI), over the years bus operators have been receiving annual increases that are below actual cost increases. To cover all its costs, NWI has had to increase its passenger fares. There are limitations even in the adjustments of passenger fares, as any contemplated increases are still subject to government’s approval.

7.35. Subsidised commuter bus operators have also raised concerns about a lack of flexibility in the subsidised commuter bus system, and the restrictions imposed by the kilometre-based system utilised by government. While there appears to be legitimate grounds for government to convert from the passenger-based ticking system to the kilometre-based system, lack of flexibility in the current system appears to significantly constrain bus operators with the effect that their services do not adequately respond to the needs of commuters, which have drastically changed since 1997. The Gauteng Department of Roads and Transport itself has acknowledged this deficiency:

**MR LESOFE:** So, the government has been criticised by both commuters and industry participants for how it has handled the subsidy contracts. For instance, there are concerns about the fact that the contracts are old, and these contracts are outdated, and they do not respond to the needs of commuters

**Mr MARINGA:** I basically accept those concerns as valid. I mean I have actually been in the directorate for a while now, and we have frequently received complaints from commuters as well as bus operators, as to the kind of service that is being offered…

7.36. The lack of flexibility in the subsidy system has also contributed to an increase in subsidised bus operators' operational costs. Their concerns in this regard are succinctly illustrated by Mr Lombertus de Beer:

"These contracts that were entered into in 1997, as I have explained, started at point A, ends at point B, your distance is for example 40 kilometres. You are only getting your subsidy for 40 kilometres. We now have to extend the routes, operating let us say 50 kilometres. For the other 10 kilometres there is no subsidy on that. It comes from the company’s pocket, the operation on that, as well as fares that the passengers pay."

7.37. Despite the capping of kilometres, it is important to note that subsidised contracts make provision for variation of routes when necessary. For example, clause 3.2 of PUTCO’s contract stipulates:

“No amendments to Parts 2 and 3 [timetable and routes section] are to be made without the prior written approval of the Employer, which will not unreasonably be withheld”

7.38. From a commuter perspective, concerns have been raised about the quality of services provided by subsidised commuter bus operators in Gauteng. In particular, concerns have been raised about buses that run late, breakdowns experienced during trips, and the use of buses that are too old. While these concerns are acknowledged, bus operators have pointed out that these challenges arise as a result of, among other things, deficiencies associated with the current subsidy system. As explained by Mr Andrew Sefala of PUTCO:

“We’ve indicated previously, Chairperson, in our submission that we had a problem in terms of funding, and I think my previous colleague from North West Investment or NTI has indicated the fact that funding is an issue. You can’t buy buses on a three months contract – you cannot do that. Currently we are having a contract that ends at the end of September. There is no way that you can buy a bus – to an extent that we are now going out of our own way to rent buses, to make sure that we render services to the best of our own ability."

7.39. While the inefficiencies identified above, which ultimately inconvenience commuters, may be attributable to multiple factors, lack of competition for subsidy contracts (as initially envisaged) and inadequate funding are the major contributing factors that ought to be addressed.

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344 Gauteng Department of Roads and Transport – oral submission by Mr Rendani Maringa, Gauteng Hearings, dated 06 June 2018. Page 53.
**Eastern Cape Province**

7.40. The Eastern Cape Province is a predominantly rural province. The province consists of two metropolitan municipalities and six district municipalities. Commuter bus services in the province are rendered mainly by three bus operators, namely; Algoa Bus Company (Pty) Ltd (Algoa), Mayibuye Transport Corporation (Mayibuye), and Africa’s Best 350 Ltd (AB350).

Figure 19: Map of municipalities in the Eastern Cape Province


7.41. Algoa is the largest commuter bus operator in the Eastern Cape Province, servicing over 40 per cent of the subsidised routes. The entity operates over 2000 routes, which are mainly in the Nelson Mandela Metropolitan area – based on an interim contract that was awarded in 1997. Just like PUTCO, Algoa had subsidy contracts with government prior to 1997. Table 17 below shows some of the popular commuter bus routes currently serviced by Algoa.

Table 17: Sample of routes serviced by Algoa

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
<th>Length of route (kms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kwamagxaki</td>
<td>Newton Park</td>
<td>16.5</td>
</tr>
<tr>
<td>Kwamagxaki</td>
<td>Harrower</td>
<td>14.8</td>
</tr>
<tr>
<td>Mount Pleasant</td>
<td>Greenacres</td>
<td>9.7</td>
</tr>
<tr>
<td>Motherwell</td>
<td>Greenacres</td>
<td>27</td>
</tr>
<tr>
<td>Motherwell</td>
<td>Summerstrand</td>
<td>31</td>
</tr>
<tr>
<td>Motherwell</td>
<td>Uitenhage</td>
<td>18.5</td>
</tr>
<tr>
<td>Summerstrand</td>
<td>Greenacres</td>
<td>11.22</td>
</tr>
</tbody>
</table>

Source: Commission’s own compilation

7.42. AB350 describes itself as a rural and urban bus passenger company. The entity is 100 per cent Black-owned, and was established by a group of about 166 small bus operators from various regions within the province. AB350 services 134 subsidised routes, which are predominantly in rural areas across the Eastern Cape Province. It operates based on negotiated contracts which were concluded in three phases. The contracts are for seven years, and can be extended for five years.

7.43. A comparison between routes serviced by AB350, as shown in Table 18 and those serviced by Algoa confirms that AB350 services mainly rural areas, while Algoa services urban areas. Furthermore, this comparison shows that the routes serviced by AB350 are significantly longer, in comparison to those serviced by Algoa. For example, from the two tables above, the longest route serviced by AB350 is 107 kilometres (Mthatha to Mount Frere) while Algoa’s longest route is 27 kilometres (Motherwell to Greenacres).

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349 Eastern Cape Department of Transport – oral submission by Mr Phathuxolo Mthirara, Port Elizabeth Hearings, dated 14 August 2018. Page 25.


351 Algoa Bus Company – oral submission by Mr Secelo Duze, Port Elizabeth Hearings, dated 14 August 2018. page 75.


Table 18: Sample of routes serviced by AB350

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
<th>Length of route (kms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mthatha</td>
<td>Mount Frere</td>
<td>107</td>
</tr>
<tr>
<td>Ngavugavu</td>
<td>Mthatha</td>
<td>64.9</td>
</tr>
<tr>
<td>Mthatha</td>
<td>Dikela</td>
<td>72</td>
</tr>
<tr>
<td>Mthatha</td>
<td>Tungwini</td>
<td>82</td>
</tr>
<tr>
<td>Dokodela</td>
<td>Mthatha</td>
<td>68</td>
</tr>
<tr>
<td>Mthatha</td>
<td>Lukuni</td>
<td>75.4</td>
</tr>
<tr>
<td>Idutywa</td>
<td>Dwesa/ Ntubeni</td>
<td>85</td>
</tr>
<tr>
<td>Queenstown</td>
<td>Zingquthu</td>
<td>48</td>
</tr>
<tr>
<td>Matatiele</td>
<td>Lqalabeng</td>
<td>65.4</td>
</tr>
</tbody>
</table>

Source: AB350 website

7.44. Mayibuye is an entity of the Eastern Cape Provincial Government and was established in 1990 to provide commuter bus services to rural areas of the former Ciskei and Border areas. Mayibuye does not have a traditional subsidy contract but operates based on an agreement concluded with the Eastern Cape Provincial Government. Mayibuye is funded from the Provincial Equity Fund, in the form of an operational and grant-in-aid. 355

7.45. The Buffalo City Metropolitan Municipality also provides commuter bus services, but on a limited scale. This service is rendered with just six buses, and over 90 per cent of commuters are scholars. The City does not get funding from the Department of Transport for purposes of running this service, as this is a municipal bus service. 356

7.46. In contrast to other provinces, there appears to be flexibility in the Eastern Cape in that the contracted bus operators can review routes and make the necessary changes. This exercise ensures that the changing needs of commuters are considered and accommodated, where possible. According to Algoa, when there are new developments, or requests from communities for services in specific areas that are not serviced, Algoa, with permission from the provincial government, reviews its current services, especially on routes that are not performing well, to determine how best to accommodate the changing needs of commuters. For example, there may be four trips running on one route, but the carrying capacity may be low. Algoa may then opt to consolidate the services and cut the number of trips on the route. The additional capacity would then be used to service a different route, as demanded by commuters. 357 This has been done in areas such as Uitenhage and Motherwell. 358

7.47. Despite the flexible approach adopted in the Eastern Cape as far as the scheduling of routes is concerned, subsidised bus operators are still forced to extend their services to routes that are not funded. Such extensions are done to respond to the needs of commuters. However, due to lack of funding, government is unable to cover the additional costs incurred by subsidised bus operators. For example, of the 2000 routes that are serviced by Algoa, 5 per cent are self-funded. This has been flagged as one of the challenges faced by bus operators in the Eastern Cape Province. 359

7.48. The figures provided by the Eastern Cape Department of Transport also confirm the assertion that there may be a disproportionate allocation of subsidies between rural and urban bus operators. For example, in the 2016/17 financial year, 46.50 per cent of the total funding available in the province for running subsidised bus services was allocated to Algoa, 29.24 per cent was allocated to AB350, and 24.25 per cent was allocated to Mayibuye. 360 Although Algoa has more routes to manage than AB350, the latter’s routes are longer, and in areas that are underdeveloped.

357 Algoa Bus Company – oral submission by Mr Andre Brink and Mr Sicelo Duz, Port Elizabeth Hearings, dated 14 August 2018. Pages 77 and 88.
358 Algoa Bus Company – oral submission by Mr Andre Brink and Mr Sicelo Duz, Port Elizabeth Hearings, dated 14 August 2018. Pages 77.
359 Algoa Bus Company – oral submission by Mr Andre Brink and Mr Sicelo Duz, Port Elizabeth Hearings, dated 14 August 2018. Page 76.
360 Submission by the Eastern Cape Department of Transport dated 17 May 2019.
7.49. In most of the geographic areas, especially those serviced by Algoa, subsidised bus operators face competition from minibus taxis. According to SANCO, Algoa shares routes with minibus taxis because it operates mainly in urban areas. Minibus taxis are unable to provide services to most of the rural communities, due to the poor road infrastructure. Thus, competition between minibus taxis and commuter bus services is largely observed in urban areas within the Eastern Cape Province. The Eastern Cape Department of Transport concedes that the allocation of subsidies to commuter buses, to the exclusion of minibus taxis, gives rise to competition concerns:

**MR LESOFE:** …I have another proposition that I would like to test with you, and I am borrowing this proposition from the Taxi Industry. And the proposition is that the allocation of subsidies to the bus industry, to the exclusion of the Taxi Industry, puts the Taxi Industry at a competitive disadvantage, especially in areas and on routes where taxis compete directly with bus operators. And this proposition is made taking into account the fact that, generally, the Taxi Industry is responsible for ferrying the majority of commuters.

**MR MTHIRARA:** “… Chair, I cannot agree with you more.”

7.51. In the Eastern Cape, it appears that the conclusion of negotiated contracts with small bus operators works well as a tool for transformation and empowerment. Unlike in other provinces where small bus operators feel completely neglected, small bus operators in the Eastern Cape appear to be recognised and empowered, although more can still be done.

**Limpopo**

7.52. The province of Limpopo has a total number of 26 contracts, which are shared among 18 companies. Of the 26 contracts, three are negotiated contracts (GNT Mokopane, GNT Seshego, GNT Hoedspruit), one is a tendered contract (Lowveld Bus Services), and the remaining 22 are interim contracts. Of these 22 contracts, GNT has five interim contracts.

7.53. The largest bus operator is Great North Transport (GNT) which is a state-owned company and is a subsidiary of the Limpopo Economic Development Agency (LEDA). GNT has a fleet of 503 buses, but is currently operating with 403 buses. GNT has 11 depots, ten of which are in Limpopo and one of which is in Bushbuckridge, Mpumalanga. GNT states that 80-90 per cent of its operations are in rural areas and villages, with Polokwane being the only city which it services.

7.54. As can be seen in Table 19, subsidised bus operators operate across all five districts of the province. Figure 20 is a visual representation of the province and shows to what extent each district receives subsidised bus services.
### Table 19: Districts of Limpopo – the extent of subsidisation in the province

<table>
<thead>
<tr>
<th>Districts</th>
<th>Subsidised routes</th>
<th>Bus operator</th>
<th>Municipalities/ areas not subsidised</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capricorn</td>
<td>Polokwane Municipality / Lepelle Nkumpi/ Blouberg/ Bochum/ My Darling</td>
<td>GNT</td>
<td>· Indermark</td>
</tr>
<tr>
<td></td>
<td>Lebowakgomo /Polokwane</td>
<td>GNT and Kopano Bus Services</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Polokwane /Molemole</td>
<td>Bahwaduba Bus Service</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Makotopong</td>
<td>Madodi Bus Service</td>
<td></td>
</tr>
<tr>
<td>Mopani</td>
<td>Giyani</td>
<td>GNT</td>
<td>· Phalaborwa[366]</td>
</tr>
<tr>
<td></td>
<td>Letaba</td>
<td>Mathole bus service</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tzaneen</td>
<td>GNT and Risaba bus service</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Maruleng/ Hoedspruit/ Ga Sekororo/Bushbuckridge(MP)</td>
<td>GNT</td>
<td></td>
</tr>
<tr>
<td>Vhembe</td>
<td>Thulamela</td>
<td>Magwaba Transport, Mukhondeleli Transport, Enos, Do Light</td>
<td>· Collins Chabane Municipality</td>
</tr>
<tr>
<td></td>
<td>Makhado Municipalit</td>
<td>GNT Makhado, Mulaudzi Transport, Mabirimisa Bus Services, R Phadziri Bus Services, G Phadziri, Mabidi Bus Service</td>
<td>· East of Malamulele, Lombardy, Giant Reef</td>
</tr>
<tr>
<td></td>
<td>Musina Municipality</td>
<td>Magwaba Bus Service, Mabirimisa Bus Services</td>
<td>· Western Musina</td>
</tr>
<tr>
<td>Sekhukhune</td>
<td>Elias Motsoaledi Local Municipity</td>
<td>GNT</td>
<td>· Makhuduthamaga Municipality</td>
</tr>
<tr>
<td></td>
<td>Ephraim Mogale Local Municipity</td>
<td>GNT</td>
<td>· Greater Tubatse Local Municipality[367]</td>
</tr>
<tr>
<td>Waterberg</td>
<td>Lephalele Local Municipity[368]</td>
<td>Lowveld bus service</td>
<td>· Thabazimbi</td>
</tr>
<tr>
<td></td>
<td>Mogalakwena Municipity</td>
<td>GNT</td>
<td>· Bela</td>
</tr>
<tr>
<td></td>
<td>Kwa Ndebele (MP) to Modimolle</td>
<td>PUTCO</td>
<td>· Mookgopong/Modimolle</td>
</tr>
</tbody>
</table>

*Source: Limpopo Department of Transport[369]*

366 GNT has a commercial service in Phalaborwa which is not subsidised
367 GNT submitted that it operates and owes a depot in Tubatse however this operation is not subsidised. Great North Transport – Oral submission of Mr Monkoe, Limpopo public hearings, dated 21 August 2018. Page 8
368 Lowveld Bus Services operates in the entire municipality including rural areas such as Ga Seleka and urban areas such as Lephalele.
369 Limpopo Department of Transport – oral submission by Mr Mainganye, Limpopo public hearings, 22 August 2018. Page 15-20
7.55. The district of Vhembe has 11 contracts (42 per cent) which are held by various bus operators. There is a large concentration of contracts in this region, which has its origins in the old homeland administration of Venda; where the previous government used to subsidise private bus operators. All the contracts from the former Venda administration were carried into the new dispensation, in 1994.

Western Cape

7.56. The Western Cape consists of one metropolitan municipality and five district municipalities, which are further divided into 24 local municipalities. Golden Arrow Bus Service (GABS) is the only subsidised commuter bus operator, and is one of the major beneficiaries of government’s bus contracting system in the country. GABS operates an interim contract with the Western Cape Department of Transport and Public Works,

7.57. In 2001, GABS formed a joint venture, Sibanye, with two groups of previously disadvantaged small bus operators; Abahlolo Bus Services and Siyakulu Bus Services. GABS was then given the authority by the National Department of Transport to sub-contract Sibanye on some of its routes, where each of the three parties had 33 per cent shares. Thus GABS operates some of its routes under the joint venture.

7.58. Fares for subsidised commuter services in the Western Cape are determined by the Provincial Department of Transport and Public Works, and are revised on an annual basis. According to the contract, the operator is not permitted to change the fares without consulting the provincial department.

7.59. No subsidised commuter bus services are provided in any of the district municipalities. Figure 21 depicts municipalities in the Western Cape.
7.60. GABS submitted several concerns regarding the current subsidy system. One of its major concerns is that subsidies increased by only 15 per cent over the past 6 years, while operating costs increased by 57 per cent, so the subsidy is “not keeping track of inflation”. This leads to poor service levels, unreliability, overloading, and deteriorating safety levels. This is exacerbated by the difficulties faced by the operators when seeking finance from financial institutions; because of the short-basis contract extensions. The inflexibility of the contracts was also identified as another challenge by GABS, claiming that the capping of subsidised kilometres inhibits the organic business growth, and diverts service provisions from routes which are not economically viable.

7.61. Despite the formation of the joint venture between GABS and the small operators, SANSBOC WC is of the view that the small bus operators in the Western Cape are not allowed adequate opportunity to participate and benefit from the government subsidies, since the current contract with GABS has been in place for more than 15 years.

**Free State**

7.62. In the Free State there are four district municipalities and one metropolitan municipality. The district municipalities have 18 local municipalities. Subsidised commuter bus services are provided within the Mangaung Metropolitan Municipality and the Thabo Mofutsanyana District Municipality.

7.63. There are two subsidised bus operators in the Free State, namely Interstate Bus Line and Maluti Bus Services. The Free State Department of Police, Roads and Transport is responsible for the administration of the two contracts. The government subsidises 214 buses from Interstate Bus Lines, and 43 buses from Maluti Bus Service. Thus, in terms of budget allocations the former receives 83 per cent of the total budget for bus subsidy in the province, while the latter receives 17 per cent share of the total budget. Both companies operate negotiated contracts, and largely operate in the rural areas and townships. Interstate Bus Line was first awarded the negotiated contract, and Maluti Bus Service was first awarded in The Free State is largely rural, thus the subsidised commuter buses operate up to 92 kilometres per trip, transporting commuters from the rural areas to different towns. These include routes such as Harrismith to Thibella/Tshirella/Petha/Theseng, Bethlehem to Industries, Intabazwe to R-Ross, and Bethlehem to Harrismith.

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378 SANSBOC WC – oral submission by Mr Swarts, Western Cape Hearings, dated 20 June 2018. Page 199.
379 Free State Department of Police Roads and Transport – oral submission by Ms Thabethe, Free State Hearings, dated 31 August 2018. Page 42.
382 Maluti Bus Service – oral submission by Mr Engelbrecht, Free State Hearings, dated 31 August 2018. Page 114.
383 Maluti Bus Service PowerPoint presentation dated 31 August 2018.
7.64. Maluti Bus Service’s first contracts expired in 2007, and were extended on a monthly basis until 2013. The contracts were then extended for another 5 years, and expired again in March 2018. From April 2018 Maluti Bus Service contracts have been renewed on a monthly basis. The short-term contracts have been identified by both operators in the province as a cause of frustration for them, especially when they approach financial institutions for financial assistance to recapitalise their fleets.

7.65. Fare increases in the Free State are implemented on an annual basis. The Free State Department of Transport has instituted a body called Joint Route Management Committee (JRMC). One of the functions of the Committee is to negotiate fare increases with the Department, on behalf of the operators in the province. The JRMC comprises representatives from various taxi associations; commuter bus operators; community leaders; bus commuters, and the provincial department. The JRMC is tasked to decide the level of fare increase every year, and table it to the provincial department. In 2016 and 2017 the provincial department rejected the fare increases suggested by the Committee, owing to insufficient budget in the department. Thus, the operators are of the view that the Department decides on the fare increases on its own.

7.66. The bus operators also expressed similar views regarding the inflexibility relating to the routes serviced. The dynamics in most of the areas which these operators service have changed since 1997, when the contracts were signed. Following a demand from the commuters, Interstate Bus Lines has

KwaZulu-Natal

7.67. KwaZulu-Natal (KZN) has one metropolitan municipality and ten district municipalities. KZN receives the second largest allocation of the PTOG funding (19 per cent) after Gauteng, which receives 37 per cent. There are 44 subsidised bus contracts in the province – 22 are tendered, 20 are negotiated and two are interim. There are three main bus associations in the province to which the majority of bus operators belong, namely; SABOA KZN, Bus Operators Association (BOA), and KwaZulu-Natal Bus Council (KWANABUCO). SABOA KZN is made up of mainly subsidised bus operators, such as Metro Group of Companies (Metro), South Coast Bus Service, and Ikhwezi Bus Service. BOA is an association of mainly small, unsubsidised bus operators who operate commuter bus services in Newlands West, Kwa Mashu, Inanda and Reservoir Hills. KWANABUCO is an association of 250 unsubsidised and previously disadvantaged bus operators, which was formed in 2006 by the KZN Department of Transport. KWANABUCO is also affiliated with SANSBOC KZN. Together, these three organisations represent the interests of bus operators in the province. KZN, owing to its historical background, is made up of five large, subsidised operators and hundreds of small, mainly unsubsidised bus operators.

386 Maluti Bus Service – oral submission by Mr Engelbrecht, Free State Hearings, dated 31 August 2018. Page 114.
391 National Treasury - PowerPoint presentation by Ms Britton, 10 October 2018, slide 29
392 KZN Department of Transport - Email from Mr Senzo Thwala dated 01 February 2019
7.69. One of the largest bus operators is Metro, which is a group of five subsidised bus companies that operate in eThekweni and Zululand. Metro operates ten tendered contracts, which were first awarded in 1997 and have been negotiated ever since. Like other large bus operators in the country, the majority of contracts are subsidised. However, there are some services/trips which are unsubsidised as a result of the delayed reforms in the subsidy regime. Like PUTCO and others, Metro submitted that in many of the areas in which it operates, there has been an expansion and growth, which has necessitated that the contracts be redesigned to accommodate changing commuter needs. However, Metro submits that it still operates on the same routes as it did in 1997. In one area, Metro has seen a growth of 6 more townships since 1997, which its current contracts are unable to subsidise. As a result, 2 of Metro’s contracts are currently making losses.

7.70. BOA and Newlands Bus Operators Association submit that they are facing serious challenges competing in the public transport sector, given the fact that they are largely unsubsidised. They face competition from subsidised bus operators as well as minibus taxis, who intimidate and harass them if they charge low fares.

7.71. KWANABUCO submits that the fact that the subsidised bus tendering system has been put on hold from 2002 makes the tendering system anticompetitive, and continues to benefit a few large players at the expense of empowering previously disadvantaged operators. KWANABUCO is of the view that subsidies have a negative impact on competition between modes of public transport, since not all bus operations are subsidised, while they compete with mini bus taxis and other modes of transport (e.g. bakkies).

Northern Cape

7.72. The Northern Cape is the largest and most sparsely populated province in the country. The province is divided into five district municipalities. The Northern Cape has a total of six bus contracts, split between six bus operators in the province: Mega Bus, Pumatra Transport, Van Wyk’s Bus Services, Imvusa Trading, SANTACO and Rainbow Transport Services. Mega Bus operates in John Taolo Gaetsewe District Municipality, Pumatra Transport, SANTACO and Rainbow Transport Services in Frances Baard District Municipality, and Van Wyk’s and Imvusa Trading Bus Services in Namakwa District Municipality.

7.73. Mega Bus and Pumatra were awarded their contracts in 1997, and they operate the biggest contracts in the province. The Northern Cape Department of Transport further entered into negotiated contracts with Rainbow Transport and Van Wyk’s Bus Services in 2013, and Imvusa

396 Combined Transport Services, Metro Bus Services, KZT Country Cruiser, KZT Bus Services and KZN Bus Services
400 KWANABUCO is of the view that subsidies have a negative impact on competition between modes of public transport, since not all bus operations are subsidised, while they compete with mini bus taxis and other modes of transport (e.g. bakkies).
Trading in 2015. None of these contracts was awarded through a tender process. It has been submitted that this limits competition, as there are a number of other small bus operators who are being denied the opportunity to participate in the process and submit bids for the contracts. However, the capacity and experience of those small operators in the provision of commuter bus services, compared to current operators, is still of great concern.

7.74. Similar to other provinces, some of the routes that are subsidised in the Northern Cape are outdated and do not respond to the needs of commuters. The province is currently reviewing the subsidised routes, in an attempt to ensure that this concern is addressed. According to the Small Bus Operators Association of the Northern Cape, the current contracts do not take into account the difficulties faced by operators in the rural areas of the province. It has been submitted that the small operators are allocated the contracts for the rural areas, while the big operators operate in the urban areas.

7.75. In terms of budget from the National Treasury and the DOT, the Northern Cape receives the least amount of the PTOG compared to other provinces, because of its population size. The department also monitors the performance of the contracted buses – and when a bus operator does not comply with the obligations stipulated in the contracts, the department penalises the operator by deducting a certain amount from their monthly payments. For example, when a bus is delayed and commuters wait for the bus for more than 30 minutes, that trip becomes free. The penalties further hit small operators hard, due to the conditions they operate under.

Mpumalanga

7.76. In Mpumalanga there are three district municipalities, which are further divided into 17 district municipalities. Each of the districts has two subsidised bus operators, but not all the district municipalities are covered by the subsidised buses. The map of the province is shown in Figure 25.

Figure 24: Municipalities in the Northern Cape

Figure 25: Municipalities in Mpumalanga


413 Submission by SANWIT Northern Cape dated 19 July 2018.
415 Northern Cape Department of Transport – oral submission by Ms Olivier, Kimberly Hearings, dated 19 July 2018. Page 27.
7.77. The province has a total of six interim contracts,\(^\text{417}\) split among six bus operators namely; Mega Bus, Thembalethu Bus Service (TBS), Great North Transport (GNT), Tilly’s Bus Service (Tilly’s), Buscor and Public Utility Transport Company’s (PUTCO).\(^\text{418}\) Buscor and GNT operate in the Ehlanzeni region, Tilly’s and Mega Bus in Gert Sibande, and TBS and PUTCO operate in Nkangala.\(^\text{419}\) Buscor has the largest contract in the province, followed by Mega Bus and GNT.\(^\text{420}\) In terms of the contract held by PUTCO, since the operator operates between two provinces (Gauteng and Mpumalanga), both provinces are responsible for administering the contract. However, the Gauteng department of transport is responsible for 96 per cent of the contract, while the Mpumalanga Department of Public Works, Roads and Transport oversees 4 per cent of the contract.\(^\text{421}\) All the six contracts in the Mpumalanga Province were entered into in 1997, and have also been extended in perpetuity. In 2018 the department renewed all these contracts for a period of three years. However, the contracts also have a provision that allows the department to terminate the contracts once funding becomes available for it to advertise or negotiate new contracts, even before this three-year period comes to an end.\(^\text{422}\)

7.78. In the province, there are other small bus operators who also operate commuter services with no subsidies.\(^\text{423}\) The unsubsidised operators charge slightly higher fares to commuters than the subsidised operators. Commuters then often opt for the subsidised buses instead. This has been flagged as the one of the main challenges for small bus operators in the province.\(^\text{424}\)

7.79. The Mpumalanga Department of Public Works, Roads and Transport holds monthly meetings with all the subsidised bus operators in the province, to ensure that all the operators are operating according to their contracts, and also to address commuter concerns about the service.\(^\text{425}\) However, in the case of PUTCO, the Mpumalanga Department of Public Works, Roads and Transport refers all the commuter concerns regarding PUTCO to the Gauteng Department of Transport, since it administers the greater portion of the contract.\(^\text{426}\)

7.80. In Mpumalanga, the contracted buses only operate during peak periods in the early mornings and afternoon, targeting mostly people who travel for work purposes.\(^\text{427}\) In terms of commuter fares, the subsidised bus operators are permitted to increase their prices once every year, taking into consideration, among other things, the CPI and operational costs.\(^\text{428}\) Bus operators are required to negotiate fare increases with the provincial department and commuter representatives.\(^\text{429}\) Once an agreement is reached, operators are responsible for announcing the increases to the public before they are effected.\(^\text{430}\) However,
in 2018, PUTCO went against this tradition by adjusting its fares twice, to the dissatisfaction of commuters. 

7.81. It has also been submitted that, just as in other provinces, routes and schedules are outdated in Mpumalanga. As the areas in which the subsidised commuter bus services operate develop, the department is unable to change routes to accommodate commuters residing in newly developed areas. The main reason for this is that the department is also constrained financially. Nevertheless, subsidised operators still try to accommodate commuters by extending their services to new areas, even if they do not get subsidies; however, this puts a strain on their operational costs. The Mpumalanga Department of Public Works, Roads and Transport asserts that there is a provision for due process – for the operators to claim for extra kilometres from the department.

7.82. It has also been submitted that in terms of the rate per kilometre, bus operators in Mpumalanga receive lower rates, and thus lower subsidies, compared to operators in the bigger urban provinces such as Gauteng and Western Cape.

7.83. Just as in other provinces, small bus operators in Mpumalanga have raised concerns about the current subsidy system, which favours the current holders of subsidised contracts. However, these operators have cautioned that it might be difficult for them to compete with experienced operators for the contracts (if the tender route is followed) and they may require support, for example in the form of training, in order to be capacitated.

7.84. In terms of commuter satisfaction, commuters have raised concerns about services rendered by both PUTCO and GNT. In this regard, complaints have been raised with the Mpumalanga Department of Public Works, Roads and Transport. During public hearings, the Commission was presented with evidence, in the form of pictures, of some of the buses that are used by these operators. The Mpumalanga Department of Public Works, Roads and Transport has confirmed that the complaints raised by commuters are legitimate, especially those that relate to buses that are old and in bad condition.

North West

7.85. The North West is divided into four district municipalities encompassing 18 local municipalities, as shown in Figure 26.

Figure 26: Municipalities in the North West


7.86. There are four bus contracts in the province, which are split between four operators namely; Atamelang Bus Service, Thari Bus Service, Phumatra Transport, and Veginela Bus service.  
All these contracts have been in place since 1997.  
Budget constraints have been cited as the main reason for not putting these contracts out to tender for such a long period. The North West Department of Transport is also of the view that the subsidised operators in the province are currently underfunded. In 2018, the provincial department was in the process of reviewing the contracts and exploring the feasibility of introducing a new subsidy model for the province, as all the four contracts were coming to an end in March 2019. According to the department, it seeks to introduce negotiated contracts and a model that would incorporate taxi operators. The department also intends to negotiate with North West Investment, a parastatal company solely owned by the North West Provincial Government, to start operating in the province rather than in Gauteng.

7.87. The small bus operators in the North West have raised concerns about not being given the opportunity to benefit from the subsidy system. Small bus operators have also submitted that there are no bus operators that provide unsubsidised commuter bus services in the province, because all the lucrative routes are allocated by the provincial department to the subsidised operators. Furthermore, small bus operators have submitted that in the event government considers incorporating them into the subsidy system, they would prefer negotiated contracts (as opposed to tendered contracts) because they do not have the required skills and infrastructure to successfully participate in the bidding process.

7.88. In terms of fare determination, the North West provincial department is responsible for setting commuter fares. Subsidised operators are allowed one fare increase per annum. In this regard, operators submit their proposed percentage increase to the provincial department, which makes the final determination.

7.89. As its performance monitoring mechanism, the provincial department has contracted four independent companies to monitor and report to the department on the performance of the operators. The department also holds monthly meetings with subsidised operators and the contracted consultants, to address all non-compliance findings.

7.90. In terms of amendments of routes, there seems to be some flexibility in the North West as the department of transport has been able to review some of the subsidised routes; in order to rationalise and redirect the services to areas where services are most needed. However, there are still areas where the subsidised buses operate without subsidies, because of recent human settlement developments. This has also been highlighted as one of the challenges with the current subsidy system. Operators incur more costs, as they operate extra kilometres to respond to the needs of the commuters.

Analysis and summary of major challenges in the provision of subsidised bus services (based on experiences in different provinces)

7.91. As demonstrated above, experiences in different provinces show that the bus subsidy system, in its current form, prevents competition between commuter bus operators and serves as a barrier to entry, especially for small bus operators. The extension of the current subsidy contracts in

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perpetuity has had the unintended consequence of creating *de facto* monopolies on subsidised routes, contrary to what was envisaged in the 1996 White Paper. This situation is exacerbated by the fact that competition in the provision of subsidised commuter bus services only occurs at the contracting phase, and not on the routes (competition for the market).

7.92. These competition distortions are attributable to several factors. Lack of adequate funding for the administration of a more efficient commuter bus system is one of the major contributing factors. In this regard, lack of adequate funding has made it difficult for the DOT and provincial governments to introduce a competitive bidding process for subsidised commuter bus services, as initially planned. According to the DOT, it needs three times more than what is currently allocated for subsidised commuter bus services, in order to run a more efficient commuter bus system – which would include the replacement of the current contracts with new tendered contracts.\(^{454}\) For example, a plan to replace a contract that operated in Tshwane/ Mamelodi (Gauteng province) was estimated to cost three times more than the current subsidy allocation.\(^{455}\)

7.93. Limited funding has also resulted in provincial governments offering the current bus operators’ rates that are low, and being unable to accommodate new and expanded routes which have come into existence as a result of growth in population and the emergence of new developments. This has made it difficult for bus operators to grow and expand their operations, while also preventing potential entrants from entering the market.

7.94. Another major challenge experienced in the provision of subsidised commuter bus services is the extension of the current subsidy contracts on a short-term basis. Although there are justifiable grounds and context for this, the practice has created uncertainties and, in turn, has made it difficult for some of the bus operators to invest in infrastructure and new fleets of buses.

7.95. Despite these challenges and limitations, government has been able to keep the bus subsidy system running over the years, based on the available budget. However, this has come at great cost to commuters, who are ultimately the intended beneficiaries of the system. For example, commuters have had to endure poor service quality in some of the provinces. Because of inadequate financial support, bus operators have also not been able to adequately respond to the changing and growing needs of commuters by, for example, extending their services to new areas, without incurring significant losses. Lack of adequate funding has also had negative effects on the entry of new players, especially small bus operators.

7.96. Government appears to be in a dilemma but there is great need for changes to be introduced, in order to make the commuter bus subsidy system more efficient and responsive to the needs of commuters, and to foster competition. While lack of competition is an undesirable outcome, the current dynamics in the market require a gradual introduction of competition – to minimise disruptions and assist smaller operators to develop capacity. For example, the termination of all subsidy contracts in the greater Soweto area (in the interest of a competitive bidding process) is likely to cause disruptions and instability in the provision of commuter bus services in that area. Such a move is also likely to result in significant job losses, and investment losses for the affected bus operator (i.e. unused assets).

7.97. In order to balance the need to promote competition, the maintenance of stability, and improved quality of services, various other options would have to be considered – than the outright termination of the current subsidy contracts.

**Findings**

7.98. The Commission finds that the bus subsidy system, in its current form, prevents competition between commuter bus operators, and serves as an artificial barrier to entry – especially for small bus operators. The extension of the current subsidy contracts in perpetuity has had the unintended consequence

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\(^{454}\) According to the DOT, it needs three times more than what is currently allocated for subsidised commuter bus services, in order to run a more efficient commuter bus system.

\(^{455}\) National Department of Transport – written submission dated 24 May 2019, paragraph 3.4.12.
of creating *de facto* monopolies on subsidised routes, contrary to what was envisaged in the 1996 White Paper. The situation is exacerbated by the fact that competition in the provision of subsidised commuter bus services only occurs at the contracting phase, and not on the routes (competition for the market). Lack of competition in the market (along routes) leads to inefficiencies, to the detriment of commuters. These inefficiencies include the provision of services of poor quality by some of the subsidised bus operators.

7.99. Lack of adequate funding is one of the major factors that has made it difficult for the DOT and provincial governments to introduce a competitive bidding process for subsidised commuter bus services, as initially planned. Limited funding has also resulted in provincial governments offering the current bus operators rates that are low, and not being able to accommodate new and expanded routes – which have come into existence as a result of growth in population and the emergence of new developments.

7.100. The Commission also finds that subsidised commuter bus routes, schedules and timetables are old and outdated, and consequently do not adequately respond to the needs of commuters. Although subsidised contracts make provision for variation of routes when necessary, it appears that most of the provinces do not take advantage of this provision. Thus, routes have remained unchanged over a long period of time. In turn, this compromises the quality of service provided to commuters.

**Provisional Recommendations**

7.101. The Commission recommended the development of a subsidy policy for public transport and review of the current subsidy framework in a manner that recognises the following: the need to create adequate opportunities for small bus operators, including the opportunity to provide services in urban areas (and not just in rural areas or scholar transport). The Commission notes that government, through the DOT, is currently in the process of developing the subsidy policy. The Commission further notes that this process may take some time to complete.

7.102. In order to achieve efficiencies while promoting competition in the provision of subsidised commuter bus services, government should gradually introduce competition in the market. This approach should entail the following:

7.102.1. Subsidy bus contracts should be put out to tender, where new routes have been identified. Small and local bus operators should be given preference, and negotiated contracts should be considered, where appropriate;

7.102.2. To improve the quality of services provided by bus operators at less cost, government should identify key corridors (e.g. the Moloto route) and increase rates payable to bus operators servicing such routes – on condition that they improve the quality of services provided, for example by investing in a new fleet of buses. This approach may be followed incrementally (on an annual basis) until all routes are covered;

7.102.3. To support and empower small bus operators, the subsidy policy should encourage the conclusion of negotiated contracts (as opposed to tendered contracts) with small bus operators. In this regard, the model followed in the Eastern Cape (i.e. AB350) should be considered for implementation in other provinces. The negotiated contracts awarded to small bus operators should account for a minimum of 30 per cent of all contracts, and progressively increased over time; and

7.102.4. Where contracts are put out to tender, government (provincial transport departments or the DOT) should consider breaking some of the contracts into smaller contracts; in order to create opportunities for new entrants and smaller bus operators. Small and local bus operators should be given preference.
Stakeholder Submissions to Provisional Recommendations

Recommendation 1: Existing contracts should be broken up into smaller contracts

7.103. This recommendation was supported by the Western Cape Department of Transport and Public Works, Greater Soweto Commuter Forum, Taxinomics and Dr Vaughan Mostert citing that breaking up the contracts into smaller contracts is likely to encourage competition in the market. This recommendation was opposed by GABS, CoCT, CoJ and SABOA who submitted that though this recommendation could be beneficial to the small operators, it could result in very expensive contracting and can be perceived as a non-competitive process. The DoT indicated that breaking-up subsidised contracts into smaller contracts is not feasible from the cost perspective.

Recommendation 2: Small bus operators should account for 30% of all negotiated contracts

7.104. This recommendation was supported by the Western Cape Department of Transport and Public Works, Newlands Bus Operators Association, PUTCO and Greater Soweto Commuters Forum citing that negotiated contracts are the preferred solution. This recommendation was not supported by GABS and City of Cape Town. GABS submitted that many existing subsidised bus operators are black empowered or have a strong black empowerment shareholding in their companies and in light of this it would be unfair to dictate that a further 30% of their business be set aside for SMME’s.

Commission’s Response to stakeholder submissions

Recommendation 1: Existing contracts should be broken up into smaller contracts

7.105. Having considered the objections raised against breaking existing contracts into smaller contracts, the Commission considered various alternative options including subcontracting arrangements. However, most of the small bus operators have stated that subcontracting is not ideal for their empowerment because big operators bully the small bus operators and there is limited transfer of skills and training. Subcontracting means that small bus operators are at the mercy of their competitors as well and ultimately do far less work than that which would be proposed in the subcontracts.

7.106. The Commission is of the view that the recommendation should remain unchanged, with an obligation placed on government to create opportunities for new entrants and smaller bus operators to benefit from provincial bus contracts within the constrained fiscal environment.

Recommendation 2: Small bus operators should account for 30% of all negotiated contracts

7.107. The Commission is in favour of maintaining the status quo but the DOT must capacitate the MRE’s and PRE’s. Once this has been done the DOT must on application devolve the planning functions to planning authorities.

Final Recommendations

7.108. Development of a subsidy policy for public transport and review of the current subsidy framework in a manner that recognises the need to create adequate opportunities for small bus operators, including the opportunity to provide services in urban areas (and not just in rural areas or scholar transport). The Commission notes that government, through the DOT, is currently in the process of developing the subsidy policy. The Commission further notes that this process may take some time to be finalised.

7.109. In order to achieve efficiencies while promoting competition in the provision of subsidised commuter bus services, government should gradually introduce competition in the market. This approach should entail the following:

Empowerment of small bus operators through negotiated contracts

7.109.1. To support and effectively empower small bus operators, the subsidy policy should make provision for and encourage the conclusion of negotiated contracts with small bus operators as the preferred model. In this regard, the model followed in the Eastern Cape (i.e. AB350) should be considered for implementation in other provinces.
7.109.2. Negotiated contracts awarded for purposes of empowering small bus operators should apply to both existing and new routes and should account for a minimum of 30 per cent of all contracts, and progressively increased over time.

*Empowerment of small bus operators through tendered contracts*

7.109.3. Where contracts are put out to tender (for existing or new routes) government (provincial transport departments or the DOT) should consider breaking some of the contracts into smaller contracts in order to create opportunities for new entrants and smaller bus operators. Small and local bus operators should be given preference.

*Introduction of a tender system (new and existing routes)*

7.109.4. Subsidy bus contracts should be put out to tender, where new routes have been identified, subject to provision being made for the empowerment of small bus operators as indicated above.

7.109.5. For subsidy bus contracts that relate to existing routes and are currently renewed on a short-term basis, a competitive bidding process should be followed within a period of five years, subject to provision being made for the empowerment of small bus operators.

*Interim measure pending the introduction of a tender system for existing contracts/ routes*

7.109.6. As an interim measure and to improve the quality of services provided by bus operators at less cost (pending the introduction of a tender system envisaged above), government should identify key corridors from all existing contracts (e.g. the Moloto route) and increase rates payable to bus operators servicing such routes – on condition that they improve the quality of services provided, for example by investing in a new fleet of buses.
8. RURAL TRANSPORTATION AND RURAL BUS CONTRACTING

Introduction

8.1. This chapter focuses on the peculiar issues facing rural public transport. The chapter begins by providing the policy framework for rural public transportation, followed by an overview of modes of transport prevalent in rural areas. Subsidised buses play a crucial role in transporting rural commuters, given the limited alternatives. Challenges faced by mostly rural bus operators are then discussed, and the chapter concludes by outlining the findings and recommendations.

Policy framework for rural transport

8.2. The 1996 White Paper articulated the vision for the South African transport system as providing safe, reliable, effective, efficient, and fully integrated transport operations and infrastructure which will best meet the needs of freight and passenger customers. The expectation was that the same vision will cascade down to the rural areas and improve public passenger transport in the rural areas. This was envisioned to be achieved by upgrading of the road infrastructure, as well as the development of non-motorised and intermediate means of transport.

8.3. Given the peculiar needs of rural areas, the DOT launched a Rural Transport Strategy (RTS) in 2007. The RTS was aimed to provide strategic guidance to all the 3 spheres of government; to address mobility and access challenges experienced by rural communities in an integrated, aligned and coordinated manner. Transport is a necessity for sustainable social and economic development and plays a catalytic role in addressing poverty and developmental needs, as well as correcting spatial distortions. The strategy noted that the delivery of rural transport infrastructure and services is comprised of the following:

8.3.1. Rural transport infrastructure encompassing access roads, district roads, public transport interchanges, tracks and other non-motorised transport infrastructure;

8.3.2. Village level or intra-farm transportation, which involves head loading, as well as the use of non-motorised transportation;

8.3.3. Rural passenger and (small-volume) freight transport services the so-called “bakkie sector”, and animal-drawn carts;

8.3.4. Passenger transport services along the main connector routes (to towns, clinics and other facilities), served mainly by kombi taxis, and in some areas subsidised bus services;

8.3.5. Special needs transportation services to address the needs of persons with disabilities, the elderly, trauma cases, learners and tourists; and

8.3.6. Bulk freight transportation to and from processing plants, distribution centres, markets and suppliers.

8.4. The limited public transport infrastructure led the DOT to introduce a draft Non-Motorised Transport (NMT) Policy in 2009, with the key focus on the promotion of NMT, to increase mobility and accessibility in rural areas. While the project scope and intentions were noble, implementation of the full array of supportive NMT infrastructure and services was constrained by limited capacity, both human and financial.

8.5. The strategic framework that underpins the implementation of the Rural Transport Strategy of 2016 includes the National Development (ND) Plan. This Plan seems to recognise the wide range of opportunities that are available to improve transport infrastructure and public transport service in rural areas. The ND Plan advocates a differentiated development in rural towns with greater potential.456
Overview of the transport modes available in most rural areas

8. South Africa is largely dominated by rural provinces such as the Eastern Cape, Limpopo, the North West, the Free State and Mpumalanga. Limpopo is approximately 80 per cent to 90 per cent rural, with a few towns across the province. As in sub-Saharan Africa, much of rural transport in South Africa involves walking with pushcarts over very short distances, while bicycles and animal-drawn carts provide mobility for short-to-medium distances. Long distance transport is largely done by buses, lorries, and pickups (bakkies) which may be available on the main roads. Such motorised options are generally overcrowded and expensive, relative to income levels for the rural residents/commuters.

8.7. According to the National Household Travel Survey (2013), 8.3 per cent of learners in rural areas walk more than 60 minutes to their educational facilities, because of a lack of access to transport services and educational facilities in their respective communities. Furthermore, the main mode used by learners to travel to school is by foot, as 64 percent of learners walk to school. Although this figure has declined from 76.3 percent in 2003, it remains high. The Commission has observed that very little has changed, in terms of rationalising the public transport subsidies to focus on rural areas.

8.8. Subsidised bus contracts are the main source of formal public transport in most rural areas, and much of the focus of this chapter will be on bus contracts.

Challenges of providing public transport in rural areas in South Africa

8.9. Several factors contribute to the inadequate provision of public transport services in South Africa’s rural lands. The DOT’s Rural Transport Strategy for South Africa (2007:26), together with the submissions received by the Commission, highlight several rural specific characteristics as key challenges in rural public transport.

Lack of collaboration within government

8.10. The DOT approved the Road Infrastructure Strategic Framework for South Africa (RISFSA) in 2006. RISFSA recommended that a coordinating body be established, in order to harmonise road maintenance across the various roads authorities and agencies in the road sector.

8.11. The lack of collaboration and partnership in solving rural development challenges has been identified by several stakeholders as a major impediment. There is no coherent strategy by National Government departments, in addressing issues of rural public transport. The Department of Rural Development (DRD) indicated that most of their work is covered by the Comprehensive Rural Development Framework, which was approved by cabinet in 2009. However, the framework does not directly cover the aspects related to rural public transportation, and there are no policy pre-scripts or studies done by the department, dealing with rural public transport. The DRD was of the view that district municipalities play a significant role, with regards to public transportation.

8.12. The departments seem to operate in silos, and are fighting for space. The Department of Human Settlements submitted that integrated planning within national departments is critical for successful interventions in rural transportation issues, and cited the example of coordinated planning for the 2010 World Cup – where collaborative efforts by government were aligned. Resolving rural transportation challenges requires the combined leadership and determination by sectors directly associated with rural development such as the Department of Transport, Department of Human Settlements, Department of Rural Development and Land Reform, National Treasury (coordination of funding), Department of Cooperative Governance and Traditional Affairs, district and local municipalities, and research institutions.
8.13. The DOT’s Rural Transport Strategy of 2016 highlights that, for purposes of transforming the rural transport landscape, it is recommended that in the deep rural and sparsely populated areas, among others, there be a coordination of public services.

Sector plans with no transportation focus

8.14. The Department of Human Settlements submitted that the National Housing Code in its current form does not focus on public transportation, although it assists in the development of sustainable human settlements. There is no policy document that supports public transportation, although the Urban Settlements Development Grant (USDG) may be utilised for transportation projects. This grant is only available to the metropolitan municipalities and is not extended to rural municipalities. The National Housing Code was last revised in 2001.

8.15. Rural Transport has been neglected and not prioritised by key national departments and, as such, public transport remains a major concern in the rural areas, where poor road conditions, poor access to various modes of transport, high operational costs – and disparities between urban operators and rural operators – have been highlighted as major challenges.

General infrastructure and location challenges

8.16. Rural areas in general are sparsely populated, which makes provision of public transport infrastructure costly and difficult. Furthermore, high incidence of rural poverty and unemployment make the demand for public transport limited, to justify interest from operators making investments. Low demand of services is not ideal for transport operators to provide services in those areas. As a result, operators are faced with low economies of scale, which leads to high operating costs.

8.17. Road conditions in some rural areas are horrific, to the extent that buses can get stuck during the rainy season. The design of the roads in rural areas is not ideal, as operators are required to drive long distances of more than 30 km on gravel, often single-lane roads.

8.18. Minibus taxi coverage is limited in rural areas as a mode of transportation, and they have alternative modes such as the use of bakkies (which are not designed to offer land-based public transport). Poor road quality has been identified as an impediment, for minibus taxis to operate.

8.19. The factors identified above collectively provide a justification for the need for subsidies in the rural areas. In the current context, only bus subsidies are available (in some of the rural areas). Even in areas where the subsidies are available, there are still challenges faced by both the operators and commuters, as discussed below.

Challenges specific to rural bus subsidy contracts

Subsidy coverage

8.20. The extent of service coverage from buses in rural areas tends to be limited as, subsidised bus operations provide a scheduled service on defined routes. These routes, as discussed in Chapter 7, were decided over 20 years ago, and do not respond effectively to changing needs of commuters. In Limpopo, not all rural areas are covered by subsidised buses.

8.21. In the Free State, subsidised commuter bus services are provided within the Mangaung Metropolitan Municipality and Thabo Mofutsanyana District Municipality. The other three district municipalities have no subsidy coverage, leading to commuters demanding an extension of routes. Following a demand from the commuters, Interstate Bus Lines

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8.22. In the Western Cape, there are no subsidised commuter bus services in most of the district municipalities. Most of the subsidised bus operations are limited to within the Greater Cape Town metro.

Subsidy allocation

8.23. Provinces such as Limpopo, that used to have homelands, do not receive total funding from the PTOG. In Limpopo, the PTOG accounts for 45 per cent of the province’s subsidy needs. For Limpopo, the PTOG typically covers what used to be called the “RSA towns” such as Polokwane (formerly Pietersburg), Marble Hall and Motetema (formerly Groblersdal). The former homeland areas (Vhembe) are then subsidised by the provincial government, through its equitable share. In the 2018/19 financial year, the provincial budget totalled R736 million – R380 million was from the provincial fund, and R365 million came from PTOG funding. Limpopo province is one of the provinces that is severely disadvantaged by the current subsidy regime.

8.24. Due to a lack of funding for subsidy contracts, and despite a growing population and expansion of villages, many areas in the province remain without subsidised bus services. Bus operators submitted that, in some instances, they operate commercial services or extend certain routes which are not subsidised, in order to service communities in the province.

Skewed subsidy allocation between rural and urban areas

8.25. Concerns have also been raised about the disproportionate allocation of subsidies to bus operators operating in the same province but servicing different areas (urban and rural areas). Small and emerging bus operators are also relegated to servicing rural areas, while their bigger counterparts service urban areas; where conditions are much better. These concerns have been raised in provinces that are generally described as rural provinces, such as Limpopo and the Eastern Cape.

8.26. It has further been asserted that the government allocates significantly large sums in urban areas for subsidies, in comparison to allocations for the rural areas. It is important to note that the allocation of subsidies to provinces is historical, and not adjusted annually. There are disparities between subsidised buses that operate in urban areas and those that service rural areas. Most of the operators servicing urban areas are the larger companies, such as PUTCO and Golden Arrow Bus services. Smaller operators who operate the rural areas receive far less allocations, compounded by the harsh operational environment.

8.27. Bus operators in Limpopo submitted that, despite having to service mainly rural towns and villages with poor road infrastructure, the subsidy rate that they receive per kilometre is the same rate they receive for servicing an urban area. This is of particular concern, when one considers that the operating costs of a bus operator who services rural areas are much higher than those of an operator who mainly services urban areas. GNT submitted that it faces serious challenges in servicing rural areas, especially where it charges low fares and incurs significant costs in operating in those areas. As a result, GNT is currently operating with a very old fleet of vehicles, much to the dismay of commuters in areas such as Bushbuckridge, Ga-Maja, Makhado and Tzaneen.

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475 National Department of Transport – written submission dated 24 May 2019, paragraph 3.4.10.
8.28. KWANABUCO’s members operate throughout the KZN province, with some mainly focused in rural areas. In these areas, its members, being unsubsidised, often encounter challenges with poor road infrastructure, frequent breakdown of buses, and high maintenance costs to repair the buses. Without subsidies, some members have been forced to either service scholar transport or completely shut down their operations. In one rural area, Umzimkhulu, commuter bus services have not been allocated subsidies since the area was transferred from the Eastern Cape to KwaZulu-Natal.

Unfavourable operating environment

8.29. Commuter bus operators who operate in the rural provinces, such as the Eastern Cape and Limpopo, raised concerns that when the subsidies are allocated, government does not take into consideration the different conditions that they operate under – such as road conditions, as compared to those operators operating in urban areas. Among other challenges, these bus operators provide services on poor road infrastructure and in poor rank facilities and, in some cases, in areas with no rank facilities at all.

8.30. According to SANSBOC, the poor conditions under which bus operators render services substantially increase the cost of providing services of good quality to rural communities. The situation is exacerbated by the fact that there is no fair distribution of subsidies by government between rural and urban operators. In other words, the allocation of subsidies does not adequately consider conditions faced by operators providing services in rural areas. SANSBOC’s evidence in this regard is corroborated by evidence from the Eastern Cape Department of Transport:

“MR LESOFE: “And I am sure their performance would be so much better if they were for instance given the opportunity to also service urban areas...”

MR MTHIRARA: “I can really agree with you due to the conditions that they operate in, and at times these challenges do have an impact on their revenue base as well. For instance, AB350, they operate under terrible conditions. When it is raining, they do not operate. You can imagine at times the rain will fall for almost a month, then there will be no service for that period; and then that affects their revenue base as well so those are the major challenges as well.”

8.31. Due to the bad conditions that it operates under, the lifespan of AB350’s fleet of buses is shorter and, consequently, the entity is required to regularly procure new buses. In some instances, AB350 experiences breakdowns which cause it not to adhere to its schedules. This attracts penalties, that are imposed by the provincial government as per the terms of the subsidy contract.

8.32. Rural operators in the Free State also expressed similar concerns about the conditions that they operate under and stated that the Free State provincial department is not taking these differences into consideration when allocating the subsidies. The operators contend that the operational costs in the rural areas are higher because of the road conditions, and this should be taken into consideration.

8.33. submitted that subsidised services in rural areas benefit the poor and make it possible for bus operators to service these areas, because often the roads are poorly maintained; making buses the most appropriate mode. In addition, subsidies allow operators such as to charge low fares to commuters in rural communities.

484 Eastern Cape Department of Transport – oral submission by Mr Phathuxolo Mthirara, Port Elizabeth Hearings, dated 14 August 2018. Page 28.
486 Tansnat Durban – written submission by Mr Joubert dated 29 May 2018.
487 Tansnat Durban – written submission by Mr Joubert dated 29 May 2018.
**Small bus operators can contribute meaningfully to rural transportation**

8.34. AB350 consists of a number of small bus operators who became one, in line with a model adopted to facilitate government’s empowerment of small bus operators. Government actively participated in the formation of the company, and further provided not only a platform for the members to access financial institutions, but also provided funding towards the establishment of AB350.\(^{488}\) AB350 currently negotiates contracts directly with government, and thus does not only receive work through sub-contracting with the bigger bus operators.

8.35. What the current success achieved by AB350 in the Eastern Cape highlights is that small bus operators may need to form bigger companies and need to work alongside government – as was done in the Eastern Cape – for negotiated contracts to serve their desired transformative purpose. A lot can be learned from the AB350 example in this regard.

8.36. AB350 holds a view that sub-contracting does not work for small bus operators, in that the large bus operators are not keen to empower them. In this regard, Mr Hintsa relates AB350’s experience:

\[\text{“…when IDC was still involved in the process, they took us to one of the big companies who required us to handover the contracts …. we can give them contracts, we can give them buses, but the agreement must be that the management will be done by us”}\] \(^{489}\)

8.37. Despite the views of AB350 on sub-contracting, in Limpopo, GNT was requested to give some of its routes to smaller operators as a way of empowerment. One of the small bus operators that is being empowered by this arrangement is Kopano Bus services (Kopano), which GNT is currently working with. It is GNT’s view that Kopano would be able to successfully compete for contracts placed on tender in Limpopo, and currently there are routes that this small bus operator services without sub-contracting. The entity has managed to grow and currently has about 20 buses.\(^{490}\) Despite the successes of sub-contracting in Limpopo, as evidenced by the growth of Kopano, the Commission notes that sub-contracting has not been that successful in other provinces, notably in the Western and Eastern Cape. In the main, small bus operators that participate in sub-contracting arrangements have expressed a view that they operate at the mercy of bigger operators, who dictate terms to them.

8.38. In the Free State, as part of negotiated contracts, the Department of Transport resolved that the two operators who had been awarded the contracts must involve small bus operators and minibus taxi operators in their operations – to promote transformation in the industry. As a result, Interstate Bus Line and Maluti Bus Service had to issue shares to minibus taxi operators and small bus operators. In 2006, the former issued \(\frac{1}{3}\) of its stake to BBT Taxi Trust, to small bus operators, and \(\frac{1}{3}\) per cent to the employees of the BBT Taxi Trust beneficiaries. The beneficiaries of the BBT Taxi Trust are three taxi associations from the province:

In 2016, BBT Taxi Trust beneficiaries bought an additional \(\frac{1}{3}\) of Interstate Bus Line.

8.39. In 2011, Maluti Bus service also transferred 20 per cent of its shares to taxi operators and Maluti Bus Service employees. The taxi operators formed a company called Remmohoe Sisonke Pty Limited, and subsequently acquired more shares in the company. Currently, Remmohoe Sisonke Pty Limited owns 85 per cent of Maluti Bus Service, and the other 15 per cent is owned by the Maluti Employees Transport Trust.\(^{492}\) Remmohoe Sisonke Pty Limited is owned by Qwa-Qwa United Taxi Association, Bethlehem Taxi Association, Harrismith Taxi Association, Tshiame Taxi Association, and the Provincial Taxi Council.\(^{493}\)

\(^{488}\) SANTACO EC submission by Mr Banjiwa, Eastern Cape (East London) hearings, 28 August 2018. Page 55.

\(^{489}\) Africa Best 350 – oral presentation by Mr Simlindile Hintsa, Eastern Cape Hearings, dated 28 August 2018. Page 112.

\(^{490}\) Great North Transport – oral submission by Mr. Monkoe, Limpopo hearings, dated 21 August 2018. Page 23.

\(^{491}\) Interstate Bus Line – oral submission by Mr Mokgothu, Free State Hearings, dated 30 August 2018. Page 150.

\(^{492}\) Maluti Bus Service – oral submission by Mr Engelbrecht, Free State Hearings, dated 31 August 2018, page 114.

8.40. To promote small bus operators in the Northern Cape, the province tried to allocate some of the Mega Bus routes to small bus operators. Mega Bus, however, refused to give up the identified routes, and instead initiated legal action against the province in 2014. Mega Bus opted to sub-contract small operators, instead of handing over some of the contracted routes to such small operators.

Findings

8.41. Skewed subsidies in favour of urban areas as opposed to rural areas for bus operations.

8.42. Bus subsidies granted to rural operators do not consider high operating costs due to harsh operating conditions. Due to the harsh operating conditions, there is limited transport coverage by buses and minibus taxis. Breakdowns are more frequent, resulting in unreliable service.

8.43. There is lack of collaboration between national and provincial departments responsible for rural development, to plan and coordinate road and transport infrastructure. Government has neglected transport planning in most rural areas.

Final Recommendations

8.44. The Commission did not receive any objections and further comments to the provisional findings and recommendations. The Commission recommends the following:

8.44.1. The DOT and National Treasury to create a dedicated funding for rural public transport. Expansion of the national rural and municipal road rehabilitation and maintenance program was highlighted by the President as part of the Economic Recovery Plan.

8.44.2. The DOT to foster coordination with sector departments and harmonise interventions in the rural areas.

8.44.3. The subsidy policy being developed by DOT should consider the operating conditions in rural areas and compensate operators accordingly.

8.44.4. Provinces should create avenues for small bus operators to participate in subsidised bus services.

494 Northern Cape Department of Transport – oral submission by Ms Olivier, Kimberly Hearings, dated 19 July 2018, page 29.
495 Northern Cape Department of Transport – oral submission by Ms Olivier, Kimberly Hearings, dated 19 July 2018, page 30.
496 Economic Reconstruction and Recover Plan, dated 15 October 2020, page 10
9. BUS RAPID TRANSIT SYSTEM IN SOUTH AFRICA

Introduction

9.1. This chapter discusses the Integrated Rapid Public Transport Networks (IRPTNs) and its integral component, bus rapid transit system (BRT). Firstly, the chapter traces the origins of IRPTNs, and how the concept was implemented in some South African cities. The key features, historical context and implementation of IRPTNs and BRT is discussed. The current status of BRT rollout in the various cities, and key challenges and inefficiencies, are evaluated. This chapter also assesses the impact of BRT on intramodal competition and concludes by making findings and recommendations.

The move from IRPTNs to focus on BRT

9.2. In March 2007, Cabinet approved a Public Transport Strategy which proposed a phased implementation of IRPTNs as an integrated, total system response to South Africa’s public transport needs. IRPTNs refer to high quality, integrated mass rapid public transport networks comprising of rapid rail and BRT priority corridors. The other key pillar of the strategy is modal upgrading, which focuses on improving the quality of the public transport fleet for commuter rail, bus, metered and minibus taxis. IRPTNs were heralded as “the mobility wave of the future and are the only viable option that can ensure sustainable, equitable and uncongested mobility in liveable cities and districts”. The key feature of IRPTNs is its emphasis on a high-speed service comprising of dedicated median busways, enclosed stations with pre-board fare payment for road trunk corridors, and dedicated infrastructure and priority slots for passenger rail corridors. Broadly, the main objective of the IRPTNs was to reduce travelling costs and time for commuters, to offset inefficient apartheid spatial planning.

9.3. The aim of the Public Transport Strategy was to accelerate the implementation of IRPTNs in metropolitan cities, smaller cities and rural districts. The phased implementation of the IRPTN aimed to have operating systems in place in 12 cities (including the nine 2010 World Cup host cities) and at least six rural districts, by 2014.

9.4. The longer-term vision until 2020 was to develop a system that places over 85 per cent of a metropolitan city’s population within 1km of an IRPTN trunk (road and rail) or feeder (road) corridor. These networks were therefore meant to comprise an integrated package of rapid rail and BRT corridors. The following were the proposed phases of the BRT aspect of the strategy:

9.4.1. Phase I: Accelerated Recovery and Catalytic Projects – This phase was to be implemented from 2007 to 2010, and would entail, among other things, the initiation of projects which would promote the implementation of BRT priority corridors in the 12 targeted cities;

498 Public Transport Action Plan - Department of Transport (2007), page 7-8
499 Public Transport Action Plan - Department of Transport (2007), page 4
500 Public Transport Strategy – March 2007, page 4
501 Public Transport Action Plan - Department of Transport (2007), page 18
503 Tshwane, Cape Town, Johannesburg, Nelson Mandela Bay, eThekwini, Polokwane, Mangaung, Mbombela and Rustenburg.
504 The six districts were identified as Sekhukhune District Municipality (Limpopo), OR Tambo District Municipality (Eastern Cape), Umkhanyakude District Municipality (KwaZulu-Natal), Ehlanzeni District Municipality (Mpumalanga), Thabo Mofutsanyane District Municipality (Free State) and Kgalagadi District Municipality (Northern Cape). Public Transport Action Plan - Department of Transport (2007), page 77.
506 Ibid.
508 The targeted cities were Tshwane, Cape Town, Johannesburg, Nelson Mandela Bay, eThekwini, Ekurhuleni, Polokwane, Mangaung, Mbombela, Rustenburg, Msunduzi and Buffalo City. Later, George Municipality was added as a 13th city. However, it is submitted that the Go George system is not a BRT or IRPTN but rather an improved bus service that was implemented by the Western Cape Government and is funded through the PTNG. See National Treasury – oral submission by Ms Britton, Gauteng hearings – Commission’s offices, dated 10 October 2018. Page 66.
9.4.2. Phase II: Promote and Deliver Basic Networks – This phase was to be implemented from 2010 to 2014 and would entail, among other things, the expansion of the initial BRT corridors; and

9.4.3. Phase III: Advance and Sustain Accessible Networks – that was to be implemented from 2014 to 2020 and would entail, among others, maximising the rollout of BRT.

9.5. The Public Transport Strategy was followed by the Cabinet approval of an Action Plan in April 2007, which was drawn up to “enable the movement from strategy to rapid implementation”. The key focus of the Action Plan was on the “Catalytic Projects” component of Phase 1 (2007-2010), as outlined above. As a critical component in the implementation of IRPTNs, the Action Plan proposed the establishment of transport authorities that were equipped to plan, manage and regulate networks in which the transport authorities would be responsible for fare revenue, and operators would be contracted to provide particular services. In this plan, provinces would play a coordinating role; with respect to planning and ensuring capacity is available for transport authorities. In addition, the Action Plan called for the urgent establishment of multidisciplinary Intergovernmental Task Teams to be able to, “fast track and minimise bureaucratic bottlenecks and facilitate speedy decision making.”

9.6. The aims and objectives, as outlined in the Public Transport Strategy and the Action Plan, demonstrate that there was an urgent target imposed on municipalities – to plan and execute IRPTNs in both a speedy and efficient manner. However, for most cities, there was insufficient time to plan, develop and implement IRPTNs. In fact, the experience of the City of Johannesburg and George Municipality demonstrate that the planning process took much longer than was anticipated. The City of Johannesburg, being the first to implement the new system, experienced protracted and complex negotiations with the minibus taxi industry for phase 1 of the Rea Vaya BRT. In addition, from a construction point of view, the plans were far too ambitious, and implemented in haste as the pressure to deliver in time for the World Cup was mounting. For smaller cities such as Msunduzi, the lack of capacity, transport planning skills and experience in IRPTNs has resulted in the slow pace of implementation.

9.7. By 2018, only six cities have managed to develop and implement IRPTNs, namely City of Johannesburg (Rea Vaya), City of Cape Town (MyCiTi), City of Tshwane (A Re Yeng), George Municipality (Go George), City of Ekurhuleni (Harambee) and Nelson Mandela Bay (Libhongolethu).

9.8. Over a decade since the approval of the Public Transport Strategy and the adoption of IRPTNs as a national policy objective, cities have largely implemented BRT systems – and there is little to no evidence of integrated “rapid rail and BRT priority corridors” as was originally envisaged. Rea Vaya in the City of Johannesburg and A Re Yeng in the City of Tshwane are but two examples of BRT systems. In the past 5 years, cities (with the guidance of the DOT and National Treasury) have had to re-evaluate and revise their IRPTNs, to reduce costs and
delays. Some cities no longer put emphasis on the requirement that their systems be of a rapid nature, as this has shown to have high cost implications. The DOT submitted that most cities have now amended their earlier plans to focusing mostly on supplying new vehicles, and fewer stations/shelters and other related infrastructure such as depots. In addition to this, minibus taxis have increasingly been introduced and integrated into the system. As a result, some of the newer systems are referred to as Integrated Public Transport Networks (IPTNs) such as in George, or Integrated Public Transport System (IPTS) as found in Nelson Mandela Bay, and not IRPTNs – to reflect these new changes and adjustments. For the purposes of this report, IRPTNs and IPTNs are used interchangeably.

9.9. However, the focus of this chapter is on the BRT system, although the Commission acknowledges the original intention by national government, and the recent endeavours by cities, to move towards integrated systems.

**Key characteristics of BRT**

9.10. The Institution for Transportation and Development Policy defines BRT as a high-quality bus-based transit system that delivers fast, comfortable, and cost-effective services at metro-level capacities. Dedicated lanes for buses, well-built stations and off-board fare collection systems are some of the prominent features of a BRT system, as shown in Table 20.

<table>
<thead>
<tr>
<th>Table 20: Features of BRT system</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dedicated lane and busway alignment</strong></td>
</tr>
<tr>
<td>Bus-only lanes allow faster travel and ensure that buses are never delayed due to mixed traffic congestion.</td>
</tr>
<tr>
<td><strong>Off-board fare collection</strong></td>
</tr>
<tr>
<td>Fare payment at the station, instead of on the bus, eliminates the delay caused by passengers waiting to pay on board.</td>
</tr>
<tr>
<td><strong>Intersection Treatments</strong></td>
</tr>
<tr>
<td>Prohibiting turns for traffic across the bus lane reduces delays caused to buses by turning traffic.</td>
</tr>
<tr>
<td><strong>Platform-level boarding</strong></td>
</tr>
<tr>
<td>Stations are level with the bus for quick and easy boarding. Accessible for wheelchairs, disabled passengers and strollers with minimal delays.</td>
</tr>
</tbody>
</table>

520 George, Mbombela, Mangaung, Buffalo City, Polokwane, Rustenburg, Msunduzi and Nelson Mandela Bay.
523 Ibid
The genesis of BRT

International perspective

9.11. The large-scale development of BRT systems was first seen in Curitiba, Brazil in 1974. Following its success in Curitiba, other cities were inspired to develop similar systems. The development of BRT systems was initially limited to North and South America. In the late 1990s, the replication of the BRT concept gained momentum and BRT systems were launched in Quito, Ecuador (1996), Los Angeles, United States of America (1999) and Bogotá, Colombia (2000). By 2005, there were over 70 such systems around the world.

9.12. The Transmilenio BRT is among the best BRT systems in the world, providing transportation to over 69 per cent of the population of Bogotá, which translates to about 2.4 million riders daily. The Transmilenio BRT is recognised as having the top corridor performance globally, with 45 000 passengers per hour per direction. One of the key aspects of the Transmilenio BRT was the creation of 5 private companies to operate the system, and this was led by former traditional operators.

South African experience

9.13. In this section, the adoption of the BRT system in South Africa is discussed. Several submissions to the Commission indicated that the BRT system in South Africa was largely modelled on the Transmilenio BRT in Bogotá, Colombia.

9.14. In addition to the influences of Bogotá, there were four main influences that are credited for ushering in the BRT system in South Africa. They are: (i) the 2010 FIFA Soccer World Cup, (ii) funding in the form of capital grants was made available and allocated by national government, to municipalities, for infrastructure spending for IRPTNs (of which BRTs were a significant component), (iii) approval of the Public Transport Strategy and Action Plan and (iv) the need to transform and empower the minibus taxi industry. These factors are discussed below.

The significance of Bogotá

9.15. While government did not prescribe the Bogotá model as the ideal model for South African cities, stakeholders in the industry, including municipalities, submitted that the Bogotá model was influential in their planning and implementation of the BRT system. In addition, Bogotá was faced with the task of absorbing existing transport operators into the new system, just like South Africa. Submissions received indicate that Bogotá had taxis and traditional buses that had to be incorporated into the system. This involved negotiations with the affected operators, to absorb them so that they did not provide competing services. Stakeholders including government officials, and taxi and bus operators from all the different cities went for study tours to Bogotá. In Bogotá, buses are said to be always full, with 3 or 4 broad peak services, and this is in direct contrast to South Africa, with only 2 narrow peak periods.

525 Ibid.
528 Ibid.
9.16. Though the DOT has submitted that the IRPTN/BRT model implemented in various cities is a 100 per cent South African model that is grounded in local operations and defined by local issues, the influence of Bogotá is evident. For example, the Rea Vaya scoping study of 2006 reveals that the city’s officials conducted a study tour which concluded that, while the circumstances of Bogotá are different from those of Johannesburg, BRT could have applicability in the context of Johannesburg. Subsequent to this, many other stakeholders have undertaken similar study tours to Bogotá to observe how the system operates.

9.17. Submissions received indicated that the Bogotá model was the incorrect model for South African cities to emulate, given the vast differences identified above. The legacy of apartheid spatial planning has resulted in commuters travelling long distances during the morning and later in the evening, which affects the viability of the BRT system. High demand is only for peak periods in the morning and evening, and during the day the buses are parked.

Figure 27: Comparison of Rea Vaya BRT with South American cities

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of operating costs covered by fares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bucharamanga</td>
<td>75</td>
</tr>
<tr>
<td>Barranquilla</td>
<td>60</td>
</tr>
<tr>
<td>Bogota</td>
<td>45</td>
</tr>
<tr>
<td>Lima</td>
<td>30</td>
</tr>
<tr>
<td>Leon</td>
<td>15</td>
</tr>
<tr>
<td>Pereira</td>
<td>5</td>
</tr>
<tr>
<td>Johannesburg</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: National Treasury Budget Review 2017

Figure 28: Comparison of urban densities

<table>
<thead>
<tr>
<th>City</th>
<th>Inhabitants per square kilometer (thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bogota</td>
<td>12</td>
</tr>
<tr>
<td>Lima</td>
<td>8</td>
</tr>
<tr>
<td>Santiago</td>
<td>5</td>
</tr>
<tr>
<td>Guadalajera</td>
<td>4</td>
</tr>
<tr>
<td>Barranquilla</td>
<td>2</td>
</tr>
<tr>
<td>Porto Alegre</td>
<td>1</td>
</tr>
<tr>
<td>Mexico City</td>
<td>1</td>
</tr>
<tr>
<td>Leon</td>
<td>1</td>
</tr>
<tr>
<td>Johannesburg</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: National Treasury Budget Review, 2017

9.18. Figure 27 and Figure 28 show that when compared to Bogotá, Johannesburg has far less inhabitants per km² – and as a result of such low population densities (and urban sprawl), the operating costs of Rea Vaya are exorbitant. Therefore, the system is likely to be heavily reliant on subsidies, as fares are inadequate to cover costs.

9.19. From the evidence gathered by the Commission, it appears that the concept of a BRT system in South Africa was introduced and fast-tracked by the announcement on 15 May 2004 that South Africa had successfully won the bid to host the 2010 FIFA Soccer World Cup. According to the City of Johannesburg and Mangaung Metropolitan Municipality, the World Cup announcement changed the course of public transport in the country. Phillip van Ryneveld, a former employee of the City of Cape Town, also highlighted that the World Cup played a crucial role, by making reference to the experience in the City of Cape Town:

“In the late 2000s the initiative for the BRT really was driven by National Government and it was in relation to the World Cup. …and Cape Town said that’s fine.”

9.20. The announcement of the hosting rights to South Africa resulted in an urgent need to prioritise public transport, and substantial investments were made to make the project successful. Because of this urgency, it appears that there was insufficient time to prepare detailed plans (with reliance on some scoping study) which would guide the implementation of the first phase of the BRT system in various cities. The City of Johannesburg submits that it was ill-prepared and under pressure to deliver the project, only managing to complete a scoping study by November 2006.

9.21. Prior to 2007, severe under-investment in public transport infrastructure and public transport operations for over 30 years was observed in South Africa. The 2010 World Cup created the impetus to address the backlog in public transport infrastructure and improvement.

9.22. In 2005, a special fund was created, called the Public Transport Infrastructure Systems Grant (PTISG), which is today known as the Public Transport Network Grant (PTNG). The PTISG was created to provide for accelerated planning, establishment, construction and improvement of new and existing public transport and non-motorised transport infrastructure and systems. This grant originated as a mechanism to support the provision of transport-related infrastructure for the 2010 World Cup but, after a series of reforms, it was later converted to deal with broader public transport services at a municipal level. The PTNG, in its current form, is allocated to municipalities to provide for the capital costs of implementing IRPTNs. The rationale for the PTNG is to support the NLTA and Public Transport Strategy and Action Plan, in promoting the provision of accessible, reliable and affordable integrated public transport services. The grant does not provide for the direct vehicle operating costs such as fuel, labour, and the maintenance of buses and bus drivers’ salaries.

9.23. As part of the investments for improvements in public transport ahead of the 2010 World Cup, R3 billion was allocated by the Minister of Finance in February 2005, for the period 2005/6 to 2007/8. The purpose of this allocation was to kickstart the

544 Ibid.
545 This grant was first established as the Public Transport Infrastructure Grant (PTIF).
Public Transport Infrastructure Grant (PTIF) by specifically concentrating on 2010-related projects. The Public Strategy and Action Plan of 2007 estimated the costs in capital investments for BRT Phase 1 rollout, for up to 12 cities, at R13 billion. However, minibus taxi operators would have to surrender their operating licences and cease operating on routes where the IRPTN/BRT was going to be implemented. Taxi operators were to be compensated for surrendering their licences, and use the compensation to participate and form bus operating companies – where they would become shareholders and begin to earn dividends. This was the mechanism to formalise and empower the minibus taxi industry.

9.24. The availability of funding as a result of the World Cup provided an opportunity for those cities that previously had not played a direct role in public transport provision, to get involved. Apart from City of Johannesburg, City of Tshwane, City of Ekurhuleni, eThekwini Municipality and Buffalo City, the majority of the cities did not have municipal bus services in operation. It was only after the selection of the host cities that some cities started to think seriously about public transport needs. One such example is the City of Cape Town, which previously did not operate a municipal bus service, but now operates an IPTN.

Public Transport Strategy and Action Plan

9.25. As discussed above, in March 2007 Cabinet approved the Public Transport Strategy, which proposed a phased implementation of IRPTNs as an integrated, total system response to South Africa’s public transport needs. The approval of the strategy gave impetus to the rollout of the IRPTNs, and funding was made available to support the initiative.

Transformation of the taxi industry

9.26. IRPTN/BRT was also meant to transform public transport, not only for commuters but for existing public transport operators, especially minibus taxi operators. Minibus taxi operators were envisaged to form part of the new system by becoming the owners, and operators of the IRPTN/BRT.

9.27. In 2008, following the Taxi Summit, the DOT released a statement which indicated that the taxi industry would be the nucleus of the BRT system, and no loss of jobs and profits would be experienced in the implementation of the BRT. This commitment by the DOT cascaded to the cities, with City of Tshwane confirming the empowering objective of the BRT; by inclusion of former taxi operators in the subsidy system. To secure the buy-in of the minibus taxi operators in the IRPTN/BRT, ownership of the system, and benefit from value chain opportunities such as cleaning and security services, were promised. Rustenburg Local Municipality submitted that it is currently exploring the possibility of awarding value chain opportunities to the minibus taxi industry in the city, as part of its transformation and empowerment initiatives. However, according to the DOT, affected taxi operators are only entitled to compensation for business rights (goodwill) on routes they service. The DOT further submitted that it is not the condition of the PTISG/PTNG that affected taxi operators must benefit from value chain opportunities, and that the DOT’s position is that operators only benefit from compensation for business rights.

550 Ibid. Page 18.
9.28. As demonstrated later in this chapter, submissions received by the Commission indicated that the implementation of the IRPTN/BRT system has left some taxi operators, who opted to participate in the system, worse off. Some face the possibility of exiting the market.

Current status of BRT/IRPTN implementation

9.29. In this section, we briefly outline the current status of BRT/IRPTN in the various cities:

9.29.1. **Johannesburg**: Two BRT corridors have been introduced, both linking Soweto with the central business district (CBD), and both with an extensive feeder network connecting with the trunk routes.

9.29.2. **Cape Town**: A BRT line from Table View into the CBD is supplemented by a feeder network. Improvements have been made to other services (e.g., CBD-Hout Bay) as part of the network. In 2016 a high-speed bus route was introduced along the N2 freeway linking both Khayelitsha and Mitchells Plain with the CBD.

9.29.3. **Tshwane**: Phase 1 of the A Re Yeng IRPTN is partially completed and operational, from Wonderboom to CBD and from CBD to Hatfield.

9.29.4. **George**: The George Municipality was not initially included in the list of cities identified in the 2007 Public Transport Strategy and Action Plan. The Western Cape government assisted the municipality to plan and implement an IPTN independently of the national effort – i.e., an IPTN without the BRT element. The emphasis is on frequency and hours of operation, with only limited infrastructure.

9.29.5. **Ekurhuleni**: The municipality launched a starter service in October 2017, consisting of a 38km route length, starting from Tembisa Civic Centre and ending at Diesel Street, Isando.

9.29.6. **Nelson Mandela Bay** - The metro launched its IPTS on 26 March 2018. The metro launched an interim phase, 1A, which runs from Cleary Park to the CBD. The IPTS is currently being operated by a vehicle operating company called Spectrum Alert, which was registered in July 2017.

9.30. Table 21 below provides a summary of the current implementation of BRT/IRPTN in Johannesburg, Cape Town, Tshwane, George, Nelson Mandela Bay and Ekurhuleni.
Table 21: Summary of current BRT/IRPTN implementation

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Model</th>
<th>Current phase(s) of implementation</th>
<th>Description of routes/corridor</th>
<th>Main features of system</th>
<th>BOC/ VOC model</th>
<th>Future phases</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Johannesburg</td>
<td>Rea Vaya BRT</td>
<td>Phase 1A – 2009 Phase 1B – 2013</td>
<td>Soweto to CBD and Ellis Park Soweto to the CBD via the western suburbs, Parktown and Braamfontein</td>
<td>Dedicated bus lanes Bus stations Fare collection system</td>
<td>· Piotrans (Pty) Ltd</td>
<td>Phase 1C&lt;sup&gt;566&lt;/sup&gt; Phase 2A and B Phase 3 Phase 1A and B extensions</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>· Litsamaiso (Pty) Ltd</td>
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<tr>
<td>City of Cape Town</td>
<td>MyCiTi BRT</td>
<td>Phase 1A Phase 1B N2 Express routes</td>
<td>Phase 1A: Woodstock rail station, Paarden Eiland, Milnerton, Montague Gardens, Century City, Dunoon, Table View, Melkbos, Atlantis and Mamre Phase 1B: Montague Gardens, Century City and Maitland N2 Express: Mitchells Plain/Khayelitsha and the Cape Town CBD using the N2 freeway</td>
<td>Dedicated bus lanes Bus stations Smart card-based fare system</td>
<td>· Transpeninsula Investment (Pty) Ltd&lt;sup&gt;568&lt;/sup&gt; · Kidrogen (Pty) Ltd&lt;sup&gt;569&lt;/sup&gt; · Table Bay Area Rapid Transit Pty (Ltd)&lt;sup&gt;570&lt;/sup&gt; · N2 Express Joint Venture&lt;sup&gt;571&lt;/sup&gt;</td>
<td>1. Phase 2a (T11 &amp; T12)&lt;sup&gt;572&lt;/sup&gt; 2. Trunk Route T17 3. Trunk Route D12 4. Trunk Route T13 5. Trunk Route T15 6. Trunk Route T14 7. Trunk Route T16 8. Trunk Route T19 9. Trunk Route T10</td>
</tr>
</tbody>
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<sup>565</sup> City of Johannesburg, 2017. Submission of “Transport Sector Plan 2017”.
<sup>566</sup> Louis Botha and Katherine Ave between the Inner City, Alexandra and Sandton CBD.
<sup>567</sup> City of Cape Town TDA. Undated. Written submission.
<sup>568</sup> The shares are held by Ditokelo Investment Holdings (Pty) Ltd, Rapitrade 679 (RF) (Pty) Ltd and Friedshelf 1473 (RF) (Pty) Ltd.
<sup>569</sup> The shares are held by 190 individual shareholders.
<sup>570</sup> The shares are held by GABS and Sibanye Bus Services (Pty) Ltd.
<sup>571</sup> The shares in this JV are held by GABS, Route 6 Taxi Association and CODETA.
<sup>572</sup> Phase 2A is the next phase of implementation of City of Cape Town’s BRT network. This phase links the Metro South East (Mitchell’s Plain, Khayelitsha, Nyanga, Gugulethu, Philippi, Cross Roads, etc.) and Wynberg and Claremont in the west. The planning and design for this phase is underway.
<table>
<thead>
<tr>
<th>Municipality</th>
<th>Model</th>
<th>Current phase(s) of implementation</th>
<th>Description of routes/corridor</th>
<th>Main features of system</th>
<th>BOC/ VOC model</th>
<th>Future phases</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Tshwane Population: 2.9 million (2011)</td>
<td>A Re Yeng BRT</td>
<td>Phase 1 – December 2014</td>
<td>Rosslyn, Hermanstad, Watloo, Hatfield, Akasia, Montana, CBD</td>
<td>Dedicated bus lanes</td>
<td>Tshwane Rapid Transit (Pty) Ltd</td>
<td>Phase 2&lt;sup&gt;574&lt;/sup&gt;: Line 4 – Mamelodi (Denneboom) to Annlin West Line 5 – Mamelodi (Mahube Valley) to Centurion Line 11 – Menlyn to Line 5 Line 6 – Pretoria CBD to Olievenhoutbosch</td>
</tr>
<tr>
<td>George Municipality&lt;sup&gt;576&lt;/sup&gt; Population: 220 000</td>
<td>Go George IPTN (GIPTN)</td>
<td>Phase 1 – December 2014 Phase 2 – February 2015 Phase 3 – May 2015</td>
<td>City, Loerie Park, Rosemoor Community Mall, Denneoord CBD Blanco, Blanco Community, Heatherpark, City Loop CBD Pacaltsdorp, Rosedale Community, Pacaltsdorp Industrial A, Pacaltsdorp Industrial B Mall, Pacaltsdorp Community</td>
<td>Conventional bus system designed as IPTN Mixed Traffic Use of existing infrastructure Paper ticket system&lt;sup&gt;577&lt;/sup&gt;</td>
<td>George Link (Pty) Ltd&lt;sup&gt;578&lt;/sup&gt;</td>
<td>Phases 4, 5, 6, and 7</td>
</tr>
</tbody>
</table>

<sup>573</sup> Intelligent Transport Systems refer to a wide variety of electronic control and information systems that can be employed to improve the operation of a transportation network in general. See Department of Transport. 2007. Public Transport Action Plan. Page 51.

<sup>574</sup> The board consists of representatives of SANTACO, NTA and PUTCO. The board is comprised of 33% from the buses, and 66% from the two taxi mother bodies. See Tshwane Rapid Transit. 2018. Oral submission by Mr Mathebane, North West public hearings. 25 July 2018. Page 172.

<sup>575</sup> Phase 2 is planned to be rolled out over a seven year period (2022-2029). Phase 2 trunk network comprises 86 km of trunk infrastructure and low floor trunk stations. See City of Tshwane. 2018. Submission.

<sup>576</sup> George Municipality. 2017. Written submission.

<sup>577</sup> An Europay Mastercard Visa (EMV) compliant system is currently in the early stages of implementation.

<sup>578</sup> The shareholding of George Link is comprised of more than 90% former or current minibus taxi industry members and one small bus operator, Louis Transport. See written submission by Department of Transport and Public Works, Western Cape. 7 August 2018. Page 7.
<table>
<thead>
<tr>
<th>Municipality</th>
<th>Model</th>
<th>Current phase(s) of implementation</th>
<th>Description of routes/corridor</th>
<th>Main features of system</th>
<th>BOC/ VOC model</th>
<th>Future phases</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Ekurhuleni&lt;sup&gt;579&lt;/sup&gt;</td>
<td>Harambee IRPTN</td>
<td>Phase 1: Stage 1A – October 2017</td>
<td>Phase 1A – Tembisa to Kempton Park /Rhodesfield Phase 1B - Kempton Park / Rhodesfield to Boksburg West Phase 1C - Boksburg West to Vosloorus</td>
<td>Mixed traffic Mobile kiosks&lt;sup&gt;580&lt;/sup&gt; Europay Mastercard Visa (EMV) cards</td>
<td>Engagements with taxi industry have stalled. Negotiations will commence once market study is complete to establish compensation model</td>
<td>Phase 2: Kempton Park West to Katlehong Phase 3: Brakpan to Alberton Kempton Park to Duduza Phase 4: Etwatwa to Duduza Etwatwa to Boksburg Phase 5: Etwatwa to Kempton Park</td>
</tr>
<tr>
<td>Nelson Mandela Bay Metropolitan Municipality</td>
<td>Libhongolethu IPTS</td>
<td>Interim (starter service) phase 1A&lt;sup&gt;581&lt;/sup&gt; - March 2018</td>
<td>Cleary Park to CBD</td>
<td>Spectrum Alert&lt;sup&gt;582&lt;/sup&gt;</td>
<td>Njoli Motherwell Uitenhage Western suburbs</td>
<td></td>
</tr>
</tbody>
</table>

<sup>579</sup> City of Ekurhuleni – presentation by Mr Mothobi, GAUTENG hearings, Commission’s offices, 12 October 2018.
<sup>580</sup> These kiosks are situated at Station 7 and Isando.
<sup>581</sup> This consists of one trunk route supported by three feeder routes.
<sup>582</sup> The VOC is comprised of members from two taxi associations, namely, Northern Areas Taxi Operators Association (NATOA) and Algoa Taxi Association (ATA). There are 174 shareholders in the VOC with a fleet of 198 taxis. The VOC is currently leasing 98 vehicles from the taxi industry. The VOC has signed a 3 year contract with the municipality. See Spectrum Alert. 2018. Oral submission by Mr King, Eastern Cape hearings (Port Elizabeth), 13 August 2018. Page 74-75 and 78.
9.31. From Table 21 above it is clear that implementation of BRT/IRPTN has been slow, with many of the cities having only implemented the first phase, except George Municipality – which has managed to implement three phases. The success of George can be attributed to the model that was adopted, which is the use of a conventional bus system designed as an IPTN. The use of existing infrastructure and mixed traffic meant that the municipality has avoided many delays associated with construction and procurement processes, which resulted in better management of costs.

9.32. The experience of Rea Vaya, MyCiTi and A Re Yeng has necessitated a change in the design and rollout of BRT by making use of existing infrastructure to a large extent, in order to manage costs. Future phases of BRT and IRPTN will consist of cost-cutting measures such as the abandonment of dedicated bus lanes, automatic public transport management systems, and use of expensive infrastructure and technology such as automated fare collection systems – to make the system more financially viable and sustainable. The DOT submitted that it has relaxed on the infrastructure vision of the Public Transport Strategy, and that all 13 cities funded by the PTNG have been instructed to scale down plans and big ticket infrastructure.

Performance of the BRT/IRPTNs

9.33. With regard to performance, MyCiTi has been performing better than all the other BRTs/IRPTNs, reaching an average of 70 000 passengers per weekday. Go George currently carries around 12 500 passenger trips per weekday. The passenger numbers for Rea Vaya are approximately 56 000 per weekday, while A Re Yeng’s passenger numbers are estimated at 9 000 per weekday.

9.34. Figure 29 below shows the number of average weekday bus rapid transit passenger trips per year in Johannesburg, Tshwane, George and Cape Town from 2014/15 to the 2017/18 financial year, as estimated by National Treasury. The figure below shows that MyCiTi has consistently had the highest patronage, followed by Rea Vaya and Go George. A Re Yeng has the lowest weekday passengers. According to the National Treasury’s performance measures, a range of between 60 000 and 100 000 passenger trips is acceptable for any BRT/IRPTN system. By these standards, 3 out of the 4 systems are failing to attract the desired number of passengers.

Figure 29: Number of average weekday bus rapid transit passenger trips per year

Source: National Treasury

9.35. Table 22 summarises the progress of the rest of the cities that are next in line to launch their IRPTNs.

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585 The City of Cape Town has undertaken that Golden Arrow will be permitted to use the MyCiTi dedicated bus ways, which they are currently forbidden from using, for phase 2 of MyCiTi. City of Cape Town TDA. 2018. Oral submission by Mr Bosch, Western Cape hearings. 21 June 2018. Page 19.
588 City of Cape Town TDA (Undated). Written submission. Page 16.
<table>
<thead>
<tr>
<th>Municipality</th>
<th>Model</th>
<th>Current phase of implementation</th>
<th>Description of routes/corridor</th>
<th>Progress to date</th>
<th>Expected passenger numbers (Daily passenger trips)</th>
<th>Reasons for delays</th>
</tr>
</thead>
<tbody>
<tr>
<td>EThekwini</td>
<td>Go Durban IPTN</td>
<td>9 corridors planned</td>
<td>C3 corridor – 2019 expected</td>
<td>Construction of C3 corridor</td>
<td>Protracted negotiations with affected operators, Construction halted by aggrieved operators, Criteria for compensation</td>
<td></td>
</tr>
<tr>
<td>Polokwane</td>
<td>Leeto La Polokwane IPTN</td>
<td>4 phases planned</td>
<td>Phase 1A – 2019 expected</td>
<td>Advertisement of the tender for buses, Engagements with taxi industry</td>
<td>14 659</td>
<td></td>
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</tbody>
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595 The MR277 Road is a new infrastructure from Brits City.
596 26 km in length, 16 stations. The C3 corridor will cut across Kwa-Mashu, Newlands West, Westville, Claremont and Pinetown.
597 Buses (21) and midbuses (15).
<table>
<thead>
<tr>
<th>Municipality</th>
<th>Model</th>
<th>Current phase of implementation</th>
<th>Description of routes/corridor</th>
<th>Progress to date</th>
<th>Expected passenger numbers (Daily passenger trips)</th>
<th>Reasons for delays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mangaung</td>
<td>IPTN</td>
<td>Phase 1 – July 2019 expected</td>
<td>Phase 1 – Chief Moroka crescent, Moshoeshoe road, Maphisa road until Intermodal facility CBD Phase 2 – Intermodal facility CBD, Dr Belcher road until M10</td>
<td>Operational Plan, Site for depot, Steering committee, governance protocol approved by council Industry – MOA signed 2016 Study tours with the Taxi Industry undertaken Formation of SPV Infrastructure roll out continues Refinement of routes and service continuous Full City IPTN under development (Nov 2018)</td>
<td>Phase 1 – 12 000</td>
<td>Funding Governance Changes in guidelines for development of CITPs and IRPTNs</td>
</tr>
<tr>
<td>Msunduzi</td>
<td>IRPTN</td>
<td>Phase 1A – 2020/21 expected</td>
<td>Edendale to CBD Northdale to CBD</td>
<td>Appointment of service provider to assist with study to assess value of affected operators MOA signed with taxi associations</td>
<td>Phase 1 – 12 000</td>
<td>Lack of sufficient transport planning skills Lack of sufficient experience in IRPTN's Lack of resources/equipment and software</td>
</tr>
</tbody>
</table>

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599 Mangaung Metropolitan Municipality. 2018. Presentation by Mr Gondogwana, Gauteng hearings, Commission’s offices. 3 October 2018.
601 This committee consists of HODs to manage IPTN activities.
602 Comprehensive Integrated Transport Plan.
603 Msunduzi Municipality. 2018. Presentation by Ms Mngenela, Gauteng hearings, Commission’s offices. 5 October 2018.
605 Ibid. Page 1.
<table>
<thead>
<tr>
<th>Municipality</th>
<th>Model</th>
<th>Population</th>
<th>Description of routes/corridor</th>
<th>Progress to date</th>
<th>Expected passenger numbers (Daily passenger trips)</th>
<th>Reasons for delays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rustenburg Rapid Transport IPTN</td>
<td>IPTN</td>
<td>650 000</td>
<td>Phokeng to CBD, Kanana to CBD</td>
<td>65 per cent of infrastructure development has been completed on 2 corridors (Phokeng-Phokeng, Kanana-Kanana). Interim bus operating company has been formed with 9 affected minibus taxi associations</td>
<td>Phase 1 – 50 000 passengers (60 vehicles)</td>
<td>Objection on the construction of the Central Station (town planning) Delays on land acquisition, EIA and appointment of depot design consultants Financial mismatch between infrastructure development phase and allocations of budget ITS Cost savings to accommodate available budget Operational Delays Community disruptions/ protests</td>
</tr>
<tr>
<td>Mbombela</td>
<td>Mbombela</td>
<td>588 794 (2011)</td>
<td>Hazyview to CBD, CBD to Barberton</td>
<td>Development of MOAs with taxi industry Construction of public transport facilities (i.e. bus shelters) A joint market study is underway to identify affected operators The City will adopt the George model of a mixed fleet</td>
<td>Phase 1A, B and C – expected 2019 Phases 2, 3 and 4 – expected 2021</td>
<td>Prolonged engagements with the taxi industry</td>
</tr>
</tbody>
</table>

606 Rustenburg has opted to implement an integrated public transport network system that has a BRT component as well as other services. This consists of a hybrid model using both minibus taxis and buses. See Rustenburg Local Municipality. 2018. Oral submission by Mr Moleele, North West public hearings. 25 July 2018. Page 62.

607 The Municipality does not hold any shares in the interim BOC. However a representative from the municipality holds a seat on the board at the shareholder and management level. This position will fade away once the company’s capacity has been fully achieved. See Rustenburg Local Municipality. 2018. Oral submission by Mr Moleele, North West public hearings. 25 July 2018. Page 83.

<table>
<thead>
<tr>
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<th>Current phase of implementation</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Buffalo City</td>
<td>IPTN</td>
<td>Phase 1</td>
<td>Mdantsane to East London</td>
<td>In the process of developing a Business Plan for IPTN</td>
<td></td>
<td>Protracted court cases</td>
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<td></td>
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<td></td>
<td>Request by DOT and National Treasury to review operation plan from IRPTN to IPTN (95 per cent complete)</td>
</tr>
</tbody>
</table>
9.36. **Table 22** above shows the extent of progress in IRPTN implementation in the other cities, namely; eThekwini, Polokwane, Msunduzi, Mangaung, Rustenburg, Mbombela and Buffalo City. As can be seen from the table, only eThekwini, Polokwane, Mbombela and Mangaung are expected to launch the first phase of their IRPTN in 2019. The reasons for delay and the slow pace of implementation of IRPTN vary between each city, however broadly; but resistance from minibus taxi operators, lack of planning capacity (especially in smaller cities), and higher operating costs and lower income fares (than had been forecast) have been cited as the most prominent reasons. These will be discussed in the section below.

**BRT as a transformation tool through bus operating companies or vehicle operating companies (BOC/VOC) 12-year contracts**

**Overview of transformation objectives of BRT/IRPTN**

9.37. The successful implementation of the BRT system requires that the existing modes of public transport rendering services on the affected route or corridor be removed, and replaced with the new mode of transport. The City of Tshwane refers to this as the industry transition:

“The main purpose of the Industry Transition within the implementation of the A Re Yeng system is to facilitate a procedure for public transport services on corridors that are already served by other road-based public passenger transport operators (buses and minibus-taxis), to be replaced by the A Re Yeng services. The CoT is therefore seeking to replace affected bus and taxi services with the new A Re Yeng services.” ...

“The viability of the A Re Yeng service is largely dependent on the sufficient number of people utilising the service. In order for the service to be effective, the business model requires that a large portion of the existing bus and taxi public transport services on the routes affected by A Re Yeng be directly replaced by the A Re Yeng services. In order for this to be achieved, some of the existing bus and taxi operations on these routes will need to cease operating and be removed completely from the corridors.”

9.38. The implementation of the BRT system requires the elimination of any form of competition on the targeted routes, as this may affect the viability of the system. To achieve this, the operators on the affected modes of public transport (minibus taxis and commuter buses) are invited to form a single entity, which would then take over the affected routes, under the auspices of the IRPTN/BRT system. Thus, by its nature the implementation of IRPTN/BRT results in the elimination of both intramodal and intermodal competition on the affected routes. It is, however, important to highlight that the effective operation of the system is reliant on the other modes playing a feeder role.

9.39. Another important component and objective behind the introduction of the IRPTN/BRT system is succinctly described in the City of Tshwane’s strategic documents:

“One of the key objectives of the plan is to transform and empower the taxi industry through their involvement in owning and operating the TRT [Tshwane Rapid Transport].” (own emphasis added)

9.40. Kidrogen, a VOC in the City of Cape Town, corroborated the fact that the intention behind IRPTN/BRT was to transform the taxi industry. Mr Peter gives this account:

“BRT is the result of the national transport integrated plan, with two major objectives. One, to transform the industry. For example, in the Western Cape, especially in the City of Cape Town, there is only one bus company. It is Golden Arrow, and now how you change that is to introduce the BRT system, at least to dilute them, and secondly is to bring the taxi industry to the main stream.”

9.41. It appears it was envisaged that the implementation of the BRT system would be undertaken in such a way that the taxi industry is both empowered...
and transformed. Most importantly, it appears that it was also envisaged that the taxi industry would have ownership and operational control of the BRT system, once implemented.

9.42. Based on the evidence obtained by the Commission, it appears that the current 12-year contract BOC/VOC model, whereby operators that opt to be part of the BRT system are required to conclude 12 year contracts, is at odds with the key components and objectives of the BRT system described above. The Commission notes that the design of this model is based on Section 41 of the NLTA, which states:

“(1) Contracting authorities may enter into negotiated contracts with operators in their areas, once only, with a view to –

(a) integrating services forming part of integrated public transport networks in terms of their integrated transport plans;

(b) promoting the economic empowerment of small business or of persons previously disadvantaged by unfair discrimination; or

(c) facilitating the restructuring of a parastatal or municipal transport operator to discourage monopolies.”

(3) “A negotiated contract contemplated in Subsection (1) or (2) shall be for a period of no longer than 12 years.”

Experiences of current BOCs/VOCs

9.43. In the case of City of Johannesburg, the process of forming a BOC was facilitated by the city in agreement with affected operators who, once they relinquished their vehicles and operating licences, then acquired shares and became shareholders in the BOC.614 The Rea Vaya model also has Taxi Operating Investment Companies (TOICs) which hold shares in the BOC.615 The basis of the establishment of TOICs was as a result of the old Companies Act, which did not permit private companies to have more than ten shareholders, and TOICs were thus set up to invest in the BOCs.616 The BOCs then entered into a negotiated contract, in terms of Section 41 of the NLTA, to own and operate the buses in terms of requirements set out in a Bus Operating Contract Agreement (BOCA). Piotrans, which operates Phase 1A of Rea Vaya, has nine TOICS with over 300 shareholders (all former taxi operators).617

9.44. The experience of Piotrans, in its eighth year of existence,618 shows mixed results in terms of transformation and overall performance. While the BOC owns the buses, it does not determine fares. Furthermore, after 8 years, the BOC has not been able to declare dividends.619 As a result, shareholders of the BOC remain uncertain about their future, once the contract comes to an end.620 The City of Johannesburg has also indicated that it is not satisfied with the BOCs’ (both Piortrans and Litsamaiso) performance.621 In addition, it has been submitted that the Rea Vaya BOCs have been plagued by issues ranging from infighting, mismanagement and lack of governance.622 This is likely to have a bearing when the contract is put out to tender after 12 years, as it seems unlikely that the BOCs will be successful given all the challenges encountered thus far. If Piotrans is unsuccessful in its bid, it is likely that some people will be left unemployed, and most likely unable to re-enter the minibus taxi industry.

9.45. A similar situation is faced in George and Cape Town, where former taxi operators are uncertain of their future after the contracts have expired. The Western Cape Minibus Taxi Task Team gave this account:

“You take a black minibus taxi operator that had an indefinite operating licence. Then you put him on a 12-year contract. Then you expect that person to compete, at the end of the 12 years, with a bus company that has been in business for 150 years….. Now this becomes an issue and I can tell you in

615 Ibid.
616 Ibid.
618 The contract was effective in 2011.
620 Ibid. Page 140.
622 Ibid.
9.46. VOCs in the Western Cape have expressed concerns about the uncertainty of the 12-year contracts, and have indicated that before they act, they will wait to see what occurs in Johannesburg with respect to the expiry of contracts.

9.47. VOCs (former minibus taxi operators in particular) in the City of Cape Town have criticised the manner in which MyCiTi has been implemented and rolled out. They are of the view that BRT is anti-transformation because the involvement of the minibus taxi industry has been limited they are merely operating the system, but they do not own the vehicles. Neither do they benefit from the value chain, nor are they involved in or informed about fare and revenue collection. The former minibus taxi operators object to the manner in which an incumbent bus operator, Golden Arrow Bus Services, continues to benefit both from the provincial bus contract, as well as an affected operator in the IRPTN.

9.48. In George, former and current minibus taxi operators are of the view that the industry is on the brink of extinction. Those that chose to opt into the system have expressed that they are worse off since joining the Go George. On the other hand, those that chose not to opt in, are either unemployed or operating illegally.

9.49. In contrast, former taxi operators in the City of Tshwane’s VOC submitted that they have benefitted from some value chain opportunities, such as station management. The City of Johannesburg also submitted that former taxi drivers who became bus drivers through the BOC are better off, as they now receive benefits such as a steady income, medical aid and provident fund.

9.50. According to the DOT, the affected taxi operators are only entitled to compensation for business rights (goodwill) on routes they service. The DOT further submits that it is the condition of the PTISG/PTNG that affected taxi operators only benefit from compensation for business rights, and not from value chain opportunities.

Conclusion on BOC/VOC contracts

9.51. While the BRT system has assisted in the formalisation of the taxi industry (through the formation of VOCs/BOCs), the 12-year contract BOC/VOC model is likely to lead to the disempowerment of the taxi industry. This is because when the 12-year term of each contract lapses, the operators that are shareholders in the affected VOC/BOC are likely to be forced to exit the market, if their VOC/BOC is not the successful bidder when the contract is put out to tender. In turn, this is likely to have negative effects on the transformation and empowerment of the taxi industry, mainly because a significant number of taxi operators belong to VOCs/BOCs (on the affected routes).

9.52. As a practical illustration, Piotrans, which operates Phase 1A of Rea Vaya, has over 300 shareholders (all former taxi operators). In the event Piotrans loses the bid/s for Phase 1A of Rea Vaya when its 12-year contract lapses, the entity may be forced to shut down, thereby affecting over 300 former taxi operators. In Pretoria, the BOC that operates the CBD to Hatfield route consists of more than 270 shareholders, who are also former taxi operators. In the event this BOC loses the bid when its contract lapses, it may be forced to close.

9.53. As demonstrated above, attempts to foster competition, on routes where VOCs/BOCs have been formed, may have the undesirable and unintended consequences of removing a substantial number of former taxi operators from the market. In turn, this would undermine government’s quest to
empower and transform the minibus taxi industry through the VOC/BOC model.

**Impact of BRT/IRPTN on competition**

9.54. This section assesses the impact of BRT/IRPTN on intramodal competition in the bus industry.

*Competition between subsidised buses (Gautrain buses, provincial/municipal buses, BRT buses and privately-owned subsidy buses)*

9.55. There is a common understanding among industry participants that government’s public transport strategy, in support of transport integration, seeks to eliminate any form of competition between provincial/municipal buses, BRT/IRPTN buses, Gautrain buses, and privately-owned subsidised buses. The City of Johannesburg explained that there is no significant competition between different bus modes.631 The city, guided by the Integrated Transport Network, has ensured that Metrobus and Rea Vaya do not compete with each other, nor is there competition between the provincial subsidised bus contracts (held by PUTCO) and the city routes. However, the City of Johannesburg has pointed out that there could be potential overlap with Gautrain bus routes. Nonetheless, owing to the differences in destination and fares between Gautrain and Metrobus / Rea Vaya, competition remains very limited.632

9.56. In order to achieve this goal, the relevant regulatory entities allocate routes and schedules to various subsidised bus operators, in such a way that there is no competition at all between these operators (or there is very minimal competition, if any). To give an illustrative example, PUTCO faces no intramodal competition from other subsidised bus operations, in the majority of its 1 860 designated routes. It only faces competition from BRT services (Rea Vaya) on some of the Rea Vaya Phase1B routes, which would have ordinarily been allocated to Rea Vaya. According to PUTCO, there has not been a complete allocation of these routes to Rea Vaya, because of a lack of adequate funding. Consequently, Rea Vaya has limited capacity on these routes, and its services must be complemented by PUCTO’s operations and minibus taxi operators. PUTCO submits that Rea Vaya has a competitive advantage on these routes, for the following reasons:

9.56.1. BRT services are a gross cost contract,633 where the operator does not carry the revenue risk, as other subsidised bus operators (PTOG) do on net cost contracts;

9.56.2. The rate per kilometre paid to the BRT services is multiple times higher than the rate per kilometre for most PTOG contracts;

9.56.3. The BRT services perform only the operating of the bus. All other functions are outsourced to other service providers – for example, ticket selling, security and bus maintenance. The PTOG services are required to perform these services themselves, for a lower subsidy rate; and

9.56.4. The BRT buses operate on dedicated bus lanes with priority signalling, while PTOG services operate in mixed traffic affected by congestion and time delays. PTOG services are penalised for late arrivals.

9.57. In furtherance of the objective to attain an environment that lacks intramodal competition, the George Municipality bought out the only local private bus operator, Louis Transport, when it introduced its Integrated Public Transport Network. Consequently, there is no intramodal competition at all between bus operations in George.

9.58. In Cape Town, MyCiTi buses, which are part of Cape Town’s IRPTN, are not intended to compete with Golden Arrow buses on its designated routes. The City of Cape Town sees these two operations as designed to be complementary.634 However, the City notes that there has to be competition for future contracts relating to the next phases of MyCiTi, and for the existing phase of MyCiTi (Phase 1) when the current contracts with the appointed companies expire after 12 years.

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632 City of Johannesburg submission dated September 2017.

633 On these contracts, the operator carries the production risk, but the revenue risk is carried by the authority. SABOA – oral submission by Mr Walters, Gauteng hearings, dated 06 June 2018. Page 97

634 City of Cape Town TDA – submission dated 10 November 2017.
9.59. Gautrain submits that its bus operations are not meant to compete with other commuter bus operations, but are intended to provide services that collect and distribute the users of the Gautrain to and from stations – as part of origin to destination journey. This is despite the fact that some of the Gautrain bus stops coincide with bus stops for operations such as Metrobus and BRT, and are within close proximity of such. Instead, the Gautrain bus operation is meant to be part of an integrated transport system which encompasses other modes of public transport, including commuter buses.\(^{635}\)

9.60. In conclusion, there is no intramodal competition between or among subsidised buses (Gautrain buses, provincial/ municipal buses, BRT buses).

Challenges with current BRT/IRPTN model

9.61. This section identifies and discusses the major challenges and inefficiencies that have been observed in cities where BRT/IRPTN has been implemented. In addition to inefficiencies, allegations of corruption have been cited as one of the major challenges affecting the successful rollout of the IRPTN, in some cities.\(^{636}\) The inefficiencies that have been identified with the current BRT/IRPTN model are: (i) lack of clear framework for BRT/IRPTN implementation; (ii) increasing under-recovery of revenue, leading to increasing subsidies; (iii) low ridership due to poor selection of routes; (iv) unnecessary (uneconomic) infrastructure rollout; (v) lack of capacity and mismanagement of the BOC/VOCs and (vi) the coexistence of both BRT/IRPTN and municipal bus services. These are discussed below.

Lack of clear framework for BRT implementation

9.62. The lack of a clear framework for the implementation of BRT/IRPTN has been cited as one of the reasons for the inefficiencies encountered by municipalities.\(^{637}\) This is despite the fact that the Public Transport Action Plan had proposed that all IRPTN Phase 1 implementation be comprised of a standard basic package that can be adapted for local, city, and district conditions.\(^{638}\) However, it appears that municipalities have individually implemented their own BRT/IRPTN systems, without any kind of standardised framework. For example, some cities have constructed new roads (eThekwini), while others have used existing infrastructure (George). On the other hand, some municipalities have, at least in the initial phase, followed the model of Cape Town and Johannesburg.\(^{639}\) In rebuttal, the DOT submitted that, together with National Treasury, it has been careful to require municipalities to develop and operate systems that are suitable to the level of income that cities can generate and support through their property rates income.\(^{640}\)

9.63. In addition, a lack of requisite skills and expertise in transport planning has been identified as one of the major challenges experienced by municipalities in BRT/IRPTN implementation.\(^{641}\) This is made worse by the fact that the many municipalities do not view public transport as a priority, and do not make the necessary budgetary provision for it.\(^{642}\) In Limpopo for example, the province has had to use its own budget; to assist municipalities to contract and consult in the development of ITPs.\(^{643}\) In order to assist City of Mbombela with its IPTN, the province forms part of the Steering Committee meetings, and provides the municipality with information and support.\(^{644}\) These challenges are indeed consistent with the observations made by the Commission (see Chapter 4).

9.64. Furthermore, the legislation places the responsibility of allocating PTNG funds on the transferring officer, in this case the DOT, to municipalities –

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635 Submission by Gautrain dated 24 August 2017, read with a document titled ‘Gautrain – Our Journey to a better Gauteng’.
once it is satisfied that all conditions have been met.\footnote{The National Treasury. 2018. Division of Revenue Bill (Bill No. 2 of 2018). Page 227-230.} It therefore appears that the DOT has allocated funds to municipalities despite a lack of dedicated personnel, and sometimes proper and detailed integrated transport plans conducted, to justify BRT/IRPTN.

**High and increasing operating costs**

9.65. The IRPTN/BRT system is expensive to operate, and the costs of running this system continue to escalate. The BRT systems experience low ridership and low fare collection, and national government would have to continue providing conditional grants to support these systems.

9.66. Municipalities, the DOT and the National Treasury underestimated the costs, and overestimated the ridership levels, of IRPTN/BRT systems.\footnote{Van Ryneveld P. Op cit. Page 166-167.} When the idea for the IRPTN/BRT was initially sold to cities, it was premised on the projection that all the operating costs would be covered by passenger fares, and government would mainly focus on funding the infrastructure costs.\footnote{The National Treasury. Oral submission by Ms Britton, Gauteng hearings, Commission’s offices. 10 October 2018. Page 18; Golden Arrow Bus Service. Oral submission by Mr Meyer, Western Cape hearings. 19 June 2018. Page 84. Von der Heyden et al. 2015. “Financing IRPTN operations: considerations for cities implementing I(R)PTNs in South Africa”. 2015 Southern African Transport Conference, Pretoria.} For Rea Vaya, fare revenue as a percentage of direct vehicle operating costs is currently at 35 per cent.\footnote{Golden Arrow Bus Service. Op cit. Page 84.} City of Johannesburg identified the reasons for high costs of implementing BRT as: stations included in the middle of the road, expensive fare collection system, use of imported goods, and extra security to protect the infrastructure.\footnote{City of Johannesburg. 2006. Rea Vaya scoping study November 2006. Page 14.}

9.67. National Treasury submits that, in the first few years of the IRPTN in the City of Cape Town, ridership came in at about 50 per cent less than what had been projected.\footnote{Golden Arrow Bus Services, one of the affected operators of the MyCiTi, indicated that the costs of operating the IRPTN in the City of Cape Town far outweighed the benefits, and require high levels of subsidy to be sustained.\footnote{The National Treasury. 2018. Oral submission by Ms Britton, Gauteng hearings, Commission’s offices. 10 October 2018. Page 45.} Golden Arrow further submits that the IRPTN/BRT is six times more expensive to operate, and less efficient than, a conventional bus system.\footnote{Engineering News. 2018. http://www.engineeringnews.co.za/article/no-longer-flavour-of-the-month-sa-rethinks-its-bus-rapid-transit-systems-2018-07-27-1rep_id:4136 (Accessed 26 October 2018).} Golden Arrow attributes this to the low population density experienced in South African cities, compared to their South American counterparts – which have thirteen times the population density.\footnote{Golden Arrow Bus Service. Op cit. Page 73.}

9.68. In the City of Tshwane, for the 2017/18 financial year, the operating costs amounted to R311 million, while the city only collected just R16.3 million in fare revenue.\footnote{The National Treasury. 2018. Oral submission by Ms Britton, Gauteng hearings, Commission’s offices. 10 October 2018. Page 18.} One of the reasons for the high costs of the City of Tshwane’s BRT is that, in its planning, it designed its entire system to cover for a twelve year period. This means that all costs of running the whole system (and not just the phases that have been implemented) such as automated fare collection systems, station management, and maintenance of buses – have already been accounted for, and the city is incurring these costs. As a result, the City of Tshwane is currently operating less than 20 per cent of the A Re Yeng system, yet it is sustaining the costs of the entire system.\footnote{Golden Arrow Bus Service. Op cit. Page 62.}

9.69. National Treasury submits that the City of Tshwane implemented the A Re Yeng BRT system in a rushed and costly manner. Tshwane started the service in December 2015, from Hatfield into Pretoria; however, it was not ready. The planning framework had deficiencies.\footnote{Ibid. Page 62.} The DOT has also expressed concerns regarding the City of Tshwane’s rush to implement the system, given the low projected ridership of 8 000 passengers a day.\footnote{City of Tshwane. 2018. Oral submission by Mr Letlonkane, Gauteng hearings, Commission’s offices.10 October 2018. Page 129.}
9.70. Corruption has also been cited as a major contributing factor leading to high costs of IRPTN/BRT. In Nelson Mandela Bay, for example, contracts amounting to R3 billion are reported to have been concluded towards IPTS related projects, between 2011 and 2015.\(^658\) It is stated that for many of these projects, funds were not utilised solely for what was stipulated by the law, or funds were spent on services not rendered.\(^659\)

Wrong choice of corridors

9.71. Another inefficiency that has been identified with the current BRT system in South Africa is the choice of corridors or routes that municipalities identified as part of the first phase of BRT rollout.

9.72. In the City of Johannesburg, the first phase of the Rea Vaya was along the Soweto Highway, from Soweto (Orlando and Diepkloof) passing by the FNB Stadium, towards the CBD. The City of Johannesburg acknowledges that the choice of this particular route was highly influenced by the 2010 FIFA World Cup and, with the benefit of hindsight, it was the wrong route to launch a BRT line — because there is an insufficient amount of passengers on the route to justify the investment.\(^660\) City of Johannesburg erred in its choice of route, as the ideal route would be Jo’burg CBD, up along Louis Botha Avenue, then past Alexandra to Sandton. This latter route has provision for seat renewal (passengers disembark, and others embark along the route).\(^661\)

9.73. A similar example can be found in the City of Tshwane, which prioritised the Hatfield to CBD route as its starter service; in the hopes of, “generating interest and to start to facilitate and capture the market”.\(^662\) At the time, the City of Tshwane hoped it would be able to capture the student market, and create awareness for the system. In reality, however, the city found that the route had too few passenger numbers. The poor performance associated with this route is attributed to A Re Yeng operating in direct competition with the Menlyn Taxi Association, Elardus Park and the Pretoria Station Taxi Association.\(^663\) City of Tshwane prioritised the Hatfield-CBD route at the expense of the underserviced townships, such as Soshangwe and Mamelodi, which were originally earmarked to be part of phase 1 implementation.\(^664\) These are the areas that can bring in the sufficient numbers.\(^665\)

Uneconomic infrastructure roll out

9.74. In some cities, a lot of money has been dedicated towards expensive infrastructure development that could have otherwise been avoided. One such example is Rustenburg, which has opted for a system which is described as a rapid transport integrated public transport network that includes a BRT component, as well as other services.\(^666\) This system comprises segregated (dedicated) bus lanes, closed bus stations and non-motorised transport lanes. The municipality has also constructed new lanes on the main corridors in its plans to implement the IRPTN. Such a system upgrade for Rustenburg, which only has 650 000 residents, an ailing economy and a high level of motorisation, is a costly and inefficient use of financial resources. Instead, it may have been more cost effective to use existing infrastructure and eliminate spending on bus stations and dedicated bus lanes, as instructed by the DOT.

9.75. Msunduzi Municipality has gone out to tender for the construction of a new road, specifically for Phase 1A of the IPTN.\(^667\) As part of this new construction, the municipality has split the contract of 4-kilometre road construction and has appointed four contractors to each construct 1 kilometre. This is inefficient as the municipality could have appointed one contractor and benefited from economies of scale.

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\(^660\) City of Johannesburg. Oral submission by Ms Seftel, Gauteng hearings, Commission’s offices. 3 October 2018. Page 17.


\(^663\) Ibid. Page 113.

\(^664\) Ibid. Page 109-110.


\(^667\) Msunduzi Municipality. 2018. Presentation by Ms Mngenela Gauteng hearings, Commission’s offices. 5 October 2018.
Lack of capacity and mismanagement of BOC/VOC

9.76. Lack of capacity, skills and mismanagement of the BOC/VOCs is another inefficiency that has been observed by the Commission with the current BRT/IRPTN implementation. These observations are aligned to the challenges and lessons learned from the establishment of VOCs which were highlighted in the DOT’s National Taxi Legotla 2020 Discussion Document. The document cites labour relations, governance and operations as the major challenges facing VOCs. Being the first to implement the new system, the Rea Vaya BOCs have experienced instances of conflict and instability at board and management level. This is mainly attributed to the lack of experience in corporate governance. Most recently, in Nelson Mandela Bay, board members of the VOC are alleged to have been interfering in the operations of the IPTS, leading to disruptions of the system.

9.77. According to the City of Cape Town, as part of its capacity building initiatives, the City has invested between R40 million and R50 million towards the N2 Express Joint Venture, to develop a capacitation strategy that will expose the affected operators to corporate governance and company law training.

Coexistence of BRT/IRPTN and municipal bus services

9.78. As mentioned, government’s public transport strategy seeks to eliminate any form of competition between municipal buses, BRT/IRPTN buses and other types of buses. This is done so that efficiencies may be realised. Presently the cities of Tshwane, Johannesburg and Ekurhuleni are serviced by both municipal and BRT/IRPTN bus services. While the routes serviced by BRT/IRPTN and municipal buses do not necessarily overlap, there appears to be a duplication of infrastructure (i.e. depots) leading to inefficiencies. For example, the City of Tshwane is serviced by both Tshwane Bus Service and A Re Yeng – however these services are operated by different entities, with each having its own infrastructure within the same municipality. The City of Tshwane owns and operates Tshwane Bus Service, and the BOC is contracted by the city to operate A Re Yeng. In the spirit of fostering integration and minimising costs, these services ought to be integrated much more. A detailed discussion on transport integration is provided in Chapter 4.

Suitability in small cities

9.79. Given the challenges of the BRT/IRPTN in major cities, the Commission sought to explore if BRT/IRPTN is suitable for smaller cities, in light of the characteristics highlighted above which have made BRT/IRPTN successful, and the challenges experienced in large cities. According to the City of Johannesburg, BRT/IRPTN is not suitable for all the cities that have been identified in the Public Transport Strategy. The reasons include limited passenger numbers, and the availability of funds from National Government that encouraged cities to implement BRT/IRPTN without identifying the need for the service adequately.

9.80. SANTACO Limpopo submits that Polokwane will not be able to sustain and maintain an IRPTN, as there are too few passengers on the Seshego-Polokwane route to justify the level of spending required to implement and operate the system. The economic challenges (high unemployment) faced by the city mean that the system in Polokwane will be heavily reliant on subsidies. This view is supported by SABOA, which states that the ideal BRT/IRPTN system requires high volumes of passenger traffic throughout the day, to ensure the financial viability of the system. SABOA cautions that very few cities in South Africa, both small and large, have high density routes that warrant a BRT/IRPTN system, due to the lack of sustainable high volume passenger movements throughout the day. This is attributed to urban sprawl (low density

671 City of Cape Town TDA. 2018. Oral submission by Mr Bosch, Western Cape public hearings. 21 June 2018. Page 64.
urban development, lack of densification along main transport corridors, and the long commuting distances found in South Africa due to the legacy of apartheid spatial planning.\textsuperscript{676}

9.81. The City of Mbombela, with a population of about 695 000 (2016),\textsuperscript{677} is also earmarked to implement an IPTN, despite operating one of the most efficient provincially contracted bus systems in the country.\textsuperscript{678} Buscor in Mbombela, currently services 80 per cent of the commuters in the municipality and its surrounds, with the minibus taxi industry accounting for the remaining 20 per cent.\textsuperscript{679} National Treasury indicates that about 90 per cent of Mbombela’s IRPTN is planned on the existing Buscor services that are being provided. It appears that this municipality does not require another bus service, and that the implementation of the IRPTN will result in a massive duplication of services, and wasteful expenditure.\textsuperscript{680} A similar case can be made for Mangaung, where the IRPTN is set to be implemented on already existing and serviced routes.\textsuperscript{681} With the provinces having more expertise (or the ability to recruit experienced personnel) in the provision of public transport, and experience in managing bus contracting, they appear to be in better position to identify the most suitable corridors or underserviced areas for IRPTN rollout.

9.82. Msunduzi Municipality will also be implementing an IRPTN system, citing congestion on the city’s main routes as the major contributing factor.\textsuperscript{682} Msunduzi was selected for IRPTN implementation based on a scoping study that was conducted in 2008, which showed that there was high demand for public transport in the municipality.\textsuperscript{683} Msunduzi has planned to implement Phase 1A (Edendale to CBD) on routes where there are currently 504 minibus taxis that are already ferrying commuters.\textsuperscript{684}

9.83. The discussion above indicates that many of the smaller cities did not conduct feasibility studies to identify the need for an IRPTN system in their respective municipalities. This is especially worrying where some IRPTNs are set to be implemented on routes where there are existing public transport providers. This is likely to result in duplication of services and inefficiencies, as experienced by the City of Johannesburg, City of Tshwane and City of Cape Town.

Views of DOT on inefficiencies identified by the Commission

9.84. The DOT has expressed a view that some of the inefficiencies identified by the Commission (experienced in the implementation of BRT in Johannesburg, Tshwane and Cape Town) are not because of BRT as a model, but are attributable to factors such as capacity, mismanagement and corruption.\textsuperscript{685} According to the DOT, these inefficiencies would continue to exist if these challenges were not addressed.

9.85. Furthermore, the DOT submits that, in recent years, selected cities have been required to implement a transformed BRT model which consists of downscaling of infrastructure, targeting high volume corridors, and adopting a hybrid model.\textsuperscript{686}

Findings

9.86. The Commission finds that the IRPTN system in its current format has led to several inefficiencies, due to the adoption of the Bogotá model without adequately taking into consideration the local dynamics within the cities. The high passenger volumes throughout the city of Bogotá mean that the system is less reliant on operational subsidies and can sustain itself through fare collection.\textsuperscript{687} This is the opposite case in South Africa, where
the legacy of apartheid still plays itself out in the provision of public transport. South Africa, unlike Colombia, lacks high density routes, has low passenger volume periods, and a continued use of minibus taxis as the predominant and preferred mode of transport by commuters. In some cities, it is evident that no feasibility studies or needs assessments were conducted to justify the implementation of the system. The IRPTN system is therefore not the most suitable model to address South Africa’s public transport challenges.

9.87. The Commission finds that the coexistence of municipal bus services and BRT/IRPTN in certain cities has led to inefficiencies, in the form of duplicated infrastructure. In order to promote integration and minimise costs, these services should be rationalised and consolidated under one entity.

9.88. The Commission finds, given the challenges and inefficiencies already experienced by Johannesburg, Cape Town and Tshwane, that the IRPTN system in its current format is not suitable for smaller cities – as they are likely to encounter similar challenges – of low passenger numbers and an over reliance on subsidies to sustain the system. George is an example of a city that does not have a fully-fledged IRPTN system, but whose network operates cost-effectively.

9.89. The Commission finds that the DOT has not fully complied with the conditions entailed in the Division of Revenue Act, which specifies that allocations should only be made to those municipalities who adhere to the conditions of the PTNG. In addition, the DORA stipulates that municipalities should demonstrate sufficient capacity to implement and operate IRPTNs. The Commission finds that some municipalities did not in fact satisfy all the conditions and should not have had funds transferred to them by the DOT. The Commission further finds that in some municipalities IRPTNs, and in fact public transport in general, is not prioritised. As a result, provinces often intervene by providing support – and in some cases even allocate budget towards the development of ITPs. Provinces appear to be better placed to manage the rollout of IRPTNs, as they would have knowledge of the appropriate corridors and/or underserviced areas that justify the implementation of the system.

9.90. The Commission finds that the IRPTN has not resulted in the empowerment and transformation of the minibus taxi industry. This is especially worrying where 12-year contracts have been put in place, for those operators who have opted into the system. It is unclear what will happen to these operators, post expiry of these contracts. The Commission finds that the BOC/VOC contracts are likely to lead to job losses, where former taxi operators are unlikely to successfully tender for new contracts – as they have not been sufficiently empowered to operate existing IRPTNs.

Provisional Recommendations

9.91. The Commission recommended the following, with respect to BRT/IRPTN implementation:

9.91.1. The provincial transport authority, once established and capacitated, with guidance from the DOT and the National Treasury, should do a complete review of the BRT/IRPTN model considering the following:

9.91.1.1. long-term fiscal and financial sustainability;
9.91.1.2. suitability of the model in smaller cities; and
9.91.1.3. inclusion and participation of the minibus taxi industry.

9.91.2. In the interim, municipal bus services and BRT/IRPTN should be rationalised and consolidated under one entity. Once established and capacitated, these services should be contracted by the provincial transport authority.

9.91.3. The DOT should enhance its monitoring capability and capacity, to ensure that it complies with the Division of Revenue Act by undertaking necessary due diligence or readiness studies, before transferring funds to the cities for BRT/IRPTN.

9.91.4. The DOT should consider reviewing the 12-year BOC/VOC model, or undertake a study to evaluate if this model promotes transformation and empowerment. Once established and capacitated, the BOC/VOC should be operated through the provincial transport authority.
Stakeholder Submissions to Provisional Recommendations

Review of BRT/IRPTN model

9.92. The Commission recommended that the provincial transport authority once established and capacitated, with guidance from the DOT and the National Treasury, should do a complete review of the BRT/IRPTN model.

9.93. Western Cape Department of Transport and Public Works, Rustenburg Local Municipality, City of Cape Town, Taxinomics and Dr Vaughn Mostert were in favour of this recommendation. It should also be noted that this recommendation has partly been achieved as National Treasury in the February 2020 budget speech suspended funding for BRT/IRPTN in Buffalo City, Mbombela and Msunduzi municipalities.

Review of 12-year BOC/VOC model

9.94. The Commission recommended that the DOT should consider reviewing the 12-year BOC/VOC model or undertake a study to evaluate if this model promotes transformation and empowerment.

9.95. This recommendation was supported by Taxinomics. The DOT did not agree nor disagree with this recommendation but submitted that this recommendation will require changes to the NLTA and that transformation requires economic interventions rather than purely transport responses.

Commission’s Response

Review of BRT/IRPTN model

9.96. This recommendation has partly been achieved as National Treasury in the February 2020 budget speech suspended funding for BRT/IRPTN in Buffalo City, Mbombela and Msunduzi municipalities. The Commission is of the view that this recommendation should remain unchanged to enable government to review the system in all cities.

Review of 12-year BOC/VOC model

9.97. Having considered the submissions to this recommendation, the Commission considered several options such as the extension of the contracts by a further 3 to 4 years or an indefinite contract extension. After careful consideration, the Commission decided to keep the recommendation unchanged.

Final Recommendations

9.98. The DOT and National Treasury should undertake a complete review of the BRT/IRPTN model considering the following:

9.98.1. long-term fiscal and financial sustainability;

9.98.2. suitability of the model in smaller cities; and

9.98.3. inclusion and participation of the minibus taxi industry.

9.99. Municipal bus services and BRT/IRPTN should be rationalised and consolidated under one entity.

9.100. The DOT should enhance its monitoring capability and capacity, to ensure that it complies with the Division of Revenue Act by undertaking necessary due diligence or readiness studies, before transferring funds to the cities for BRT/IRPTN.

9.101. The DOT should consider reviewing the 12-year BOC/VOC model, or undertake a study to evaluate if this model promotes transformation and empowerment.
10. Introduction

10.1. This chapter provides an overview of the minibus taxi industry. The chapter begins by providing a discussion of the evolution of the industry, and then outlining the regulatory framework that governs the minibus taxi industry. A discussion on price determination and the challenges faced by operators in the industry follows. The chapter concludes by making findings and recommendations.

The evolution of the taxi industry

10.2. The apartheid laws fostered racial segregation, and Africans resided in areas far from the commercial and industrial centres of all South African cities. This spatial planning led to several challenges in the bus and rail public transport systems. Buses and rail began to operate at peak times only, and routes became less flexible. There was a noticeable increase in the kombi operators, to cater for increasing transport needs which the subsidised operators could not satisfy. These operators did not have carrier permits and operated illegally in the beginning.

10.3. The apartheid government was initially opposed to legalising the minibus taxi industry, until the events in Soweto in June 1976. The strength of this protest undoubtedly shook government, and from 1977 onwards government embarked on a policy of ‘upliftment’. One of the ‘concessions’ made was an agreement between government and the newly formed SA Black Taxi Association (SABTA), to allow taxi permits to specify up to eight seats, and thus to legalise the kombi. This agreement was incorporated into the Road Transportation Act.

10.4. The minibus taxi industry was officially recognised with the passing of the Road Transportation Act. The growth and success of taxi usage resulted in conflicts between bus companies and minibus taxi operators. This led to the Welgemoed Commission of inquiry in 1981. The Welgemoed Commission recommended that the competition from the minibus taxi industry must be gradually eliminated. Following the Welgemoed Commission recommendations, the National Transport Policy Study (NTPS) was established in 1982.

10.5. The NTPS recommended that 16-seater vehicles should be allowed to operate as minibus taxis, and that the local authorities should set quotas and restrict new permits, as opposed to the Welgemoed Commission recommendations. The system of setting quotas was vehemently opposed by the Competition Board established in 1985, advocating for a totally unregulated industry instead. This led to the tabling of the White Paper on Transport Policy in January 1987, and the establishment of the Transport Deregulation Act, 1988 (Act No. 80 of 1988). The 1987 White Paper, in conjunction with the Transport Deregulation Act of 1988, effectively deregulated the minibus taxi industry.

10.6. The deregulation paved the way and marked the beginning of the taxi industry as we know it today. The deregulation of the public transport industry also allowed market dynamics to determine the entry of operators in the industry. It also suggested that almost all applicants be granted permits to operate minibus taxis. The minibus taxi market grew exponentially and became overtraded. Overtrading by minibus taxis drastically eroded the market share of the other modes of transport (i.e. buses and trains). Minibus taxis were (and still are) favoured due to their flexibility (rapid response to market conditions), and availability and easily accessible to commuters. Key concerns are related to high fares and safety.

10.7. In post-apartheid South Africa, the minibus taxi industry became a major player in the public transport industry, and government attempted to formalise the industry. The minibus taxi industry has remained relatively informal (individual businesses) and as a result, information on its size is difficult to establish with accuracy. However, it is estimated that there are approximately 200 000 to 250 000 minibus taxis operating in South Africa. NTA submitted that the taxi industry generates at least R 100 billion per annum. These vehicles travel approximately 19 billion kilometres a year, and the most commonly used models are the Toyota Quantum Ses’fikile, followed by Nissan Impendulo. Most of these vehicles have a carting capacity of between 13 to 16 passengers.
Key role players in the minibus taxi industry

10.8. This section provides a brief description of role players in the taxi value chain. As highlighted in Chapter 3, regulators such as PREs and local government (planning authorities) play a key role in the public transport industry. Provincial Regulatory Entities’ (PREs) main function is to receive and decide on operating licence applications. On the other hand, planning authorities are responsible for issuing directives to the PREs; whether to grant, renew, amend or transfer operating licences.

10.9. The Department of Labour publishes a sectorial determination for the taxi industry, in terms of the Basic Conditions of Employment Act. The sectorial determination outlines minimum wages, maximum hours of work and minimum rest periods, and (paid) annual, sick and paternity/maternity leave. Since its publication in 2005, the determination has been regularly updated, to change the minimum wage.

10.10. In addition to the regulators discussed above, taxi associations, financiers and manufacturers play a significant role in the minibus taxi industry. The role of each key stakeholder is discussed below.

Taxi associations

10.11. There are two main umbrella bodies representing minibus taxi operators in South Africa, namely South African National Taxi Council (SANTACO) and the National Taxi Alliance (NTA). Both SANTACO and NTA operate at a national level, supported by provincial and regional structures, up to local taxi association level. SANTACO has over 123 000 individual taxi operators. Each local association of SANTACO has a minimum of 30 members, and collectively has 956 minibus local taxi associations. There are 1 200 local associations affiliated with NTA, with 70 000 individual members, and the numbers of vehicles that each association owns collectively ranges from 30 to 2 000.

10.12. The role of local taxi associations includes providing a letter of support, required by the PRE in processing operating licences. Membership fees are required to join a local taxi association, and in some instances these fees are prohibitive. These fees cover, among others, funeral contributions for members, and salary of queue marshals. The payable fees to become a member of an association vary from R10 000, and can be anything up to R200 000 and more.

Manufacturers

10.13. The minibus taxi market is dominated by Toyota, under the Ses’fikile brand. The Ses’fikile brand has been produced locally since July 2012. The second largest manufacturer of minibus taxis is Nissan, under its Impendulo brand, followed by Mercedes-Benz Sprinter, and then the Sasuka model produced by Beijing Automobile Works (BAW). According to SA Taxi Finance, SANTACO and NTA, Toyota is the most preferred vehicle by taxi owners, despite the original replacement parts being expensive. Even though it is locally produced, most of the vehicle’s components are imported – and this has a major impact on the cost of the vehicle.

Financiers and insurers

10.14. The credit sector is regulated and consists of the Department of Trade and Industry (DTIC) as the policy maker, and the National Credit Regulator (NCR) as the regulatory entity. The DTIC sets the policy framework for the credit sector, whilst the NCR implements the policy, and monitors credit providers. Any credit provider in South Africa must be registered with the NCR and comply with the National Credit Act (NCA). The NCR is responsible for regulating all credit providers, credit bureaus and debt counsellors.
10.15. The NCA regulates the credit market by imposing maximum caps on the interest rates, fees and other charges which credit providers can charge, depending on the type of credit. According to the NCA, there are seven rate categories namely, mortgage agreements; credit facilities; unsecured credit transactions; short-term credit transactions; developmental credit agreements; short-term transactions; other credit agreements and incidental credit agreements.

10.16. SA Taxi Finance and the traditional commercial banks are the major financiers of the minibus taxi industry. In addition, original equipment manufacturers (OEMs) and in-house financiers provide funding for minibus taxis. SA Taxi Finance provides finance, under developmental credit by the NCA. There are maximum prescribed interest rates that developmental credit institutions can charge per year. There are numerous underwriters and brokers who provide financial and intermediary services to the minibus taxi sector, all of whom are governed by the Financial Advisory and Intermediary Service Act 37 of 2002.

10.17. In addition to the main players highlighted above, the motor vehicle repair and maintenance industry supports the minibus taxi industry, and includes fitment centres, motor body repairers or panel beaters, and parts suppliers. Taxi owners/operators and drivers form the cornerstone of the taxi industry.

Overview of the licencing regime of minibus taxis

Application process

10.18. In terms of Section 50(1) of the NLTA no person may operate a road-based public transport service without an operating licence. A minibus taxi operating licence is categorised under non-contracted services, and its operating licence is valid for a maximum period of seven years.

10.19. One of the functions of PREs is to receive and decide on applications for operating licences, with direction from the planning authority. Municipalities, as planning authorities, issue directives to the PRE regarding the operating licence application process. The directives by the municipalities are informed by ITPs. Municipalities are also involved in providing directives to the PRE’s for the granting, renewal, amendment or transfer of operating licences.

10.20. When an application is lodged, the PRE must give notice in the Government Gazette of the receipt of an application for an operating licence, and if it so decides, in such other manner as it deems fit – to comply with the Promotion of Administrative Justice Act, No 3 of 2000, and allow interested persons an opportunity to comment and make representations. Similarly, the PRE must request the relevant planning authority to give directions regarding the application, based on the planning authority’s ITP. The planning authority would give a directive to the PRE, based on the need for the service.

10.21. In addition, the PRE would also have to consider objections received from interested persons and may decide either to approve or reject the application. Interested persons, including members of the public, have 21 days to make representations from the date of the publication of the notice in the Government Gazette. If any of the parties are dissatisfied with the ruling of the PRE, an appeal can be lodged with the Transport Appeal Tribunal (TAT). A decision of the TAT can be appealed to the High Court.

10.22. Where objections have been raised regarding an application, the PRE would be required to convene a hearing and adjudicate on the objection. Figure 30 provides a summary of the entities involved in the application process, and the roles of each entity.
10.23. Different provinces seem to have adopted different strategies to deal with operating licence applications. For instance, in the Eastern Cape, the submission of applications and adjudication is done in each district, and this may explain why there are limited backlogs in the province.

**Route allocation**

10.24. The process of identification of new routes within a municipality should ideally be informed by ITPs. However, submissions received indicate that in most cases, municipalities have no dedicated personnel to develop ITPs and implement them. This has led to municipalities failing to perform their functions to identify new routes based on their ITP. The effect is that operators tend to identify new routes themselves, based on new developments, and then apply to the PRE for operating licences (or for amendments of their operating licences). In some instances, some operators do not even apply for amendment of their operating licences – thus resulting in those operators illegally providing a service, which results in conflict. In the absence of reliable and up-to-date ITPs, the PREs and municipalities are not dealing with the issue of route allocation effectively. **Figure 31** depicts how the route allocation process currently unfolds.
10.25. The Commission received submissions that operators pay large sums of money to join associations. Once an operator is accepted by an association, they may operate on all routes that were assigned to the association, under the NLTT. In many instances, associations add and amend new routes without the knowledge of the planning authorities. This has caused problems, because whenever a new development (commercial property or housing) occurs along adjacent routes serviced by more than one taxi association, conflict ensues. This was highlighted in the Mall of Africa in Midrand case, where two associations claimed the route, and the PRE had to try and resolve the issue through negotiations.

10.26. In the Mall of Africa case the Alexandra, Randburg, Midrand and Sandton Taxi Association (ARMSTA) conflicted with the Alexandra Taxi Association (ATA) over routes. Similarly, Dube West Taxi Association (NANDUWE) and Witwatersrand Taxi Association (WATA) had vehement clashes for routes in Soweto. Most recently, four members of a rival taxi association were gunned down in Hout Bay, Cape Town. PEs struggle to resolve the issue of routes, because taxi operators as business people develop these routes based on demand from commuters, before both the planning authority and PREs become aware of them.

10.27. The Commission also received submissions that, in the Free State, a new route allocation would start with the community members, who may need public transport services to a certain destination. The operator would then start transporting those community members to that destination. The demand and/or profitability of the new route will determine if the operators want to operate the route on a fulltime basis. Henceforth, the association would then start applying for the right to operate in the new route. In the case of an existing route, operators would then apply for a route extension, to service the new customers.

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10.28. The way routes have been identified and structured, by associations and operators, has been one of the main sources of conflict in the industry. In 2017, Gauteng had the highest number of incidents associated with taxi-related violence, followed by KwaZulu-Natal. The Western Cape recorded 23 instances of taxi-related murders, Mpumalanga had seven, the Eastern Cape five, Limpopo three, the Free State and North West one each, while the Northern Cape recorded zero instances.\(^{693}\) The key factors that lead to taxi violence have been found to be mostly about route disputes, internal power struggles within and between taxi associations, and revenge attacks (in which hitmen were specifically hired to eliminate the victims).\(^{694}\)

10.29. Route conflicts also arise between minibus taxis and buses in instances where they service the same routes or have overlapping sections along the routes. These instances are not very common, due to limited intermodal competition. \(^{695}\) Table 23 provides a summary of the major route-related conflicts. It is important to note that this is not an exhaustive list of all the incidences. Within the minibus taxi industry, there is fierce competition between taxi associations for routes. The allocation of routes thus has a significant influence on the level and outcomes of the competitive process in this market. The allocation of routes does not only influence intermodal and intramodal competition, but also has the potential of perpetuating violence within the industry. Violence in this industry not only affects operators, but also raises concerns about commuter safety.

Table 23: Summary of selected route related conflicts in the period 2016 -2019

<table>
<thead>
<tr>
<th>Province</th>
<th>Municipality</th>
<th>Route</th>
<th>Mode</th>
<th>Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mpumalanga</td>
<td>Thembisile Hani Local Municipality</td>
<td>Moloto Road</td>
<td>Buses and minibus Taxis</td>
<td>72 taxi associations and 6 bus contracts(^{695})</td>
</tr>
<tr>
<td>Free State</td>
<td>Matjhabeng Local Municipality</td>
<td>Welkom to Odendaalsrus</td>
<td>Minibus taxis</td>
<td>NTA and SANTACO(^ {696})</td>
</tr>
<tr>
<td>Gauteng</td>
<td>City of Johannesburg Metropolitan Municipality</td>
<td>Soweto to Johannesburg CBD</td>
<td>Minibus Taxis</td>
<td>Witwatersrand African Taxi Owners Association (Wata) and Nancefield Dube West Taxi Association. (Nanduwe)(^ {697})</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>Mhlonllo Local Municipality</td>
<td>R61 Mthatha and Port St Johns N2 Mthatha and Tsolo R396 Tsolo and Maclear</td>
<td>Minibus Taxis</td>
<td>Border Alliance Taxi Association (Bata) and Uncedo Service Taxi Association (Uncedo)</td>
</tr>
<tr>
<td>Western Cape</td>
<td>George Municipality</td>
<td>Short distance route in George</td>
<td>Buses and Minibus Taxis</td>
<td>Go George a Vehicle Operating Company (George Link Pty Ltd) and UNCEDO George Taxi Association</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>Newcastle Local Municipality</td>
<td>Johannesburg and Ladysmith</td>
<td>Minibus Taxis</td>
<td>Sizwe Taxi Association and Klipriver Taxi Association</td>
</tr>
<tr>
<td>North West</td>
<td>Rustenburg Local Municipality</td>
<td>Seraleng route near Rustenburg</td>
<td>Minibus Taxis</td>
<td>minibus taxi drivers</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>Sol Plaatjie local Municipality</td>
<td>Craven Street Taxi Rank and in the Diamond Pavillion Mall</td>
<td>Minibus Taxis</td>
<td>Thusano Taxi Association (TTA) and Green Point Taxi Association</td>
</tr>
<tr>
<td>Limpopo</td>
<td>Maruleng Local Municipality Greater Tzaneen Local Municipality</td>
<td>Mertz to Tzaneen and Johannesburg</td>
<td>Minibus Taxis</td>
<td>Letaba Taxi Association and Oaks Taxi Association</td>
</tr>
</tbody>
</table>


\(^{697}\) The National Taxi Alliance (NTA) represents both associations.
Minibus taxi fare determination

10.30. Minibus taxi fares are not regulated by the government. Based on submissions received, fare determination in the minibus taxi industry is based on a uniform/fixed fare structure. The local taxi associations’ executive committees, with the mutual agreement of their members, determine fares per route for all operators belonging to that association.698 The use of taxi associations assist operators with limited formal business training, to determine appropriate fares.699 Long distance services operate differently with fares taking into account distance, fuel costs, among others.

10.31. The DOT argues that the pricing regime does not allow price/ fare competition between operators – which may be in violation of section 4 of the Competition Act. There are historical factors influencing the price determination in the minibus taxi industry. The structure of the market is such that minibus taxis operating along the same route have different owners. At the taxi rank or point of origin, passengers board the first taxi in line regardless of the price. As a result, pricing competition on the same route would not be feasible when minibus taxis queue and wait for their turn to ferry commuters. The industry has also raised some public interest justifications in their pricing regime such as being price transparent to allow passengers to budget their transport costs. In addition, the industry is of the view that if passengers are charged different prices for the same trip, they may be subjected to abuse. For example, when it is raining, or at night, the minibus taxi operator may decide to charge higher prices, to the detriment of the passengers. The industry considers it irrational and impractical for minibus taxis to set different fares on the same route, as this has been a source of violent conflict.

10.32. The Commission notes that some taxi associations have over 100 vehicles on a single route, and to prevent conflict arising from potential different fares, a uniform fare is determined by the association – even when operators incur different costs. For example, in Tsolo (close to Mthatha in the Eastern Cape), two taxi associations, Uncedo Taxi Association and Border Alliance, operate between Tsolo and Mthatha, and charge different fares for a trip commencing in Mthatha (R30 and R20) because they use different ranking facilities. These differences have been a source of conflict between the two associations.

10.33. In determining the appropriate fare, local taxi associations take the following factors into consideration: operational cost, price sensitivity, socio-economic status, and fares for subsidised bus services. According to the Free State National Taxi Association, even though commuters are not directly involved in the decision-making process, they indirectly influence the fare level, hence fare levels consider the commuter’s affordability.700

10.34. Operation costs include fuel prices, insurance, wages, maintenance cost and vehicle finance payment, among others.701

10.35. Price sensitivity. SANTACO further submits that because commuters are price-sensitive, fares are negotiated with them, so commuters indirectly influence the fare level.702 Stakeholders in the minibus industry indicated that when fares increase, a large number of commuters can either switch to using subsidised buses or walking, especially in small cities/towns like Bloemfontein, Kimberley and Welkom. The minibus taxi industry must take this into account, when reviewing fares.

10.36. Socio-economic conditions: SANTACO and the Free State NTA submitted that the industry does not charge a market-related price, but charges what they call “compassionate fares” – because the minibus taxi industry serves the poor.703 Similarly, the KwaZulu-Natal NTA submitted that in some instances, associations are charging half of the actual fares because of the communities they serve, which results in low or no profit margins.704 Some associations have not increased fares in three to seven years.705

10.37. **Fares for subsidised buses:** In instances where there are overlapping routes with subsidised buses, the taxi operators take this into account. Taxi operators will charge a slightly higher rate than the subsidised buses, because of lack of operating subsidies. Minibus taxis rely on their efficiency and easy access to commuters.

**Financing of minibus taxis**

10.38. Many minibus taxi operators rely on credit from financial institutions to purchase new and used minibus taxis. The availability of credit is the mainstay of the minibus taxi business, as the majority do not have the means to acquire the minibus taxis on cash basis. The credit sector is regulated, and consists of the Department of Trade, Industry and Competition (DTIC) as the policy maker, and the National Credit Regulator (NCR) as the regulatory entity. The DTIC sets the policy framework for the credit sector, whilst the NCR implements the policy and monitors credit providers. Any credit provider in South Africa must be registered with the NCR and comply with the National Credit Act (NCA). The NCR is responsible for regulating all credit providers, credit bureaus and debt counsellors.

10.39. The **NCA** regulates the credit market by imposing maximum caps on the interest rates, fees and other charges that credit providers can charge – depending on the type of credit and when the credit was granted. According to the NCA, there are seven rate categories, namely, mortgage agreements; credit facilities; unsecured credit transactions; short-term credit transactions; developmental credit agreements; short-term transactions; and other credit agreements and incidental credit agreements. The NCA imposes minimum requirements that ought to be met by both financiers and borrowers, to avoid reckless lending. However, developmental credit providers are exempted from certain provisions that would ordinarily be classified as reckless lending.

10.40. Minibus taxis financing can be done either under developmental credit, or other credit agreement category. Vehicle asset finance agreement may be in the form of an instalment or lease agreement. An instalment sale agreement is a sale agreement where an asset is purchased, and repayment is made over a defined period. At the end of the repayment period, the purchaser takes ownership of the asset. A lease agreement is where the asset is rented for a certain period, and at the end of the period it is returned to owner. The minibus taxi industry predominantly enters into instalment sale agreements.

The different financiers and their market share

10.41 The credit providers to the minibus taxi industry include Standard Bank, Nedbank, FirstRand (WesBank), Absa, SA Taxi Finance and Bridge Taxi Finance. Other dealerships and manufactures, such as Mercedes Benz Financial Services, Toyota Financial Services and Nissan also provide financing, using their relationships with other banks.

10.42. SA Taxi Finance and Bridge Taxi Finance use developmental credit principles when assessing applications for funding from taxi operators. Banks submit that they do not offer developmental credit to minibus taxis. Similarly, Mercedes Benz Financial Service and Toyota Financial Services submit that they do not finance minibus taxis under the developmental credit provisions. SA Taxi Finance submits that it is a developmental credit provider, registered in terms of section 41 of the NCA, and has been granted a supplementary registration in respect of developmental credit agreements. SA Taxi Finance further submits that a developmental credit provider has a mandate, in terms of the NCA, to provide sustainable and accessible credit to historically disadvantaged, low-income persons and communities – and to develop small businesses. Therefore, SA Taxi Finance focuses on providing developmental credit to minibus taxi operators who are regarded as SMMES. SA Taxi Finance also describes itself as a niche financial provider for minibus taxis operators that are unable to get access to funding from commercial banks.

10.43. **Table 24** presents an overall picture of the financial institutions that extend credit to minibus taxis, which is inclusive of both developmental credit providers and traditional banks. This does not suggest that developmental credit providers and traditional banks are in the same market, as will be explained later.

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707 SA Taxi Finance website states that “SA Taxi finances entrepreneurs who operate minibus taxis that may not otherwise have access to credit from traditional banks” webpage: https://sataxi.co.za/about-sa-taxi/ (accessed on 24 January 2020).
Table 24: Proportion of minibus taxis financed by each credit provider (%)

<table>
<thead>
<tr>
<th>Financiers</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
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<tr>
<td>SA Taxi Finance</td>
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<tr>
<td>Standard Bank</td>
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<tr>
<td>WesBank</td>
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<tr>
<td>Nedbank</td>
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<tr>
<td>Bridge Taxi Finance</td>
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<tr>
<td>Absa</td>
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<tr>
<td>Mercedes Benz</td>
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<tr>
<td>Toyota Financial Services</td>
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<tr>
<td>Ithala Developmental Finance</td>
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<tr>
<td><strong>Total</strong></td>
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</table>

10.44. SA Taxi Finance is the predominant financier to the minibus taxi industry, followed by Toyota Financial Services. SA Taxi Finance provides credit to finance predominantly the Toyota Sesfikele, Nissan Impendula and Mercedes Benz Sprinter, with 708 of its credit finance being derived from these three brands. Taxi associations (NTA and SANTACO) submit that Bridge Taxi Finance is a small player, and specialises in mostly Japanese and Chinese minibuses (e.g. Inyathi and BAW Sasuka) which are the least preferred by taxi operators.

10.45 Traditional banks have low presence in the minibus taxi business, because of how they assess risk as compared to developmental credit providers. As will be discussed later, the evidence from minibus taxi operators suggests that developmental credit providers may be in a separate market. These points are discussed below.

The differences in the assessment of risk

10.46. In the assessment of credit applications, most financial institutions make use of risk-based assessment models to determine affordability, and corresponding interest rate. In risk-based pricing, the interest rate charged on a loan to potential borrower depends on the lenders’ view of the borrowers’ default risk, or equivalently on their probability, willingness and ability to repay. Financiers build credit application scorecards to assess the default risk of applicants’ application using information provided, and credit bureau data.

10.47. Financial institutions such as Standard Bank, ABSA, Toyota Financial Service, Mercedes Benz Financial Service and WesBank submit that they finance minibus taxis on the same credit principles as financing any other vehicle or asset class. For these financial institutions, the customer profile in respect of risk level, generated by the individual scorecard, is an important factor in deciding whether to offer credit. In addition, factors such as “route calculator”, to determine the profitability of the routes, are also considered. Nedbank submits that when financing a minibus taxi, it considers the inherent risks of this asset class, such as excessive mileage, high accident chances, and the condition of the vehicle over the finance term. ABSA submits that factors such as route profitability, customer conduct, general economic climate, and violence over routes are risks which may be associated with providing finance to minibus taxi operators. Westbank considers financing a taxi minibus different from financing other types of vehicles, due to “the inherent credit risk associated with minibuses and the taxi industry generally”.

10.48. SA Taxi Finance submits that, unlike traditional financing models employed by commercial banks, it does not apply the traditional affordability assessment of considering the employment income (as evidence by payslip) and consumer-related expenses (such as housing, utility and consumable expenses as evidenced by bank statements). Instead, SA Taxi Finance conducts affordability assessment by considering the potential income to be earned by the minibus taxi operator on a specific route, against the expenses involved in conducting a taxi business. A taxi operator is considered as an entrepreneur and an SMME, in line with the NCA, under developmental credit provisions.

10.49. Similarly, Bridge Taxi Finance submits that it views the financing of the minibus taxi as financing of an SMME, as opposed to the financing of an asset, which would generally be the case with other vehicle financing. Bridge Taxi Finance submits that developmental credit requires different credit criteria than normal asset-based finance. The normal asset-based finance principle, applied by commercial banks and other non-developmental credit providers, evaluates the ability of the individual to service the debt – considering the total income of the individual, as well as total exposure to debt and other expenses. In contrast, the developmental credit finance principle evaluates the ability of the business to service the debt that will be incurred, with the potential income to be earned.

10.50. The banks and non-developmental financial institutions are unlikely to finance a taxi operator with a poor credit record, for an asset class that is categorised as risky. Developmental credit institutions are of the view that their risk assessment methodology permits them to provide credit to taxi operators with undesirable credit records, or credit scores. For instance, SA Taxi Finance and Bridge Taxi Finance provide credit finance to customers (i) who are blacklisted and have defaulted, (ii) with no employment history or source of income, and (iii) no bank account or credit history or profile. The different risk assessment models may explain the varying interest rates charged by developmental credit providers and the traditional banks.

**Average Interest rates charged**

10.51. Developmental credit providers are allowed, in terms of the NCA and the associated regulations, to charge a maximum of Repo Rate + 27% – which currently translate to 33.55% (as at 24 January 2020). On the other hand, traditional banks can charge a maximum of Repo Rate + 17% – which translates to 23.55% (as at 24 January 2020). Figure 32 below shows that developmental credit providers such as SA Taxi Finance and Bridge Taxi Finance charge the highest interest rates, of approximately 7\% whilst Standard Bank charges on average 10\%. Toyota Financial Services and ABSA submit that their average interest rate for minibus taxis is around 10\%.

**Figure 32: Average interests rates charged by financiers 2013- 2018**

Source: Submissions from various financiers

10.51.1. Based on the differences outlined above (interest rates, business model, customer acquisition) the Commission explored the nature of competition between the traditional banks and developmental financial institutions. Specifically, the Commission wanted to establish if minibus taxi operators consider the developmental financial institutions and traditional banks as viable alternatives. Table 25 presents extracts of the evidence provided by members of taxi association during public hearings.

709 National Taxi Alliance- written submission dated 21 August 2017.
<table>
<thead>
<tr>
<th>Name and affiliation</th>
<th>Extracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence by Mr Phumodi (the Provincial Secretary of SANTACO Free State)</td>
<td>MR MANDIRIZA: I just have one question in relation to financing, you mentioned that you have challenges, the high interest rates and the like, from your members which are the major financiers of taxis in the province? ...... MR PHUMODI: Its Nedbank, Absa, WesBank and the most popular one that is now assisting us is SA Taxi of which now we don’t have any option, even if they charge us exorbitant interest, we don’t have any option. If it weren’t because of them, a lot of operators would have been out of business because we have been rejected by all these banks. (Own emphasis)</td>
</tr>
<tr>
<td>Evidence by Mr Gama (Spokesperson of SANTACO Mpumalanga)</td>
<td>MR. MANDIRIZA: …. amongst your members which financial institution as far as you know finances most of your taxis in Mpumalanga? MR. GAMA: As a taxi industry, we have our own institution that finance taxi operators because before each and every bank when we come as a taxi operator, they don’t want to finance you. They say you are high risk, so we take a resolution to develop our own financial institution known as SA Taxi Finance which helps all taxi operators.</td>
</tr>
<tr>
<td>Evidence by Mr Tsebe (Chairperson of the Pretoria-Randburg Soshanguve Taxi Association)</td>
<td>MR TSEBE: … Lack of support from financial houses. I think – if not 80% of our members are blacklisted and the only finance house that can assist in that regard is SA Taxi Finance. SA Taxi Finance, in terms of the interest rate … they are saying: But you are risk. So, we are taking risk. So, we are giving you 25% and all we … [indistinct] for you to get that 16 of 10% from Absa. (Own emphasis).</td>
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</table>

Source: Taxi associations' oral submissions during the Public Passenger Transport Inquiry Public hearings

10.51.2. Submissions from these associations suggest that only SA Taxi Finance is willing to finance taxi operators with a poor credit record. In addition, the taxi industry has argued that the traditional banks are not an option, because the majority of the operators are either blacklisted or do not meet all the requirements of the banks. SANTACO Mpumalanga indicated that SA Taxi Finance is the major financer of minibus taxis in the country. 10.51.3. NTA submits that many taxi operators do not have an alternative but are forced to use SA Taxi Finance, since approximately 65% of the taxi owners are blacklisted or have bad credit records. This was supported by Greater Bloemfontein Taxi Association, which submits that taxi operators with bad credit records can only get finance from SA Taxi Finance, with interest rates of between 25 to 33 per cent, as they do not qualify to get finance from banks. Minibus taxi operators have no bargaining power, and have to resort to other means to get the attention of SA Taxi Finance. For instance, minibus taxi operators block roads in 2017 in a bid to force SA Taxi Finance to lower its interest rates. 10.51.4. The desperation by minibus taxi operators highlights that they have limited or no alternatives, which suggests a narrow market for minibus taxi financing – through developmental credit providers. This narrow market has only two financial institutions that are registered as developmental credit providers, and finance minibus taxis as reflected in Table 26 below. SA Taxi Finance’s market share (based on the number of minibus taxis financed) has consistently been above since 2012, and it has held an average market share of approximately for the period 2012 to 2018.

Table 26: Market share for developmental credit advanced to minibus taxis (%)

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<tr>
<td>SA Taxi Finance</td>
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<tr>
<td>Bridge Taxi Finance</td>
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<td>Total</td>
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</table>

Source: Calculated using submissions from SA Taxi Finance and Bridge Taxi Finance

10.52. The structure of the minibus taxi financing market is highly concentrated, with no prospect of new entry – given the unwillingness or risk aversion by traditional banks to extend finance to the minibus taxi industry under developmental credit principles. Traditional banks indicated that advancing credit through developmental credit does not align to their risk appetite. In addition, banks identified limited access to industry-specific information and route profitability as barriers to extending credit under developmental credit. The banks seem to be reluctant to incur data collection systems, to enable them to finance minibus taxis under developmental credit. For instance, SATF invested in mobile vehicle mechanics, refurbishment centres and used taxi parts, amongst other investments – which was essential in collecting relevant information. The banks seem not to be willing to expand their taxi financing portfolios, as it does not represent a massive commercial opportunity; which therefore does not justify further investment.

10.53. While the commercial banks have limited interest in extending developmental credit directly to minibus taxi operators, it appears however that some of the commercial banks extend credit to SA Taxi Finance, despite concerns about the minibus taxi industry being risky. The lack of interest by the commercial banks results in further entrenching the near-monopoly position of SA Taxi Finance and gives rise to potential concerns of exploitative conduct by SA Taxi Finance.

10.54. Evidence from the taxi industry suggests that the reliance on SA Taxi Finance creates a vicious cycle for the minibus taxi operators, in two ways. Firstly, the industry is considered as high risk, which implies that they must be charged relatively higher interest rates. Secondly, the high interest rates charged result in high default rates (approximately on time). Defaulting operators will have their taxis repossessed, further tarnishing/worsening their already bad credit records. Approximately of minibus taxis of the defaulted loans have been repossessed. Consequently, this has a negative impact on accessing finance in the future, which will perpetuate the vicious cycle for the minibus taxi operators. The concept of developmental credit becomes a “double-edged sword”, where the intended objectives of improving access to credit finance are leading to a worsening financial position of the minibus operators.

Policy rationale for high interest rate for development credit providers

10.55. Developmental credit providers are permitted to charge an interest to a maximum of Repo Rate + 27%, which currently translates to 33.25% (as at 24 January 2020). The factors that are considered when determining the maximum interest rate are stipulated in Section 105 subsection 2 of the NCA, which include the need to make credit available to historically disadvantaged persons, low income persons and communities that would not ideally qualify for credit through commercial banks.

10.56. The Minister of Trade and Industry must take the following factors into consideration, when determining lending rates and fees for each category of credit:

10.56.1. the need to make credit available to persons contemplated in section 13(a);

10.56.2. conditions prevailing in the credit market, including the cost of credit and the optimal functioning of the consumer credit market; and

10.56.3. the social impact on low income consumers.

719 Analysis by the Commission based on data submitted by SA Taxi Finance.
721 These include historically disadvantaged persons, low income persons and communities; and remote, isolated or low-density populations and communities.
10.57. The rationale for the introduction of the maximum interest rates was to promote entry into this market, as there was no appetite due to lower interest rates on this finance. In order to attract financiers, interest rates were increased to a maximum of Repo Rate +27%. The DTIC and NCR submit that developmental credit provisions were introduced to encourage financiers to provide credit to, inter alia, SMMEs and people who would ordinarily not meet the affordability test requirement. In this regard, developmental credit providers registered in terms of section 41 of the NCA are exempt from a number of provisions relating to reckless lending, and thus are able to offer funding to SMMEs and individuals with poor credit record.

10.58. The DTIC and NCR highlighted that some impact studies are done to assess the effectiveness of the maximum interest rates. NCR makes recommendations to the Minister, should a need arise to change the maximum interest rates. However, the Commission has not been furnished with any documents detailing the methodology used in determining the prescribed maximum interest rates. The rationale provided to the Commission was the need strike a balance on the interest, that would promote entry into the developmental credit market as well as avoid customers becoming indebted due to high interest rates. Without access to impact studies on the appropriate level of maximum interest rates and its effect on minibus taxi operators, the Commission is unable to conclude if the developmental credit providers have significantly benefited the minibus taxi industry. Evidence gathered by the Commission indicates that developmental credit assists with entry into the industry, but at the same time the level of repossessions of minibus taxis increases, due to defaulting in payments.

10.59. The Commission remains concerned about the structure of the minibus taxi financing market as there is no competition in this market, which breeds exploitative abuse by the near-monopoly firm.

**Competition within the minibus taxi industry**

**Competition between minibus taxis**

10.60. Minibus taxi services operate from ranks (rank-based operation) and some roam along the designated routes. From the rank, operators drop off and pick up commuters along the route.

10.61. Revenue in the minibus taxi industry depends on the number of passengers the taxis convey. This implies that larger revenues can be ensured through speedy service, which allows more frequency on the route to collect and drop off as many passengers as possible. The City of Cape Town submitted that competition among minibus taxis has safety implications, as taxis drive dangerously while seeking out passengers. This feature of the market is suggestive of intense competition between minibus taxis belonging to the same association, as these taxis would be the only ones allowed to operate on the relevant route(s).

10.62. Competition also arises from minibus taxis encroaching on other associations’ routes. This happens when other associations start routes from their point of origin, and then encroach on another taxi association’s routes. There are also instances where two associations have been granted operating licences on similar routes, for historical reasons. NATOA submitted that it shares similar routes and the same facility (Cleary Park taxi rank) with ATA. These associations, however, appear to be cooperating instead of competing for passengers on the similar routes in which they operate, as they charge similar fares.
Challenges faced by minibus taxis

Misalignment of operating licence functions

10.63. Submissions from stakeholders indicate limited coordination and misalignment, between planning and licencing functions. The taxi industry argues that planning authorities and PREs have no capacity to undertake the functions stipulated in the NLTA, and the reliance on either party in the approval process remains a problem. The industry submits that if planning and licencing were under one entity, the approval process would be swift. Though the devolution of licencing functions to planning authorities are stipulated in the NLTA, capacity remains a challenge.

The lack of provision of directives by the municipalities

10.64. As discussed above, PREs are licencing authorities, and municipalities issue directives in terms of their ITPs to the PRE, to approve operating licences. Various stakeholders submitted evidence that municipalities take a long time to provide directives to the PREs, resulting in a backlog of applications – which has led some operators to be on the road illegally.

10.65. SANTACO is also of the view that PREs can take a long time to issue an operating licence – irrespective of whether it is a new application, conversion, replacement, renewal, and transfer or for additional routes. The PREs highlighted outdated systems, lack of funding, capacity and technical capability at both PREs and municipalities as contributing factors to the inefficiencies in the issuing of operating licences. With respect to outdated systems, Gauteng PRE and Limpopo PRE indicated that the licensing system has not been functioning effectively. This was also confirmed by the National Department of Transport, and plans are being put in place to upgrade the system.

Lack of stakeholder consultation

10.66. Most municipalities confirmed that they do not have capacity to implement ITPs (in cases where these exist) or provide directives. In such cases, the PRE ends up issuing operating licences without consideration of the ITP which, in most cases, results in routes being overtraded.

Moratorium

10.69. In terms of the NLTA, a moratorium can be issued by either the municipality or the MEC. Section 18(3) of the NLTA confers on municipalities the power to introduce moratoria in respect of all new applications for operating licences, in accordance with the municipality’s ITP. These powers have been utilised by various municipalities across the country. A moratorium has been in eThekwini municipality since 2010, and since August 2017 in Nelson Mandela Bay municipality. In the City of Mbombela, a moratorium had been in force since 2015, which expired on 1 September 2018. A new moratorium by the PRE in terms of Section 39(1)(b) of the NLTA, was gazetted and valid for a period of two years. In Kimberley, Northern Cape, the MEC issued a moratorium in 2015/16 for a period of 18 months, to clear a backlog of over 3 000 applications.

738 See Government Gazette Notice 42036. 16 November 2018.
10.70. The rationale of the moratorium is to allow for an audit process of all operating licences issued; physical verification of all operating licences issued in the municipality/province; allow the municipality/province an opportunity to align all routes and put new operating conditions on all operating licences; and allow for the finalisation of the development of the Integrated Provincial Transport Network Plans, as well as the Integrated Transport Plans. Various operators across the country raised different concerns about the way moratoria have been imposed on applications for new operating licences. In the City of Mbombela, the moratoria were not communicated properly, and there was no council resolution to support the moratorium.739

10.71. In Bloemfontein, the PRE submitted that there has been a moratorium on issuing new operating licences since 1999, as a directive from the DOT.740 The NLTA does not make provision for the DOT to prescribe a moratorium. The Free State Department of Roads and Transport failed to communicate this discrepancy to the taxi industry, and no rationale for the moratorium was provided. In 2015, the North West Department of Transport announced a three year moratorium on issuing of new operating licences, to conduct route verification and assess the need for public transport services within the taxi industry.741 The moratorium was therefore imposed to try and deal with the transport planning issue, and the issue of backlogs.742

10.72. In Gauteng, SANTACO submitted that there was never a legislated moratorium.743 In Limpopo, SANTACO submitted that no new operating licences have been allocated to any operators since 2006.744 Limpopo’s Department of Transport submitted that the moratorium was meant to conduct verification of all operating licences.745 The moratorium has not served its purpose, as illegal operations persist. In the Eastern Cape there is a moratorium in place for new applications, with only renewals or amendments being processed.746 Table 27 provides a summary of the moratoria imposed in different provinces, and also indicates provinces where backlogs are said to exist.

Table 27: Provinces where moratoriums have been imposed

<table>
<thead>
<tr>
<th>Province</th>
<th>Moratorium on minibus taxis</th>
<th>Backlog</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>Yes,747 only on new applications</td>
<td>No</td>
</tr>
<tr>
<td>Gauteng</td>
<td>No</td>
<td>Yes, estimated to be 11 000</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>Yes748</td>
<td>No</td>
</tr>
<tr>
<td>Limpopo</td>
<td>Yes</td>
<td>Yes, estimate not available</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>Yes</td>
<td>Yes, estimated to be 3 000</td>
</tr>
<tr>
<td>North West</td>
<td>Yes</td>
<td>Yes, estimate not available</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Western Cape</td>
<td>No</td>
<td>No749</td>
</tr>
<tr>
<td>Free State</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

10.73. From Table 27, it is evident that for most of the provinces where moratoria were imposed, backlogs still remain a challenge. For instance, the Northern Cape declared a moratorium to deal with backlogs and oversaturation, but these backlogs are still estimated at around 3 000 outstanding operating licences. A similar situation prevails in the North West and Limpopo. This suggests that the current moratoria have not achieved their objectives, with regard to backlog elimination.

10.74. The Commission has observed that, across all provinces, there is a huge problem of oversaturation in the minibus taxi industry. The over saturation is caused by numerous factors, such as the incentive by taxi associations to derive more revenue from membership fees, and lack of capacity within the planning authorities and PREs to process applications timeously. When a taxi operator applies for an operating licence, he/she must provide the PRE with a letter of recommendation from a taxi association that he/she belongs to. This requirement for a letter of recommendation is not stipulated in the NLTA, but it is enforced by all PREs (to reduce conflict). Membership or joining fees range between R30 000 and R120 000 per vehicle, which is a significant investment, or sunk cost, to enter the market.

10.75. The high membership fees also incentivise the taxi associations to recruit more members, which exacerbates the problem of oversaturation and influx of unlicensed vehicles in the minibus taxi industry.

10.76. Dealerships and banks are required to approve funding and release motor vehicles when there is proof that an operating licence has been secured. However, evidence presented to the Commission indicates that some dealerships and banks do sell minibus taxis without requesting operating licence. In addition, during the application process for an operating licence, the planning authorities are required to advise the PRE’s on the availability of ranking facilities, and on whether the route is saturated or not. Most municipalities confirmed that they do not have capacity to implement ITPs (in cases where these exist) or provide directives.

10.77. To address oversaturation, SANTACO at its congress resolved to impose self-regulation; to limit the entry of new taxi operators. This decision was also taken to maintain growth for the existing members.

**Slow pace of conversion of operating licences**

10.78. The conversion of old permits to operating licences has also been raised as one of the challenges facing the minibus taxi industry. These permits, which were issued for an indefinite period, were issued to operators under the Road Transportation Act and NLTTA. In terms of Section 47(2) of the NLTA, holders of these indefinite permits may apply within the conversion period, being seven years after the date of commencement of the NLTA, for their conversion to an operating licence. In terms of Section 49(3) of the NLTA, any permit or operating licence authorising minibus taxi-type services issued for an indefinite period or issued for a definite period that has not yet expired, must lapse seven years after the date of commencement of NLTA.

10.79. It therefore appears that the old permits were to remain valid for seven years and would lapse on 9 December 2016 if not yet converted. Although most permits have been converted, SANTACO has raised an issue that some are still outstanding due to backlogs at some PREs. The Amendment Bill proposes that the conversion period be extended for another five years. Due to delays with the Amendment Bill, the DOT has obtained an order from the High Court suspending the operation of the conversion provisions, until the Amendment Bill is passed.

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750 Gauteng Department of Roads and Transport meeting notes. 12 December 2017. Page 2.
751 Meeting with NATOA. 7 November 2017.
752 Meeting with Algoa Taxi Association. 7 November 2017.
755 Section 47(2) of the NLTA reads as follows: “... (2) All permits issued for an indefinite period remain valid, subject to Sections 48 and 49, but lapse seven years after the date of commencement of this Act, but the holder may apply within that period for its conversion to an operating licence to the entity that is responsible for receiving applications for operating licences for the relevant services.”
10.80. The DOT is required by law to provide for passengers with special categories of needs, in public transport. This requirement is found in the NLTA, the Public Transport Strategy 2007; and the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Chapter 5, Section 25, 1(c) iii). In the draft review of the White Paper on national transport policy, the DOT identifies universal access as one of the main issues that needed attention. The DOT further acknowledged that there are currently no policies or regulations to promote universal access and public transport is not sufficiently accessible to all categories of passengers, including persons with disabilities. 757

10.81. Evidence obtained during public hearings also seems to suggest that universal access is lacking. For instance, Mr Godongwana submitted:

“…As you are aware of the current system that does not accommodate the elderly and looking at what we had in the past, in terms of our infrastructure it does not accommodate that. So that means we have to go back, look at our infrastructure, and try to make it accommodate the elderly and, to be quite honest, that’s an expensive exercise. Because if you look at our sidewalks, they are not universally accessible and to do that, to make them universally accessible then it becomes also a costly exercise, but it is one of the challenges anywhere…” 758

10.82. It is apparent that the DOT has further requested SANTACO to start to develop a universal design access plan for taxi services. 759 The Commission has observed that currently minibus taxis are not universally accessible. The Commission further notes that the DOT, as a custodian of transport policy, should spearhead universal access (with relevant government entities) to develop technical guidelines for public transport vehicles.

10.83. Minibus taxis operate from taxi ranks, where they pick up and drop off passengers. They usually enter the rank, offload passengers and may then queue for the next load. A rank will have an entrance, a holding area, loading area and an exit. Minibus taxis must be able to load passengers going to different destinations independently, and a bay is needed for each destination, except in cases where the bays are designed to accommodate sharing. The responsibility of the day-to-day control of the activities at the minibus ranks is in the hands of the queue marshals. They are tasked to oversee that drivers load at the right places and that passengers queue in orderly fashion, based on their destinations. The rank marshal is responsible for coordinating the queue marshals, and the operations of the rank in general. 760

10.84. The ranking facilities within various municipal boundaries include minibus taxi ranks and bus ranks, as well as intermodal ranks accommodating various modes of transport. Municipalities, in line with the Constitution and section 28(1) of the NLTA, are empowered to develop and administer bylaws on local government matters, including ranking facilities. Various municipalities administer Municipal Taxi Ranks bylaws to establish, maintain and manage municipal taxi ranks within their areas of jurisdiction. The municipalities, in line with these bylaws, are responsible for granting, refusing or suspending rank permits. 761 These ranks are usually within the plans of municipalities and consist of loading, ablution and shopping (informal traders, kiosks and shopping units) facilities. 762

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761 These municipalities include amongst others Ubuntu Municipality, Lekwa Local Municipality, Muskwaligwa Local Municipality, Tsantsabane Local Municipality, and Sol Platjie Local Municipality.
10.85. Under extraordinary circumstances, the MEC responsible for public transport is also empowered, in terms of Section 91(2) of the NLTA, by notice in the Provincial Gazette, to close taxi ranks. The Provincial Department of Transport in Gauteng, with support from the City of Johannesburg and law enforcement agencies, closed the routes and taxi ranks – in response to violent conflict between Nancefield Dube West Taxi Association (NANDUWE) and the Witwatersrand Taxi Association (WATA).  

10.86. Although municipalities have powers to build, manage and maintain the ranks, some taxi ranks are managed to some extent by the taxi associations. It therefore appears as if the exercising of effective control of ranking facilities rests on municipalities and minibus taxi associations. The ranking facilities may be managed by:

10.86.1. The local authority – municipal workers clean ranks and ablution facilities and provide sanitary products;

10.86.2. Private organisation – where ranking facility is on a private property, and the owner is responsible for maintaining and managing the facility;

10.86.3. A management body – a body consisting of all the parties involved at the rank; and

10.86.4. Joint venture – a local authority and minibus taxi industry adopt shared responsibility to manage and maintain the taxi ranks.

10.87. In general, municipalities (through bylaws) manage and allocate ranks to taxi association(s), who are then required to adopt certain responsibilities – such as hiring marshals and maintaining order and smooth operation at the ranking facilities. The City of eThekwini municipality established rank management systems in order to manage ranking facilities. In the City of Ekurhuleni, there are officials dedicated to monitoring the operations at various ranks, as well as various associations' activities. Minibus taxis are authorised to access their designated ranking facilities if they have parking permit discs attached to them, as required by these bylaws. The City of Johannesburg has a lease agreement with PRASA CRES. In terms of the lease agreement, the City of Johannesburg is responsible for the upkeep of the taxi rank.

10.88. Despite the existence of municipal bylaws, informal taxi ranks are on the increase in most urbanised municipalities. These ranks are predominantly established by taxi owners or associations, particularly where there are new developments. Open spaces are usually utilised to park and wait for passengers. In such a case, the taxi operator is still required by the bylaws to apply for a permit to use such ranking areas. The municipality, based on land use and transport plans, either approves or rejects such application.

10.89. In Stellenbosch, for example, a study conducted by the steering committee of Comprehensive Integrated Transport Plan for Stellenbosch, found 2 formal out of 10 taxi ranks within the municipal boundary. It is also apparent that in many instances, informal ranks are on-street (lay-by) and do not have facilities found at formalised ranks.

10.90. The minibus taxi industry pointed out several challenges in relation to quality of services at ranking facilities, such as the rank infrastructure and ablution facilities. SANTACO Polokwane submitted that:

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766 City Of eThekwini, oral Submission from Mr Robin Chetty, Durban hearings, dated 27 June 2018. Page 111.

767 City of Ekurhuleni, oral submission from Mr Mothobi, Pretoria hearings, dated 12 October 2018, page 92.

768 PRASA CRES, oral submission from Ms Vuyokazi Lugqola, Johannesburg hearings, dated 6 June 2018. Page 130.


“...Infrastructure we talk to roads and taxi ranks. Customers are normally subjected to unsafe environment in the form of ranks or taxi ranks. Normally these taxi ranks do not even have a security guard, ablution facilities are not working, government no longer erects these facilities and the provincial department really passes the buck to municipalities, to say it is the competency of municipalities to erect these particular facilities…”

10.91 The National Department of Human Settlements also submitted that the construction or refurbishment of minibus taxi ranks has not been prioritised to the extent that it should have been. The National Department of Human Settlements mentioned that, for the financial year 2016/17, it was only the City of Cape Town that reported having built one mini bus taxi rank, and for the 2017/18 financial year Buffalo City reported having built one, with eThekwini reporting two, and then City of Cape Town reporting one.

10.92 The Commission learnt during public hearings that Government should explore granting minibus taxi associations using ranks the opportunity to manage the ranks. The Commission noted that some of the territorial conflicts in the minibus taxi industry are mainly associated with access to taxi ranks and routes. A fully functional taxi rank can attract more commuters, in cases where there are a few taxi ranks near one another.

Access and cost of finance

10.93 Minibus taxi operators are of the view that the cost of finance is exorbitant. The minibus taxi industry has argued that SA Taxi Finance is charging excessive interest rates. In this regard, the National Taxi Alliance (NTA) submits that SA Taxi Finance charges interest rates of approximately 26.5%, compared to 12% to 17.25% from traditional credit providers. The high interest rates are likely to increase the costs of taxi operators, thus making them unprofitable and uncompetitive, particularly the smaller taxi operators. Taxi operators can be disadvantaged and/or discouraged from growing their operations because of the high costs associated with the financing of new or used minibus taxis.

10.94 There are several reasons advanced for the high interest rate charged by developmental credit providers. As discussed above, the NCA allows the maximum prescribed interest rates that developmental credit institutions can charge per year to be significantly higher than the other credit types. Developmental credit providers’ cost of capital is relatively higher, compared to that of traditional banks. For instance in the case of a bank, the sources of funds are more diversified to include retail deposits, corporate deposits and institutional investors as opposed to SA Taxi Finance, which relies on equity capital or borrowing from international or local financiers. SA Taxi Finance sources approximately of SA Taxi Finance funding internationally, and the locally. According to SA Taxi Finance, it would be able to accelerate its growth and reduce the cost of funding to taxi operators if it was able to procure cheaper funding from local public enterprises.

10.95 Minibus taxi operators are considered by financing institutions to be high risk, because their ability to repay the financed amount is relatively low. SA Taxi Finance further argues that by virtue of being a developmental credit provider, all of its customers are naturally of a higher risk, and it is important to price for the risk. SA Taxi Finance submits that it operates in a high risk environment, hence it charges high interest rates relative to other players. In this regard, SA Taxi Finance argues that the taxi industry is inherently risky, and the taxi operators they finance are also high-risk customers who are likely to default – due to their bad credit record and no other source of income.
10.96. The NTA is of the view that one of the reasons SA Taxi Finance charges exorbitant interest rates is because it does not have competition. NTA therefore proposes that government should assist the taxi industry by extending loan capital or guarantees at prime interest rate.\footnote{National Taxi Alliance – written submission dated 23 August 2017.} Alternatively, in order to lower the interest rates, the government must consider establishing a transport bank to assist the taxi industry.\footnote{Port Elizabeth and District Taxi association, which is an affiliate of Boarder Alliance, Oral submission by Mr Qoko, Public hearing Eastern Cape, dated 27 August 2018.}

Findings

10.97. Misalignment of operating licence function and lack of provision of directives by the municipalities. The Commission finds that planning authorities lack capacity to develop and implement integrated transport plans. This failure has resulted in these planning authorities being unable or taking too long to provide directives to the PREs, when the latter is considering applications for operating licences. This has led to backlogs and illegal operations.

10.98. Outdated licencing system. The Commission finds that the National Land Transport Information System (NLTIS) used for the processing of operating licences is outdated and inefficient, to the extent that a few provinces have abandoned this system; or customised it to suit their needs.

10.99. Ineffective communication channels between the taxi industry and the transport authorities. The Commission finds that the exclusive use of the Government Gazette as the medium of communication with the minibus taxi industry is ineffective, given its informal nature.

10.100. Route allocation. The Commission finds that planning and licensing authorities are reactive and wait for routes to be developed by the taxi industry. This leads to conflict between taxi associations who operate in adjacent routes or close to new developments.

10.101. Moratoriums and backlogs. The Commission finds that in some provinces there is lack of proper communication regarding moratoria, which has frustrated the minibus taxi industry. The moratoria have not been effective, due to illegal operations.

10.102. Price setting. The Commission finds that the minibus industry does not receive operating subsidies, even though it transports the largest proportion of the market. The misalignment between ridership volumes and the allocation of subsidies is not socially justifiable.

10.103. Access to finance. The Commission has observed that the structure of the minibus taxi financing market is not conducive to promoting effective competition. SA Taxi Finance has no real competition, and the Commission has reason to believe the interest rates charged for the provision of credit to finance minibus taxis may be exploiting minibus taxi operators. The Commission is further concerned that potential competitors in the developmental credit market (commercial banks) have chosen not to participate effectively in this market, and yet, extend credit to SA Taxi Finance for its expansion programmes. As such, the Commission is currently investigating whether interest rates are excessive (this investigation is being conducted separate from the Market Inquiry).

10.104. Universal access. The minibus taxi vehicles’ current design is not universally accessible.

10.105. Access to ranking facilities. The Commission has observed that the responsibility of exercising effective control of ranking facilities rests on municipalities and, to a certain extent, on minibus taxi associations.

Provisional Recommendations

10.106. An overhaul of the issuing of the operating licence regime, and removal of quantity restrictions on all permits. Operators will still be required to apply for roadworthy permits and other documents necessary for applying for permits, but their operating licence applications will not be denied based on supply-and-demand assessments. In addition, the Commission recommended all pending applications should be processed and finalised expeditiously, given that a significant number of operators are already operating illegally. This will free up some capacity at the PREs to consider new applications, without
having to deal with massive backlogs. Capacity should be increased at both the PREs and planning authorities, to address backlogs and issue directives timeously;

10.107. That planning authorities and provinces enter into memoranda of understanding (MoUs) to jointly exercise their respective powers and functions, as contemplated in Section 12 of the NLTA. This joint exercise or performance of their respective powers and functions may be regulated by an agreement between the parties, but this exercise would still require both spheres of government to be sufficiently capacitated;

10.108. The DOT should upgrade the National Land Transport Information System urgently, to improve efficiencies;

10.109. The PREs should utilise additional communication channels to communicate with the minibus taxi industry, rather than relying on the Government Gazette. Additional mechanisms to consider may be direct communication to affected taxi associations, use of local government offices, or making use of taxi ranks;

10.110. In relation to access to ranking facilities, it is recommended that in order to eliminate conflict of interest and perverse incentives, the management and control of ranking facilities should solely be the responsibility of municipalities;

10.111. The minibus taxi industry must be subsidised through increased funding for the Taxi Recapitalisation Programme, to address the misalignment between ridership volumes and the allocation of subsidies; and

10.112. To improve access to financing to the minibus taxi industry, government should consider setting up a financial institution that would offer competitive interest rates to the minibus taxi operators.

### Stakeholder submissions in response to findings and recommendations

#### Recommendation 1: overhaul of the issuing of the operating licence regime, and removal of quantity restrictions on all permits

10.113. The recommendation is not supported Free State Police, Roads and Transport Department, Western Cape Department of Transport and Public Works and the City of Cape Town.\(^\text{783}\)

The concern is that the removal of quantity restrictions will lead to possible increase in violence within the minibus taxi industry; an increase in overtraded routes; route invasions, road congestion and unlawful road behaviour. The City of Cape Town further submits that the removal of quantity restrictions would require an amendment of the NLTA.

10.114. The DoT published a discussion document on taxi industry regulation\(^\text{784}\) which signals its determination to review the regulatory framework and clearly states that operating licenses are the key lever to regulate the minibus taxi industry. Moreover, the DoT acknowledges the challenges in the issuance of operating licenses.

10.115. The Gauteng PRE submits that not assessing supply and demand will harm the important objective of ITPs. Although the Gauteng PRE states that it currently does not have the formal data, it is of the view that the minibus taxi market is oversaturated. As a result, the Gauteng PRE submits that should conflict arise because of the unregulated market the regulators will not be able to contain the conflicts. It, therefore, argues against issuing of operating licences without considering the supply and demand.

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783 The Free State Police, Roads and Transport Department, Western Cape Department of Transport and Public Works and the City of Cape Town

784 National Taxi Lekgotla 2020, Taxi industry Regulation, Ver 1, 11 September 2020
**Recommendation 2:** That planning authorities and provinces enter into memoranda of understanding (MoUs) to jointly exercise their respective powers and functions, as contemplated in Section 12 of the NLTA.

10.116. The Free State Police, Roads and Transport Department submits that an integrated and well-coordinated approach should be sought, favourably led by COGTA to ensure synergies of plans (IDPs and ITPs) and actual development amongst all stakeholders. CODETA further submits that the transferring of powers and functions through MoUs’s must be communicated to minimise confusion and miscommunication.

**Recommendation 3:** The DOT should upgrade the National Land Transport Information System urgently to improve efficiencies.

10.117. This recommendation is supported by the City of Cape Town.

**Recommendation 4:** Additional communication channels to communicate with the minibus taxi industry

10.118. SANTACO supports this recommendation and proposes a representation of the minibus taxi industry in the PREs, to advise the PREs and planning authorities on transport needs more particularly those arising from new developments. SANTACO further submits that it will also be in a better position to effectively assist with communication with the minibus taxi Industry.

**Recommendation 5:** Management and control of ranking facilities should solely be the responsibility of municipalities

10.119. The Free State Police, Roads and Transport Department, City of Cape Town and SANTACO supports this recommendation. The City of Cape Town submits that in its view, in the interest of providing an efficient and effective integrated public transport system, municipalities should (through its the Metropolitan Transport function) retain control of ranking facilities. The Free State Police, Roads and Transport Department further proposes the integration of the Provincial Transport Law Enforcement in conjunction with municipal law enforcement as part of encouraging compliance with operations. While SANTACO is of the view that the ownership of the ranking facilities must remain with the government, but the day to day running of the taxi rank must be given to the industry.

**Recommendation 6:** The minibus taxi industry must be subsidised through increased funding for the Taxi Recapitalisation Programme

10.120. The City of Cape Town supports this recommendation submits that increasing government funding to the Taxi Recapitalisation Program needs to be assessed against the evolving role that the minibus taxi industry will play in the fast changing and evolving public transport market. The Western Cape Department of Transport and Public Works suggests that the recommendation must include a subsidy model that will provide financial incentives targeted at improved levels of service for passengers. SA Taxi Finance submits that government should consider subsidising the industry in the same way as it subsidises rail and bus transport.

10.121. The Commission notes that there are plans within the DOT to review the Public Transport Funding Model to ensure coordinated subsidy provisions. In addition, the DOT published a discussion document submits that due to its informal nature, financial institutions have always been reluctant to finance the industry as they were considered a high-risk sector. The DOT submits that forming companies and co-operatives can give the industry access to capital/finance as opposed to when approaching financial institutions as individual operators. The DOT further submits that when the industry is united, various business opportunities can be explored. Furthermore, there is a need for training intervention for taxi operators to improve their limited financial management skills to ensure better management of their finances.
**Recommendation 7: To improve access to financing to the minibus taxi industry, government should consider setting up a financial institution that would offer competitive interest rates to the minibus taxi operators**

10.122. The Commission found that the structure of the minibus taxi financing market is not conducive to promote effective competition. To improve access to financing to the minibus taxi industry, the Commission is recommending that government should consider setting up a financial institution that would offer competitive interest rates to the minibus taxi operators. This recommendation is supported by the National Taxi Alliance. There were no further submissions from other stakeholders.

**Commission’s Response to Stakeholder’s Submissions**

10.123. The Commission responds only to recommendations that received objections as outlined below.

**Recommendation 1: overhaul of the issuing of the operating licence regime, and removal of quantity restrictions on all permits**

10.124. Having considered objections raised by stakeholders, the Commission maintains the view that these markets are best served without quantity restrictions. The current operating licensing regime is characterised by inefficiencies at the PRE’s with backlogs in the issuing of operating licences and at planning authorities who are unresponsive in terms of providing directives to the PRE’s. Planning authorities are unable to provide directives to the PREs because of a lack of capacity to develop and implement integrated transport plans to inform the directives. The DOT states, in its 2017 Revised White Paper, that the lack of capacity at the municipal level is a major inhibiting factor in municipalities preparing transport plans. Several provinces also lack capacity but can attract skills if resources are made available.

10.125. These integrated transport plans are primarily used as a scientific basis to quantify demand and supply of public transport. Even though PREs are allowed in terms of the NLTA to dispose of applications without considering directives from planning authorities, PRE’s have been cautious in adopting such an approach. In the Commission’s view if this situation can continue public transport will continue to be marred by inefficiencies and illegal operations.

10.126. Despite the Commission’s view on the removal of quantity restrictions, the Commission is also cognisant of the other objectives that the legislature had in mind when enacting quantity restrictions. These objectives include *inter alia* the management of congestion, public safety, protection of passengers and mitigate violent altercations between operators. Having considered all these objectives, while the market is best served without quantity restrictions, the Commission finds merit in the policy objectives of quantity restrictions but there are no competition grounds for it. In light of public interest considerations to mitigate violence as a result of oversaturation, the Commission is persuaded that in the interim, quantity restrictions may still be imposed in the short term, with the long term objective being the deregulation of the industry. The Commission is also persuaded in the interim the separation of planning and licensing functions should be maintained. However given the lack of capacity within municipalities, provinces or provincial transport authorities should be better equipped to deal with these functions, if adequate resources are provided.
**Recommendation 2: To improve access to financing to the minibus taxi industry, government should consider setting up a financial institution that would offer competitive interest rates to the minibus taxi operators**

10.127. The Commission also notes that there are government linked financial institutions who are in a position to provide developmental credit finance to the minibus taxi industry. These include financial institutions such as African Bank Limited, Ithala SOE Limited and the Small Enterprise Finance Agency (SOC) Limited (“SEFA”). Ithala SOE Limited has 51 branches and provide retails banking throughout KwaZulu-Natal. It also facilitates development and empowerment of KwaZulu-Natal based SMMEs and Co-operates. For the period 2013 to 2018, Ithala SOE Limited financed about 207 minibus taxis and has not repossessed any minibus taxi over this period. Ithala SOE Limited further submitted that it does not provide credit finance under developmental credit provisions and has not considered doing so.

10.128. Ithala SOE Limited is already exposed to the minibus taxi industry (albeit on small scale) and gained industry knowledge. For Ithala SOE Limited to provide developmental credit or credit finance to minibus taxi industry at a large scale it will require access to cheaper cost of funding from public institutions such as Public Investment Corporation and Industrial Development Corporation. Moreover, it will require to invest or built relationships with mobile mechanics and repair centres to ensure that the minibus taxi spends most of its time on the road generating income.

10.129. The Small Enterprise Finance Agency (SOC) Limited (“SEFA”), is a wholly owned subsidiary of the Industrial Development Corporation Limited (IDC). Its activities include amongst others providing financial products and services to qualifying SMMEs and Co-operatives, as defined in the National Small Business Act of 1996 and amended in 2004, through a hybrid of wholesale and direct lending channels to various sectors. SEFA submitted that it does not provide financial support to minibus taxi operators businesses directly. Instead, SEFA is exposed to the minibus taxi industry through SATF. For instance, SEFA submits that it provided SATF with R100million business loan to be used for on-lending to minibus taxi operators. It is the Commission’s view that SEFA must consider providing financial support to minibus taxi operators directly and not through intermediaries.

10.130 Having considered the above the Commission notes that some of these government linked financial institutions are already directly or indirectly funding the minibus taxi industry through intermediaries. However, given that the existing institutions have limited appetite to directly finance minibus taxis, it is unlikely that they will prioritise the minibus taxi industry in the short term. In this regard, a review of the funding and subsidy model for the minibus taxi industry is appropriate considering the lack of competition in the minibus taxi financing market.

**Final recommendations**

10.131. The Commission recommends that capacity at PREs and planning authorities be increased and all pending applications should be processed and finalised within 6 months of the publication of this report. Capacity may be improved if planning authorities and PREs enter into memoranda of understanding (MoUs) to jointly exercise their respective powers and functions, as contemplated in Section 12 of the NLTA.
10.132. Government through the DOT to review the funding model for the taxi industry and ensure equitable allocation of subsidies to the taxi industry.

10.133. DOT should upgrade the National Land Transport Information System to improve efficiencies.

10.134. PREs should utilise additional communication channels to communicate with the minibus taxi industry.
11. INTERPROVINCIAL BUS OPERATIONS

Introduction

11.1. This chapter, assesses the state of competition and impediments to effective competition in the provision of interprovincial bus services. An overview of the interprovincial bus services is discussed first, followed by the regulatory framework that governs the provision of interprovincial bus services, and a discussion on how prices are generally determined by market participants. Barriers to entry and expansion in the provision of interprovincial bus services is examined and, lastly, the chapter makes findings and provides recommendations.

Overview of the interprovincial bus industry

11.2. Interprovincial bus services entail the provision of scheduled bus services linking all the major cities in South Africa. Interprovincial bus operators also provide scheduled cross-border services linking South Africa with other countries within the Southern African Development Community (SADC) region. Interprovincial bus services are largely provided by private operators with no state support, with the exception of Autopax Passenger Services (SOC) Ltd (Autopax).

11.3. The largest players in the provision of interprovincial bus services, based on fleet size and passengers transported annually, include Unitrans Passenger (Unitrans), Intercape Ferreira Mainliner Proprietary (Intercape) and Autopax. Autopax is a wholly-owned subsidiary of the Passenger Rail Agency of South Africa (SOC) Ltd (PRASA) and operates two brands, Translux and City to City, a luxury and semi-luxury brand, respectively. Unitrans also operates two brands, Greyhound and Citiliner. Greyhound provides luxury coach services, while Citiliner provides a semi-luxury coach service. Intercape also operates a luxury and semi-luxury service under its brand.

11.4. There has also been some gradual expansion over the years in the provision of interprovincial bus services, with new operators such as Nozulu Enterprise and Events Transport CC (Nozulu Enterprise), Moolla’s Transport Services CC (Moolla’s) and Africa People Mover (Pty) Ltd (APM). Table 28 depicts some of the prominent players in the provision of interprovincial bus services, based on information submitted to the Commission as well publicly available information from the company profiles.

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786 For the purpose of this report, cross-border services will not be considered as they are not part of the scope of this Market Inquiry.
787 There are other interprovincial bus operators in the market that are not included in the table. However the Market Inquiry has received submissions from these operators.
Table 28: Company profiles for selected bus operators

<table>
<thead>
<tr>
<th>Firm</th>
<th>Fleet size</th>
<th>Passengers per annum</th>
<th>Year of operation</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autopax</td>
<td>519</td>
<td>2.2 million</td>
<td>2000</td>
<td>Cross-border and Interprovincial</td>
</tr>
<tr>
<td>Intercape</td>
<td>155</td>
<td>1.2 million</td>
<td>1979</td>
<td>Cross-border and Interprovincial</td>
</tr>
<tr>
<td>Unitrans Passenger</td>
<td>96</td>
<td>1.3 million</td>
<td>1984</td>
<td>Cross-border and Interprovincial</td>
</tr>
<tr>
<td>Eldo Coaches</td>
<td>70</td>
<td>32 271</td>
<td>1956</td>
<td>Interprovincial</td>
</tr>
<tr>
<td>APM</td>
<td>28</td>
<td>-</td>
<td>2014</td>
<td>Interprovincial</td>
</tr>
<tr>
<td>Moolla’s Transport</td>
<td>3</td>
<td>-</td>
<td>2016</td>
<td>Interprovincial</td>
</tr>
<tr>
<td>Nozulu Enterprise</td>
<td>4</td>
<td>-</td>
<td>2017</td>
<td>Cross-border and Interprovincial</td>
</tr>
</tbody>
</table>

Source: Commission’s own compilation

11.5. Intercape, Unitrans Passengers and Eldo Coaches have been in the market the longest, and thus have a large fleet size. Autopax, which commenced its operations in 2000, acquired most of its buses after it was allocated funding from the government as part of transport preparations for the 2010 FIFA World Cup. Of its total fleet of 519 buses, only 160 buses were fully operational as of June 2018. Autopax pointed out the age and thus high maintenance costs of its fleet as one of the biggest challenges that the company is facing. All the other 359 buses were not operating because of breakdowns.

11.6. Interprovincial bus operators connect all the major towns and cities throughout the country, operating more than 30 routes. Figure 33 shows the most popular routes serviced by interprovincial bus operators nationally.

Figure 33: Routes operated by interprovincial bus operators in South Africa

Source: Intercape

789 Intercape. 2017. Submission. Also see https://www.intercape.co.za/2017-intercape-busses-overview/
791 Notes of meeting between Competition Commission and Nozulu Enterprise. 11 October 2017.
794 https://www.greyhound.co.za/route-map/
11.7. The following routes have been identified as the most popular and attractive routes in the provision of interprovincial bus services:

11.7.1. Pretoria/Johannesburg to Durban;
11.7.2. Pretoria/Johannesburg to Port Elizabeth;
11.7.3. Pretoria/Johannesburg to East London;
11.7.4. Pretoria/Johannesburg to Mthatha; and
11.7.5. Pretoria/Johannesburg to Cape Town.

11.8. There are bus operators that have applied for additional operating licences in order to increase their capacity on these routes. However, it has been submitted that some of these routes are already oversaturated and cannot accommodate additional capacity. For example, the Pretoria/Johannesburg to Durban route is alleged to be the most saturated route, with over 12 bus operators providing services on the route.

11.9. There are also other routes that are less lucrative and unpopular; most of which connect rural towns and big cities. According to Autopax, it provides services on these routes as part of its social responsibility, as mandated by the government. These include the routes connecting Cape Town and Lusikisiki; Pretoria/Johannesburg and Sibasa; and Pretoria/Johannesburg and Acornhoek.

11.10. Interprovincial bus services require access to terminal facilities. PRASA manages most of the terminals in the country. PRASA provides access to these facilities through its division, PRASA CRES. The intermodal terminal facilities managed by PRASA CRES include Park Station (Johannesburg), Pretoria, Bloemfontein, Polokwane and the Cape Town Railway Stations. PRASA is vertically integrated in that it owns and manages most of the bus terminal facilities and is also active in the provision of interprovincial bus services.

11.11. PRASA's presence in both the provision of intermodal terminal facilities and the provision of interprovincial bus services is undesirable, as demonstrated in the competition assessment section. PRASA's ownership of Autopax creates wrong incentives for PRASA to safeguard and protect the interest of Autopax. The wrong incentives may be direct (intentional) or otherwise. This concern is exacerbated by the fact that Autopax is inefficient and has been underperforming over the years. The natural incentive may be to try to offer some benefits to Autopax, to mitigate competitive pressures. PRASA's protection of Autopax distorts, limits and/or prevents fierce competition between Autopax and other bus operators.

11.12. Park Station is one of PRASA's flagship stations and is strategically located in the central business district of Johannesburg – linking commuters to long distance and commuter buses, minibus taxis and rail transport (Metrorail, Shosholoza Mewl and Gautrain). Park Station offers retail space for supermarkets, convenience stores, food courts, banking facilities, vehicle rental facilities and a hotel under one roof. Given the features of this infrastructure, Park Station is an essential facility for bus operators, and access to such a facility provides a competitive edge. In Johannesburg, there is no other facility such as Park Station.

11.13. This section outlines the current regulatory framework that governs the provision of interprovincial bus services in South Africa.

11.14. As far as the provision of interprovincial bus services is concerned, the NLTA prescribes that the following authorities be established, as discussed in detail in Chapter 3.

11.14.1. National Public Transport Regulator (NPTR) and...
11.15. The NPTR was established in 2016 and is responsible for the monitoring and overseeing of public transport nationally; and monitoring the PREs and municipalities in relation to land transport functions. The PRE on the other hand must monitor and oversee public transport within its province. For example, a PRE considers and decides on approval of permits and licence applications for all public transport modes within its province.

11.16. The function to issue operating licences for interprovincial transport primarily resides with the NPTR. However this function is currently performed by the PREs, because the former is currently not adequately resourced to consider applications for operating licences in the provision of interprovincial bus services.\footnote{National Department of Transport. 2018. Oral submission by Mr Patel, Gauteng hearings. 7 June 2018. Page 41.} Currently, NPTR only considers applications for operating licences and accreditation for tourism services.\footnote{Ibid.} The DOT intends to further capacitate the NPTR, which has only 12 officials, to enable it to fully perform its functions as mandated by the NLTA.\footnote{Ibid. Page 41.}

11.17. When applying for an operating licence, the applicant is required to submit a timetable with the routes it wishes to service, demonstrate that it has capacity to service the proposed routes, and that there is demand for the service it seeks to render. Upon receiving new applications, the relevant PRE issues a notice in the Government Gazette, of applications received.\footnote{See Section 59 of the NLTA.} These applications are also posted on the notice board at the offices of the PRE. Members of the public, including other bus operators, wishing to submit comments or make representations, are permitted to do so within 21 days of the date of the publication.\footnote{Gauteng Department of Transport. 2018. Oral submission by Ms Smith, Gauteng hearings. 7 June 2018. Page 22.}

11.18. Where objections have been raised regarding a particular application, the PRE is required to consider all comments and presentations received and convene a hearing and adjudicate on the objection.\footnote{Notes of meeting between Eldo Coaches and Competition Commission. 9 October 2017.} If any of the parties are dissatisfied with the ruling of the PRE, an appeal can be lodged with the Transport Appeal Tribunal. While there is also an option to approach the High Court to adjudicate on any appeal matters, this avenue is hardly ever pursued because it is costly.\footnote{SABOA. 2017. Submission. 22 September 2017. Page 11.}

11.19. In instances where the application is approved, the vehicle to be used by the applicant must be inspected, to ensure it complies with all the legislative requirements before the licence is issued. Where the vehicle does not comply with the relevant requirements, the motor vehicle inspector is required to identify the areas of non-compliance, and the operating licence will not be issued until such time that the vehicle inspection has been signed off by the inspector.\footnote{Unitans. 2017. Submission. September 2017. Page 11.}

11.20. Operating licences issued in terms of the NLTA are issued for a minimum of five years, and a maximum of seven years. Thereafter they have to be renewed.\footnote{Figure 34 illustrates the process followed when applying for an operating licence (OL).}
Route allocation

11.21. For interprovincial bus services, bus operators determine the routes they wish to operate as part of the application for operating licences.\(^\text{811}\) There is no limitation on the number of routes that an operator can service. If the application is successful, the operating licence would specify the routes to be serviced, including the starting point and time, and various stops with their respective times. Bus operators are expected to adhere to these routes, stops and times at all times.\(^\text{812}\)

Price setting mechanisms

11.22. Each operator of interprovincial bus services determines its own prices, based on a number of factors which include: input costs; office rental costs and costs for entry at bus terminal facilities; cost of capital and return on investment; type of coach (i.e. luxury or semi-luxury); competitor analysis; projection/trends from previous years; supply and demand (peak or off-peak); and profit margin for the operator.\(^\text{813}\)

Dynamic pricing – off-peak vs peak pricing

11.23. Submissions received by the Commission indicate that interprovincial bus services is a fixed cost business with low margins; bus services must operate on pre-determined schedules, which must be adhered to irrespective of the number of passengers being conveyed.\(^\text{814}\) As a result of competitive forces, this market is price-sensitive.\(^\text{815}\) Furthermore, as indicated above, none of the bus operators in the provision of interprovincial bus services (with the exception of Autopax) receive any form of subsidy or financial support from the government.

11.24. The provision of interprovincial bus services is cyclical, with peak and off-peak periods.\(^\text{816}\) The demand for the service varies during the year, with peak periods over school holidays, long weekends, Easter weekends and festive periods. During the off-peak periods, interprovincial bus services have low capacity utilisation, and excess capacity is observed. It is for this reason that interprovincial bus operators use dynamic pricing as their method of setting prices.\(^\text{817}\)

11.25. Bus operators increase prices during peak periods, in order to recover losses made during off-peak periods when demand is low.\(^\text{818}\) The fluctuating demand thus compels bus operators to have differential pricing for peak and off-peak periods. During the off-peak season, bus operators reduce their ticket prices to attract passengers, and to at least cover their operating costs.\(^\text{819}\) During peak season, when there is high demand for the service, bus operators adjust their prices upwards. The increased revenue from the peak periods allows the operators to sustain their operations during the off-peak periods.\(^\text{820}\)

11.26. Uniform pricing, or flat rate pricing, throughout the year was viewed as unsustainable.\(^\text{821}\) Peak and off-peak differentiated pricing policy allows bus operators to maintain a level of capacity in the market, which they would not have been able to profitably sustain had they implemented a flat rate pricing policy.\(^\text{822}\) APM’s experience appears to give credence to the view that flat rate pricing may not be sustainable. In 2016, it implemented flat pricing as an entry strategy (penetration price), in an effort to attract more passengers.\(^\text{823}\) This strategy was successful to attract passengers, but it could not be sustained for an extended period.
because of losses that were incurred. APM has since abandoned this pricing strategy, in favour of dynamic pricing.

**Barriers to entry and expansion**

11.27. This section identifies barriers that may prevent new entrants from entering and competing effectively – and existing bus operators, especially small operators, from expanding in the market. Understanding the barriers to entry is imperative when assessing the state of competition in any market. Competition requires rivals, and in markets where the barriers to entry are high, rivalry is limited. Limited rivalry in the markets, among others, heightens potential abuse or stabilises existing collusive arrangements. Barriers to entry and expansion in the interprovincial bus industry are being considered, as an important component in the competition assessment which follows later.

11.28. Entry in the provision of interprovincial bus services does not seem to be overly difficult, as evidenced by the entry of several bus operators in recent years, such as Nozulu Enterprise and APM. However, there appear to be several factors that delay, and in some instances discourage entry by small operators. These factors are discussed below.

**Cost of entry and access to finance**

11.29. Just like in any other market, there are cost drivers that are a critical consideration for a bus operator intending on entering the market for the provision of interprovincial bus services, and for an operator to stay viable in the market. Such cost drivers include infrastructure, IT systems, sales distribution networks, management experience, technical skills, operating licences, and fleet procurement and maintenance.

11.30. Start-up costs for a bus operator are relatively high. New entrants are required to make substantial and various financial investments. APM submits that when it started its operation, the financiers required 30 per cent deposit on a bus (coach) which costs R4.5 million on average. There are also other costs, such as bus registration fees, which cost approximately R35 000.

11.31. APM and Nozulu Enterprise identified funding as one of the main challenges facing new entrants in the market, and there appears to be no incubator funding in the industry. Consequently, commercial institutions offer preferential terms to existing and large entities. Due to lack of funding, new entrants are forced to lease buses from existing operators; in order to raise enough capital to procure their own buses. For example, Nozulu Enterprise had to lease buses from Eagle Liner, which also operates interprovincial bus services. This arrangement presented some challenges, especially when Nozulu Enterprise's operations started showing growth.

11.32. Furthermore, it appears that the Original Equipment Manufacturers (OEMs) offer preferential procurement terms to the larger operators (previously advantaged and still advantaged) to the detriment of smaller bus operators. For example, a large operator can take delivery of between six and 15 new coaches with delayed payment terms, while similar terms are not open to small and new entrants.

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Access to bus terminal facilities

11.33. As outlined above, access to bus terminal facilities is critical in interprovincial bus operations, and PRASA owns most of the terminal facilities in the country. It has also been highlighted that Park Station is one of PRASA’s flagship stations, and it is strategically located in the central business district of Johannesburg; linking commuters to different modes of public transport.

11.34. PRASA uses different pricing mechanisms across the 12 bus terminal facilities under its management.\(^{837}\) Interprovincial bus operators have expressed concerns with regard to the fees charged by PRASA at these facilities, especially at Park Station. Until November 2013, PRASA charged bus operators a flat rate per month for collecting and off-loading passengers at Park Station. With effect from 1 November 2013, PRASA charged bus operators a flat rate per month for collecting and off-loading passengers at Park Station. With effect from 1 November 2013, PRASA introduced what is commonly referred to as the Pay-Per-Use system, in terms of which bus operators are charged hourly rates for utilising the bus terminal.\(^{838}\) An operator is required to pay R480 for each bus that enters Park Station, and is given one hour to off-load and collect passengers. If this process takes longer than the allocated time, operators are charged R10 per minute for any additional time.\(^{839}\)

11.35. All the interprovincial bus operators who participated during the Inquiry, except Autopax, have raised concerns about the Pay-Per-Use system. According to Eldo Coaches, it now pays R400 000 per month (compared to R7 000 it used to pay).\(^{840}\) APM submits that it also pays in excess of R400 000 for its 25 services, and is concerned that this figure grows with every new service added.\(^{841}\) Nozulu Enterprise, another new entrant, has also raised concerns regarding PRASA’s pricing.\(^{842}\) Unitrans estimates that the Pay-Per-Use system has added R900 000 per month to its operating costs, and it is forced in some instances to pass on the cost to passengers.\(^{843}\)

11.36. PRASA on the other hand has justified its decision to introduce the Pay-Per-Use system. In this regard, PRASA indicated that before the new system was introduced, all the loading bays at Park Station (there are 22 in total) were allocated and split among the 10 bus operators at the time.\(^{844}\) These bays were allocated in terms of long-term lease agreements entered into with the respective operators. After the introduction of the new system, PRASA was able to increase the capacity of the facility to include 8 new bus operators.\(^{845}\)

11.37. PRASA further submits that prior to implementing the Pay-Per-Use system, Park Station was operating at a loss – and that the Pay-Per-Use system would enable PRASA to generate sufficient revenue for the facility to begin to pay for itself, and fund the cost of improving it.\(^{846}\) PRASA has also argued that in introducing the Pay-Per-Use system, it sought to eradicate the exclusive use of the facilities, which served as a barrier to entry for small operators – and that the system has given rise to significant efficiencies in the bus management and operating system.\(^{847}\)

11.38. The issues relating to access to PRASA’s bus terminal facilities, and Autopax’s alleged preferential treatment by PRASA, are considered more fully in separate investigations that are being conducted by the Commission. In this regard, the Commission has received four complaints relating largely to these issues.\(^{848}\)

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\(^{837}\) Submission by PRASA dated 24 November 2017.
\(^{839}\) Initially, PRASA had set these fees at R600 per hour and R 200 for every 15 minutes thereafter, respectively. Meeting notes, Eldo Coaches and Competition Commission, dated 09 October 2017; PRASA submission, Annexure B, dated 24 November 2017.
\(^{840}\) Meeting notes, Eldo Coaches and Competition Commission, dated 09 October 2017.
\(^{841}\) Submission APM dated 09 November 2017.
\(^{842}\) Submission by Unitrans dated September 2017.
\(^{843}\) Submission by Unitrans dated September 2017.
\(^{847}\) Submission by PRASA dated 24 November 2017.
\(^{848}\) Africa People Mover v PRASA – Case number: 2017Mar0020; Moolla’s Transport v PRASA – Case number 2018Mar0008; Intercape v PRASA – Case number 2018May0005; and Eagle Liner v PRASA – Case number 2019Apr0031.
Exploitation of regulations – regulatory barriers

11.39. The Commission has observed that there are certain practices in the provision of interprovincial bus services that limit, distort and/or prevent competition between bus operators. These practices are enabled by ineffective implementation and application of the current regulatory framework. In this section, we discuss these regulatory challenges.

Capacity at PREs

11.40. Interprovincial bus operators have described the process of acquiring operating licences as rather frustrating, for various reasons. This has been attributed to, among other things, the lack of capacity in the PREs. Although the NLTA places the responsibility for issuing interprovincial operating licences with the NPTR, it is still the PREs that perform this role. It has been asserted that the PREs do not have the necessary skills to perform this task. For example, one of the stakeholders made this submission to the Commission:

“The people that serve on the PRE must be qualified with skills in transport economics, law, in accounting, science and in the maintenance of vehicles, knowledge of vehicles, etcetera, etcetera. The PREs have a far lower level of qualifications .... required to perform their functions.”849

“The national regulator is in terms of the Act enjoined to set standard, to create a standard procedures manual for all applications, whether at the level of the planning authority, the level of the PRE itself, or the transport appeal tribunal. So, and that has not been done, so the standardised procedures that are an essential element of the functioning of this whole act, do not exist ....”850

11.41. The current regulations relating to applications for operating licences are open to abuse and exploitation, as the large, established bus operators object to applications by new players. The abuse of this process creates an artificial barrier to entry and inhibits the ability of bus operators, especially small operators, to grow and expand. This practice also entrenches the position of bus operators who are prone to raising frivolous and vexatious objections. While any bus operator is entitled to object to applications for operating licences, the abuse of this process distorts and, in some instances, prevents effective competition in the provision of interprovincial bus services.

11.42. As stated above, if no objections are lodged, the application process is quick, and approval can be obtained from the relevant PRE within 60 business days. Although the objection process is important, especially in instances where there are legitimate grounds to object to applications for operating licences, it appears that this process is open to abuse and exploitation. The Commission heard evidence that big interprovincial bus operators use legislation (i.e. the objection process) as a tactic to prevent or delay entry or expansion for other players in the provision of interprovincial bus services, especially small bus operators and new entrants.851

11.43. The Gauteng PRE, which receives and evaluates most of the applications filed by interprovincial bus operators, has confirmed that the concerns raised by bus operators are legitimate.852 Big operators often exploit the process to frustrate small operators, through litigation, and this occurs with almost every application filed with the PRE.853 The depth and severity of this problem is best described by the Gauteng PRE itself:

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“It is indeed a fair concern or a valid concern. You know, we deal with these objection hearings and we actually pick up that you know this is not just about objection. It is about creating entrance barriers by the existing operators. The problem is that the existing, the current existing operators you know, they have great financial muscle that they can use to frustrate you know the upcoming operators, through litigation and all that. They even take us though litigation processes as the PRE and you know, the snag [sic] for them is that as long as they are doing that, they delay the application. They can delay it for a year or two or even three years you know, and as the application is being delayed they are continuing to benefit from operations, and we are actually even putting it to them you know that, to say that you know, it is clear that what you are doing is you know [you are] creating an entrance barrier to new entrants and it is actually anti-competitive behaviour and it reflects even in our decisions when we make a determination, a final determination…and there is little we can do as the PRE. Even if we decide to grant the application, like I am saying they will take the application further on litigation and it the application happens to succeed at the second level of litigation, they will take it to another level.”

11.44. The most cited reason in the objections filed with the PREs is oversaturation of routes. Due to lack of capacity, the PREs are not able to immediately dismiss objections of this nature, as no proper demand and supply assessments are conducted. For example, reference has been made to an instance where two different operators applied for 20 and 40 operating licences respectively from the Gauteng PRE. The Gauteng PRE granted the two operators 10 and 20 operating licences, respectively.

In response to these applications, two operators filed objections asserting that the routes that Eldo Coaches was applying for were oversaturated. The PRE granted Eldo Coaches five operating licences and rejected the other five applications. The PRE’s decision in this regard was challenged in the Transport Appeal Tribunal. At the date of providing evidence to the Commission, Eldo Coaches had spent more than R1.5 million on legal fees, and the matter was still unresolved.

11.45. Eldo Coaches has also provided the Commission with evidence that gives credence to the view that big operators exploit the objection processes. For example, Eldo Coaches submits that in 2017, the entity applied for 10 operating licences from the Gauteng PRE, to increase its capacity on already existing routes. In response to these applications, two operators filed objections asserting that the routes that Eldo Coaches was applying for were oversaturated. The PRE granted Eldo Coaches five operating licences and rejected the other five applications. The PRE’s decision in this regard was challenged in the Transport Appeal Tribunal. At the date of providing evidence to the Commission, Eldo Coaches had spent more than R1.5 million on legal fees, and the matter was still unresolved.

11.46. The Gauteng PRE further advised the Commission that, in certain instances, because of high litigation costs, some potential entrants abandon their intention to enter the market and withdraw their applications. The PRE’s evidence is consistent with evidence from one of the bus operators. The operator contends as follows:

“Generally a new business has minimal to no cash flow, any unnecessary delay it may face in being able to legally trade/operate may have adverse irreparable effects on the new business, such as the business incurring more costs and in most instances running the business down to a point that it withdraws from the entire process”.

11.47. While there may be concerns of oversaturation on some routes, some operators have a number of operating licences that they do not use during the off-peak season, and only use them to increase their capacity during the peak season. This is despite the requirements in the NLTA, for operating licences that have not been used for more than 180 days to be revoked. For example, Autopax,

860 Submission by APM dated 09 November 2017, page 5.
which has a fleet size of about 519 buses, only uses a fraction of its fleet – yet still holds operating licences for the entire fleet.\textsuperscript{864} When objections are submitted based on, among other reasons, oversaturation, Autopax’s entire fleet on the affected routes would be taken into account when an assessment is conducted – despite the fact that some of its buses may not be in operation at the time of the assessment. This distorts the assessment and serves as an artificial barrier to entry.

11.48. Based on this evidence, there seems to be credence to the allegations that the big operators exploit the objection process set out in the NLTA, using it to stifle competition in the market.

Irregular practices in relation to operating licences

11.49. The Commission has also received submissions that there are irregular practices perpetrated by some of the bus operators when they apply for operating licences.\textsuperscript{865} These include the use of pseudonyms by well-established operators; informal transferring, leasing or interchanging of operating licences; and the entry of new operators without complying with the requirements of the NLTA. These practices lead to the oversaturation of routes, among other problems.\textsuperscript{866}

11.50. Mr Mtshala of Uncedo Service Taxi Association also gave evidence that there are interprovincial bus operators who have no operating licences at all, or utilise operating licences that do not belong to them.\textsuperscript{867} Moolla’s Transport also gave similar evidence and stated that during the peak seasons, some of the bus operators are able to increase their capacity by hiring additional buses, and operate them without any permits.\textsuperscript{868}

State of competition in the provision of interprovincial bus services

11.51. This section assesses the state of competition in the provision of interprovincial bus services and highlights the possible obstacles to fair competition in the market.

11.52. Bus operators describe competition within the provision of interprovincial bus services as fierce.\textsuperscript{869} The dimensions of competition include pricing, reliability, safety, comfort and convenience.\textsuperscript{870} Despite the fierce competition, market participants have also identified a number of features of the market that distort, limit and/or prevent more robust competition. Of great concern is the vertical integration of PRASA and Autopax, and the abuse of the regulatory framework by some of the bus operators. In the section that follows, we discuss these issues in detail.

PRASA’s preferential treatment of Autopax

11.53. Access to bus terminal facilities in the provision of interprovincial bus services is critical for any bus operator. PRASA owns and manages most of the bus terminal facilities in South Africa, especially those that are considered as key infrastructure because of their location and design. These include Park Station (Johannesburg), Pretoria Station, Durban Station, Bloemfontein Station, Polokwane Station and the Cape Town Railway Station. At the terminal facilities, PRASA offers bus operators loading bays, and office space for distribution of bus tickets. Autopax is a subsidiary of PRASA and operates interprovincial bus services.

\textsuperscript{864} Eldo Coaches – Oral submission by Mr Jansen Van Niewenhuizen. Cape Town Hearings, dated 19 June 2018. Page 19
\textsuperscript{865} Submission by dated 24 August 2017.
\textsuperscript{866} Submission by dated 24 August 2017.
\textsuperscript{867} Uncedo Services Taxi Association – oral submission by Mr Mtshala. Eastern Cape Hearings, dated 27 August 2018. Page 68.
\textsuperscript{868} Moolla’s Transport – oral submission by Mr Moolla. Gauteng Hearings, dated 05 June 2018. Page 184.
\textsuperscript{869} Submission by Intercape dated 24 August 2017. See also submission by Unitrans dated September 2017.
\textsuperscript{870} Submission by Eldo Coaches dated 05 December 2017, read with notes of meeting dated 09 October 2017; submission by Unitrans dated September 2017; submission by APM dated 09 November 2017.
11.54. Autopax was previously under Transnet and was acquired by PRASA in 2008.871 A number of market participants have expressed a view that the relationship between PRASA and Autopax gives the latter a competitive advantage in the provision of interprovincial bus services. For example, it has been submitted that Autopax is not obliged to pay the fees payable by other bus operators to PRASA, although it is invoiced monthly.872 This gives Autopax a competitive advantage, in that it does not incur similar costs as its competitors for the use of the terminal facilities owned by PRASA.873

11.55. PRASA has refuted the claims that Autopax enjoys favourable trading terms, given that PRASA CRES and Autopax are separate business entities with separate boards of directors.874 PRASA submitted that the only relationship between the two entities is that of a lessor and lessee.875 PRASA further contends that it treats Autopax no differently to other bus operators.

11.56. To substantiate its claims, PRASA CRES provided a list of top 10 bus operators who were in arrears, and it was evident that Autopax is not the only operator in arrears for the use Park Station facility.876 However, Autopax had the largest debt compared to other operators on the list. Autopax owed PRASA compared to the other 9 operators in the top 10, who owed PRASA about combined.877 Table 29 shows the list of the top 10 bus operators who are in arrears for bus terminal usage at Park Station. As at February 2019, Autopax’s debt at Park Station had increased to .878 Furthermore, the Commission’s analysis shows that, in addition to its inconsistencies in making payments, Autopax was allowed to use the Park Station bus terminal facilities for almost two years (i.e. 19 consecutive months) without making any payment. While there are indeed bus operators who have defaulted in making payments, Autopax is a perennial defaulter – with no concomitant action by PRASA CRES to recover the debt, other than issuing letters of demand. As of February 2019, Autopax owed PRASA CRES R77.9 million nationally in rental arrears.

Table 29: Top 10 bus operators in arrears for the use of bus terminal facilities at Park Station as of June 2018

<table>
<thead>
<tr>
<th>Operator</th>
<th>Amount owed (Range)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autopax</td>
<td>Less than 30 million</td>
</tr>
<tr>
<td>Möolla’s Transport Services</td>
<td>Less than 10 million</td>
</tr>
<tr>
<td>African People Mover</td>
<td>Less than 10 million</td>
</tr>
<tr>
<td>Greyhound</td>
<td>Less than 5 million</td>
</tr>
<tr>
<td>Cream Magenta</td>
<td>Less than 5 million</td>
</tr>
<tr>
<td>Nyamende Events and Transport</td>
<td>Less than 1 million</td>
</tr>
<tr>
<td>Intercape</td>
<td>Less than 1 million</td>
</tr>
<tr>
<td>Mavambo Coaches</td>
<td>Less than 1 million</td>
</tr>
<tr>
<td>Luqray Coaches</td>
<td>Less than 1 million</td>
</tr>
<tr>
<td>DMJ Transport</td>
<td>Less than 1 million</td>
</tr>
</tbody>
</table>

Source: PRASA submission June 2018

11.57. PRASA CRES has submitted that the reason Autopax has the highest debt is that it has the largest bus fleet, compared to other operators. However, during public hearings, Autopax pointed out that while it has 519 buses, only 160 buses were fully operational, and in November 2017 only 90 buses were running.879 Moreover, PRASA CRES does not seem to provide a convincing argument why no action was taken for non-payment of services for 19 months.

11.58. Recently, PRASA CRES attempted to recover the debt owed by Autopax by issuing summons against the latter. In response to this action, Autopax’s CEO made the following remarks to PRASA CRES worth noting:

872 Submission by APM dated 09 November 2017.
875 Ibid.
876 Submission by PRASA dated 03 June 2018.
877 Submission by PRASA dated 03 June 2018. (Confidential)
11.59. The Commission also notes the following statement made by PRASA during public hearings:

“In terms of financial support, you know PRASA’s primary objective – that is Autopax and rail - is running Autopax and the secondary objective PRASA CRES are the integral part of the broader PRASA mandate. In terms of Section 23 of the Legal Succession Act, PRASA is authorised to carry out its mandate for a subsidiary company and to finance such company in terms of Section 23 – the Legal Succession Act. That is the relationship between Autopax and Prasa then. That’s by law – these two have to support each other. PRASA CRES is required to generate an income from the exportation of assets – required and support statutory objectives from PRASA, being rail and bus service. So, that is just where we fit in.”

(own emphasis)

11.60. The Commission has also observed that from time to time, PRASA provides financial support and bailouts to Autopax. For example, when Autopax failed to pay salaries to its staff in April 2018, PRASA’s Group CEO confirmed in a press release that PRASA had continuously supported Autopax as a business and would continue to do so. He further mentioned that, “PRASA had advanced Autopax a loan of R50 million at the end of March 2018”. The issue of bailouts provided by PRASA to Autopax is discussed further below.

11.61. The Commission has also established that Autopax’s semi-luxury brand, City to City, has been allocated an exclusive loading area and ticketing office, by PRASA CRES, at Park Station. This arrangement commenced in 2000 and City to City used the allocated space based on a developmental lease agreement that was entered into by Autopax (when it was still part of Transnet) and PRASA CRES.

11.62. PRASA submits that Autopax developed the leased area and effected numerous improvements, using its own CAPEX. When Autopax leased the area, it was the only operator allowed into Park Station. The developmental lease agreement was continuously renewed until June 2018. Although the lease agreement has since terminated, Autopax continues to use the exclusive area to date.

11.63. During the public hearings, Autopax described the exclusive loading area as a small area that only serviced a few passengers. However, when the Commission conducted an inspection in loco at Park Station, it observed that the exclusive loading area is not as small as had been suggested by Autopax. The Commission’s observation is consistent with Eldo Coaches’ evidence that the exclusive loading area can accommodate up to 15 buses. Furthermore, the Commission’s recent visit to Park Station, on 17-18 April 2019, confirmed that the exclusive loading area is still used by Autopax to provide services to passengers travelling to destinations in the Mpumalanga and Limpopo provinces. The Commission’s analysis further shows that, based on passenger volumes, Autopax has a strong hold in the Limpopo and Mpumalanga provinces.

11.64. Figure 35, Figure 36 and Figure 37 shows the exclusive loading area allocated by PRASA CRES to Autopax’s City to City:
11.65. Interprovincial bus operators, notably APM, Nozulu Enterprise and Moolla’s Transport, have also raised concerns about significantly low fares charged by the big operators, especially on the routes where there is intense competition. It was submitted that big operators were able to charge as low as R140 for a ticket from Johannesburg to Durban. Mr Kgaboesele’s evidence was that, based on his experience at both APM and Autopax, it is not possible for an operator to charge prices as low as R140-R160 on the Johannesburg to Durban route and still cover its costs. Mr Kgaboesele also advised the Commission that an operator that charges less than R220 to travel from Johannesburg to Durban, with an average load factor of about 80 per cent, cannot be covering its operating costs.

11.66. In order to test the above allegations, the Commission conducted a dummy booking using Computicket online ticket sales, and the prices that were obtained confirmed that Autopax charged prices that range between R140-R160 on the Johannesburg to Durban route. This was during the off-peak season. Autopax attributed its pricing to market conditions, including dynamic pricing. However, Autopax could not explain why its two brands, whose cost structures are different (i.e. City to City and Translux) would charge the same price, which is believed by other operators to be substantially low. While this evidence is not conclusive, it is suggestive of anti-competitive behaviour by Autopax, given its financial performance.

**Unfair pricing practices (predation allegations)**

11.67. PRASA’s provision of financial support to Autopax creates distortions to the competitive environment. Autopax has been a consistent underperformer for an extended period of time, becoming more pronounced in the last five years – when it posted substantial losses, with the exception of 2014/15. Further losses are anticipated in 2018/19. Table 30 depicts Autopax’s performance between 2013 and 2018:

<table>
<thead>
<tr>
<th>Table 30</th>
<th>Depicts Autopax’s performance between 2013 and 2018:</th>
</tr>
</thead>
</table>

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889 The dummy booking was done on 08 June 2018, for the period 11 June 2018 - 17 June 2018.
### Table 30: Autopax financial performance 2013-2018

<table>
<thead>
<tr>
<th></th>
<th>2013/14</th>
<th>2014/15</th>
<th>2015/16</th>
<th>2016/17</th>
<th>2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total revenue (R)</strong></td>
<td>848 058 302</td>
<td>913 897 048</td>
<td>943 216 225</td>
<td>915 686 367</td>
<td>568 152 487</td>
</tr>
<tr>
<td><strong>Fare revenue (R)</strong></td>
<td>683 452 962</td>
<td>750 688 611</td>
<td>709 299 138</td>
<td>616 971 349</td>
<td>509 658 791</td>
</tr>
<tr>
<td><strong>Operational expenditure (R)</strong></td>
<td>888 035 246</td>
<td>879 603 569</td>
<td>959 992 612</td>
<td>1 004 366 494</td>
<td>833 446 322</td>
</tr>
<tr>
<td><strong>Profit/(loss) (R)</strong></td>
<td>-75 102 504</td>
<td>7 920 829</td>
<td>-28 548 430</td>
<td>-212 457 978</td>
<td>-304 590 046</td>
</tr>
<tr>
<td><strong>Passenger numbers</strong></td>
<td>2 737 150</td>
<td>2 725 890</td>
<td>2 515 873</td>
<td>2 252 011</td>
<td>1 898 777</td>
</tr>
<tr>
<td><strong>Total employees</strong></td>
<td>1 770</td>
<td>1 447</td>
<td>1 619</td>
<td>1 376</td>
<td>1 076</td>
</tr>
<tr>
<td><strong>Employee costs/ opex</strong></td>
<td>32%</td>
<td>35%</td>
<td>36%</td>
<td>37%</td>
<td>42%</td>
</tr>
<tr>
<td><strong>Customer satisfaction</strong></td>
<td>74%</td>
<td>77%</td>
<td>74%</td>
<td>62%</td>
<td>62%</td>
</tr>
<tr>
<td><strong>Kilometres travelled</strong></td>
<td>54 484 358</td>
<td>55 556 374</td>
<td>57 627 360</td>
<td>53 623 691</td>
<td>38 262 447</td>
</tr>
</tbody>
</table>

Source: PRASA MTEF Corporate Plan 2020 – 2022

11.68. The drastic decline in Autopax’s financial performance is shown in 2017/18, where all indicators such as total revenue, passenger numbers, losses and kilometres travelled were worse compared to the previous years.

11.69. In both PRASA and Autopax’s strategic documents, it has been acknowledged that Autopax’s underperformance was attributable to inefficiencies within the entity. These documents identify the following inefficiencies, among others:

11.69.1. The entity does not have personnel with relevant technical expertise (no core technical skills);

11.69.2. Autopax’s management team lacks relevant experience in the bus industry. According to Autopax’s Strategic Plan: 2018–2023, “the fact that the company was not able to understand and diagnose that the Autopax products (Translux and City-to-City) was in a decline stage in terms of the product life cycle is another clear indication of ineptness in the management and leadership. The fact that the company did not have a robust plan to respond to new entrants in the long-distance bus industry market is a sign of lack of requisite management and leadership skills”.

11.69.3. More than half of Autopax’s fleet is not in use, due to either technical breakdowns or accidents. This has had detrimental effects on Autopax’s passenger volumes, revenue and customer satisfaction.

11.70. As a result of underperformance, Autopax had to rely on bailouts and financial support from PRASA. Between 2012 and 2018, Autopax received financial support. Of this total figure, (respectively). The financial position of Autopax has been worsening, and this possibly explains why PRASA CRES is not pursuing the outstanding debt aggressively. This brings into question the impact to competition and desirability of a vertically integrated firm (PRASA Group) continuing to support and protect an inefficient subsidiary (Autopax).

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894 Autopax Strategic Plan 2018-2023, page 5.

Conclusion on the state of intramodal competition

11.71. The above evidence (especially evidence on preferential treatment; the allocation of an exclusive loading area to Autopax; PRASA’s financial support to Autopax; and Autopax’s underperformance and inefficiencies) put the spotlight on the relationship between PRASA and Autopax. Given its concerns about Autopax’s underperformance and inefficiencies, PRASA, as the custodian of intermodal bus terminal facilities (through PRASA CRES), is faced with a dilemma, and this creates wrong incentives for PRASA to safeguard and protect the interest of Autopax. In turn, this distorts, limits and/or prevents competition between Autopax and other bus operators.

11.72. Access to an intermodal facility is key for competition in interprovincial bus services, and there is scope for competition if access is improved. There have been few entrants and their growth is limited, due to lack of access to intermodal facilities. The involvement of the state may serve as a blockage in the development and growth of this market due to its interest as a player in the market, which requires protection from time to time (as demonstrated above). If Autopax was efficient, profitable and subjected to the same terms as other bus operators, the impact on competition arising from vertical integration may be neutral. Given that there are sufficient market participants that compete in the provision of interprovincial bus services, and some degree of dynamism is observed, it is undesirable and unnecessary for the state to actively participate in this market. This is premised on the fact that Autopax is inefficient and PRASA, as an owner of an intermodal facility, has to consider their inefficient subsidiary in its decision-making process. Moreover, the state’s participation in the provision of interprovincial bus services has not yielded any significant benefits for users of long-distance public transport. Instead, as is evident from the table above, there is a decline in customer satisfaction as far as this relates to the services rendered by Autopax.

11.73. Consequently, the Commission has taken the view that appropriate steps need to be taken to address competition distortions created by the relationship between PRASA and Autopax, in the provision of interprovincial bus services.

11.74. It is important to mention that between March 2017 and July 2019, the Commission received five complaints from interprovincial bus operators concerning allegations of, among other things, excessive access fees charged by PRASA for access to loading bays at Park Station. The complainants also alleged that PRASA grants favourable trading terms to Autopax by affording it extended payment terms for the use of bus terminal facilities and allocating it (Autopax) exclusive loading bays at Park Station. Such favourable trading terms create a competitive advantage for Autopax.

11.75. The Commission duly investigated the complaints and found that PRASA has contravened sections 8(1)(c), 8(b) and 8(a) of the Act. In particular, the Commission found that the bus access fee, which was introduced by PRASA through the Pay-On-Use System, is unreasonably high and has significantly increased the operating costs of interprovincial bus operators. The Commission also found that PRASA is reluctant to demand payment from Autopax for bus access fees and rentals, for leasing office space at Park Station. Furthermore, PRASA has allocated a large exclusive area to Autopax at Park Station, while not providing access to loading bays to several interprovincial bus operators that have applied for access to Park Station. Based on these findings, on 07 February 2020, the Commission referred the five complaints to the Competition Tribunal for determination.

Findings

Intra-modal competition and the relationship between PRASA and Autopax

11.76. The relationship between PRASA, as the custodian of key intermodal terminal facilities in South Africa, and Autopax, as an active market participant in interprovincial bus services, creates wrong incentives for PRASA as it acts in a manner that protects and safeguards the interests of Autopax, whether intentionally or unintentionally. This is evident from (i) PRASA’s allocation of an exclusive loading area and ticketing office to Autopax at Park Station, when none of the other bus operators enjoys such privilege; (ii) Autopax consistently being allowed to use PRASA’s bus
terminal facilities without making payments; and (iii) PRASA has been providing financial support to Autopax for the business to continue operation. Autopax’s record of underperformance over the years, has worsened in the past two years. This evidence gives credence to the view that Autopax enjoys preferential treatment from PRASA. PRASA and/or Autopax’s conduct in this regard distorts, limits and/or prevents effective competition between Autopax and other bus operators in the provision of interprovincial bus services.

**Exploitation and abuse of regulations**

11.77. There is abuse of the objection process. Frivolous and vexatious objections by established bus operators delay and/or discourage entry and/or expansion by other bus operators, especially those that are small in size. This practice entrenches the position of bus operators who are prone to raising frivolous and vexatious objections.

**Access to terminal facilities as a barrier to entry**

11.78. The Commission has observed some entry in the provision of interprovincial bus services, but the growth of new entrants is hampered by the limited access to an intermodal facility. Access to an intermodal facility is key for any entrant to be an effective competitor.

**Price setting mechanism by bus operators**

11.79. The Commission has observed that the provision of interprovincial bus services is cyclical in nature, and bus operators are unlikely to cover their costs during the off-peak season. In order to remain in business, bus operators increase their prices during peak periods, to recoup the losses that they may have incurred during the off-peak periods. Thus, flat rate pricing is unlikely to work in the provision of interprovincial bus services.

**Provisional recommendations**

*Autopax be separated from the PRASA Group and become a separate state entity.*

11.80. The Commission recommended that Autopax be separated from the PRASA Group and become a separate state entity. As a separate state entity, Autopax will manage its business activities independent of the PRASA Group, and report directly to government and not through the PRASA Group.

*PRASA Cres to be incorporated as new and independent state entity outside of the PRASA Group*

11.81. The Commission recommended that PRASA Cres, which currently operates as a division of the PRASA Group, be incorporated as a new and independent state entity outside of the PRASA Group, to eliminate conflict of interest and perverse incentives. The new state entity will manage all intermodal terminal facilities currently under PRASA Cres, and other ranking facilities in partnership with municipalities.

*An overhaul of operating licence regime by removing all quantity restrictions on the number of operators per route*

11.82. The Commission recommended an overhaul of the operating licence regime, by removing all quantity restrictions on the number of operators per route. Operators will still be required to apply for roadworthy permits and other documents relevant for applying permits, but operating licence applications will not be denied based on supply and demand. Planning authorities are still required to confirm if ranking facilities are available. In addition, the Commission recommends that all pending applications should be processed and finalised expeditiously.
Stakeholder submissions in response to the provision report

Recommendation 1: Intramodal competition and the relationship between PRASA and Autopax

11.83. Interprovincial bus operators such as SANSBOC Limpopo, Phadziri Coaches and APM largely support the Commission’s recommendations in this regard. However, some of the operators have expressed concerns with competing with a state-owned entity which enjoys state support whilst private operators receive no subsidies from the government. Intercape, for example, called for privatization of Autopax. Government is of the view that Autopax has a significant role in terms of its mandate to provide interprovincial bus services to non-profitable routes in the far-flung rural communities that are not serviced by the private operators and cannot be privatized. Autopax does not only operate on commercial terms but also has a social service component directed by its mandate.

11.84. PRASA also denies that it extends any preferential treatment to Autopax vis-a-vis its competitors and has no incentive to do so. Furthermore, it states that it is entitled to fund Autopax.

Recommendation 2: Access to terminal facilities as a barrier to entry

11.85. The Commission has observed some entry in the provision of interprovincial bus services, but the growth of new entrants is hampered by the limited access to an intermodal facility. PRASA owns most of the intermodal facilities in the country. Access to an intermodal facility is key for any entrant to be an effective competitor.

11.86. The Commission recommended that PRASA Cres, which currently operates as a division of the PRASA Group, be incorporated as new and independent state entity outside of the PRASA Group to eliminate conflict of interest and perverse incentives.

11.87. This recommendation was largely accepted by APM and Phadziri Coaches. City of Cape Town suggested that in the interests of providing an efficient and effective integrated public transport system, municipalities should retain control of all ranking facilities in their respective cities, including those that are owned by PRASA.

11.88. PRASA however, submits that the Commission’s recommendation in this regard is not practically implementable without at least repealing or amending existing legislation. This is because the recommendation conflicts with PRASA Group’s statutorily imposed objectives and socio-economic mandate.

11.89. National Treasury questioned whether the creation of a separate government entity will address the issue given the potential favouritism likely to occur between state entities. National Treasury was of the view that the Commission should interrogate if Autopax is addressing any specific market failure given the competitive nature of interprovincial bus market. The argument in relation to catering for marginalised areas served by Autopax may be addressed by commuter subsidy as opposed to having the state operating the bus service.

Recommendation 3: Exploitation and abuse of regulations

11.90. The Commission found that there is abuse of the objection process by the established bus operators to delay and/or discourage entry and/or expansion of other bus operators, especially those that are small in size.

11.91. The Commission therefore recommended an overhaul of operating licence regime by removing all quantity restrictions on the number of operators per route. Operators will still be required to apply for roadworthy permits and other documents relevant for applying permits, but operating licence applications will not be denied based on supply and demand.

11.92. All the stakeholders who made submissions in this regard, including bus operators (SABOA, APM, Intercape and Unitrans) and regulators (Gauteng PRE, CoJ and CoCT), do not support the Commission’s recommendations. Some of interprovincial bus operators contend that the Commission’s finding is incorrect. The practise to submit comments or representations by objectors at operating licence and permit hearings are subjected to quasi-judicial processes with sufficient safeguards, and thus cannot be exploited.
11.93. Interprovincial bus operators such as APM, Intercape and Unitrans submit that the fault is not with the legislation with itself but rather it is with its implementation. The bus operators further submit that the demand for intercity services is not infinite and so unrestrained issuance of operating licences without due regard to demand (versus supply) can only lead to unintended consequences such as conflict between various modes, as has been the case on some of the over saturated routes. Another material consideration is that without sufficient numbers, newly established black operators find it extremely difficult to service the ultra-competitive market. Gauteng PRE also submits that disregarding the issue of demand and supply will grossly defeat the fundamental objective of ITPs and the regulators will not be able to contain conflicts that are likely to occur as a result.

Commission’s Response to stakeholder submissions

Intramodal competition and the relationship between PRASA and Autopax

11.94. The issue of PRASA CRES granting preferential treatment to Autopax is currently a matter that is before the Competition Tribunal and in its papers, the Commission is seeking an order that interdicts and restrains PRASA from acting in a manner that is exclusionary and contravenes the Competition Act. The Commission believes that these are the most suitable solutions to deal with the competition issues identified with regards to the relationship between Autopax and PRASA.

Exploitation and abuse of regulations

11.95. Given the competition distortions arising from the existing conflict of interest between PRASA CRES and Autopax, the Commission is of the view that a complete structural separation between the two entities is appropriate.

Final Recommendations

11.97. The DOT must address the conflict of interest between PRASA CRES and Autopax. This can be achieved through, among others, a complete structural separation between the entities.

11.98. PRASA CRES should ensure that all bus operators are treated in a non-discriminatory manner.

11.99. The DOT should fast track the process of establishing a fully-fledged NPTR. The NPTR that is fully capacitated will be in a better position to evaluate applications for operating licenses in the provision of interprovincial bus services, as prescribed in the NLTA. In turn, this will minimise the objections that are filed by bus operators.

11.100. The NPTR and/or the PREs should conduct proper needs and/or supply and demand assessments (and any other related assessments prescribed by law) when assessing applications for operating licences.
12. COMPETITIVE DYNAMICS IN THE PUBLIC TRANSPORT SECTOR

Introduction

12.1. This chapter evaluates competitive dynamics within the public transport industry. Firstly, the chapter outlines the competition assessment framework for the public transport sector. The chapter then discusses intermodal competition within the public transport sector, and impediments to competition. Findings and recommendations conclude the chapter.

Competition assessment framework

12.2. Competition assessment within the public transport industry is done predominantly through a point of origin/point of destination (O&D) approach. According to this approach, every combination of a point of origin and a point of destination may be a separate market, from the customer’s viewpoint. To establish whether there is competition in an O&D market, the Commission looked at the different routes in that market, and other alternatives – to the extent that they are substitutable by other modes of public transport.

12.3. The information gathered by the Commission indicates that the transport industry in South Africa does not largely conform to the standard competition framework, due to the existence of regulations and government involvement in the sector, which limit or influence competition. Competition in public transport can either be (i) competition for a market (or competition for a route) and (ii) competition in a market (or competition on a route). The former implies a condition where there is a tender competed for by various transport service providers, for a contract or a certain concession; for which, once awarded, only the winning service provider renders a service for the relevant period. The latter implies competition between two or more public transport operators whose earnings depend on the number of passengers each of them convey. The O&D approach will only be utilised in instances where it is applicable.

Intramodal competition

12.4. Intramodal competition refers to the competition between identical modes of transport, for example competition within the taxi industry. In the sections to follow, an assessment of the state of intramodal competition in the public passenger transport industry is conducted.

Competition within the bus industry

12.5. Currently, government uses (used) a tender process to appoint bus operators to service specified routes. For example, PUTCO and Golden Arrow were appointed in Gauteng and Western Cape, respectively. PUTCO explains that it faces very limited direct competition from other bus operators on the 1 860 routes allocated to it, and this is because of ‘government policy of competition for a route, but not on a route’.

12.6. The same notion has been cited by City of Johannesburg:

“There is no significant competition between different bus modes. The City, guided by the Integrated Transport Network, has ensured that Metrobus and Rea Vaya do not compete with each other. The provincial subsidised bus contracts also do not compete with City routes. There could be potential competition with Gautrain bus routes, but their destinations are very different (being Gautrain train stations) and their fares, if passengers only use the bus, are much higher than the Metrobus or Rea Vaya fares.”

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897 City of Cape Town – Submission by Jody Van Wyk, dated 8 September 2017.

898 Submission by City of Johannesburg dated September 2017. See also SABOA submission dated 22 September 2017; Golden Arrow Bus Services submission dated 02 November 2017.
12.7. In Cape Town, MyCiTi buses, which are part of Cape Town’s Integrated Rapid Public Transport Network (IRPTN), are not intended to compete with Golden Arrow buses on its designated routes. The City of Cape Town sees these two operations as designed to be complementary. Gautrain submits that its bus operations are not meant to compete with another commuter bus.

12.8. In conclusion, there is limited evidence of intramodal competition within the bus industry.

**Competition between subsidised and non-subsidised commuter buses**

12.9. Submissions received suggest that there is little competition between subsidised and non-subsidised commuter buses. Non-subsidised bus operators indicated that it would be uneconomical for them to attempt to compete with subsidised bus operators. Unsubsidised bus operators largely rely on scholar transport and, in some cases, interprovincial bus services, if they have capital to acquire a new fleet.

12.10. The only exception was observed in KwaZulu-Natal, where there are a number of routes where subsidised and non-subsidised bus operators compete. The Newlands Bus Operators Association represents a group of non-subsidised bus operators and asserts that there is strong competition between them and subsidised buses. However, unsubsidised buses find it difficult to compete on price.

**Competition within the rail industry – Gautrain vs Metrorail**

12.11. Metrorail provide services in six metropolitan municipalities and Gautrain, on the other hand, only operates in Gauteng Province. The only geographic space where Metrorail and Gautrain operate is in Gauteng. The information gathered from the submissions by both PRASA and Gautrain Management Agency, together with Bombela Concession Company (Pty) Ltd, suggest that there is no competition between Metrorail and Gautrain, as these services target different customer groups. In addition, stakeholders also highlighted the significant difference in the fares charged by Metrorail and Gautrain buses, and the routes operated by the two services. More details are provided in Chapter 4.

**Intermodal competition**

12.12. Intermodal competition refers to the competition between different modes of transport.

**Competition between minibus taxis and subsidised municipal buses**

12.13. Market participants are of the view that there is competition between minibus taxis and municipal buses (subsidised buses). The Algoa Taxi Association submits that there is competition between minibus taxis and the Algoa Bus Company on the same routes, a view which is also supported by the Eastern Cape Provincial Department of Transport. Tshwane Municipality also identified that there is competition between subsidised buses and minibus taxis.

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899 Submission by City of Cape Town dated 10 November 2017.
901 In the province, there are 44 subsidised bus contracts – 22 tendered; 20 negotiated and 2 interim contracts. KZN Department of Transport - Email from Mr Senzo Thwala dated 01 February 2019
12.14. From a customer’s viewpoint, there is evidence of switching between the modes, though minibus taxis remain preferred based on accessibility, reliability, and convenience. Tshwane Municipality submitted that minibus taxis are the most preferred transport mode, due to their accessibility and reliability. Buses are less preferred, because of lack of customer service due to constant breakdowns. Unlike buses, when a taxi breaks down, there is another taxi to assist immediately.

**Competition between metered taxis (and e-hailing) and buses and rail**

12.15. The Commission received submissions which indicated that there is no competition among app-based/metered taxis, buses and rail. Submissions indicated that app-based taxis provide a complementary service to the other modes. Bolt has categorised that the taxi industry, trains and buses do not cater for the same target market.

**BRT and minibus taxis**

12.16. Market participants’ evidence on competition between minibus taxis and BRT is mixed. The context painted by those participants who indicated no competition is only in relation to where the minibus taxis have been removed from their routes, as part of the negotiations in the implementation of BRT.

**Minibus taxis vs commuter rail**

12.17. Overall, the Commission found sufficient evidence of intense competition between BRT and minibus taxis. BRT was introduced on routes that are predominantly operated by taxis. This was corroborated by Taxinomics. The Gautrain Management Agency (GMA) submits that minibus taxi operators saw the introduction of the BRT system in the province as problematic, because they were taking over their routes. George Municipality in the Western Cape also indicated that there is competition between minibus taxis and BRT.

12.18. In the Western Cape, Metrorail connects surrounding townships and/or suburbs with Cape Town’s central business district. There are also minibus taxis operating in the same O&D pairs, with Metrorail transporting commuters from various townships or from urban areas to Cape Town. In determining whether competition exists between minibus taxis and Metrorail as per the O&D pairs, the Commission considered among other factors, the fares charged by these modes in the identified O&D pairs. Table 31 shows the different fares charged by both minibus taxis and Metrorail in the identified O&D pairs, and the percentage differences.

**Table 31: Fares charged minibus taxis and Metrorail**

<table>
<thead>
<tr>
<th>Point of origin</th>
<th>Point of destination</th>
<th>Minibus taxi fares</th>
<th>Metrorail fares</th>
<th>Price differential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claremont</td>
<td>Cape Town</td>
<td>R15.00</td>
<td>R7.50</td>
<td>100%</td>
</tr>
<tr>
<td>Khayelitsha</td>
<td></td>
<td>R30.00</td>
<td>R10.00</td>
<td>200%</td>
</tr>
<tr>
<td>Strand</td>
<td></td>
<td>R30.00</td>
<td>R9.00</td>
<td>230%</td>
</tr>
<tr>
<td>Bellville</td>
<td></td>
<td>R13.50</td>
<td>R8.00</td>
<td>60%</td>
</tr>
</tbody>
</table>

Source: Go Metro https://app.gometro.co.za/#/fares

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906 Greater Soweto Taxi Forum describes lack of customer service as lack of communication. Firstly, GSTF indicates that there is no mass announcement when the buses will not be operating. Secondly, when there are strikes commuters are not made aware, nor is there redress made when tickets expire due to strikes. In addition, tickets continue to be sold even when the strikes are envisioned, to the detriment of commuters that already paid upfront.
908 Taxinomics is an initiative driving a communication platform in the taxi industry. Its main aim is to pose questions about the minibus taxi industry if it suspects that the government/private sector is withholding and excluding certain participants to operate in the industry.
909 See GMA meeting notes dated 29 May 2017, page 3.
910 See Esau meeting notes dated 27 October 2017, page 2.
12.19. The fare differential is significant, but commuters in Cape Town expressed a preference to get to work on time using minibus taxis, as opposed to using the train – which is much more affordable but not reliable. The City of Cape Town also indicated that commuters are switching from passenger rail to other modes of public transport, and this implies that there is existing competition between the rail and minibus taxis, driven largely by the inefficiencies in the rail system.

12.20. PRASA on the other hand, submitted that they do not compete with minibus taxis directly, although they have some common routes. City of Johannesburg indicated that in areas or routes where Metrorail operates, minibus taxis tend to charge a relatively lower price – compared to areas where there is no Metrorail presence.\textsuperscript{911} This implies that Metrorail does constrain fares charged by minibus taxis in certain areas, although to a limited extent.

12.21. To further understand the state of competition between Metrorail and minibus taxis, an assessment of Gauteng North area is undertaken for illustrative purposes. Table 32 shows the points of origin and points of destination travelled by commuters in Gauteng North and Metrorail that connects a number of towns within the greater Pretoria area and Pretoria Central Business District.

Table 32: Minibus taxis points of origin and destination in Gauteng North

<table>
<thead>
<tr>
<th>Point of origin</th>
<th>Point of destination</th>
<th>Minibus taxi fares</th>
<th>Metrorail fares</th>
<th>Price differential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mabopane</td>
<td>Pretoria CBD</td>
<td>R22.00</td>
<td>R10.50</td>
<td>100%</td>
</tr>
<tr>
<td>Pretoria North</td>
<td></td>
<td>R14.00</td>
<td>R7.50</td>
<td>80%</td>
</tr>
<tr>
<td>Pretoria West</td>
<td></td>
<td>R15.00</td>
<td>R6.50</td>
<td>130%</td>
</tr>
<tr>
<td>Garankuwa</td>
<td></td>
<td>R15.00</td>
<td>R10.50</td>
<td>40%</td>
</tr>
<tr>
<td>Atteridgeville</td>
<td></td>
<td>R15.00</td>
<td>R7.50</td>
<td>100%</td>
</tr>
<tr>
<td>Mamelodi</td>
<td></td>
<td>R15.00</td>
<td>R8.50</td>
<td>70%</td>
</tr>
</tbody>
</table>

Source: Commissions’ own investigation and Metrorail website

12.22. Table 32 shows the routes where passenger rail and minibus taxis co-exist, and there is also a significant price differential between the two modes. This suggests that Metrorail and minibus taxis do not compete with one another, at least from a pricing perspective. However, the Commission is cognisant of the fact that commuters in different areas, including Gauteng North and Western Cape, do use minibus taxis and commuter rail services interchangeably – due to the unreliability and inefficiency of the services offered by PRASA (forced substitution).

**Competition between interprovincial buses, minibus taxis and long-distance rail**

12.23. The evidence on competition between interprovincial buses and minibus taxis is mixed. Intercap is of the view that minibus taxis were traditionally zoned to operate short distances within cities and townships. Intercap further contends that the minibus taxis are encroaching on interprovincial bus market routes, with their below-market-related prices.\textsuperscript{912} Intercap indicated that it competes with minibus taxis in all the routes that it operates, especially on these routes: Durban to Eastern Cape, Cape Town to Eastern Cape, Pretoria to PE, Pretoria to East London, and Pretoria to Mthatha.\textsuperscript{913} Moolla’s Transport Services states that in some instances, taxi operators require or expect interprovincial bus operators to set prices at certain levels, so that minibus taxis do not lose passengers to buses.\textsuperscript{914} While Intercap believes that there is fierce competition between interprovincial bus operators and minibus taxis, it is of the view that competition from rail is limited.\textsuperscript{915}

\textsuperscript{911} Competition Commission and City of Johannesburg – Notes of meeting dated 09 October 2017.
\textsuperscript{912} Intercap – oral submission by Mr Nortje, Gauteng Hearings, dated 07 June 2018. Page 18.
\textsuperscript{913} Intercap – oral submission by Mr Nortje, Gauteng Hearings, dated 07 June 2018. Page 18.
\textsuperscript{914} Notes of meeting between Competition Commission and Moolla’s Transport Services dated 06 March 2018.
\textsuperscript{915} Submission by Intercap dated 24 August 2017.
12.24. Uncedo Service Taxi Association (Uncedo) in East London is of the view that interprovincial minibus taxis do compete with buses, and submitted some concerns in relation to how interprovincial bus operators are “taking business from the minibus taxis”. There are pertinent issues that seem to prevent, distort or limit competition between the minibus taxis and interprovincial buses. One such major concern, shared by most of the bus operators, is that minibus taxi operators often resort to violence as a means to either prevent bus operators from operating on certain routes, or to force them to price at certain levels. For example, in October 2017, one of APM’s buses was set alight by minibus taxi operators in the Eastern Cape, operating on routes from Mthatha via Butterworth and Dutywa to Pretoria, because APM allegedly charged low prices that minibus taxis could not compete with. Most recently, in September 2018, the minibus taxi operators blockaded the interprovincial buses from coming into and out of Windmill Station in East London, in protest of interprovincial buses operating without operating licences.

12.25. However, Eldo Coaches believes that minibus taxis and interprovincial buses do not compete in the same market. This is because the permit requirements for minibus taxis are different from those of interprovincial buses, and the determination of price structures and schedules is also different. Furthermore, buses have sufficient space for both passengers and their luggage. Eldo Coaches also asserts that it does not even consider prices of minibus taxi operators when it sets its own prices. Customer interviews conducted by the Commission at Park Station (Johannesburg) and Bosman Station (Pretoria) suggest that intercity buses and long distance taxis do not compete. In this regard, a significant number of intercity bus users interviewed by the Commission indicated that their preference is to use intercity buses, and they are unwilling to switch to other modes of public transport, including long distance taxis.

12.26. In respect of rail, fares are heavily subsidised – making the fare difference between rail and bus substantial; the rail infrastructure, which includes train yards and stations, is provided by government. The industry does not operate to make a profit, and this results in large scale inefficiencies, as government subsidises operating costs. Based on these factors, rail was found not to compete with interprovincial buses.

Summary of intermodal competition

12.27. With regards to competition between minibus taxis and BRT, the Commission notes that there is intense competition on overlapping routes between the two modes of transport.

12.28. With regards to competition between minibus taxis and subsidised buses, it is evident that there is competition between the two. The Commission notes that minibus taxis are the most preferred mode of transport by commuters, since they are accessible, and readily available any time.

12.29. With regards to competition between long distance minibus taxis and interprovincial buses, commuters do not view the two modes as competing, due to factors such as comfort, and ability to carry luggage, among others. The Commission concludes that competition is limited, if any, due to the preference of buses by commuters.

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916 Uncedo Services Taxi Association – oral submission from Mr Mtshala, Eastern Cape Hearings, dated 27 August 2018. Page 68.
919 Submission by Eldo Coaches dated 05 December 2016.
920 Notes of meeting between Eldo Coaches and Competition Commission, dated 09 October 2017.
921 The customer interviews were conducted during the Easter break, on 17-18 April 2019, at Pretoria Station (Bosman) and Park Station (Johannesburg).
Factors distorting competition in the public transport industry

12.30. The subsidisation of different modes of transport to the exclusion of others, and an asymmetric regulatory environment, were the most cited concerns distorting competition.

Subsidies

12.31. The top concern from the taxi industry is that subsidies skew competition in favour of the subsidised services. The Commission did not find sufficient evidence to conclude that subsidies impede competition. However, the Commission noted that the taxi industry transports over 70 per cent of commuters and yet it is not subsidised, except for the taxi recapitalisation. As discussed in detail in Chapter 4, subsidies in South Africa are meant to achieve the social goal of making transportation more affordable.\footnote{922 South African Bus Operators Association – oral submission by Prof. Walters, Gauteng hearings, dated 6 June. Page 107}

Entry Barriers

12.32. Entry into the transport industry is marked by certain regulatory requirements and varying costs of entry, from one mode to another. Moratoria on taxi operating licences, objections to operating licences applications, and funding for fleet renewal, are some of the barriers faced by transport operators. Several players in the minibus taxi industry have indicated that the market is oversaturated, owing to entry of unlicenced vehicles in the industry.\footnote{923 Meeting with NATOA dated 7 November 2017, and meeting with Algoa Taxi Association dated 7 November 2017.} To enter the minibus taxi industry, the entrants must become members of taxi associations, the costs of which range between R30 000 and R120 000 per vehicle.\footnote{924 Hlongwane. A. 2013. Lifting lid on mafia taxi industry. Available at: https://www.iol.co.za/motoring/industry-news/lifting-lid-on-mafia-taxi-industry-1459651. (Accessed on 11 October 2017).} The detailed discussion is in Chapters 4 to 10.

Regulatory framework – objections of operating licences

12.33. Frivolous objections to licence applications, by established bus operators, is an impediment to new entries and expansion of existing operators, who are largely small bus operators owned by HDIs. The existing operators who have “financial muscle” include Intercap and Unitrans and use the objection process to frustrate upcoming entrants through litigation processes.

Findings

12.34. The Commission found the following as impediments to competition:

12.34.1. Use of objections to discourage entry in interprovincial bus services; and

12.34.2. Government has not tendered new contracts for bus services in a long time. These contracts have entrenched incumbent bus operators as the sole contracted and subsidised operators, by virtue of them being perpetual, to such an extent that competitors cannot compete for these tenders.

Final Recommendations

12.35. The recommendations with respect to frivolous objections are dealt with in Chapter 11 and for lack of tendered contracts in Chapter 7.
13. PUBLIC TRANSPORT SAFETY

Introduction

13.1. The public transport system in South Africa has and continues to be afflicted with safety concerns, despite various efforts by government to mitigate these problems. The provision of safe, accessible and affordable public transport infrastructure is important for the socio-economic growth of South Africans. The National Transport Master Plan 2050 (NATMAP) recognises the need to provide safe and accessible public transport options. Safety is thus critical in ensuring the success and sustainability of such a transport system.

13.2. This chapter focuses on transport safety in South Africa and its implication on users’ choice of public transport. The chapter discusses the safety regulatory framework, and highlights some of the shortcomings. It concludes by providing some remedies to deal with safety concerns.

Safety as a fundamental requirement in public transport

13.3. Safety (or lack thereof) in a public transport mode is one of the factors influencing commuter choice, in instances where there are alternatives for commuters. In some instances, commuters do not have alternative modes of transport and rely on an unsafe mode of transport, due to lack of alternatives. However, in cases where commuters have options, before a commuter decides on the mode of transport to use, one of the key considerations is safety.

13.4. Broadly, safety in public passenger transport has been categorised, in literature as (i) traffic safety, (ii) in-vehicle security and (iii) emergency management. Traffic safety refers to risks outside the vehicle, such as the possibility of being involved in a traffic accident, while in-vehicle safety is concerned with fear of becoming a victim of crime in a vehicle. Emergency management includes technologies available for passengers to detect and respond to risks on board. A good emergency management system allows passengers to use, for example, emergency exits, fire alarm systems, and channels of reporting anything suspicious on board.

13.5. Studies of important factors affecting public transport use in various countries reveal that safety and security is paramount in determining users’ choice to use public transport, or a particular mode over the other. Users are deterred from using a specific mode of transport when they deem it unsafe. Some studies have examined the safety of women when travelling, given their higher risk of victimisation. Men’s subjective sense of security on board has been found to be better than those of women, with respect to in-vehicle and traffic security. Users were more concerned about safety, followed by accessibility, reliability, fares, communication and trip experience in the public transport.

13.6. The “travel fear factor” can be influenced by several elements, particularly in urban areas, including punctuality of a transport service; security; infrastructure; and comfort. While the literature shows that public transport is unsafe in urban areas, waiting for public transport was found to be equally risky. Users of public transport, particularly women, feel insecure while walking to and from bus stops, or while waiting at the bus stops. Punctuality and security are thus documented in literature to be the most critical determinants of safety. Users, especially women, felt safer while they were in a bus, as opposed to increased fear when buses do not arrive on time. The users also feel safer when they have ample information regarding the bus service beforehand.

930 Sham, R. Samsudin, N. and Rahman, K. 2013. Managing Public Transport Service Operation in Reducing Travel Fear Factor. AMER
13.7. Given the importance of safety, from users’ perspective, the infrastructure used to access public transport, such as bus stops, metro stations, and waiting areas, has also received attention from policy makers.

**Institutional arrangement of transport safety in South Africa**

13.8. The Road to Safety 2001-2005 Strategy launched in 2001 identified a need for the introduction of a policy that regulates operational safety issues for all modes of transport, to ensure that passengers are conveyed in a safe, reliable and cost-effective manner. There are several role players in the public transport industry who are responsible for, or play a role in safety and enforcement. Some of these role players are discussed below.

**National Traffic Law Enforcement**

13.9. The National Traffic Law Enforcement (NTLE), was established in terms of the Road Traffic Management Corporation Act 20 of 1999 as one of the Road Traffic Management Corporation functional units. National Traffic Law Enforcement is divided into two sub-units, namely: National Traffic Police, and Norms, Standards and Compliance Unit.

13.10. The primary function of the National Traffic Police Unit is to provide for coordination, planning, regulation and facilitation of traffic law enforcement in respect of road traffic matters by national, provincial and local spheres of government. The National Traffic Police has wide ranging functions, which include ensuring driver and vehicle fitness, mitigating dangerous driving, dealing with intoxicated driving, and pedestrian enforcement, amongst others.

**South African Police Service (SAPS)**

13.11. Chapter 11 of the Constitution assigns responsibilities to SAPS which include: to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property, uphold and enforce the law, create a safe and secure environment for all people of South Africa, and participate in efforts to address the causes of crime.

13.12. The White Paper on Policing (2016) highlighted that section 199(1) of the Constitution calls for the establishment of a single police service, given that the available resources in South Africa do not permit the huge duplication of functions; where policing forces are fragmented the standard of training and other support services are likely to diminish; and artificial boundaries and barriers (geographical or legal) between police forces makes the task of policing more difficult, and raises serious problems with regard to the jurisdiction of one police force over crimes committed in one area, and where the suspects have crossed the border into another area.

13.13. The policing model advocated in the White Paper on Policing was not intended to usurp the powers and functions of municipalities, through the wholesale integration of Metropolitan Police Services into the SAPS. Rather, it was geared toward ensuring the overall operational command of the service, deepening effective oversight of the MPS, and enabling an optimal utilisation of public resources. Ultimately, greater emphasis was placed on maximising the utilisation of law enforcement resources for effective and efficient policing.

**Metropolitan police**

13.14. Metropolitan police, according to the White Paper on Policing, are well placed at municipal level to proactively address crimes through the rigorous enforcement of their other two mandates – traffic enforcement and bylaw enforcement. By ensuring that traffic laws and bylaws are observed, Metropolitan police will contribute to instilling a culture of lawfulness. The limitation of the Metropolitan police is that they are subjected to far less accountability measures, as opposed to the SAPS; which is accountable ultimately to Parliament.

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13.15. A regulatory framework must be established for conferring of limited investigative competencies for Metropolitan police to conduct investigations for preparation to submit to court. Metropolitan police may only detain suspects until the SAPS are able to take custody.

**Private security**

13.16. Private security companies play a role in the prevention and circumvention of crime, thereby promoting safety for passengers at public transport stations. Private security in public transport has been on the rise, given the resource limitations of the SAPS and other enforcement agencies. The use of private security guards within stations has also been observed internationally. For example, in Belgium, there is collaboration between private security and the police. An added advantage to the use of private security is that they provide additional security measures, such as CCTV cameras and other technologies, as well as the security guards. A good example of the use of private security in public transport can be seen with the Gautrain. With the Gautrain, a private company was appointed to supply and install high tech security measures of cameras, monitors etc.

13.17. The success of the Gautrain in relation to its security standards shows that private security companies also have an important role to play in the enforcement of security at public transport stations.

**National Rail Transport Regulator**

13.18. The National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) established the Railway Safety Regulator of South Africa (RSR) to monitor and enforce compliance in the rail sector. Safety performance of rail services is the key focus of RSR. Safety performance has two key elements: (i) operational occurrences and (ii) security related incidents. Operational occurrences imply incidents occurring due to unsafe or system faults in railway operations. On the other hand, security related incidents are criminal in nature and include safety, theft and vandalism of infrastructure, and personal safety of passengers.

13.19. Theft of train equipment poses the risk of train derailments and collisions (operational occurrences), which in turn cause unexpected train delays; to the detriment and dissatisfaction of commuters. Another concern identified by RSR is lack of security personnel to curtail overcrowding in the trains, as well as to ensure safety of passengers.

13.20. The RSR issues safety contravention notices and suspends the safety permits in instances where safety standards are not met by rail operators. For example, PRASA’s safety permit was suspended in 2018, following a collision in Kempton Park in which 320 people were injured. Although Rapid Rail Police (a specialised unit within the South African Police Service) and PRASA officers are available to deal with illegal entry into the railway platforms, RSR indicated that personal safety of commuters and drivers are still compromised. Figure 38 shows the trends in crimes involving rail assets of PRASA.

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13.21. In the Western Cape, the high level of incidents was a result of train sets which were destroyed and set alight, coupled with vandalism and theft of assets – hampering train service provision. In Gauteng, train accidents and crime of assets are ascribed to high crime incidents. A level crossing accident near Kroonstad in the beginning of 2018 resulted in 24 fatalities, negatively affecting passenger confidence.939

Policing in the rail sector

13.22. In terms of the history of policing of railways, the South African Railways and Harbour Police (SARP) was established in 1934, but was later amalgamated into the SAPS in 1986. Around 16 000 officers were transferred to local police stations. In 2003, the mandate, functions and resources of the Protection and Security Services (PSS) Division were approved by Parliament to include railway police.940

13.23. The integration of the railway police unit into SAPS in 2003 was met by criticism that rail under the SAPS received relatively low attention, compared to the separate rail police unit that had existed prior to the integration. The Institute of Security Studies indicated that dedicated railway police units within the SAPS i.e. PSS had not been effective in combatting the occurrence of violent crimes on railways. Statistics for rail-related crimes were not being kept. Under SAPS, crime increased to the extent that the rail industry had to employ private security companies to ensure safety of the rail system. The Institute of Security Studies proposed that the railway police be re-established.941

13.24. In 2004, the railway police, now known as the Rapid Rail Police (RRP) was reintroduced and, with the restructuring of SAPS in 2008, it was moved to the Visible Policing Division. The RRP’s major functions include the following;

13.24.1. To render a visible policing service to address safety of commuters, passengers, freight and rail transport system;
13.24.2. To conduct preventative and reactive policing services;
13.24.3. To provide rapid rail policing services; and
13.24.4. To perform crime prevention and crime combating operations, all of which is in the rail environment.

13.25. To improve visibility, mobile rail police stations were introduced at selected stations. The first mobile rail police stations have been established in the Western Cape, KwaZulu-Natal and most recently in the Eastern Cape. The RPR units which were established in these provinces run these police stations, and are mandated to both monitor and combat rail-related crimes, including attacks on commuters, drug smuggling and other crimes.942

Source: PRASA’s annual report and financial statement 2017/18

13.26. Crimes that occur within the rail environment are quite extensive. In the 2017/18 SAPS’ annual report, 31 821 crimes were reported, of which 21 106 were for less serious crimes, and 10 715 were for serious crimes. Serious crimes include 2 381 contact crimes, 669 contact-related crimes, 320 property-related crimes, 1 789 crimes dependent on police action for detention, and 5 556 for other serious crimes. However, notwithstanding these figures, a decrease of 11.83 per cent was reported from 2016/17.

13.27. From a safety and security perspective, the Gautrain is praised by the public for its safety and security. Its founding company, Bombela Concession Company (RF) (Pty) Ltd developed and implemented a number of measures that would mitigate security and safety risks in the Gautrain. These included having recorded CCTV coverage of all the stations and trains, together with the key locations along the routes, 24-hour security guards who are present at all parking areas, continuous satellite tracking of all the buses, and secure fencing along the route – to prevent unauthorised access to the premises and vandalism of critical assets.

13.28. To consider how much such safety and security measures cost, a tender was awarded in 2018 to CyberTech, a division of Altron, a JSE listed technology company. CyberTech was awarded a R5.5 million security and network operations (SNOC) tender for the Gautrain Management Agency (GMA).

Public transport policing (all modes of public transport)

13.29. At a provincial level, provincial governments have units and projects to deal with safety and the prevention of crimes in the transport environment. Such examples include the North West provincial department, which has a programme in the provincial secretariat for police services involving the Community Police Forum, Community Safety Forum, Community Safety Patrollers, and non-profit institutions, which are all responsible for the implementation of crime prevention. The department also has a transport regulator programme, which involves the taxi associations, who are tasked with overseeing taxi operations and ensuring relative peace and stability in the industry. However, the functionality and sustainability of some of these programmes have been a challenge.

13.30. The municipal police (metro police) are established in terms of section 206(7) of the Constitution of the Republic of South Africa and section 64(E) of the South African Police Service Act, 1995 (Act No. 68 of 1995) (SAPS Act). The main functions of municipal police are set out in terms of section 64(E) of the SAPS Act and include traffic policing, policing of municipal bylaws and regulations, and the prevention of crime. Metro police services have been established by the following municipalities: Johannesburg, Cape Town, eThekwini, Nelson Mandela Bay, Tshwane and Ekurhuleni municipalities. Metro police do not possess investigative capacity, and therefore transfer all investigative work to the SAPS.

13.31. In the bus industry, the DOT has developed a vehicle quality management system for bus operators, to ensure safety of the industry. The DOT and other bus contracting authorities use contracts to ensure that minimum safety and compliance requirements are adhered to by bus operators – to improve the level of safety in the bus sector. Bus breakdowns are common in this sector. Some submissions received by the Commission revealed that there is no strict enforcement of safety requirements by provincial authorities. This is also reflected in perpetual bus contracts, extended to bus operators with old bus

945 https://www.bombela.com/design/
948 http://omq-assets.s3-website-eu-west-1.amazonaws.com/180627dcstm.pdf
fleets that are susceptible to breakdowns across the country.

13.32 With regards to minibus taxis, the Taxi Recapitalisation Programme has been used to ensure that the types of vehicles used for passenger conveyance are safe. Nevertheless, the deficiencies in the programme, as highlighted by the industry, make safety issues a concern. Lack of proper enforcement in identifying unsafe vehicles has also often been attributed to lack of safety in the industry. One of the concerns has been the illegal conversion of panel vans to passenger vehicles that do not meet safety standards. Although conversion of these panel vans is permissible, taxi operators have been converting them illegally. In 2010, it was estimated that 2 353 panel vans in South Africa were illegally converted into passenger-carrying minibuses which do not comply with new safety standards. These vehicles were among the taxis prioritised for recapitalisation.  

Impact of safety on competition - South African perspective

13.33 Lack of safety has proven to be one of the key considerations in public transport in South Africa, sometimes at the expense of effective competition and/or consumer choice. Fair competition can be understood as that which involves aggressive pricing (reduced prices to certain extent) and increased efficiencies (e.g. increased innovation to attract customers), among others, to exert competitive constraint on competitors. Intimidation and conflict have been used in the public transport sector to unfairly eliminate competition, thus reducing consumer choice and welfare.

13.34 The effect of lack of safety on competition manifests itself on two fronts. First, operators may be dis-incentivised from serving certain segments of the market, given the high security risks involved in servicing those markets. Second, passengers may shy away from using public transport they deem unsafe, or may be left without their mode of choice (in areas that are not served by operators who fear violent confrontations).

13.35 Ongoing violent feuding between e-hailing and metered taxis, for example, has presented a problem for e-hailing drivers and riders when accessing Gautrain stations. With consideration of safety for its drivers and passengers, Uber’s app displays warnings when riders open the e-hailing platform to book rides in the Gautrain station. Gautrain has also advised commuters to be vigilant when using e-hailing platforms. The e-hailing drivers in some cases decline trips from or to Gautrain stations, due to safety risks involved as a result of this conflict, while some prefer to pick up and drop off passengers some distance away from the stations. Users are thus, to some extent, deterred from using e-hailing services as their preferred mode, whose availability has been reduced by the safety risk involved. While e-hailing services are commonly seen as safe, due to in-vehicle security features, compared to other modes the violent feuds between e-hailing services and metered taxis has to some extent dented their competitiveness in some areas, such as around the Gautrain stations.

13.36 Violence and intimidation have also been a commonplace occurrence in the minibus taxi industry, typically taking place between associations, over routes. While assassinations in South Africa have received prominence, particularly with regards to media coverage, the study by Association Witness revealed that a large portion of assassinations in South Africa are ascribed to taxi wars. The conflicts leading to these assassinations are in most, if not all cases, between rival associations contending for lucrative routes, with violence over the Mall of Africa route being one of the prime examples. Figure 39 provides a breakdown of assassinations in the taxi industry, compared to three other categories.

Figure 39: Breakdown of assassinations per category

Source: Assassination witness

13.37 At the intermodal level, intimidation and conflict is also common between the minibus taxi and the bus industry. In George, Western Cape, violent disputes between minibus taxi drivers and traffic officials followed, after 13 minibus taxis were impounded for not being roadworthy. George municipal traffic patrol vehicles and private cars of Go-George bus service employees were torched during the violent confrontation. The minibus taxi leaders were of the view that the impounds were carried out to make way for the Go-George bus service (a system that is mostly rejected by the taxi industry, for its apparent potential to eliminate the minibus taxi industry from the specific routes). Commuters are often caught in the middle of these feuds, by either falling victim to these attacks (whether intentionally or unintentionally) or being left stranded without transport when operations are suspended.

13.38 Evidence presented before the Commission shows that violence and intimidation has also affected the provision of long-distance bus services. For example, in 2015, the North Gauteng High Court granted an interdict in favour of APM against Autopax and several taxi associations, whereby Autopax was ordered to refrain from inciting, among others, long distance taxi operators to disrupt APM’s bus operations; cease damaging its buses; and intimidating and harassing APM’s personnel and customers. This interdict was in relation to the routes that APM was attempting to service between Johannesburg and Limpopo, and Johannesburg and Mpumalanga, respectively. This would have afforded passengers more options to choose from when travelling between these provinces. AMP has since withdrawn its services on these routes, because of safety concerns. In the Butterworth and Idutywa areas of the Eastern Cape, APM’s buses were also vandalised, burnt and damaged, allegedly by taxi associations in these areas.

13.39 Due to lack of dedicated enforcement institutions, as well as safety monitoring agencies at taxi ranks, to deal with safety issues – SAPS, the metro police and traffic authorities are often left to deal with these violent disputes, and intimidating or threatening incidents. This approach is reactive, in the sense that commuters must report such incidents as and when they occur, and government fundamentally deals with these crises rather than preventing them. Violence not only limits competition by preventing commuters from using their preferred mode of choice, but also limits consumer welfare.

Experiences of safety concerns in the public transport sector

13.40. Incidences of crime in the form of vandalism, theft and violence have negative effects on the provision of safe public transport. Some of these issues have been highlighted during the public hearings in the following provinces.

Western Cape

13.41. There are several incidents of crime and vandalism occurring in the rail sector. Trains are being delayed and/or services have been suspended, due to cable theft and vandalism of the rail infrastructure. This negatively impacts on the reliability of the service. It has been reported that since 2015, approximately, 149 Metro Rail carriages were decommissioned due to acts of vandalism and arson. The two arson attacks in July 2018 resulted in damages of approximately R51 million.\(^{964}\)

13.42. The effects of an unreliable train service leads to overcrowding on buses and taxis.\(^{965}\) This occurs due to forced switching by commuters regardless of the safety concerns on the selected mode. Given that Metrorail caters for more commuters in Cape Town, any delays will lead to a shift of commuters to other modes, leading to overcrowding and heightening security concerns.\(^{966}\)

13.43. FEDUSA submitted that murders are now increasing and engagements with the Western Cape provincial government are planned to ensure that decisive action against the rampant passenger murders are addressed.\(^{967}\) Similarly, the Western Cape is plagued with taxi violence incidents, particularly in relation to the delay in issuing of operating licences and the concerns from the introduction of the BRT system. Some MyCiTi buses and stations were vandalised along the N2 express routes in Langa, Khayelitsha and Mitchells Plain.\(^{968}\)

KwaZulu-Natal

13.44. Violence within the taxi industry in KZN is rampant due to route conflicts.\(^{969}\) For example, in Ladysmith, the KZN Transport and Community Safety MEC had to suspend all taxi operators, due to the infighting between taxi associations which harmed innocent, ordinary commuters.\(^{970}\) Poor conditions and uncleanness of taxi ranks and bus stops was also cited by commuters. Old vehicles raise safety concerns for passengers.\(^{971}\)

13.45. With respect to rail, copper theft and other forms of vandalism of infrastructure are common due to Metrorail network being open with some people residing next to the tracks making theft easier.\(^{972}\) Such acts of vandalism can be seen in reports relating to trains being burned in Durban and the Berea area.\(^{973}\)

Gauteng

13.46. In Gauteng, occurrences of minibus taxi violence are common, as in other provinces with a surge of violence between metered taxis and e-hailing operators.\(^{974}\) This is further evident in publicised cases, such as the killing of a Bolt driver allegedly at the hands of metered taxi drivers, in Roodepoort\(^{975}\) and Pretoria.\(^{976}\)

13.47. Incidences of crime are also experienced at rail stations, and NACTU submitted that an agreement between PRASA and the JMPD was reached, for the JMPD to train security personnel for train services. However, passengers are still being mugged at train stations.\(^{977}\)

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\(^{965}\) Ibid.


\(^{967}\) FEDUSA. Oral submission by Mr Khumalo at Gauteng public hearings. 5 June 2019. Page 123.


Findings

13.48. The choice of the mode of transport is influenced by the perception of safety. Unsafe modes of transport with high incidences of crime, violence and conflict negatively affect consumer welfare. The safety and security challenges present in public transport are partly a result of wider socio-economic problems, such as unemployment. This leads to community protests and the vandalism of public transport vehicles and infrastructure, which negatively impacts on the provision of safe and reliable public transport.

13.49. Law enforcement in the public transport sector is fragmented and which include: SAPS, Metro Police, Rapid Rail Unit, Provincial Traffic Police, Municipal Traffic, officers deployed by PRASA, Gautrain and other private security companies. This fragmentation limits the effectiveness of enforcement in the public transport industry.

13.50. Law enforcement agencies are not adequately resourced leading to limited visibility.

Final Recommendation

13.51. The Commission recommends that a specialised division within SAPS be created, to deal with all public transport related matters.
14. TRANSFORMATION AND EMPOWERMENT IN PUBLIC TRANSPORT

Introduction

14.1. This chapter provides a summary of the extent of transformation within the passenger public transport industry. An assessment is done from two perspectives, firstly, at an operator’s level and secondly, evaluation of ownership of critical inputs across the value chain. Given that there are diverse role players for each mode of transport, the analysis will therefore be conducted for each mode of transport, and to the extent possible, the analysis is combined to reduce repetition. The chapter will firstly provide background to transformation and its relevance to the Competition Act, and then assess the levels of transformation in the taxi, bus and rail industries, respectively. Impediments to transformation are discussed, and the chapter concludes by proposing some recommendations.

Transformation and the Competition Act

14.2. One of the objectives of the Competition Act is the promotion of a greater spread of ownership, in particular to historically disadvantaged individuals (HDIs). The existence of barriers to entry within a particular market affect the ability of HDIs to participate in the economy slowing the pace of transformation.

14.3. To determine the extent of transformation, the Commission used the BEE grading or codes developed by the Department of Trade and Industry. BEE ratings and percentages of management and control, and of Black ownership and Black female ownership – are used as indicators, to determine whether or not a sector or level of the value chain is transformed or not. A BEE contribution level 1 is the most compliant (most transformed) and a contribution level 8 is the least compliant (least transformed). For the purposes of this chapter, the focus will be on ownership and management control.

14.4. In accordance with the ToRs, the Commission identifies the critical inputs required by operators, for the provision of transport services. Various stakeholders across all modes of transport indicated that financing, manufacturing, fuel supply and vehicle repairs are critical inputs in the provision of public transport. These critical inputs are evaluated, to ascertain the ownership patterns.

Financiers

14.5. For effective entry into the industry and participation in contracted services, an operator requires significant capital. The major traditional banks in South Africa, including ABSA, Nedbank, Standard Bank and First National Bank (FNB) have been cited as the major providers of finance. In addition to traditional banks, there are other financial institutions that provide niche funding. These include major bus manufacturers such as MAN and Scania. In the minibus taxi industry, the only alternative for operators to access funding is through SA Taxi Finance, which is part of Transaction Capital Limited. Information on ownership patterns of financial institutions utilised by operators in the bus and minibus taxi industry is presented in Table 33.
Table 33: Ownership patterns of financial institutions servicing bus and minibus taxi industry

<table>
<thead>
<tr>
<th>Name of entity</th>
<th>ABSA Bank(^{980})</th>
<th>Standard Bank(^{981})</th>
<th>First Rand Bank (^{982})</th>
<th>Scania Financial services</th>
<th>Man Financial services</th>
<th>Nedbank(^{983})</th>
<th>SA Taxi Finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black ownership (%)</td>
<td>15.28%</td>
<td>22.20%</td>
<td>31.06%</td>
<td>0%</td>
<td>17.36%</td>
<td>28.00%</td>
<td>0%</td>
</tr>
<tr>
<td>Black female ownership (%)</td>
<td>6.51%</td>
<td>9.59%</td>
<td>15.08%</td>
<td>0%</td>
<td>6.72%</td>
<td>14.05%</td>
<td>0%</td>
</tr>
</tbody>
</table>

14.6. In late 2018, Transactional Capital Limited announced that the taxi industry had acquired a 25 per cent stake in SA Taxi Finance. This transaction was said to transform the minibus industry, as well as the shareholders in the industry.\(^{984}\) This transaction is a positive move towards transforming vehicle financing in the taxi industry.

Manufacturers

a) Bus sector

14.7. The Commission considered the manufacturers of critical and intermediate inputs required in the bus industry. These critical inputs are chassis, spare parts, bodies and fuel. A large majority of these critical inputs are imported from overseas manufacturers, based in countries such as Germany, Sweden and Brazil.

14.8. Bus operators such as Unitrans have submitted that critical inputs and intermediate inputs such as chassis and bus bodies are sourced from Mercedes-Benz, Marcopolo, MAN and Scania, among others.\(^{985}\) Table 34 illustrates the levels of Black ownership and Black female ownership among the prominent manufacturers, by bus operators, in South Africa.

14.9. None of the providers have Black ownership, apart from MAN. The distributors in the bus industry are mostly firms that import the fully-assembled buses into South Africa. The information received indicates that limited availability of credible Black suppliers for input material, spare parts and maintenance services is an impediment to transformation.\(^{986}\)

Table 34: Level of transformation at bus manufacturing level

<table>
<thead>
<tr>
<th>Entity</th>
<th>Mercedes-Benz(^{987})</th>
<th>VDL Bus and Coach</th>
<th>Marcopolo(^{988})</th>
<th>MAN(^{989})</th>
<th>Scania(^{990})</th>
<th>Volvo(^{991})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black ownership (%)</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>25.10%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Black female ownership (%)</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>12.55%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>


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985 Unitrans – submission by Unitrans, September 2017, pg. 5.
986 Autopax – submission by Autopax, 9 November 2017, pg. 15.
b) Taxis

14.10. The minibus taxi industry is currently dominated by Toyota, with its Toyota Ses’fikile brand. These minibus taxis have been assembled in South Africa since July 2012, at the factory located in Durban. The second biggest manufacturer of minibus taxis in South Africa is Nissan. Mercedes-Benz is the third biggest supplier, with its Sprinter brand. Another manufacturer is the Beijing Automobile Works (BAW) which has assembled vehicles locally since November 2013. BAW SA mainly produces the Sasuka brand. These manufacturers have no Black ownership.

14.11. The most common brands that are used by metered taxis and e-hailing app-based taxis include: Toyota, Ford, Volkswagen, Kia and Hyundai, Mercedes-Benz, BMW, Audi, Honda, Suzuki, and Nissan and Opel. As indicated above, very limited transformation has taken place at the manufacturing level. In 2009 the Department of Trade, Industry and Competition (DTIC) launched the Automotive Incentive Scheme, to develop and grow the automotive sector in South Africa. This has not resulted in sufficient transformation.

Fuel supply

14.12. The Liquid Fuels Charter (LFC) was introduced into South Africa’s petroleum and liquid fuels industry as a means of promoting the empowerment of the historically disadvantaged South Africans in the industry. The LFC aimed to ensure the sustainable presence, ownership and control by approximately 25 per cent of historically disadvantaged South Africans across the industry value chain, by 2010. In fuel retail, over 90 per cent of the fuel companies are still owned by Whites, showing limited transformation.

Operators

Commuter bus operators

14.13. Large bus operators: PUTCO is the largest commuter bus operator in South Africa, and has a level 3 BEE rating. The second largest commuter bus operator is Golden Arrow Bus Services (GABS) which is a wholly owned subsidiary of one of Hosken Consolidated Investments Limited (HCI), with a level 2 BEE rating. Imperial Logistics owns 55 per cent of Interstate Bus Lines, trading as Itumele. The remaining 45 per cent is owned by taxi organisations (20 percent) while 25 per cent belongs to management. The big operators largely operate in the urban areas, and the small operators operate largely in the rural areas. This is discussed in detail in Chapters 7 and 8.

14.14. Table 35 provides a summary of the BEE ratings for other operators.

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997 GABS – submission by Bowmans (GABS lawyers) 2 November 2017, pg. 2.
Table 35: Transformation at the commuter bus level

<table>
<thead>
<tr>
<th>Entity</th>
<th>Putco(^{1000})</th>
<th>HCI/GABs(^{1001})</th>
<th>Buscor(^{1002})</th>
<th>Itumele-Imperial Logistics(^{1003})</th>
<th>Amarosa / Thari bus services</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEE rating</td>
<td>Level 3</td>
<td>Level 2</td>
<td>Level 2</td>
<td>Level 2</td>
<td>Level 3</td>
</tr>
<tr>
<td>Black ownership</td>
<td>43%</td>
<td>81%</td>
<td>99.43%</td>
<td>49.45%</td>
<td>100%</td>
</tr>
<tr>
<td>Black female ownership</td>
<td>19%</td>
<td>44%</td>
<td>46.53%</td>
<td>17.45%</td>
<td>0%</td>
</tr>
</tbody>
</table>


14.15. Small bus operators: These are mostly Black-owned companies.\(^{1004}\) SABOA submitted that the small operators in the commuter bus industry are largely Black-owned, with only an estimated 5 per cent being White-owned.\(^{1005}\) While small bus operators are transformed, they remain on the periphery of the commuter bus sector due to limited opportunities.

Interprovincial buses

14.16. The interprovincial bus market has a number of bus operators across provinces. Small bus operators owned by HDIs play a role within a limited geographical scope. For purposes of assessing the state of transformation, the Commission focused on the biggest operators, based on availability of information. APM is one of the 100 per cent Black-owned interprovincial bus operators in South Africa.\(^{1006}\) Eldo Coaches is a level 1 BEE enterprise that is 100 per cent Black-owned.\(^{1007}\) Autopax is a wholly owned subsidiary of PRASA, which is government owned. The other big interprovincial bus operators include Intercape, with a level 7 BEE rating, and Unitrans (Greyhound and Citiliner) with a level 7 BEE rating. Both Unitrans and Intercape have Black ownership of 0 per cent and 12 per cent, respectively.

Taxi operators

14.17. The racial demographic of taxi owners and drivers of minibus taxis, metered taxis and app-based taxis is mostly Black African. The taxi industry is the only Black-owned industry in the whole of South Africa.\(^{1008}\) The participation of women in the taxi industry is low, with many of the operators and drivers being Black African men.

14.18. Overall, there are limited levels of Black ownership and Black female ownership across the value chain. At an operational level, the taxi industry has better transformative levels, however, the industry is not benefiting from the value chain opportunities such as sourcing fuel, vehicle manufacturing, vehicle maintenance, among others. The taxi industry still depends on untransformed players in the value chain to source essential inputs.

14.19. Similar to the taxi industry, the main players in the bus industry are untransformed and depend on untransformed players in the value chain to source critical inputs.

Impediments to transformation

Bus sector

14.20. Several factors have been identified by various stakeholders within the industry as bottlenecks that hinder transformation in the bus sector. These problematic features within the bus sector include the long-standing contracts between government

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999 Note: with the exception of Putco, percentages are based on BEE Certificates and industry websites, confirmation from the relevant bus operators is pending.

1000 Putco – written submission by Putco, 11 October 2017, pg. 3.
1004 Putco – submission by Putco, 11 October 2017, pg.56.
1005 SABOA – submission by Bowmans (SABOA’s lawyers), 22 September 2017, pg.38.
1006 APM – submission by APM, 9 November 2017, pg.3 and 5.
1007 Eldos Coaches – submission by Mr. Moolla, Cape Town Public Hearings, 19 June 2018, pg. 8.
1008 Cape town Public Hearing, submission by Mr Esau, 20 June 2018, pg. 62.
and the more established bus operators, the difficulty experienced, particularly by small bus operators, in gaining access to finance for entry and expansion, as well as the disparities on the allocation of subsidies between large and small bus operators.

14.21. Furthermore, small bus operators have limited participation in subsidy contracts from government, and find it difficult to compete with the large operators.\footnote{SANSBOC NW – submission from presentation submitted at North West Public hearings, Mahikeng, 26 July 2018.} The bus industry is a very high-capital-intensive market, and lack of funding hampers small operators from growing and becoming effective competitors.\footnote{Vaal Maeru – submission by Vaal Maeru, 16 October 2017, pg. 14.} A major challenge to transformation in the industry remains access to funding.\footnote{Big Sky Coaches (Pty) Ltd – submission by Big Sky, 11 November 2017, pg.8.}

14.22. Government was cited as not supporting the empowerment of small bus operators owned by HDIs, but rather as supporting the incumbent large operators.\footnote{SANSBOC Western Cape – submission by Mr. Johan Swarts, 24 May 2018, pg. 3-4.} An exception to this view can be seen in the Free State, where previous owners of minibus taxis and employees bought shares in Maluti Bus Service. The taxi industry holds 60% shares in the Maluti Bus Service.\footnote{Accessed on https://www.polity.org.za/print-version/sa-statement-by-the-free-state-police-roads-and-transport-on-launch-of-maluti-bus-services-23102012-2012-10-23 on 17 February 2020.} This collaborative work is a good example of how government can assist in effecting transformation. Although subcontracting was suggested as a way of achieving transformation, as discussed in Chapter 7, the Commission is of the view that negotiated contracts between government and small bus operators are the most suitable way of empowering small operators, so as to achieve transformation.\footnote{Great North Transport – submission by Mr. Monkoe, Limpopo (Polokwane) hearings, 21 August 2018, pg.23.}

Minibus taxis – impediments to transformation

14.23. Taxi operators submitted that lack of subsidisation impacts their potential to participate in the upstream levels of the value chain. Operators submit that subsidies will assist the industry to explore ways of participating in the value chain, for instance in the supply of critical inputs such as tyres and fuel, given a guaranteed revenue from subsidies.

14.24. The lack of formalisation has been cited as an impediment to supporting the industry to transform. The context is usually with respect to subsidies and participation in integrated public transport networks. The City of Cape Town saw the formalisation of the taxi industry as a way of effecting transformation.\footnote{City of Cape Town, Cape Town Public Hearings 21 June 2018 pg. 44.} The motivation by most of the cities in implementing BRT or IRPTNs has been to transform the taxi industry and create formal business. The creation of cooperatives or vehicle operating companies/ bus operating companies (VOCs/BOCs) was mooted as one such avenue.\footnote{Kidrogen submission by Mr. Peter, Cape Town Public Hearings, 19 June 2018, pg. 131. Rustenburg Local Municipality submission from Mr. Moleele, North West Public hearings, 26 July 2018, pg. 59. City of Mbombela, Mpumalanga Public Hearings, 10 July 2018, pg.126} However, the implementation of the BRT/IRPTN, despite the objective of transforming the taxi industry, resulted in unintended consequences which reversed the transformation objectives. The manner in which most BRTs/IRPTNs were initially implemented resulted in the total replacement of minibus taxis with buses, where previous taxi operators are now shareholders.\footnote{SANTACO western Cape submission by Mr. Billard, Cape Town public hearings, 19 June 2018, pg.103.} Taxi operators believed that the BRT or IRPTN would be owned by the taxi industry. However, in Cape Town, incumbent bus companies (which are not transformed) still form part of the IRPTN system. Taxi operators are required to forfeit their permits with no chance of getting back in the industry legally.\footnote{Kidrogen submission by Mr. Peter, Cape Town public hearings 2018, pg. 131-133.} The perception of incumbent operators being part of every VOC has been cited as a major problem, especially in Cape Town, with GABS as an incumbent operator.\footnote{Provincial Task Team submission from Mr. Dyson, Cape Town public hearings, 19 June 2018, pg. 171-175.}

14.25. Forfeiting operating licences in exchange for participation in VOCs was cited as perpetuating the imbalances between the buses and minibus taxis. There are concerns regarding the management of the VOCs, and the empowerment of the former taxi owners in these newly formed VOCs. Shareholders submitted that they do not have operational control of the VOCs, as some
municipalities are involved in decision making on strategic issues such as fare determination and ticketing systems. Kidrogen, a VOC in Cape Town, indicated that its members do not know what is happening in the business because of lack of relevant skills and training. They are not empowered to understand the business operations, which then leads to the involvement of the old, big companies.1021

14.26. The implementation of the BRT/IRPTN involves many activities, including building the infrastructure and ancillary services; such as cleaning and security services, among others (value chain opportunities). Submissions received during the public hearings indicate that the rolling out of the infrastructure is not being directed to the taxi industry. The taxi industry is only involved in cleaning and security services.1022 The unintended consequence of the BRT/IRPTN is that taxi operators had their income reduced – from earning approximately R40 000 a month to R5 500, and taxi operators have gone from being taxi owners to washing buses.1023

14.27. The informal nature of the taxi industry has been cited as among the impediments to transformation has. In September 2020, the DOT has published its discussion paper on formulating a model to empower the taxi industry. Formalising the taxi industry was identified as key to empowering the industry and addressing other challenges that limit transformation within the industry. The DOT is of the view that formalising the industry will address issues of drivers being exploited and poor working conditions. An example of where “formalising” the industry addressed poor working conditions and the exploitation of taxi drivers, is through the BRT/IRPTN system. The implementation of the BRT/IRPTN system has been a positive for some drivers who managed to receive employment benefits such as medical aid, provident fund and earn a steady salary every month. The working conditions for the drivers in the BRT/IRPTN system are far better than when they were taxi drivers. In this context, the BRT/IRPTN system has empowered the taxi drivers but broader empowerment objectives still lack across the industry. In addition to improving working conditions and empowering taxi drivers, empowerment with relevant skills to manage and operate the BRT/IRPTN system still lacks.

14.28. An additional impediment cited is lack of finance (or lack of access to finance) from traditional banks, that has forced operators to seek financial assistance from other financial institutions – at exorbitant interest rates. Consequently, taxi operators are then blacklisted because they are unable to repay these debts, and the taxis are then repossessed.1025

14.29. DOT has noted that, lack of access to finance(capital) to taxi operators wanting to enter or expand in the industry, limits the empowerment of HDI taxi operators and is a bottleneck to achieving transformation in the industry. The DOT envisions a model that includes the formalisation of the industry as a transformative tool. The reasoning is that when individual taxi operators form cooperatives or companies will give the taxi industry more access to getting financial assistance than at present, when financial institutions are approached by individual operators.1026

14.30. The lack of subsidisation and funding from government acts against transformation given that there are concerns with the Taxi Recapitalisation Programme. The DOT discussion paper proposes creation of a special purpose vehicle (SPV) that will trade as a Taxi Recapitalisation South Africa in partnership with the taxi industry. The SPV envisages 60 per cent ownership to the taxi industry and the remaining 40 per cent held on


1021 Kidrogen submission by Mr. Peter, Cape Town public hearings, 19 June 2018, pg. 131-133.

1022 Provincial Task Team submission by Mr. Sotho, Cape Town public hearings, 19 June 2018, pg. 186. This was also highlighted by UNcebo Taxi Association, which says that, “only White people are benefitting from the building of infrastructure, and the BRT should have meant that taxi operators could benefit on the value chain but all those things are now under the White minority”. Mr. Zungu, Cape Town, indicated that its members do not have access to loans.

1023 Oral submission by Mr. Esau, Western Cape hearings, dated 20 June 2018. Page 64.

1024 City of Johannesburg submission by Ms. Seftel, Competition Commission offices, 3 October 2018, pg.10.

1025 Port Elizabeth and District Taxi Association, East London submission by Mr. Ooko, public hearings, 27 August 2018, pg. 110. Uber and Taxify drivers’ submission by Mr. Mogale, North West public hearings, 25 July 2018, pg. 148-149. NTA submission by Mr. Mogashoa, Polokwane public hearings, 21 August 2018, pg. 130.

1026 DOT Empowerment Discussion September 2020.
behalf of the government.¹⁰²⁷

Rail sector

14.31. The major rail players in the rail industry include the Passenger Rail Agency of South Africa (PRASA) and Gautrain. PRASA is a state-owned entity under the National Department of Transport, which is the sole shareholder in the rail sector.¹⁰²⁸ The Gautrain is a concession between Gautrain Management Agency (GMA) (on behalf of Gauteng Provincial Government) and Bombela Concession Company (Pty) Ltd. The Gautrain Management Agency is a state entity. Bombela Concession Company in 2017 had a BEE rating of 51.04 per cent on management and control, 38.86 per cent of Black ownership, and 14.74 per cent of Black female ownership.¹⁰²⁹

14.32. The GMA submitted that some of the critical inputs for rail transportation include track and wayside infrastructure, the signalling equipment, rolling stock, automatic fare collection system, and power and distribution-related infrastructure.¹⁰³⁰ The manufacturers of railway locomotives and rolling stock are global players, such as Alstom, Siemens and Bombardier, and the local manufacturers include Transnet Engineering and Wietra Holdings.¹⁰³¹

14.33. One of the bottlenecks identified for transformation was the high costs of assets, and the lack of skills within the industry – which makes it difficult for active participation by historically disadvantaged individuals. The critical inputs necessary to operate these facilities are imported from large international entities. In summary, the rail infrastructure is state-owned, and there is little transformation and limited local manufacturing of critical inputs in the rail industry. Efforts are ongoing to localise some of the manufacturing.

Findings

14.34. The Commission’s findings in relation to transformation are:

14.34.1. There is no or limited transformation within the public transport industry across the value chain, except for minibus taxi operators, who are majority Black. Upstream levels of the value chain, such as financing and manufacturing are not transformed.

14.34.2. The longstanding bus subsidy contracts between government and large commuter bus operators limits the ability of historically disadvantaged persons and small bus operators to participate competitively within the commuter bus industry. This hampers transformation.

14.34.3. The way some of the BRT/IRPTN was implemented had unintended consequences on transformation of the taxi industry, especially in respect of not being empowered to run the VOCs. In addition, the requirement that taxi owners forfeit their taxi operating licences when opting to be part of the VOCs, without a guarantee in the continuation of their contracts, creates an uncertainty that impedes the empowerment of these former taxi owners.

14.34.4. Frivolous objections to licence applications by established bus operators is an impediment to transformation in the bus sector, as it disadvantages small bus operators owned by HDIs.

14.34.5. Government owns the bulk of rail infrastructure, and most of the critical equipment is imported, with limited domestically produced components. The promotion of local suppliers and particularly HDI businesses at this level is minimal.

Provisional Recommendations

14.35. To address long-term bus contracts by large bus operators, the subsidy policy should prescribe the conclusion of negotiated contracts with small bus operators, to fast track transformation. The negotiated contracts awarded to small bus

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¹⁰²⁷ Ibid.
¹⁰²⁸ Metro Rail EC submitted that Eastern Cape is the only Metro Rail that uses Transnet infrastructure, and that in the other areas the rail lines belong to PRASA, Ms. Joni PRASA, Eastern Cape Public Hearings, pg.14.
¹⁰³⁰ Gautrain Management Agency and Bombela Concession Company (RF) (PTY) Ltd. written submission 25 May 2018.
operators should account for a minimum of 30 per cent of all contracts, and progressively increase over time.

14.36. Where contracts are put out on tender, government should consider breaking some of the contracts into smaller contracts, in order to create opportunities for new entrants and smaller bus operators. Small and local bus operators should be given preference.

14.37. The DOT should develop a guideline for all contracting authorities for the implementation of IRPTNs, where an IRPTN is still feasible. The guideline should ensure that the minibus taxi industry is incorporated into the IRPTN, to achieve some level of empowerment in the minibus taxi sector.

Stakeholder submissions to provisional recommendations

Recommendation 1: Small bus operators should account for 30% of all negotiated contracts

14.38. This recommendation was supported by the Western Cape Department of Transport and Public Works, Newlands Bus Association, Putco and the Greater Soweto Commuter forum who made submissions citing that negotiated contracts are the preferred solution. Conversely, GABS submitted that many existing subsidised bus operators are black empowered or have a strong black empowerment shareholding in their companies and in light of this it would be unfair to dictate that a further 30% of their business be set aside for SMME’s.

Recommendation 2: The DOT should develop a guideline for all contracting authorities for the implementation of IRPTNs, where an IRPTN is still feasible.

14.39. The DOT is proposing the establishment of a Taxi Empowerment Model, where the taxi industry will have 60 per cent of the value chain opportunities in IRPTN projects.

14.40. In addition, the DOT has released a discussion paper which suggest the creation of a special purpose vehicle (SPV) such as the current VOC to promote empowerment in the industry. The SPV is envisaged to enter into contracts with government in IRPTNs. The discussion paper also proposes the establishment of co-operative banks for the taxi industry as an empowerment avenue.

Commission’s response to stakeholder submissions

14.41. The chapter on the BRT/IRPTN has already identified the shortfalls of the VOC model as a vehicle of empowerment. From submissions received from former minibus taxi operators that formed VOCs, there is lack of transfer of skills and limits their ability to get contracts in the future.

Final Recommendations

14.42. To address long-term bus contracts by large bus operators, the subsidy policy should prescribe the conclusion of negotiated contracts with small bus operators to fast track transformation. The negotiated contracts awarded to small bus operators should account for a minimum of 30 per cent of all contracts, and progressively increase over time. Women operators should be prioritised in the awarding of these contracts.

14.43. Where contracts are put out on tender, government should consider breaking some of the contracts into smaller contracts, in order to create opportunities for new entrants and smaller bus operators. Small, local bus operators and women operators should be given preference.

14.44. To encourage women participation in the public transport sector, preference should be given to women operators in respect of the issuance of operating licenses and awarding of subsidised bus contracts.

14.45. The DOT should develop a guideline for all contracting authorities for the implementation of IRPTNs, where an IRPTN is still feasible. The guideline should ensure that the minibus taxi industry is incorporated into the IRPTN, to achieve some level of empowerment in the minibus taxi sector.
15. CONCLUSION AND RECOMMENDATIONS

15.1. The recommendations resulting from the Market Inquiry contained in this report seek to introduce or encourage changes in the transport sector. The recommendations have been summarised from the various sections of the report. The relevant sections should be referred to directly for more detail.

15.2. Table 36 provides a comprehensive summary of all the Commission’s findings and applicable recommendations. This table outlines the relevant regulatory bodies and market participants deemed responsible for implementing the recommendations.
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<tr>
<td>4. Public transport as an integrated system</td>
<td>There is lack of public transport in South Africa due to the involvement of different spheres of government. The fragmentation in the roles of each sphere of government in public transport and ineffective intergovernmental relations have resulted in uncoordinated operations creating inefficiencies. Public transport is not prioritised by local government given competing mandate of providing other basic services. Lack of human capital and skills by municipalities and some provinces is a major inhibiting factor in transport planning. Spatial planning and land use management at local government not taking due consideration for public transport provision results in lack of integration between transport planning and land development. Functional separation of human settlement and transport departments exacerbates this misalignment. DOT has not developed a devolution strategy which sets out the criteria to guide the devolution of public transport functions to lower levels of government. The reliance on Ministerial approval without a devolution strategy is not ideal.</td>
<td>Dedicated transport authorities to be established at provincial or metropolitan or district or municipal level, where appropriate. DOT to promote integrated public transport ticketing system comprising a single system with inter-operability across modes in line with its 2017 White Paper. The ticketing system should facilitate participation by all banks and cardholders. Government (national and provincial government) and SALGA to create capacity at local government level to ensure that transport planning is prioritised by municipalities.</td>
<td>DOT, Provinces, local government</td>
<td>March 2023</td>
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<td>5. Subsidies in the public transport</td>
<td>Government does not currently have a subsidy policy for public transport. The Commission is aware that DOT has recently awarded a tender for a development of a subsidy policy. Fragmented public transport subsidy regime with minimum coordination and integration due to different subsidies allocated to all spheres of government. Minibus taxis are not subsidised even though they transport the largest portion of passengers.</td>
<td>Finalisation of the subsidy policy that: &lt;ul&gt;&lt;li&gt;Address fragmented subsidies in the public transport sector to improve coordination.&lt;/li&gt;&lt;li&gt;Create incentives for infrastructure investment in marginalised areas.&lt;/li&gt;&lt;li&gt;Incentivise expansion of rail in high density corridors.&lt;/li&gt;&lt;li&gt;Equitable allocation of subsidies to all modes of public transport including minibus taxis and rural transport operations.&lt;/li&gt;&lt;/ul&gt;</td>
<td>DOT</td>
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<td>6. The rail sector</td>
<td>Gautrain and Metrorail services in Gauteng are not integrated, leading to duplication on some routes. Provision of services for Gautrain and Metrorail services in Gauteng under two separate entities is not an efficient utilisation of limited government funding.</td>
<td>To facilitate proper coordination, the Commission recommends:  · DOT to develop a policy that ensures efficiency and integrated planning in commuter rail services. This policy may include, among others, (i) integration of Metrorail and Gautrain in Gauteng and (ii) rail devolution strategy setting out the criteria for devolution of commuter rail services.</td>
<td>DOT</td>
<td>March 2023</td>
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<td>National Government is not an appropriate sphere to operate Metrorail commuter services within the metros. This function should be devolved to lower levels of government.</td>
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<td>Metrorail is inefficient in the provision of urban rail commuter services, given constraints to the quality of its services.</td>
<td>Infrastructure backlogs to be curbed by exploration of alternative funding sources and fostering private sector participation.</td>
<td>DOT in collaboration with the National Treasury.</td>
<td>on-going</td>
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<td>High density corridors should be prioritised for rail services.</td>
<td>Incorporation of the new rail expansion in the grant network to target high density corridors, in addition to the refurbishment of existing infrastructure.</td>
<td>DOT and National Treasury</td>
<td>on-going</td>
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| 7. Subsidised bus contracts in urban areas | Extension of subsidy contracts in perpetuity creates *de facto* monopolies that prevents competition and serves as artificial barrier to entry for small bus operators. Lack of competition leads to poor quality of services by some operators to the detriment of commuters. | In order to achieve efficiency while promoting competition, Government should gradually increase competition in the market through the following approach:  
· Subsidy bus contracts to be put out to tender where new routes are identified; with preference given to small local bus operators.  
· The subsidy policy should encourage negotiated contracts to empower small bus operators. At least 30 per cent of contracts to be awarded to small bus operators and be increased progressively over time.  
· Tendered contracts to be broken into smaller contracts, to create opportunities for small and local bus operators. These operators to be given preference in the awarding process. | DOT and provinces | March 2024 |
<p>| | Lack of adequate funding made it difficult for the DOT and provincial governments to introduce competitive bidding for subsidised bus services. Limited funding has resulted in provincial governments offering low subsidy rates to bus operators and are unable to accommodate new and expanded routes. | To ensure quality service at less cost, government to identify key corridors and increase rates payable to operators, on condition that operators servicing those routes offer quality service. | Contracting authorities, in consultation with planning authorities and commuter bus operators and commuter forums. | March 2024 |
| | Subsidised commuter bus routes, schedules and timetables are outdated and do not respond to the needs of commuters. This compromises the quality of services provided to commuters. | Development of a subsidy policy and review of the current policy framework that recognise the need to create adequate opportunities for small bus operators, including the opportunity to provide services in urban areas. | Provincial departments or DOT. | March 2023 |</p>
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| 8. Rural transportation and rural bus contracting | Limited coordination between government departments  
Subsidy coverage is skewed in favour of urban areas as opposed to rural areas.  
Level of subsidies granted to operators in rural areas does not account for harsh operating conditions in those areas, which increase operating costs.  
Poor road infrastructure serves as a major barrier to the provision of public transport in rural areas. Rural communities appear to be neglected, given limited transport coverage by both buses and minibus taxis. | The Department of Transport to foster coordination with sector departments to harmonise interventions for the rural areas.  
The subsidy policy being developed by the Department of Transport should consider the operating conditions in rural areas and compensate accordingly.  
The Department of Transport and National Treasury to explore the creation of dedicated funding for rural public transport.  
Provinces should create avenues for small bus operators to participate in subsidised bus services. | DOT | March 2024 |
| 9. Bus Rapid Transit System in South Africa | IRPTN system is inefficient, lacks high density routes, and has low passenger volumes, which makes it over-reliant on subsidies.  
Coexistence of municipal bus services and BRT/IRPTN in certain cities has led to inefficiencies, in the form of duplicated infrastructure.  
DOT has not fully complied with the conditions entailed in the Division of Revenue Act which stipulates that municipalities should demonstrate sufficient capacity to implement IRPTNs before funding is transferred. Some municipalities did not satisfy all conditions DORA conditions.  
The IRPTN implementation has not resulted in empowerment and transformation of the minibus taxi industry.  
Expiry of BOC/VOC contracts are likely to cause job losses when taxi operators cannot successfully tender for new contracts. | The DOT and the National Treasury to do a complete review of the BRT/IRPTN model considering (i) long term fiscal and financial sustainability, (ii) suitability of the model in smaller cities, and (iii) inclusion of the minibus taxi industry.  
The DOT to enhance its compliance with the DORA, before transferring funds to the cities for BRT/IRPTN.  
A complete review of BRT/IRPTN model to include participation of the minibus taxi industry.  
A review or study of 12-year BOC/VOC model to be conducted, to evaluate if these models promote transformation and empowerment. | DOT, National Treasury | March 2023 |
<p>| | | | DOT | March 2022 |
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<td><strong>10. Minibus taxi industry</strong></td>
<td>Planning authorities lack capacity to implement integrated transport plans resulting PREs not getting directives timeously leading to backlogs and illegal operations. Planning and licencing authorities are reactive and wait for routes to be developed by the taxi industry, leading to conflict between taxi associations. PREs are reliant on outdated and inefficient National Land Transport Information System.</td>
<td>Capacity to be increased at both PRE and planning authorities, to address backlogs and pro-actively plan for transport needs arising from new developments. DOT to upgrade National Land Transport Information Systems to improve efficiencies.</td>
<td>PREs, DOT</td>
<td>March 2023</td>
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<td></td>
<td>Minibus taxis are unsubsidised even though they transport the largest portion of the market, which is not justifiable in social terms.</td>
<td>Government through the DOT to review the funding model for the taxi industry and ensure equitable allocation of subsidies to the taxi industry.</td>
<td>DOT</td>
<td>March 2023</td>
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<td>The responsibility of exercising effective control of ranking facilities rests on municipalities and to a certain extent on minibus taxi associations.</td>
<td>The management of ranking facilities to be sole responsibility of municipalities, in order to eliminate conflict of interest and perverse incentives.</td>
<td>Municipalities</td>
<td>March 2023</td>
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| 11. Interprovincial bus operations | Autopax as active market participant gets preferential treatment from PRASA in a manner that distort competition as follows:  
- PRASA allocated exclusive loading area and ticketing office to Autopax at Park Station when none of the other operators enjoying such privilege  
- Autopax is consistently allowed to use PRASA’s bus terminal facilities without making payments  
- Autopax has been receiving financial support from PRASA to continue its operations | DOT must address the conflict of interest between PRASA CRES and Autopax. This can be achieved through, among others, a complete structural separation between the entities. PRASA CRES should ensure that all bus operators are treated in a non-discriminatory manner. | DOT | March 2023 |
<p>| | Frivolous and vexatious objections by established other bus operators delays entry and/or expansion of small bus operators. Although there is some entry in the provision of interprovincial bus services, growth is hampered by limited access to intermodal facilities. | The DOT should fast track the process of establishing a fully-fledged NPTR. The NPTR that is fully capacitated will be in a better position to evaluate applications for operating licenses in the provision of interprovincial bus services, as prescribed in the NLTA. | DOT | March 2023 |
| 12. Competition dynamics in the public transport sector | Use of objections by incumbents to discourage entry of in interprovincial bus services. | The NPTR and/or the PREs should conduct proper needs and/or supply and demand assessments (and any other related assessments prescribed by law) when assessing applications for operating licences. | PREs | |
| | The bus service contracts are perpetually extended, and they have entrenched incumbent bus operators as sole contractors, resulting in competitors being unable to compete for such tenders. | Subsidy bus contracts to be put out to tender with preference given to small local bus operators; The subsidy policy should encourage negotiated contracts, to empower small bus operators. Tendered contracts to be broken into smaller contracts, to create opportunities for small and local bus operators. | DOT, PREs | |</p>
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<tr>
<td>13. Public transport safety</td>
<td>There is a fragmented approach to enforcement in public transport which includes SAPS, Metro police, Rapid Rail Unit, provincial traffic police, municipal traffic officials, officers deployed by PRASA and Gautrain and other private security companies. This fragmentation limits the effectiveness of enforcement in the public transport industry.</td>
<td>Establishment of a specialised division within SAPS to deal with all public transport-related matters.</td>
<td>SAPS</td>
<td>March 2024</td>
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<td>Enforcement agencies are not adequately resourced with personnel and financial resources, to effectively deal with transport related infringements.</td>
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| 14. Transformation in the public transport industry | Various levels of the value chain within the public transport industry have limited or no transformation, with the exception of minibus taxis, who are majority Black-owned.  

The BRT/IRPTN implementation has unintendedly impeded transformation in the taxi industry, who are not empowered to run the VOCs.

The requirement for taxi owners to forfeit their taxi operating licence when opting into the VOCs, without guarantee of continuation of their contracts, creates uncertainty that impedes empowerment. | To promote transformation the following measures are recommended:  
· Negotiated contracts with small bus operators to fast track transformation.  
· Some tendered contracts to be broken down into smaller contracts, to create opportunities for smaller bus operators.  

Guidelines for all contracting authorities for the implementation of IRPTNs to be developed where implementation is feasible. The guideline to incorporate the minibus taxi industry into the IRPTNs to achieve empowerment in the minibus taxi industry | DOT, Provinces | March 2024 |
|                                     |                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                       | DOT              | March 2023 |
### ANNEXURE A: RESPONSES TO CALL FOR SUBMISSIONS

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<th>Government and others</th>
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<td>Uber</td>
<td>1. Africa Best 350</td>
<td>1. Gautrain Management Agency and Bombela Concession Company</td>
<td>1. Department of Transport</td>
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<td>Atlantis Transport Task Team</td>
<td>3. Unitrans</td>
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<td>3. City of Johannesburg</td>
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<td>National Taxi Alliance</td>
<td>4. Intercape</td>
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<td>4. Stuart Denoon-Stevens</td>
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<td>South African Metered Taxi Association</td>
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<td>5. Lucretia Pretorius</td>
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<td>Basil Nagel – Taxinomics</td>
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<td>6. Koboro Elcort Matlala</td>
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<td>Cornelius Esau</td>
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<td>7. Shelley Childs</td>
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<td>SA Taxi Finance</td>
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<td>8. Malekutu Jonathan Lebea</td>
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<td>9. DG Murray Trust</td>
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### ANNEXURE B: RESPONSES TO INFORMATION REQUESTS

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<td>5. Africa Best 350</td>
<td>15. PRASA Rail</td>
<td>16. City of Cape Town</td>
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<td>Taxify</td>
<td>6. Autopax</td>
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<td>17. City of Tshwane</td>
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<td>SA Taxi Finance</td>
<td>7. Eldo Coaches</td>
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<td>18. City of Ekurhuleni</td>
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<td>12. PUTCO</td>
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<td>14. Vaal Maseru Bus Services</td>
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<td>Province</td>
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<td>Eastern Cape</td>
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<td>1. SANTACO – Eastern Cape</td>
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<td>Taxi industry</td>
<td>2. Uncedo Service Taxi Association</td>
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<td>3. GRATAX</td>
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<td>4. Ntuza Cabs</td>
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<td>9. FREE State Department of Police, Roads and Transport</td>
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<td>10. MANGUANGU Metropolitan Municipality</td>
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<td>11. MR. STUART DENNOON-STEVES</td>
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<td>Taxi industry</td>
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<td>3. GREATER BLOEMFONTEIN TAXI ASSOCIATION</td>
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<td>7. MR. KGOLOKWANE</td>
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<td>23. PRASA RAIL</td>
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<td>2. SANTACO – Gauteng</td>
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<td>5. GAUTENG METERED TAXI ASSOCIATION</td>
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<td>6. AEROPARK METERED TAXI ASSOCIATION</td>
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<td>7. MR. PAUL BROWNING – TRANSPORT SERVICES</td>
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<td>8. GAUTENG EDUCATIONAL TRANSPORT SERVICES</td>
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<td>9. GCINA CABS</td>
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<td>28. CITY OF EKURHULINI</td>
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<td>29. CITY OF TSAWANE</td>
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<td>30. DEPARTMENT OF RURAL DEVELOPMENT</td>
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<td></td>
<td>31. DEPARTMENT OF HUMAN SETTLEMENTS</td>
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<td>32. NATIONAL TRANSPORT COMMUTER ORGANISATION OF SOUTH AFRICA – NATCOSA</td>
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<td></td>
<td>33. NATIONAL TRANSPORT COMMUTER ORGANISATION OF SOUTH AFRICA – NATCOSA</td>
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<td>34. GREATER SOWETO COMMUTERS FORUM</td>
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<tr>
<td>Province</td>
<td>Taxi industry</td>
<td>Rail industry</td>
<td>Bus industry</td>
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<tr>
<td>Northern Cape</td>
<td>1. SANTACO – Northern Cape 2. SANTACO – Namaqua Regional Association 3. SANTACO Local Transport Association</td>
<td>4. SANSBOC – Northern Cape</td>
<td>6. Department of Transport, Safety and Liaison</td>
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<tr>
<td>Province</td>
<td>Taxi industry</td>
<td>Bus industry</td>
<td>Rail industry</td>
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</table>
| Western Cape  | 1. SANTACO Western Cape  
2. Provincial Task Team  
3. Mr Cornelius Esau  
4. George Taxi Association  
5. UNCEDO Service Taxi Association  
6. Mr David Drummond  
7. Mr Riaz Mongratie  
8. Mr Basil Nagel - Taxinomics | 9. Eldo Coaches  
10. N2 Express  
11. Kidrogen  
12. SANSBOC – Western Cape  
13. Golden Arrow Bus Services | 14. PRASA Western Cape  
15. Western Cape Department of Transport  
16. City of Cape Town  
17. DG Murray Trust  
18. Mr Phillip Van Ryneveld  
19. Mr Manny De Freitas - MP  
20. Cape Culture Heritage  
21. United Commuter Voice  
22. South African Network of Women in Transport  
23. SANCO Western Cape |
### ANNEXURE D

Integrated Rapid Public Transport Networks (IRPTNs) and the development of integrated transport plans (ITPs).

<table>
<thead>
<tr>
<th><strong>District</strong></th>
<th><strong>Municipality</strong></th>
<th><strong>Status</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CAPRICORN</strong></td>
<td>Capricorn District</td>
<td>ITP developed in 2004, reviewed in 2007 and 2013 in terms of the new ITP guidelines,</td>
</tr>
<tr>
<td></td>
<td>Molemole</td>
<td>ITP developed in 2007/08 in terms of the old guidelines</td>
</tr>
<tr>
<td></td>
<td>Lepelle Nkumpi</td>
<td>No ITP</td>
</tr>
<tr>
<td></td>
<td>Polokwane</td>
<td>ITP developed in 2012/13 in terms of new guidelines. The ITP was reviewed and approved by the MEC in May 2016.</td>
</tr>
<tr>
<td></td>
<td>Blouberg</td>
<td>Developed an ITP in 2012/13</td>
</tr>
<tr>
<td><strong>MOPANI</strong></td>
<td>Mopani District</td>
<td>Developed an ITP in 2004, reviewed in 2007 and has commenced in 2014 with a review. Not yet received by the Department for approval.</td>
</tr>
<tr>
<td></td>
<td>Greater Tzaneen</td>
<td>The Department developed an ITP in 2016/17 in conjunction with the municipality.</td>
</tr>
<tr>
<td></td>
<td>Greater Letaba</td>
<td>Commenced in 2014 with the development of an ITP. Not yet received by the Department for approval.</td>
</tr>
<tr>
<td></td>
<td>Greater Giyani</td>
<td>No ITP.</td>
</tr>
<tr>
<td></td>
<td>Maruleng</td>
<td>No ITP.</td>
</tr>
<tr>
<td><strong>SEKHUKHUNE</strong></td>
<td>Greater Sekhukhune</td>
<td>Developed an ITP in 2004, reviewed in 2007 on old guidelines.</td>
</tr>
<tr>
<td></td>
<td>Elias Motsoaledi</td>
<td>Developed an ITP in 2008 on old guidelines.</td>
</tr>
<tr>
<td></td>
<td>Ephraim Mogale</td>
<td>No ITP.</td>
</tr>
<tr>
<td></td>
<td>Fetakgomo / Greater Tubatse</td>
<td>The ITP was reviewed in 2015, but is still awaiting approval by the Council. Will be developing an ITP for the integrated municipality in 2018/19.</td>
</tr>
<tr>
<td><strong>VHEMBE</strong></td>
<td>Vhembe District</td>
<td>Developed an ITP in 2004, reviewed in 2007 and 2010 respectively.</td>
</tr>
<tr>
<td></td>
<td>Thulamela</td>
<td>Commenced with the development of an ITP in 2014. Not yet submitted for approval.</td>
</tr>
<tr>
<td></td>
<td>Musina</td>
<td>The Department developed an ITP in 2016/17 in conjunction with the municipality.</td>
</tr>
<tr>
<td></td>
<td>Makhado</td>
<td>No ITP.</td>
</tr>
<tr>
<td></td>
<td>Collin Chabane</td>
<td>No ITP – Department will fund the development of an ITP in 2018/19.</td>
</tr>
<tr>
<td><strong>WATERBERG</strong></td>
<td>Waterberg District</td>
<td>Developed an ITP in 20014, reviewed in 2007, 2011 and 2014. The 2014 ITP has been submitted to the Department for approval.</td>
</tr>
<tr>
<td></td>
<td>Mogalakwena</td>
<td>Developed an ITP in 2010 in terms of guidelines. The Department reviewed the ITP in 2017/2018 in conjunction with the municipality.</td>
</tr>
<tr>
<td></td>
<td>Lephale</td>
<td>Developed an ITP in 2012 on new guidelines with the assistance of the Department. The DOT will be assisting the municipality to review its ITP during 2018/19.</td>
</tr>
<tr>
<td></td>
<td>Thabazimbi</td>
<td>No ITP.</td>
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<td></td>
<td>Modimolle</td>
<td>No ITP.</td>
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<td></td>
<td>Mookgopong</td>
<td>No ITP.</td>
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<td></td>
<td>Bela-Bela</td>
<td>No ITP.</td>
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MARKET INQUIRY INTO THE

LAND BASED
PUBLIC PASSENGER
TRANSPORT SECTOR

METERED TAXIS AND
E-HAILING SERVICES
REPORT
NON-CONFIDENTIAL
MARCH 2021
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<th>Description</th>
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<tr>
<td>4IR or Industry 4.0</td>
<td>Fourth industrial revolution</td>
</tr>
<tr>
<td>ACCC</td>
<td>Australian Competition and Consumer Commission</td>
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<tr>
<td>CADE</td>
<td>Administrative Council for Economic Defense, Brazil</td>
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<tr>
<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>DOT</td>
<td>National Department of Transport</td>
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<tr>
<td>EPH</td>
<td>Earnings per hour</td>
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<td>ERTB</td>
<td>Economic Regulation of Transport Bill</td>
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<td>GPS</td>
<td>Global positioning system</td>
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<td>IPTNs</td>
<td>Integrated Public Transport Networks</td>
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<td>IPTNP</td>
<td>Integrated Provincial Transport Network Plans</td>
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<td>ITPs</td>
<td>Integrated Transport Plans</td>
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<tr>
<td>MEC</td>
<td>Member of Provincial Executive Committee</td>
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<td>MRE</td>
<td>Municipal regulatory entity</td>
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<td>NLTA</td>
<td>National Land Transport Act, 2009 (Act No. 5 of 2009)</td>
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<td>NLTTA</td>
<td>National Land Transport Transition Act, 2000 (Act No. 22 of 2000)</td>
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<td>NLTIS</td>
<td>National Land Transport Information System</td>
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<td>NTA</td>
<td>National Taxi Alliance</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>PRE</td>
<td>Provincial regulatory entity</td>
</tr>
<tr>
<td>PTSAP</td>
<td>Public Transport Strategy and Action Plan</td>
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<tr>
<td>SAA</td>
<td>South African Airways</td>
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<tr>
<td>SABOA</td>
<td>South African Bus Operators Association</td>
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<tr>
<td>SAMTA</td>
<td>South African Metered Taxi Association</td>
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<tr>
<td>SANTACO</td>
<td>South African National Taxi Council</td>
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<tr>
<td>TAT</td>
<td>Transport Appeal Tribunal</td>
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<td>ToR</td>
<td>Terms of reference</td>
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1. On 10 May 2017, the Competition Commission (the Commission), in exercising its powers under section 43B of the Competition Act, 1998 (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 Market Inquiry). The Terms of Reference (ToRs) for the Market Inquiry were also gazetted on the same day. The ToRs identified the centrality of public transport in providing meaningful mobility for most of the population in pursuit of economic participation. The Commission has identified the public passenger transport sector, including road and rail based public passenger transport, as relevant for this Market Inquiry.

2. The Inquiry was initiated because the Commission was of the view that there are features or a combination of features in the public passenger transport sector that were distorting or inhibiting competition. The Commission made this assessment based on several complaints in the industry, as well as complaints lodged with the Commission by some stakeholders. In addition, transport in general is one of the priority sectors of the Commission. South Africans spend a high proportion of disposable income on public transport (over 20 per cent) against the world benchmark (of 10 per cent) and therefore any resolution on identified impediments in the sector was envisaged to have benefits in the long run.

3. The ToRs identified the central role of public transport in providing meaningful mobility for most of the population in pursuit of economic participation. The ToRs identified the following broad themes to be investigated as part of the Inquiry:

   3.1 Price setting mechanisms: Analysing different price setting mechanisms for all modes of public transport and their impact on competition;

   3.2 Price regulation: Examining applicable price regulations and their impact on competition;

   3.3 Route allocation, licensing and entry regulations: Assessing the impact of regulations, including route allocation, licensing and entry requirements on intermodal and intramodal competition;

   3.4 Allocation of operational subsidies: Assessing the impact of operational subsidies on some modes of public transport and their impact on both intramodal and intermodal competition;

   3.5 Transport planning: Evaluating the impact of the government’s transport planning framework on dynamism, efficiency and competition; and

   3.6 Transformation: Assessing transformation issues, including ownership patterns in the public transport industry.

4. Following the publication of the ToRs, the Commission published the Stakeholder Participation Guidelines (the Guidelines) and Call for Submissions on 13 July 2017. The Commission also held public hearings across the 9 provinces between June 2018 and August 2018. Oral and written submissions were received from over 200 stakeholders. All submissions and transcripts of public hearings are available on the Commission’s website (http://www.compcom.co.za/public-passerger-transport-market-inquiry/)

Rationale of subdividing the report

5. This report has a specific focus on e-hailing and metered taxi services, while the main report will focus on traditional markets which are largely static in nature (i.e. minibus, bus and rail).

---

1 Section 43B of the Competition Act which relates to initiation of market inquiries states:

“(1) The Competition Commission, acting within its functions set out in section 21(1), and on its own initiative, or in response to a request from the Minister, may conduct a market inquiry at any time, subject to subsections (2) to (4):

(i) if it has reason to believe that any feature or combination of features of a market for any goods or services prevents, distorts or restricts competition within that market; or

(ii) to achieve the purposes of this Act.”
6. The Commission is of the view that the dynamics of competition between the metered taxis and e-hailing services are driven largely by technological developments. The innovation and digitisation of the markets are referred to as the fourth industrial revolution (4IR or Industry 4.0). Competition assessment and regulatory scrutiny in these evolving technology or platform markets require special attention, given their dynamic nature. This report therefore focuses on the dynamic nature of competition in these evolving technology markets, while the main report focuses on the traditional markets which are largely static in nature (i.e. minibus, bus and rail). The Commission is not in any way downplaying some technological developments in the traditional markets, but the innovations do not disrupt the way the industry generally operates on a broader level. For example, in several countries, no regulations exist to cater for e-hailing services. In South Africa, the Department of Transport (DOT) issued a practice note to assist provincial regulatory entities (PREs) to deal with the licensing process of e-hailing operators while the amendments to legislation are being considered. For ease of reference, we refer to them as e-hailing operators.

7. Given the dynamic nature of these markets, the Commission analysed the impact of regulations on competition, i.e., do regulations (or lack thereof) inhibit or distort competition in the metered taxi and e-hailing service markets? The ultimate objective is to promote competitiveness and efficiency in this market, as well as to encourage the industry to explore new and innovative ways of operating.

Evolution of the metered taxi industry

8. The metered taxis industry has evolved over time, and was initially predominantly owned by white South Africans until the 1980s. During this period, the metered taxi industry was largely self-regulated and not subject to formal regulation. When the White Paper on National Transport Policy was approved in 1996 (the 1996 White Paper), it included the regulation of metered taxis.

9. Metered taxis are currently fragmented, without a nationally recognised body advancing the interests of the industry. The fragmentation may be due to the differences in the metered taxi groupings. There are two groups of metered taxi operators: those who operate as private metered taxi companies, and those who operate as individuals or sole proprietors. Private metered taxi companies provide an array of transport services, including 24-hour services – and bookings can be made via websites, telephone or e-mail.

10. Metered taxi services provide on-demand services to the general public. Unlike in other countries, South Africa’s metered taxis do not roam the streets searching for passengers. A passenger has to place a booking with a taxi company telephonically or go to the taxi rank to get a ride – or to the streets where they park. In major cities, metered taxi companies are allocated ranking facilities by municipalities. In various airports, the Airports Company South Africa (ACSA) provides limited parking bays to the metered taxi operators that ACSA has agreements with. In hotels and shopping malls, metered taxis usually park on the street corners. Apart from the legislative requirements, such as application for operating licences and having a sealed and functional meter in the vehicle, the metered taxi industry remains self-regulated – with local metered taxi associations playing a significant role. Local metered taxi associations recruit new members, and offer a letter of recommendation for members during the process of applying for operating licences.

11. Metered taxis are frequently used by middle-to-high income earners and tourists. Most metered taxis operate in urban areas in South Africa. Low income earners use metered taxis mostly in emergency situations. Other than the use of the sealed meter and telephone booking system, it is safe to say there is limited use of technology in the metered taxi industry. This lack of innovation, or the slow pace of technology adoption by metered taxi operators, is leading to their demise – as evidenced by the entry of e-hailing services.
The entry of e-hailing changed the market dynamics

12. E-hailing services refer to transport services that use a digital platform to connect private operators, or operators, with passengers more efficiently. The platform uses a global positioning system (GPS) technology to connect the nearest active linked operator to a commuter who is in need of the service. E-hailing services provide upfront pricing to passengers that are agreed on before the journey begins, and automatically generate an electronic notice—with the cost of the trip and a map of the route to be taken. A new e-hailing company called inDriver was launched in South Africa in March 2019.2 The inDriver business model allows the passenger to determine the fare of the trip. The passenger enters the amount he or she is willing to pay for the trip. The order is then confirmed by the first driver who is willing to accept the fare offered. In both e-hailing models, passengers can pay using a debit or credit card, cash, or prepaid voucher. Unlike metered taxis, e-hailing passsengers have access to information about the operator, vehicle details, and the estimated time of arrival in realtime. In addition, a passenger can share this information with friends or family.

13. E-hailing services began operations in South Africa in 2013, with Uber as the first mover into this market. Uber commenced operations in Johannesburg, and subsequently extended these services to Pretoria, Cape Town, Durban, Port Elizabeth and East London. Taxify, now rebranded as Bolt, commenced operations in April 2016. Bolt currently operates in Johannesburg, Pretoria, Cape Town, East London, Port Elizabeth, Emalahleni, Ermelo, George, Mossel Bay, Kimberley, Knysna, Plettenberg Bay, Ladysmith, Mahikeng, Mbombela, Mthatha, Pietermaritzburg, Polokwane, Potchefstroom, Klerksdorp, Queenstown, Thohoyandou and Worcester. inDriver entered the South African market in February 2019 and offers services in Cape Town and Johannesburg.3

14. The entry of e-hailing services into South Africa disrupted the business model of metered taxis. In sharp contrast to metered taxis, the e-hailing application enables the hailing of a vehicle electronically. Operators on an e-hailing platform can roam and hail everywhere, and prices are determined in accordance with demand and supply. Unlike metered taxis, e-hailing services do not own the vehicles used by operators, but rather provide an electronic platform through which passengers and operators can connect to each other. The vehicles are owned by independent operators. The growing popularity of e-hailing services also caught regulatory authorities off-guard, as e-hailing services do not fall under the conventional regulatory framework.

15. Despite the entry of e-hailing services, metered taxis were slow to respond and found it difficult to create their own digital platforms. Some players in the metered taxi industry introduced their own apps – such as YooKoo Passenger and Cruise App, both of which struggled to attract large numbers of subscribers to their platforms. Passengers are reluctant to register with small and lesser-known e-hailing companies, due to security concerns.

16. Digital platforms, such as e-hailing services, thrive on network effects or network externalities. Network externality is defined as the benefit gained by current users of a group when an additional user joins the group. The group can be thought of as a network of users; hence the term network externality. Strong network effects increase barriers to entry into platform markets, because of the “winner takes all” or “winner takes most” phenomenon. There have already been a few potential entrants in the e-hailing market who have failed to recruit a substantial number of operators to their platforms. The new local start-up e-hailing companies – such as SnappCab, Ryda, ScoopaCab and Cabbie – ceased operations because they were unable to compete with the established e-hailing companies.

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3 See https://www.iol.co.za/business-report/companies/bargaining-ride-hailing-app-launches-in-johannesburg-23340625(last accessed on 05 February 2020)
17. The brand loyalty and first-mover advantages enjoyed by pioneers of e-hailing services make it difficult for metered taxi companies – or operators – to launch apps that can successfully compete with established brands. As an example, Uber has solidified its presence in South Africa by entering into strategic partnerships with well-known institutions like banks and airlines. For instance, First National Bank passengers can earn and spend eBucks on their Uber rides. South African Airways (SAA) Voyager has collaborated with Uber so that its passengers can pay for their Uber rides with their SAA Voyager miles. All these partnerships increase passengers’ awareness of Uber, and give it more legitimacy. Metered taxi operators are not able to match these incentives.

18. Given these barriers faced by metered taxis and the nature of platform markets, which strive for economies of scale and network effects, metered taxi operators found it very difficult to compete with e-hailing services. Metered taxi operators with vehicles that met the requirements of e-hailing companies joined e-hailing services, as they could not compete successfully. The basis for the lack of competition arises from factors such as area restrictions and pricing dynamics, which will be discussed below.

21. The Commission considered whether area restrictions (in practice as opposed to what is legislated) affect competition, and whether the requirement in the NLTA to pre-determine a pick-up area for metered taxis distorts competition between e-hailing operators and metered taxi operators. The main issue of concern raised by the metered taxi operators is that e-hailing operators are not subjected to area restrictions in practice, while metered taxi operators are required to operate in designated areas. If a metered taxi picks up a passenger from a rank and drops the passenger off at the preferred destination, it must return to the designed rank without a passenger if no pre-booked trip is available. This has created an uneven competitive environment between metered taxis and e-hailing services, as metered taxis have an average of 50 percent of unpaid kilometres (dead mileage), given the empty return trip after dropping off a passenger. This increases metered taxis’ operating costs, which may lead to higher fares – as metered taxi operators have to recoup the costs from passengers. The 50 percent of unpaid return-trip kilometres influence their pricing. For e-hailing services, operators have an option to move around (roam) after dropping off a passenger, and thus minimise the unpaid kilometres that are experienced by metered taxis.

22. Unlike metered taxi operators, who are required to operate in designated areas and only in one municipality, e-hailing operators in Gauteng can provide services in Tshwane, Johannesburg, and Ekurhuleni municipalities thus minimise the dead

The impact of area restrictions on competition

19. The practice note by the DOT makes provision for e-hailing operators to be licensed as metered taxi operators, whilst the National Land Transport Amendment Bill [B7 D-2016] (Amendment Bill) is being considered in Parliament. The current legislative framework on area restrictions does not make any distinction between metered taxis and e-hailing services. Both metered taxi operators and e-hailing operators are required to apply for an area-based operating licence which defines a specific radius within which they must operate as well as allocated taxi ranks, terminal, pick-up, and dropoff points. The radius should be specified in the application for an operating licence.

20. At an operational level, metered taxis comply with the legislative restrictions imposed on their licences and operate within the defined radius. In the case of e-hailing services, the radius is not adhered to, because the app used by e-hailing operators allows operators to connect to the nearest passenger outside their municipal boundaries in violation of the licence conditions. Given their use of an app, the violation of the licence conditions by e-hailing operators is difficult to monitor by law enforcement officials. This violation of licence conditions by cutting across municipal boundaries has been a source of conflict, leading metered taxi operators to conclude that the regulatory environment creates an uneven competitive playing field. The Commission’s view is that though regulations are similar, the significant difference is at an operational level, where lack of enforcement results in an uneven competitive playing field between metered taxis and e-hailing services.
mileage. In addition, the use of an app enables e-hailing operators to reduce the distance between the last dropoff and the next pick-up, thereby reducing operational costs; including low call out fees. E-hailing services are efficient because of the reduced dead mileage and increased convenience for passengers, who determine their pickup areas. These efficiencies are reflected in the lower fares charged by e-hailing services, compared to metered taxi fares. Area restrictions may limit the benefits that could be derived from metered taxis absent those restrictions, as highlighted in the e-hailing operations.

23. Area restrictions have been a common feature of the metered taxi industry in many countries, and the entry of e-hailing services has led to the interrogation of their relevance. The Commission has also observed that some countries are moving away from imposing area restrictions on metered taxis. In Finland, a decision has been taken that metered taxi operators will no longer be tied to a zonal operation (area restriction), and operating licences are valid throughout the country. In London, zones based on licence conditions imposed on operators – by the London Cab Order of 1934 – were in use prior to acceptance of the United Kingdom Department of Transport’s recommendation for the removal of zones; on the basis that zoning diminishes the supply of taxis and limits the scope for passenger choice. The United Kingdom’s Department of Transport also found that the removal of zones promotes fuel efficiency, because taxis can pick up passengers anywhere in the local authority area, rather than having to return empty to their licensed zone after dropping off a passenger in another zone.

24. However some countries, such as Germany, have maintained area restrictions with debates on their relevance continuing. In 2018 the German government, through its Transport Minister, announced its intention to remove the rule that requires taxi operators to return to their rank or base after every dropoff. In Italy, privately chauffeured vehicles (equivalent to metered taxis in South Africa) must return to their bases after dropping off a passenger in compliance with area restrictions. This is likely to change, as the Italian Transport Regulation Authority favours the adoption of a new framework in which traditional taxi services, private hire car services and new ride-sharing services will compete in the same market and for the removal of the restrictions that require the private hire vehicle to return to its base after dropoff.4

25. Area restrictions, more specifically designated pick-up areas, may be justifiable in very specific circumstances. International experience suggests that places such as airports may require restrictions; given the limited operational space and the need to mitigate excessive congestion.

Area restrictions have an impact on pricing which influences competition

26. The impact of area restrictions on competition is illustrated by fare differences between metered taxis and e-hailing services. Minimising unpaid kilometres by e-hailing operators influences the way in which fares are determined. In assessing the price determination mechanisms, the Commission sought to understand how the operators set their prices, establish efficiencies and inefficiencies in the process – and how that impacts on competition.

27. Metered taxi operators have two ways of setting prices (i) regulated fares and (ii) fares determined by the local metered taxi association. The NLTA makes provision for the MEC or Minister, in consultation with the relevant authority, to determine a fare structure for metered taxis – but in practice, neither the Minister nor the MECs (except for Western Cape) determine the fare structure. Section 66 of the NLTA does not provide guidance to the provinces or the municipalities

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4 Organisation for Economic Co-operation and Development. 2018. Taxi, ride-sourcing and ride-sharing services.
5 Section 66 of the NLTA provides:

"(1) In the case of a metered taxi service—
(a) the entity granting the operating licence may specify an area for picking up 30 passenger;
(b) if the operating licence or permit specifies such an area, the vehicle may leave that area if, on the return journey, it is to carry the same passenger that it carries on the outward journey or if the vehicle is to return empty;
(c) the vehicle may pick up passenger outside of that area if the fare is pre-booked and the passengers will return to such area; and
(d) any particular journey may be operated at a fare not determined by the meter if the fare for that journey has been agreed upon before the journey begins, but the meter must be kept running for the information of passengers."
on how to determine the fare structure. Given the lack of fare regulation by the majority of the MECs, metered taxis determine their own fares through local metered taxi associations, who agree on a rate per kilometre. The key question is whether government should be involved in regulating metered taxi fares and, if so, under what circumstances. International experience suggests that government should not be involved in regulating fares. There are however exceptional circumstances where fares for metered taxis are regulated by government. For example, fares for metered taxis in some countries, such as Sweden, are set for airport trips in order to protect tourists.

28. E-hailing services, on the other hand, have adopted a market-based approach in which the fares are determined by the forces of demand and supply. Passengers are aware of the fare estimate, in the case of Bolt, and exact fare (for Uber) before a trip is accepted by the passenger. However, there are circumstances which necessitate a change in upfront fares for example, if the passenger requests the operator to use an alternative route that is significantly different from the one used to calculate the upfront fare. When the demand for the service outstrips supply, dynamic pricing (surge pricing) kicks in, which increases the fares by a particular multiplier. The rationale for this, as provided by the e-hailing companies, is to incentivise more e-hailing operators to come onto the platform and service the surge in demand. When the market reaches equilibrium, the price returns to normal. Even though dynamic pricing has benefits, such as incentivising more e-hailing operators to come onto the platform thus meeting increased demand and providing passers with an opportunity to compare their prices before accepting a trip, the Commission is concerned that dynamic pricing can also be used to overcharge passengers. There has been a surge of complaints by passengers, especially after major events such as concerts and sporting events.

29. The potential for abuse arising from dynamic pricing is a real possibility, in the markets in which the “winner takes all” phenomenon prevails where there are high barriers to entry, and where there is reliance on network effects. A few countries have capped the dynamic pricing for example, in the USA where a cap is in place in cases of natural or man-made emergencies. Uber has reached an agreement with the New York Attorney General to cap price increases at 3.5 times the base fare for UberX, and 2.5 times the base fare for Uber Black, when a state of emergency has been declared. However, when there is no emergency, dynamic pricing can lead to very high multipliers (up to approximately 10 times the base fare in New York). In South Africa, Bolt has implemented a cap of the base fare, while Uber initially applied a cap which varied per city from . In 2019, Uber standardised the maximum cap to across all the cities in South Africa.

30. A new e-hailing service, called inDriver App, was launched by a group of students in Russia to counter dynamic pricing whenever temperatures dropped. inDriver follows the Real-Time Deals (RTD) model which allows passengers to choose how much they are willing to pay, and at the same time allows drivers in the area to either accept the offer or make a counter offer through a bargaining process. Even though there are recommended rates in the inDriver app, these rates merely serve as guidance; the final fare is set by the passenger and driver in a real-time negotiation. inDriver charges zero commission to its driver for the first 6 months. This means whatever cash the driver receives, the driver keeps. After 6 months, the InDriver platform charges operators 5-7% commission.

31. Digitisation has not only brought about challenges to transport regulations across the world, but also to labour and taxation laws. There are several questions on labour and taxation laws that have arisen. Firstly, are e-hailing operators classified as independent contractors or employees of e-hailing companies? Secondly, are e-hailing companies adequately accounting for taxation, particularly corporate tax and Value-Added-Tax (VAT)? These questions have been controversial in many jurisdictions in the world, with South Africa being no exception. These issues were raised during the Commission’s
public hearings by some stakeholders. Given these challenges, the Commission has sought to examine the role played by digitisation in shaping employer-employee relations, and the extent to which e-hailing companies account for taxation in South Africa.

32. Evidence presented to the Commission revealed that the relationship between e-hailing companies and its e-hailing operators is not governed by labour laws. The Commission received submissions alleging that e-hailing companies take unilateral decisions with no input from e-hailing operators, an action that has the potential of undermining the rights of the e-hailing operators and threatening their survival. During the public hearings, some e-hailing operators alleged that when e-hailing services entered the South African market, they (especially Uber) used various incentives to attract as many e-hailing operators on the platform as possible. These incentives were later withdrawn unilaterally, negatively affecting their earnings. In addition, e-hailing companies introduced booking fees of an average of 4%, which also impacted their earnings. Based on the data received from e-hailing companies, the Commission found that the gross earnings per e-hailing operator were declining over time until 2017/2018. However, data received show that for the period 2018/2019, the gross earnings per e-hailing operator have slightly increased, possibly due to the increase in fares. Uber has started limiting the number of e-hailing operators, based on its assessment of demand and supply in a defined area. This is a form of self-regulation to minimise oversupply of e-hailing operators. Similar measures – of not accepting new members – have also been taken by the South African National Taxi Council (SANTACO) in the minibus taxi industry.

33. On taxation, the Commission noted that the corporate tax and VAT being paid by e-hailing companies was disproportionately low, compared to the revenue they generated in South Africa. However, on 1 April 2019, South Africa implemented new rules designed to address the challenge of digitisation. The new definition of "electronic services" was amended to introduce the new VAT regime for cross-border e-commerce transactions. This change in the law meant that, where a supply of service is made by a non-resident to a resident of another country, the non-resident supplier is required to register as a taxable vendor. The Commission is of the view that the move towards a more ‘destination’ based approach on VAT accounting makes Uber and Bolt pay their fair share of VAT in the jurisdiction where they operate. On corporate tax, the Commission is of the view that this issue may be better dealt with by tax authorities.

Both e-hailing and metered taxis face challenges with licensing

34. In general, both metered taxis and e-hailing operators face some regulatory challenges with respect to operating licences, and massive backlogs at the provincial regulatory entities (PREs). Backlogs are caused by, inter alia, the absence of directives by the municipalities to the PRE, limited capacity to develop integrated transport plans (ITPs) to inform the directives, general lack of capacity in planning authorities and the PREs, and inadequate stakeholder consultations. As in other jurisdictions, the South African regulatory regime is not yet specifically designed to regulate the e-hailing services.

35. The Commission found that 79 per cent of e-hailing operators are providing a service without valid operating licences. No reliable data is available to quantify the proportion of metered taxis that are operating without valid licences, but submissions received by the Commission portray a significant proportion operating without valid licences. The Commission also noted that there are substantial backlogs at various PREs, partly due to the inefficiencies of the National Land Transport Information System, as well as capacity and financial resources at various PREs. While other provinces and municipalities have issued moratoria on operating licences, these have not been effective in halting illegal operations. For instance, a moratorium on metered taxis has been in place in eThekwini since 2010, but e-hailing companies that came onto the South African market in 2013 are operating. Evidence gathered by the Commission indicates that some metered taxi operators opted to join e-hailing platforms and continued to use their existing metered taxi licences. However, other operators are providing
a service without valid licences. The moratoria was put in place without conducting needs assessments (market study) and without updated integrated transport plans as envisaged by the NLTA.

36. In its Draft Revised White Paper on Transport Policy (2017), the DOT indicated that the Transport Appeal Tribunal (TAT) must be capacitated to deal effectively with major backlogs in the public transport operating licence disputes – to assist the industry with problems experienced at PREs. It appears that government is struggling to deal with challenges at PREs and planning authorities, and that these problems continue to exist in major provinces – with Gauteng, KwaZulu-Natal and Western Cape affected the most. While some municipalities (such as Tshwane) do not have backlogs in issuing directives to the PRE, backlogs are nevertheless encountered at the PREs. Limited enforcement capability results in illegal operations, and this is not sustainable where 79 per cent of e-hailing operators do not have valid licences. Given the significant proportion of illegal operators, this raises a question of whether licences should be granted to all e-hailing operators that meet specific requirements – such as vehicle fitness – and whether the government should be less concerned about limiting the number of e-hailing operators in the industry using quantity restrictions.

37. The NLTA provides for the devolution of the licensing function to planning authorities, on condition that the necessary capacity is developed. Nearly ten years have elapsed without any devolution taking place, pointing to the disparity between legislative intent and implementation. The Draft Revised White Paper on Transport Policy (2017) indicates that a strategy for implementing devolution still needs to be developed, and DOT has not managed to do so for some time. Submissions received from both PREs and other metropolitan municipalities indicate that several challenges still exist at the municipal level, for devolution to take place, and it is unlikely that devolution will be achieved in the short- to-medium term. If the status quo remains with respect to the challenges at PREs (with regards to backlogs) and planning authorities (issuing directives to PREs timeously), licensing of public transport will continue to be marred by inefficiencies and illegal operations. These regulatory inefficiencies are becoming a hindrance to the operation of public transport, and the necessity of imposing quantity restrictions on e-hailing operators (by not timeously processing applications) requires scrutiny.

38. The entry of e-hailing services in South Africa generated conflict between metered taxi and e-hailing operators. At the heart of the conflict is metered taxis’ view that e-hailing operators have bypassed regulatory scrutiny (as there was no specific regulation governing their business model) and are charging low fares. This conflict has heightened safety concerns for passengers and operators, which hinders normal operations. There are areas that have been deemed no-go areas for e-hailing operators, and this hinders effective competition based on merit, as well as limits consumer choice.

39. The Commission provisionally recommended the removal of area restrictions prescribed in Section 66 of the NLTA. Area restrictions reduce competition and their rationale is incompatible with the evolving nature of the markets. Retaining area restrictions may constrain both e-hailing operators, and metered taxi operators when they fully embrace e-hailing technology in the future.

40. The Commission provisionally recommended that no area or operational restrictions should apply to both metered taxis and e-hailing operators once a permit is granted. Restrictions would only apply in designated areas such as for airports, and other national key points where there is limited operational space to mitigate excessive congestion. Allowing e-hailing operators once licenced, to operate nationally, removes the legislative requirement for PREs to undertake localised demand and supply assessments before granting licences to metered taxis or e-hailing operators. Decisions for entry and exit in the e-hailing and metered taxi services should be left to the operators, and not subjected to government intervention.
41. On dynamic pricing, the Commission was of the view that once area restrictions are removed, potential abuse arising from dynamic pricing is mitigated; given the number of e-hailing operators in the market. The Commission committed to monitor developments in the market and, should dynamic pricing arise more frequently, an enforcement avenue may be pursued.

42. The Commission recommended that government (through the MEC or Minister) should not be involved in determining fare structure for metered taxi services as it is inefficient, not justifiable and has not been fully implemented by the majority of the MECs.

43. On backlogs at PREs, the Commission provisionally recommended:

43.1 An overhaul of the issuing of operating licence regime and removal of quantity restrictions. E-hailing and metered taxi operators will still be required to apply for roadworthy permits, but their operating licence applications should not be denied based on supply and demand assessments. In addition, the Commission recommended that all pending applications should be processed and finalised expeditiously and PREs and planning authorities to increase capacity to deal with existing backlogs.

43.2 Planning authorities and provinces should enter into MoUs to jointly exercise their respective powers and functions as contemplated in Section 12 of the NLTA. This joint exercise or performance of their respective powers and functions may be regulated by an agreement between the parties, but this exercise would still require both spheres of government to be sufficiently capacitated; and

44. To ensure that the metered taxis industry is recognised and empowered to represent the interests of its members, the DOT and PREs should assist the industry to establish a national association of metered taxis. A formalised structure for metered taxis will assist with consultations with the government, and advance their interests in the industry, in light of increased digitisation.

45. To deal with conflict between metered taxis and e-hailing operators, and ensure safety of passengers, the Commission recommended that a specialised division within SAPS be created to deal with all public transport-related matters.

STAKEHOLDERS RESPONSES TO THE PROVISIONAL RECOMMENDATIONS

46. The detailed submissions from each stakeholder is captured in Section 9 of this report. At a high level, the provisional recommendations that received most opposition relates to:

46.1 Removal of area restrictions - stakeholders argue that by allowing e-hailing and metered taxi to operate nationally without restrictions will further disadvantage metered taxis whose business model is geared servicing localised markets. In addition, removal of area restrictions will escalate the levels of violence between the metered taxis and e-hailing operators.

46.2 The removal of the requirement of conducting demand and supply assessment by planning authorities has been criticised due to likelihood of influx in already overtraded markets leading to massive congestion on the roads. The implication is that violence will escalate. Stakeholders argue that public policy and regulatory intervention should play a role in mitigating adverse effects of congestion and potential for escalation of violence in the public transport industry.

COMMISSION’S RESPONSE TO STAKEHOLDER SUBMISSIONS

47. The detailed Commission’s response to stakeholder submissions are captured in Section 10 of this report. At a high level, the Commission has considered some of the objections raised by stakeholders are respond as follows:

47.1 On removal of area restrictions – the Commission is of the view that area restrictions create an uneven competitive environment between metered taxi and e-hailing services. The Commission notes that area restrictions are still applicable.
per the Amendment Bill for the purposes of granting and issuing a metered taxis licenses, while e-hailing operators are not subjected to any area restrictions. The implication of this regulatory disparity impacts on the competitiveness of the metered taxis and creates an uneven regulatory environment between e-hailing and metered. The Commission submits that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The Commission recommends that the regulatory dispensation in the Amendment Bill for e-hailing services should be extended to metered taxis and restrictions are an important intervention to manage conflict in the industry.

47.2 On removal of the requirement of the planning authorities conducting demand and supply assessment (deregulation of the licencing function) – the Commission notes that planning authorities will not be required to provide directives to the PREs which may reduce the amount of backlogs. Oversaturation may occure increasing the possibility of violence. Uncontrolled entry may lead to road congestion and public safety compromised. The Commission is of the view that these markets are best served without quantity restrictions, however, due to real concerns of violence as a result of oversaturation, the Commission recommends that quantity restrictions may still be imposed on both e-hailing and metered taxis.

48. On quantity restrictions, the Commission maintains that these markets are best served without quantity restrictions. In light of public interest considerations to mitigate violence, the Commission recommends that, quantity restrictions may still be imposed on both e-hailing and metered taxis.

49. On backlogs of operating licences, the Commission recommends:

49.1 Maintaining the separation of planning and licensing functions and where appropriate, Provincial Transport Authorities and PREs enter into memoranda of understanding (MoUs) to jointly exercise their respective powers and functions, as contemplated in Section 12 of the NLTA.

50. With respect to all existing applications for operating licences which are still pending upon the completion of this market inquiry, the Commission recommends that they must finalised within six months from the date of publishing a report of the inquiry in the Gazette.

**FINAL RECOMMENDATIONS**

48. The Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The regulatory dispensation in the Amendment Bill for e-hailing services should be extended to metered taxis in respect of the following:

48.1 The Amendment Bill does not impose any area restrictions for e-hailing services and this should be extended to metered taxis to create an even competitive environment.

48.2 The Amendment Bill does not regulate fares for e-hailing services and therefore, the Commission recommends that the legislature delete Section 66(3) of the NLTA which allows MEC or Minister together with the planning authority to determine a fare structure for metered taxi services. No price regulation for metered taxis is recommended as the Amendment Bill does not regulate e-hailing fares. This is essential to create an even competitive landscape.
### Summary of expected outcomes

<table>
<thead>
<tr>
<th>The nature of distortion/inefficiencies</th>
<th>Recommendation</th>
<th>How recommendation addresses the distortion</th>
<th>Expected benefit or outcome</th>
</tr>
</thead>
</table>
| **Area restriction**                   | The Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The Amendment Bill does not impose any area restrictions for e-hailing services and this should be extended to metered taxis to create an even competitive environment. | Removal of area restrictions improves efficiencies and passenger benefit due to reduced waiting times. Ensures a competitive playing field between metered taxis and e-hailing services Address public interest such as violence in the industry | Removal of legislative impediment will promote competitive markets, make equal playing fields and enhanced competition between metered taxis and e-hailing services leading to:  
- Reduced waiting time  
- Choice  
- Affordable fares  
- Increased consumer welfare  
- Promotes fuel efficiency  
- Innovation  
- Simpler administrative and enforcement costs.  
- Improved competition thus improved economic growth |
<p>| <strong>Price Regulation by MECs</strong>           | The Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The Amendment Bill does not regulate fares for e-hailing services and therefore, the Commission recommends that the legislature delete Section 66(3) of the NLTA which allows MEC or Minister together with the planning authority to determine a fare structure for metered taxi services | Ensures a competitive playing field between metered taxis and e-hailing services | Fares to be subjected to market forces, which promotes competition and leads to lower fares |</p>
<table>
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<th>Recommendation</th>
<th>How recommendation addresses the distortion</th>
<th>Expected benefit or outcome</th>
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<tbody>
<tr>
<td>Backlogs</td>
<td>Maintaining the separation of planning and licensing functions would be efficient if capacity is increased at both the PREs and planning authorities. In addition, the Commission recommends that all pending applications should be processed and finalised expeditiously, given that a significant number of operators are already operating illegally. This will free up some capacity at the PREs to consider new applications without having to deal with massive backlogs;</td>
<td>Operators will operate legally</td>
<td>This will free some capacity at the PREs to consider new applications without having to deal with massive backlogs</td>
</tr>
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<td></td>
<td>That the PREs and planning authorities increase capacity to deal with existing backlogs</td>
<td>Improve efficiency</td>
<td>Prevent illegal operators</td>
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<td></td>
<td>That planning authorities and provinces enter into MoUs to jointly exercise their respective powers and functions as contemplated in Section 12 of the NLTA. This joint exercise or performance of their respective powers and functions may be regulated by an agreement between the parties, but this exercise would still require both spheres of government to be sufficiently capacitated.</td>
<td>Improves efficiency</td>
<td>Better cooperation between provinces and adjacent Municipalities in relation to transport matters</td>
</tr>
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<td></td>
<td>Metered taxis associations are empowered to represent the interest of the industry; the DOT and PREs should assist the industry to establish a national association of metered taxis.</td>
<td>A formalised structure for metered taxis will assist with consultations with government and advance their interests in the industry in light of digitisation</td>
<td>Improved and innovative metered taxi industry</td>
</tr>
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1. Market Inquiry background

1.1. On 10 May 2017, the Competition Commission, exercising its powers under Section 43B of the Competition Act, 1998 (Act No. 89 of 1998), published a notice in the Government Gazette that it would conduct a Market Inquiry into the land-based public passenger transport sector. The Commission initiated the Market Inquiry in order to understand the general state of competition in the land-based public passenger transport industry, and to determine whether there are any features that lessen, prevent or distort competition in the industry.

1.2. The terms of reference (ToR) identified the following broad themes for assessment in the Market Inquiry:

   **Price setting mechanisms**: Analysing different price setting mechanisms and their impact on competition in the land-based public passenger transport industry;

   **Price regulation**: Examining applicable price regulations and their impact on competition in the land-based public passenger transport industry;

   **Route allocation, licensing and entry regulations**: Assessing the impact of regulations, including route allocation, licensing and entry requirements on intermodal and intramodal competition in the land-based public passenger transport industry;

   **Allocation of operational subsidies**: Assessing 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;

   **Transport planning**: Evaluating the impact of the government’s transport plans on dynamism, efficiency and competition in the land-based public passenger transport industry; and

   **Transformation**: Assessing transformation issues, including ownership patterns in the land-based public passenger transport industry.

1.3. For the purposes of this report, the ToRs are discussed with specific reference to the metered taxis and e-hailing services. As such, this report will focus on the following themes identified in the ToRs: price setting mechanisms, price regulation, route allocation, licensing and entry regulations. The allocation of operational subsidies, transport planning and transformation will not be dealt with in this report. The following discussion sets out a summary of the process followed in conducting the Market Inquiry.

Launch of the Market Inquiry

1.4. The Commission engaged with key stakeholders as part of the pre-launch consultations. The purpose was to inform the stakeholders about the Market Inquiry, and to solicit their views on its scope. These consultations culminated in the publication of the ToRs on 10 May 2017, following which the Commission published the Stakeholder Participation Guidelines (the Guidelines) and Call for Submissions on 13 July 2017. The Guidelines provided a fair opportunity and a transparent process for all stakeholders to participate effectively in the Market Inquiry. The Call for Submissions was an initial invitation to all stakeholders to respond to the issues raised in the ToRs. In addition, the Call for Submissions was also important for the Market Inquiry to assess if there are additional issues that may be considered by the Commission.

1.5. The Commission conducted the Market Inquiry in several phases. **Phase 1** involved evidence and information gathering, during which more than 200 stakeholders made written and oral submissions. Oral submissions were largely through public hearings. The Commission appointed three panel members and two evidence leaders from its staff – to preside over the public hearings. Oral submissions were held in all nine provinces over 24 days, between June 2018 and August 2018. Appendix A provides a comprehensive list of all stakeholders that made submissions to the Market Inquiry. Additional hearings at the Commission’s offices were held in October 2018, to cater to some of the stakeholders that could not participate during the first round of public hearings.
1.6. **Phase 2** of the Market Inquiry involved an assessment of the state of competition in the transport sector, based on the information received from market participants. A range of analytical techniques were applied to understand and draw conclusions where possible, or make inferences on the nature of competition in the sector – and the impact of any feature or conduct observed in the sector. **Phase 3** focuses on report drafting and reporting on preliminary findings and recommendations.

**Invitation for comment of preliminary findings and recommendations**

1.7. In February 2020, the Commission published preliminary findings and recommendations for public comment. The input received from stakeholders was assessed and incorporated into the analysis, to enhance the outcomes of the Market Inquiry.

**The rationale for subdividing the report**

1.8. The Commission has subdivided the publication of its draft report for public comment into two parts. This report has a specific focus on e-hailing and metered taxi services, whilst the main report will focus on the traditional markets. Traditional markets refer to markets that are largely static in nature (i.e. minibus, bus and rail). The traditional markets are excluded from this report, because they are not direct competitors of metered taxis and e-hailing services.

1.9. The Commission is of the view that the dynamics of competition between the metered taxis and e-hailing services is driven largely by technological developments. The innovation and digitisation of the markets are referred to as the fourth industrial revolution (4IR or Industry 4.0). Competition assessment and regulatory scrutiny in these evolving technology or platform markets requires special attention, given the dynamic nature of these markets. This report therefore focuses on the dynamic nature of competition. The Commission is not in any way downplaying some of the technological developments in the traditional markets, but the innovations therein have not been to a sufficiently large scale to disrupt the way the industry operates.

**Structure of the report**

1.10. The report is structured as follows: section 1 provides a market inquiry background, and section 2 provides a background on the metered taxi industry and e-hailing services. Section 3 provides an overview of the regulatory framework. Section 4 discusses price setting mechanisms in the metered taxi industry and e-hailing services. Section 5 focuses on barriers to entry. Section 6 assesses the intramodal and intermodal competition and the effect of area restrictions on competition. Section 7 highlights emerging issues from stakeholder consultations, in particular; the impact of digitisation on labour issues and taxation. Sections 8 and 9 present the Commission’s findings and recommendations respectively.
2. Background to the metered taxi industry and e-hailing services

Introduction

2.1. This chapter sets out the contextual background of metered taxi and e-hailing services, evolution, business models and discussion of the main role players in the industry. For purposes of this report, drivers utilising e-hailing apps are referred to as e-hailing operators; companies such as Uber and Bolt are called e-hailing companies; and metered taxi drivers are referred to as metered taxi operators. The term e-hailing operators includes drivers working for vehicle owners, drivers leasing vehicles, or owners driving own vehicles.

2.2. The precise inception of the metered taxi industry in South Africa is unclear, since metered taxi services were not regulated in the past. However, the history of the metered taxi industry can be traced back to the 1950s.9 Metered taxis were historically family businesses that have been passed from generation to generation. Given its informal nature, the metered taxi industry was initially self-regulated.10 The available information suggests that metered taxi companies were predominantly owned by white South Africans until the 1990s,11 and black South Africans were not granted metered taxi operating licences before 1994. The 1996 White Paper introduced a formal regulatory framework for the metered taxi industry.

2.3. E-hailing in the public transport market in South Africa started in 2013.12 Uber was the first mover in this market. It introduced its operations in Johannesburg in 2013 and subsequently extended services to Pretoria, Cape Town, Durban, Port Elizabeth and East London. Bolt entered the market and became fully operational in April 2016. Bolt currently operates in Johannesburg, Pretoria, Cape Town, East London, Polokwane, Port Elizabeth, Emalahleni, Ermelo, George and Mosselbay, Kimberley, Knysna and Plettenberg Bay, Ladysmith, Mahikeng, Mbombela, Mthatha, Pietermaritzburg, Potchefstroom and Klerksdorp, Queenstown, Thohoyandou and Worcester. inDriver entered the South African market in February 2019. It is currently available in Cape Town and Johannesburg.13

2.4. The entry of e-hailing has been facilitated by the exponential growth of innovation, increased global connectivity, and technological advancements that are disrupting traditional business models across industries. These technological disruptions are posing challenges to traditional markets with rigid business models.

E-hailing and metered taxi fragmentation

2.5. There are several organisations representing the interests of various metered taxi operators, including the South African Metered Taxi Association (SAMTA), the South African Meter Taxi Forum (SAMTF), Tshwane Metered Taxi Council (TMTC), Western Cape Metered Taxi Council (WCMTC) and the Gauteng Metered Taxi Association (GMTA). These organisations are responsible for safeguarding the interests of metered taxi companies as well as individual metered taxi operators, and play an active role in assisting the metered taxi industry with operating licence applications.14 Despite the existence of these and other organisations, metered taxis are currently fragmented and do not have a nationally recognised body to advance the interests of the industry. The fragmentation may be due to the differences in the metered taxi groupings. For instance, SAMTA submitted that it is a national body safeguarding the interests of metered taxi operators in South Africa.15 However, the Commission later learnt that SAMTA is active in Durban only, while GMTA and TMTC are active only in Gauteng. Some metered taxi associations are registered as companies. For instance, Aero Park Metered Taxi Association (APMTA) is, in reality, a transport company operating from Kempton Park; rather than an association of metered taxi operators.16

10 Tshwane Metered Taxi Council. Submission by Mr Magano.
16 Aero Park Metered Taxis in Kempton Park. Oral submission by Mr Thomas Rabodiba, Gauteng hearing. 8 June 2018. Page 3
2.6. E-hailing operators are to some extent also fragmented. However, the dominance of the two companies (Uber and Bolt) means that the level of fragmentation is limited. E-hailing operators seem to have organised themselves under an organisation called The Movement, but this does not include all e-hailing operators. During the public hearings, most Uber and Bolt operators presented evidence in their individual capacity. The Commission has however observed that both metered taxi operators and e-hailing service operators do not have a national body or structure (similar to SANTACO or the National Taxi Alliance (NTA) that is recognised to represent the minibus taxi industry. As a result, the metered taxi and e-hailing operators do not have a united voice to advance their common interests. E-hailing companies, on the other hand, are able to lobby given their resources and access to policy makers.

2.7. Metered taxis and e-hailing services use different business models to acquire passengers and conduct operations. The business models will be briefly discussed below.

2.8. Metered taxi operators provide an on-demand service to the general public. Unlike in other countries, South Africa’s metered taxis do not roam the streets searching for passengers. There are two groups of metered taxi operators in South Africa: (i) private metered taxi companies, and (ii) individual or sole proprietor metered taxi operators. Private metered taxi companies provide an array of services, including a 24-hour service throughout the year – with payments done through cash, and debit and credit card machines on board. Passengers may book for services via websites, telephone and e-mail. Some private taxi companies have public passenger liability cover, and their cars are in good condition. In major cities, private metered taxi companies are allocated ranking facilities by the municipality. ACSA provides limited parking bays to contracted metered taxi services within various airports in South Africa.

2.9. On the other hand, individual or sole proprietor operators usually use a taxi rank as a base, and passengers visit the rank to get a service. Metered taxis usually park or rank close to hotels and shopping malls, waiting for passengers. Apart from the legislative requirements such as applications for operating licences and having a functional, sealed meter in the vehicle, the metered taxi industry remains self-regulated; with local metered taxi associations playing a significant role. Local metered taxi associations recruit new members, and offer a letter of recommendation for members during the process of applying for operating licences.

2.10. Evidence gathered by the Commission revealed that metered taxis are frequently used by middle-to-high-income earners and tourists. Most metered taxis operate in urban areas in South Africa. Low income earners use metered taxis mostly in emergency situations. Metered taxis have limited use of technology (slow pace of technology adoption) and this is leading to their demise, as evidenced by the entry of e-hailing services. Lack of innovation (or the slow pace of technology adoption) by metered taxi operators is leading to their demise. The demise of the metered taxis around the world has raised several questions: should regulators intervene in these markets and if so, to what extent and for which objectives?

2.11. E-hailing in public transport refers to the use of technological platforms to connect e-hailing operators with passengers more efficiently. These platforms use global positioning system (GPS) technology to connect the nearest active linked e-hailing operator to a passenger who is in need of the service. E-hailing companies such as Uber and Bolt connect e-hailing operators and passengers seamlessly, in a two-sided market. Digital platforms are dynamic in nature, and can easily extend services to new or related markets with much ease. For instance, Bolt has already expanded from e-hailing with cars, to motorbikes and scooter sharing. Uber has now expanded into food delivery with an app called Uber Eats. In 2018, Uber announced that it was looking at the possibility of flying drones for food deliveries.

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2.12. The nature of digital platforms is dynamic, while the regulatory framework is static, and may not efficiently deal with such developments and innovations. For instance, when the NLTA was promulgated in 2009, e-hailing was not part of the South African public transport system, and it was not explicitly defined in the NLTA. Subsequent to the entry of e-hailing services, the DOT issued a practice note to provide guidance to all PREs and municipal regulatory entities (MREs) as an interim measure; on the approach to be followed when dealing with applications for operating licences for e-hailing services. The DOT gave all PREs directives to the effect that, while it was still in the process of amending the NLTA, all PREs should treat e-hailing services as a sub-category of metered taxi services.20

2.13. Unlike metered taxis, e-hailing companies such as Uber and Bolt do not own the vehicles used by e-hailing operators, but rather provide a platform for the passengers and e-hailing operators to connect. The vehicles are owned (sometimes leased) by independent contractors and for ease of reference, we refer to them as e-hailing operators. The term e-hailing operators includes drivers working for vehicle owners, drivers leasing vehicles or owners driving their vehicles. All e-hailing operators with vehicles are required to get their respective vehicles licensed by the Provincial Regulatory Entities (PREs).

2.14. E-hailing fare structure is based on vehicle type, rates and city. The fares may vary due to, among others, traffic conditions, weather, routes, and demand and supply. The trip is based on three components, namely: base fare, time and distance. For the sake of transparency, e-hailing provides an upfront pricing system, to help the passengers know the estimated fare before the journey begins. At the end of the trip, the system automatically generates an electronic notice with the cost of the trip and a map of the route taken. Passengers can pay with a debit or credit card, cash or prepaid voucher. A passenger is provided with information about the operator (name and telephone number), vehicle details, and the estimated time of arrival in realtime. In addition, a passenger can share this information with friends or family; to improve security.

Comparison of the efficiency of e-hailing business model vs metered taxis

2.15. The e-hailing business model offers great convenience to both passengers and e-hailing operators, thus resulting in efficiencies. One measure of efficiency is how much time e-hailing operators spend searching for passengers, or driving to pick up passengers. A trip is allocated to an e-hailing operator who is closest to the passenger, thereby limiting costs for both the operator and passenger. Passengers connect to a vehicle closest to them, and in a shorter period of time.

2.16. In addition, the e-hailing technology enables a e-hailing operator to find another fare-paying passenger closer to another passenger’s dropoff point. This significantly reduces the travel time and distance between fare-paying rides. The e-hailing technology allows the passengers, in real time, to monitor the location and time of arrival. Passengers have full transparency of pricing via price estimate function, and can share their trip information with friends, family or other persons; to further enhance security.21

2.17. The Commission observed that metered taxis that operate at designated areas or at airports and major stations are forced to return to the base after dropping off a passenger. This means that the trip is priced to recover an empty return trip. This is in sharp contrast to the e-hailing model, where a ride close to the destination is found through the use of technology. The metered taxi business model therefore results in greater distances travelled between fare-paying rides; thus effectively raising the operating costs of metered taxi services. High operating costs, in turn, result in higher fares which ultimately limit the demand for metered taxi services.

2.18. Differences in efficiency levels (which are being reflected in fares) between the metered taxis and e-hailing services have been a source of conflict in most cities in the world. The efficiency of e-hailing has brought fares down in ways that metered taxis are not able to duplicate. In some countries, including South Africa, e-hailing services face significant opposition, as discussed below.

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21 Bolt submission. 20 February 2018. Page 3-4
The conflict between metered taxi operators and e-hailing operators

2.19. The entry of e-hailing services in South Africa and all over the world has often generated conflict, sometimes with fatal consequences, between metered taxi and e-hailing operators. From the submissions presented at public hearings, at the heart of the conflict are two issues. Firstly, metered taxi operators argue that e-hailing operators have bypassed regulatory scrutiny (as there was no specific regulation governing their business model) and are operating without regulation. Secondly, metered taxi operators allege that e-hailing operators’ fares are “too low”, and that e-hailing companies are subsidising their operators. Metered taxi operators have used these two issues to argue that e-hailing operators are threatening the survival of their businesses, with unfair low prices. Metered taxis have also argued that government has failed to protect the metered taxi industry.

2.20. In Paris, France, metered taxi unions have protested about Uber’s low fares and are against e-hailing operators being granted licences. Some of these protests have attracted national participation, while others have been violent, sometimes resulting in the burning of tyres, traffic blockades and damaging of vehicles owned by e-hailing operators.22

2.21. In Bogota, Colombia, metered taxis (Yellow Cabs) blocked roads and clashed with police while protesting against e-hailing operators. The protests came after Colombia’s government decided that metered taxis should replace taxi meters with GPS-based software applications that can be used to calculate and collect fares. During the protests, metered taxi operators called for more regulation of technology-based services.23

2.22. In Madrid, Spain, metered taxi demonstrators blocked access to a major tourism fair, Fitur, and vowed not to give up on demands for more stringent regulations for e-hailing services like Uber and Cabify. The demonstrators demanded that users of e-hailing services be required to book the service an hour in advance – to mimic metered taxis’ business model. In response to their demands, the government called for a “balanced” approach that will enable both transportation options to coexist peacefully.24

2.23. In London, England, cab operators staged protests against e-hailing services, arguing that the service has an unfair advantage due to less stringent regulation, and use their international structure to pay less tax.25 South Africa has also experienced protests and several confrontations between e-hailing and metered taxi operators, some of which have led to the loss of lives.26

2.24. In summary, e-hailing services have been beneficial to passengers and, at the same time, posed new challenges to regulators. Difficulties arose with respect to how e-hailing services are classified – are they technology companies or transport companies? There are other conceptual difficulties with the model, such as who is the firm between the technology company and e-hailing operators, and whether e-hailing operators can be classified as employees for labour law purposes. The responses of regulators are discussed below.

How regulators have responded

2.25. Regulators and courts around the globe continue to grapple with the legal challenges posed by the conflict discussed above. In 2017, Uber was initially banned in Italy after a court in Rome ruled that Uber represents unfair competition for traditional metered taxis. This decision was reversed on appeal.27 The Italian government has promised to introduce clearer rules governing competition between conventional metered taxis and rival transport services.

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In 2016, the Higher Regional Court in Frankfurt, Germany, found UberPop had violated German law because its e-hailing operators did not have public transport licences. UberPop is a budget version of UberX, that allows every driver to become an e-hailing operator with their own car without acquiring a professional driver’s licence and a public transport operating licence. The court banned Uber from running the service with unlicensed operators, and set fines for any violations of local transport regulations. UberPop service was also outlawed in France.

Canadian municipalities such as Toronto and Ottawa took a decision to license UberX operators in 2016, resulting in a new regime for Uber licensing. This decision was taken after various protests by the metered taxi industry.

In Spain, a ruling from a Madrid Court in 2014 forced Uber to shut down its services. The court ruled that Uber’s activities should be terminated and prohibited in the whole country, as a cautionary measure, due to condemnation from the metered taxi operators’ association. After this, a Judge in Barcelona requested the Court of Justice of the European Union to determine whether the activities of e-hailing companies present unfair competition against metered taxi operators. In December 2017, the European Court of Justice held that Uber is a transportation service company and as such, it will have to comply with existing metered taxi rules. Member states can thus regulate the conditions for providing the e-hailing service.

The South African regulatory regime has also not yet been designed to regulate the e-hailing services. For this reason, the DOT is currently developing the legal framework, through the Amendment Bill which explicitly accommodates electronic hailing.

Role players

The key role players in the metered taxi industry include:

- The PREs responsible for granting operating licences;
- Planning authorities for issuing directives to the PREs; indicating whether a service is required or not in accordance with the NLTA;
- Motor vehicle manufacturers and dealerships;
- Metered taxi companies, metered taxi associations;
- Financiers; and
- Fuel suppliers among others.

E-hailing companies in South Africa include Uber, Bolt, plus new entrants such as inDriver, Ntuzu Digital TaxiCab app (launched in East London), YoTaxi app (launched in Durban by 12 metered-taxi associations), YooKoo Passenger, Hailer (launched in Kimberley) and inDriver app (available in Port Elizabeth, Cape Town, Johannesburg and Pretoria). YooKoo Passenger (a newly developed e-hailing app) announced its partnership with the metered taxi industry; with the aim of challenging both Uber and Bolt.

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3. Overview of the regulatory framework

Introduction

3.1. This chapter discusses the regulatory framework for metered taxis and e-hailing services. Its objective is to assess whether any regulations impede the effective functioning of the market, and deter competition between metered taxis and e-hailing services. The intended outcome is to provide a foundation for the assessment of competitive dynamics between the metered taxis and e-hailing services. The chapter begins by outlining the key policy documents that guide the regulatory framework for public transport in South Africa. An overview of the licensing regime for metered taxis is discussed, and how e-hailing operations are currently regulated. Challenges facing both metered taxis and e-hailing services are discussed, with the objective of developing recommendations to promote fair competition.

Significance of the White Paper

3.2. The 1996 White Paper on National Transport Policy (1996 White Paper) played a crucial role in initiating the process of transforming the South African land based public transport sector. The 1996 White Paper introduced various changes in the regulation of public transport in the country, which culminated in the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) (NLTTA) and the NLTA respectively. The NLTTA came into force in 2000, but it was transitional in nature and implemented for a period of five years, while the NLTA was being drafted. The NLTA was promulgated in 2009 and repealed the NLTTA.

3.3. The NLTA defines a “metered taxi” as a public transport service operated by means of a motor vehicle which is available for hire using different mechanisms such as hailing while roaming, by telephone or otherwise. Metered taxis may be available for hire from a rank, and should be equipped with a sealed meter to determine the fare payable and the meter should be calibrated for such fare or complies with any other requirements applicable to such meters.

3.4. E-hailing or App-based services were not initially defined in the NLTA and on 25 February 2015, the DOT issued a practice note to provide guidance to all PREs on how to deal with operating licences for e-hailing services. The practice note directed all PREs to treat e-hailing services as a sub-category of metered taxi services. The successive discussion in terms of the application process, licensing requirements for e-hailing services and metered taxis are largely the same, based on the practice note issued by the DOT.

3.5. The NLTA Amendment Bill (“Amendment Bill”) was introduced to formally recognise e-hailing services. On 10 March 2020, the Amendment Bill was passed by the National Assembly and empowers the Minister to make regulations for standards or requirements for e-hailing applications or similar technology. As a result, e-hailing is treated as a sub-category of the metered taxi for purposes of operating licences. The Amendment Bill provides for a distinct category of e-hailing services and defines e-hailing as:

“1(c) ‘electronic hailing service’ or ‘e-hailing service’ means a public transport service operated by means of a motor vehicle, which—
(a) is available for hire by hailing while roaming;
(b) may stand for hire at a rank, and
(c) is equipped with an electronic e-hailing technology-enabled application, as contemplated in section 66A.

3.6. While the Amendment Bill categorised e-hailing services as a sub-category of metered taxis, there are differences in the way metered taxis and e-hailing services are regulated and how they operate. This dual regulatory framework creates an uneven competitive environment in that metered taxis operate within defined areas while e-hailing services are not subjected to area restrictions. In addition, the NLTA provides for fare regulation for metered taxis while no fare regulation applies for e-hailing services. These issues will be discussed in detail in sections 4 and 6 of this report.

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3.7. This section identifies the roles and responsibilities of each stakeholder in the approval process of operating licences for both e-hailing and metered taxis. In terms of Section 50(1)34 of the NLTA, no person shall operate or provide public transport services unless he/she holds an operating licence. Section 23(1)35 of the NLTA requires MECs of transport within their jurisdictions to establish PREs which must then carry out the powers assigned to them in terms of Section 2436 of the NLTA. One of those functions, contemplated in Section 24(1) of the NLTA, is to decide on applications relating to operating licences where no municipality to which the operating licence function has been assigned exists. Although the NLTA contemplates the assigning of the operating licence function from the provincial sphere of government to the municipalities, nowhere in South Africa has this function been assigned. Therefore, PREs are currently responsible for the issuing of all operating licences.

3.8. Municipalities, as planning authorities, make recommendations or issue directives to the PREs to either approve or decline applications for granting new operating licences, and the renewal, amendment or transfer of existing operating licences. In the processing of the applications, the PREs must, by means of notice as prescribed in the NLTA regulations, inform all planning authorities in whose areas the services will be operated – to give directions regarding the application based on the planning authority’s integrated transport plans. In terms of Section 1437 of the NLTA, the planning authorities are involved in the preparation of the integrated transport plans as contemplated in Section 3638 of the NLTA. If there is a need for the service, the planning authority must direct the PRE to grant the application.39 If there is no need for the service, the planning authority must direct the PRE to refuse the application.40

3.9. In terms of Section 18(3)41 of the NLTA, planning authorities are also conferred with powers to introduce moratoria and to give notice that they will no longer be receiving applications for new services, except in accordance with invitations for specified services on specified routes, or specified areas in accordance with the municipality’s ITP. In addition, in terms of Section 39 of the NLTA, planning authorities also have the power to impose a moratorium on the issuing of new operating licences when rationalising public transport services in their areas if, based on their ITPs, they conclude that there is a surplus of legally operated services by operators on a particular route – as a result of which an existing non-contracted public service is no longer required.

34 Section 50(1) of the NLTA states:
“(1) No person may operate a road-based public transport service, unless he or she is the holder of an operating licence or a permit, subject to sections 47, 48 and 49, issued for the vehicle concerned in terms of this Act.”

35 Section 23(1) of the NLTA states:
“(1) Every MEC must establish a Provincial Regulatory Entity within the relevant provincial department, to perform the functions of that entity in the province.”

36 Section 24 of the NLTA states:
“(1) Each Provincial Regulatory Entity must—
(a) monitor and oversee public transport in the province;
(b) receive and decide on applications relating to operating licences for intra-provincial transport where no municipality exists to which the operating licence function has been assigned but excluding applications that must be made to the National Public Transport Regulator in terms of section 21.”

37 Section 14 of the NLTA states:
“(1) All planning authorities must—
(a) prepare the integrated transport plans as contemplated in section 36;
(b) perform the constitutional transport functions listed in Parts B of Schedules 4 and 5 of the Constitution;
(c) supply directions to the entities responsible for the granting, renewal, amendment or transfer of operating licences in terms of their integrated transport plans in the prescribed manner; and
(d) perform any other land transport-related functions assigned to them in terms of the Constitution and this Act.

38 Section 36(1) of the NLTA states:
“(1) All planning authorities must prepare and submit to the MEC, by the date determined by the Minister, integrated transport plans for their respective areas for the five-year period commencing on the first day of the financial year determined by the MEC, and must update them in the prescribed manner and as frequently as prescribed.”

39 See section 55(2) of the NLTA

40 See section 55(3) of the NLTA

41 Section 18(3) of the NLTA which confers planning authorities with powers to introduce moratoria states:
“…(3) Such a municipality may give notice in the prescribed manner that it will no longer receive applications for operating licences for new services except in accordance with invitations given by it for specified services on specified routes or in specified areas in accordance with its integrated transport plan, either for the purpose of concluding a contract or because those routes or areas are already adequately served.”
3.10. Apart from legislative provisions in the NLTA, metered taxi operators must also comply with the planning authorities/city traffic by-laws. These by-laws regulate *inter alia* the position of the meter in a vehicle, fares to be displayed, and that the fare shall be calculated from the time the passenger enters the vehicle and immediately stop when the passenger arrives at their destination. In addition, these by-laws also provide for the prohibition of interference with the meter, testing of taxi meters, and charges for testing meters.  

Application process

3.11. When a new application is lodged, the PRE must give notice of the receipt of an application for an operating licence, in the Government Gazette, and may allow interested persons an opportunity to comment and make representations in favour of or against the application. The PRE is not required to publish a notice in the Government Gazette with respect to the following applications:

- 3.11.1. Applications for renewal of an operating licence;
- 3.11.2. Applications to amend particulars of the same vehicle specified in the operating licence;
- 3.11.3. Applications to replace the vehicle specified in an operating licence under section 73 of the NLTA; and
- 3.11.4. Applications for the conversion of a permit where the permit is already route-based, in the case of minibus taxi type service or scheduled service.

3.12. Interested persons, including members of the public and other operators, wishing to submit comments or make representations are permitted to do so within 21 days of the date of the publication of the notice in the Government Gazette. Where objections have been raised regarding a particular application, the PRE would be required to convene a hearing and adjudicate on the objection. Before the PRE considers the application, it must, in the prescribed manner, inform all planning authorities in whose areas the services will be operated, with the request to give directions regarding the application based on the planning authority’s Integrated Transport Plan (ITP). Based on the need for the service, the planning authority will give a directive to the PRE. The PRE will also consider all objections received, and may decide either to approve or reject the application. If any of the parties are dissatisfied with the ruling of the PRE, an appeal can be lodged with the Transport Appeal Tribunal (TAT). A decision of the TAT can be appealed to the High Court.

3.13. Below is a schematic representation of the application process.

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43 South Africa, Republic: National Land Transport Regulations, publication of applications, regulation 17 (4)
Currently, both metered taxi and e-hailing operators are granted similar operating licences as metered taxis, due to the NLTA not recognising e-hailing services which is being remedied by the Amendment Bill. The granting of metered taxi operating licences to e-hailing operators follows a decision of the Transport Appeal Tribunal (“TAT”) which is binding on all PREs. When applying for a new operating licence, the NLTA requires a detailed description of the area that will be serviced because metered taxi operations are generally radius or area-based services and not route-based services, which are applicable to minibus taxi and bus services.
Developments in the regulatory framework

The Economic Regulation of Transport Bill

3.15. The purpose the Economic Regulation of Transport Bill (ERTB) of 2018 is to consolidate the economic regulation of transport in a single legal framework. The ERTB provides for the establishment of a single regulator (the Transport Economic Regulator) and the Transport Economic Council, ending the role of specialised industry-specific regulators in price control.

3.16. The Transport Economic Regulator will incorporate the Ports Regulator and regulate the following entities: National Ports Authority, Transnet Ports Terminals, Transnet Freight Rail, Airports Company of South Africa, Air Traffic and Navigation Services Company, Passenger Rail Agency of South Africa and South African National Roads Agency Limited. Any person adversely affected by a decision, determination or ruling issued or made by the Transport Economic Regulator may appeal or apply for a review to the Transport Economic Council.

3.17. The primary form of regulation by Transport Economic Regulator focuses on price control. Price control has been defined as a method for setting the maximum price that can be charged, or revenue that can be earned, by a regulated entity for the use of or access to its assets, facilities or services.45 Each regulated entity described in 3.16 above would be required to submit a proposal to the regulator, requesting approval of its tariffs on services.

3.18. The Minister of Transport may however, in consultation with the Regulator, by notice in the Gazette, declare that the ERTB applies to any market, or any entity, facility or service, irrespective whether privately or state owned, within the transport sector. Such a determination by the Minister occurs if any of the following circumstances apply:

3.18.1. the facility or service is provided by only a single operator; or
3.18.2. the entity, market, facility or service is not functioning competitively; and
3.18.3. economic regulation cannot adequately address the economic consequences resulting from the non-competitive nature of the market.

3.19. The Passenger Rail Agency of South Africa (PRASA) and its associated entities such as PRASA Cres, fall within the definition of regulated entities in the ERTB. PRASA Cres (which manages the real estate business of PRASA and intermodal terminals) has different tariffs across its properties, and the Transport Economic Regulator will have powers to regulate its fees or tariffs. As such, PRASA would be required to submit a proposal to the Transport Economic Regulator, requesting approval of its tariffs on services and facilities offered.

3.20. The ERTB will not currently apply to minibus taxis, e-hailing services and metered taxis, as none of them are defined as regulated entities in terms of the ERTB. However, should the Minister establish that economic regulation can address some concerns in any market, the ERTB may apply to all transport modes.


3.22. Given the time required to fulfil all parliamentary processes, it is unlikely that the ERTB will have an immediate impact on the outcomes of the inquiry. Rather, the inquiry may provide valuable information to the Minister of Transport, to assess if economic regulation is necessary on specific transport modes.

45 See Section 1 of the Economic Regulation of Transport Bill
Challenges faced by metered taxi and e-hailing operators

Uneven regulatory environment between e-hailing and metered taxis

3.23. Section 66(1)(a-c) of the NLTA requires metered taxi operators to apply for an area-based operating license which a detailed description of the area (defined radius), as well as allocated taxi ranks, terminal, pick-up, and dropoff points to be specified in the application. In the case of e-hailing, which is treated as a sub-category of metered taxi services, based on the practice note issued by DOT and also a decision of Transporst Appeal Tribunal, the radius is not explicitly defined and e-hailing operators may cut across different municipal boundaries. This disparity has been a source of complaints by the metered taxi operators as the regulation seem to favour e-hailing operators. The Amendment Bill further perpetuates this regulatory imbalance with metered taxis operating in defined areas while e-hailing operators are not subjected to any area restrictions. Therefore, some metered taxi operators have raised a concern that e-hailing services are able to operate with no area restrictions, while metered taxi operators are required to operate in designated/pick-up areas.

3.24. The different regulatory regime also extends to fare determination – metered taxis as per Section 66(3) of the NLTA are subjected to fare regulation by the MEC/Minister. E-hailing services, on the other hand, are not subject to any fare regulation. The implication of this regulatory disparity impacts on the competitiveness of the metered taxis as will be discussed in section 6 of this report.

Route allocation, licensing and entry regulations

3.25. In general, both metered taxis and e-hailing operators face some regulatory challenges with respect to moratoria on the issuing of new operating licences, and massive backlogs at the PREs. Insofar as moratoria are concerned, various municipalities such as Ethekwini and Nelson Mandela Bay have utilised these powers. The following reasons were advanced for the various moratoria:

- to conduct an audit process of all operating licences issued;
- to conduct physical verification of all operating licences issued in the municipality/province, with a view to stamping out illegal operations; and
- to allow for the finalisation of the development of the Integrated Provincial Transport Network Plans (IPTNPs) as well as the ITPs.

3.26. In eThekwini, the municipality has taken a decision not to support or recommend any application for an operating licence – for either a meter or charter licence and e-hailing operators to the PRE – due to a moratorium that was imposed in order to assess demand and supply. Despite the DOT’s practice note, and the TAT’s decision that operators applying for e-hailing operating licences be granted a metered taxi operating licence, the municipality has decided not to issue any operating licences to e-hailing operators. The Eastern Cape PRE also indicated that the Buffalo City and Nelson Mandela Bay municipalities have declared a moratorium on metered taxis.

3.27. Persistent backlogs at PREs were highlighted by several stakeholders as a challenge faced by both metered taxis and e-hailing operators. The PREs have acknowledged the backlogs but provided reasons for them, which include delays by the planning authorities to issue directives. Sometimes, planning authorities are unable to provide directives to the PREs when the latter are considering applications for operating licences. The general reasons include the lack of funding, capacity and technical capability; resulting in planning authorities being overwhelmed and unable to perform their legislative functions efficiently. Some planning authorities indicated in their submissions that the lack of directives has been a result of the lack of capacity to develop

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47 Gauteng Metered Taxis Associations. Oral submission by Mr Rabodiba. 8 June 2018. Page 7. The assertion was also confirmed by Gauteng. South African Metered Taxi Association.
48 City of eThekwini, oral submission from MrWOYISANA datted 27 June 2018. Page 131
and implement ITPs to inform the directives.\textsuperscript{51} The moratoria has not been successful in preventing both metered taxis and e-hailing operators from providing a service in these towns and cities.

3.28. Even though the PREs may consider applications without directives from the planning authorities, in terms of Section 55(6)\textsuperscript{52} of the NLTA, the PREs have been cautious in disposing of these applications without directives.\textsuperscript{53} This is mainly because these ITPs are primarily used as a scientific basis on which to quantify demand and supply of public transport. Granting an operating licence without considering ITPs may result in oversaturation of the market, since the PRE would have granted the application without considering whether there is a need for such a service in that area.

3.29. In addition, the PREs highlighted the outdated and ineffective operating licence application systems. The PRE’s heavy reliance on the National Land Transport Information System (NLTIS) for the processing and issuing of operating licences prior to adjudication of applications has also led to backlogs. Although in terms of Regulation 6(7) of the NLTA, applications for operating licences must be finalised within 60 days, evidence obtained shows that in the City of Johannesburg alone, there is a backlog of nearly 7 000 applications (including minibus taxi applications) dating back to 2007.\textsuperscript{54} According to the Gauteng PRE, the NLTIS system has not functioned consistently for at least ten years, resulting in backlogs and inefficiencies. Gauteng PRE indicated further that Western Cape and KwaZulu-Natal have developed their own systems, and have found their performance improving significantly.\textsuperscript{55} Bolt submitted that, although their operators have been applying for licences, none had received updates about the status of applications, or when they may obtain their licences.\textsuperscript{56}

3.30. As a result of the backlogs at PREs, metered taxi and e-hailing operators utilise the proof of application receipt to operate. The receipt or proof of application does not constitute an operating licence, implying that it is illegal to operate using the proof of application. Regardless of this, e-hailing companies accept applications from potential operators; who then provide a service illegally; without operating licences. The sheer extent of the illegal operations poses an enforcement challenge for the authorities. Even though law enforcement officials impound vehicles operating without operating licences, evidence shows that Uber pays impounding fees for the release of the vehicles of their e-hailing operators. For example, between 2015 and 2018, Uber paid release fees on behalf of its operators, for operating without valid operating licences in Cape Town.\textsuperscript{57}

3.31. Table 1 illustrates the number of e-hailing operators with or without valid operating licences as at September 2019. In the major cities, Uber has \%\textsuperscript{58} of its e-hailing operators without valid operating licences, compared to \%\textsuperscript{59} for Bolt. Overall, 79 per cent of e-hailing operators do not have valid licences for the major cities presented in Table 1. The e-hailing companies combine data for all the metropolitan municipalities in Gauteng under “Gauteng”.

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\textsuperscript{51} Department of Transport, Mpumalanga. Oral submission by Mr Gadisi. 11 July 2018. Page 10–11.

\textsuperscript{52} Section 55(6) of the NLTA states: “…(6) Where the planning authority has failed to respond to the request contemplated in subsection (1), the National Public Transport Regulator or a Provincial Regulatory Entity may dispose of the application without any input from the planning authority, by considering the matters mentioned in Section 57.”

\textsuperscript{53} Department of Roads and Transport. Oral submission by Ms Smith. 6 June 2018. Page 29.

\textsuperscript{54} Gauteng Provincial Department of Roads and Transport. Oral submission by Ms Smith. 6 June 2018. Page 47-49

\textsuperscript{55} Gauteng Provincial Department of Roads and Transport. Oral Submission by Ms Smith. 6 June 2018. Page 44.

\textsuperscript{56} Bolt. Oral submission by Mr Taylor. 7 June 2018. Page 179.

\textsuperscript{57} Department of Transport and Public Works Western Cape. Oral Submission by Mr Reyneke. 20 June 2018. Page 146-147
Table 1: No. of e-hailing operators with(out) valid operating licences as at Sept 2019

<table>
<thead>
<tr>
<th>City</th>
<th>Uber With OL</th>
<th>Uber Without OL</th>
<th>% without</th>
<th>Bolt With OL</th>
<th>Bolt Without OL</th>
<th>% without</th>
<th>Combined With OL</th>
<th>Combined Without OL</th>
<th>% without</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cape Town</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Durban</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gauteng</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Port Elizabeth</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td>Total</td>
<td></td>
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<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Various submissions from Uber submission and Bolt

3.32. The level of compliance is low in towns and cities where the e-hailing companies introduced new services. For instance, all Uber operators are providing a service without licences in East London. Similarly, Bolt is currently operating without licences in Emalahleni, Ermelo, George, Mosselbay, Kimberley, Knysna, Plettenberg Bay, Ladysmith, Mahikeng, M bombela, Mthatha, Pietermaritzburg, Polokwane, Potchefstroom, Klerksdorp, Queenstown, Thohoyandou and Worcester.

Entry regulation

3.33. Planning authorities ascertain the need for public transport services in their jurisdiction. If there is a need for the service, the planning authority must direct the PRE to grant operating licences; otherwise (if there is no need for the service) the planning authority must direct the PRE to refuse the application. The arguments for regulating entry by planning authorities are to prevent congestion in city centres by limiting the number of vehicles circulating and/or parked on the streets, and to deal with violent altercations among competitors. Therefore entry restrictions or supply caps are closely related to area restrictions, in that the intention is often to limit supply in a particular area.

3.34. Several competition authorities from Canada, Spain, Portugal, Norway and Finland have criticised the strict control of the number of taxi licences, on the basis that they create significant barriers to entry. Some competition authorities, including the Federal Competition Commission of Mexico, the Canadian Competition Bureau, and the Spanish Competition Authority, have expressly recommended the elimination of restrictive quotas.

3.35. The Organisation for Economic Co-operation and Development (OECD) also noted that:

“It is increasingly widely accepted that restricting taxi numbers constitutes an unjustifiable restriction on competition and reduces economic welfare. While several theoretical arguments based on externalities (notably pollution and congestion) and productivity have been advanced to justify the imposition of supply restrictions, each of these rationales is strongly contested. In sum, the economics literature provides little support on theoretical grounds for supply restrictions.”

62 Ibid page 7
3.36. However, in the vast majority of the European Union Member States, the local authorities are empowered by the legislation to regulate the number of licences issued.\textsuperscript{63} For example, in the Member States such as, but not limited to France, Germany and Italy, the number of taxis operating in the municipality boundaries is restricted.\textsuperscript{64} While the national government sets the requirements for licences, the municipalities are authorised to add their own requirements, and are allowed to control access to the market.\textsuperscript{65} In Italy, the municipalities fix the number of taxi licences, frequency of assigning new licences, and the assignment procedures, characteristics of vehicles, rules of service provision (such as shifts), and the criteria for setting taxi fares.\textsuperscript{66} Even though Sweden deregulated entry together with fare regulation in the taxi business in 1990, the quality requirements for taxi operators were tightened.\textsuperscript{67} The Danish Parliament abolished quantity restrictions in 2018, however, the number of licences issued remained capped on a year-to-year basis, and they are distributed quarterly to establish competition between taxi operators.\textsuperscript{68}

3.37. In India, quantity restriction differs between various types of taxis such as local taxis, and those on the city taxi scheme. The quantity restricted however, is on the number of vehicles allowed to be operated by corporations or individuals. Local taxis do not have such restrictions, whilst the minimum and maximum number of taxis that can be operated on a city taxi scheme are set. Local taxi permits are indefinite, while those on the city taxi scheme are valid for a 5 year period. In African countries such as Kenya, Ghana and Nigeria, there are no quantity restrictions in place. However, operators have to conform to vehicle safety and quality standards. Vehicle requirements include legislative prescriptions on the quality, type and condition of vehicles to be used for transportation, amongst others. Quality requirements are legislative requirements for taxi operators to obtain operating licences. This is based on the qualifications, skills, and other attributes such as the health condition of the driver.

3.38. The impact of quantity restrictions on competition will be explained in detail in section 6.

\textsuperscript{63} With the exception of Austria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Netherlands, Poland, Slovenia, Slovakia, and Sweden (and the cities of Berlin and London), all EU Member States have introduced quantitative restrictions based on socio-economic criteria, such as the number of inhabitants, the number of tourists and business travellers. The taxi market is also geographically fragmented since the licences are usually valid only for the territory of the issuing municipalities. Exceptions are the Netherlands and Sweden, where a valid licence covers all national territories. (See European Commission. 2016. Study on passenger transport by taxi, hire car with driver and ridesharing in the EU. Study contract no. MOVE/D3/SER/2015-564/SI2.715085).

\textsuperscript{64} Uber Submission dated 06 June 2019. Page 31.

\textsuperscript{65} European Commission. 2016. Study on passenger transport by taxi, hire car with driver and ridesharing in the EU. Study contract no. MOVE/03/SER/2015-564/SI2.715085.

\textsuperscript{66} Organisation for Economic Co-operation and Development. 2016. Taxi, ride-sourcing and ride-sharing services - Note by Italy. Directorate for Financial and Enterprise Affairs Competition Committee. 22 May 2016.

\textsuperscript{67} Federal Ministry for Economic Cooperation and Development. Taxi as a part of Public Transport. Sustainable Urban Transport Technical Document#16.

\textsuperscript{68} Organisation for Economic Co-operation and Development. 2016. Taxi, ride-sourcing and ride-sharing services - Note by Denmark. Directorate for Financial and Enterprise Affairs Competition Committee. 22 May 2016.
4. Price setting mechanism

Introduction

4.1. In this chapter, the Commission analyses different price setting mechanisms in order to understand how pricing is determined, and secondly, to assess the impact of pricing on competition. The objective of this section is to provide a basis from which to undertake a competitive assessment, using price determination as one of the key considerations in understanding the state of competition between metered taxis and e-hailing services. The section, firstly discusses how fares for metered taxis and e-hailing services are determined, and then assesses how these differences in price determination influence the actual fares charged to commuters.

Metered taxi fare determination

4.2. There are two ways in which metered taxi fares are determined. Firstly, metered taxi fares are regulated in terms of the NLTA and secondly, their fares are determined by metered taxi associations. The protection of commuters from unduly high prices is one of the reasons cited to justify regulating fares. According to SAMTA, there is a risk that passengers (tourists and visitors) may be overcharged, especially by metered taxis who do not comply with the regulations, so called “unmetered taxis”.

4.3. The NLTA requires metered taxi vehicles to be equipped with a sealed meter to determine the payable fare. In terms of Section 66(3) of the NLTA, the decision to determine a fare structure rests on the Minister or MEC, in consultation with the relevant authority. The NLTA requires the fare structure to be published in the provincial Gazette.

4.4. Even though Section 66 of the NLTA gives the Minister or MEC (in consultation with the relevant authority) the power to determine the fare structure for metered taxis, no guidance is provided on how the fare structure ought to be determined. Despite the existing legislative framework assigning the MEC or Minister some powers to determine the fare structure, the Commission found that neither the Minister nor the MECs actively regulate fare structure, with the exception of the Western Cape Provincial Regulatory Entity (WCPRE) and City of Cape Town – where a maximum fare level is set. In all other provinces, fares are determined by local associations, or set by the company in instances where metered taxis are company-owned.

4.5. The pricing for metered taxi services is not flexible compared to e-hailing services. When applying for a licence, an operator has to indicate the applicable charge per kilometre, for example, R10 per kilometre. The fare is set and calibrated on the sealed meter and cannot be changed by an operator without the approval of the traffic department. This requirement makes fare changes by metered taxis inflexible, and unlikely to respond to supply and demand timeously. This inflexibility may result in metered taxi operators either overcharging or undercharging passengers given the fixed fares.

4.6. Regulated fares in theory have the disadvantage of being inflexible. According to the OECD, in markets where competition flourishes, rules and regulations on price should be treated with scepticism and possibly avoided. Fare regulation in potentially competitive industries may have some unintended consequences.

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70 Section 66(3) of the NLTA states: “...(3) The Minister or MEC, in consultation with the relevant planning authority, may determine a fare structure for metered taxi services and the MEC must publish such fare structure in the Provincial Gazette.

4(4) The Minister or MEC may make regulations providing for—
(a) a grading system for metered taxis;
(b) special requirements for operators of metered taxis, which may include testing of knowledge of the relevant area;
(c) special markings or other requirements for metered taxi vehicles; and
(d) any other matter affecting the standard or quality of operation of metered taxis.”
71 See Section 66(3) of the NLTA.
72 See Section 66 of the NLTA.
4.7. The predominant way in which metered taxis set fares is through their local metered taxi associations. The metered taxi associations’ executive committees, with their members (by mutual agreement) determine fares per area for all metered taxi operators belonging to that association. This practice may be unlawful in terms of the Competition Act.

**Fare determination for e-hailing services**

4.8. E-hailing fares are not regulated. There are two ways in which e-hailing companies set fares. Uber and Bolt independently set their fares, whilst inDriver allows passengers to set their own fare for their selected route. Uber and Bolt fares are based, among others, on vehicle type, rates depending on demand and supply which varies per city, and traffic and weather conditions. The trip is calculated based on these three components below;77

**Base fare:** a fare charged to the passenger per trip;78

**Time (per minute):** a fare charged per minute during the trip;79 and

**Distance (per kilometre):** the fare charged per kilometre.80

4.9. In setting fares, Uber and Bolt adopted an upfront pricing system where a passenger and e-hailing operator are presented with an exact fare (in the case of Uber) and estimated fare (in the case of Bolt) before a passenger accepts the trip.81 The upfront fares are calculated based on the following factors: the expected time and distance of the trip in current traffic conditions, the availability of e-hailing operators, the number of people requesting rides, and toll fees (where applicable). The consequence is that prices for the same journey may vary, depending on the prevailing demand from other passengers, and the supply of e-hailing operators.82

4.10. The inDriver business model is different from Uber/Bolt in that the inDriver app recommends a fare for the selected route, which the passenger may either accept or decline or put in an offer indicating the fare s/he is willing to pay for the trip. After setting the fare, nearby e-hailing-operators can either match the passenger’s requested amount, or bid a higher amount. The order is confirmed by the first operator who is willing to accept the offered price. As indicated earlier, inDriver still has a relatively small presence in South Africa.

**Dynamic pricing and how it works**

4.11. Uber and Bolt have adopted a market-based approach in which the fares are determined by demand and supply. When the demand for the service outstrips supply, dynamic pricing kicks in, which increases the fares, until demand and supply normalises. Passengers have full transparency of pricing.83 The rationale provided by e-hailing companies for dynamic pricing is that it incentivises more e-hailing operators to come onto the platform in response to increased demand. When the market reaches equilibrium the price returns to normal.84

4.12. Bolt and Uber submit that dynamic pricing has several benefits. Firstly, a passenger who is willing and able to pay high fares during peak times can get service, and price-sensitive passengers will wait until the price falls. Secondly, dynamic pricing incentivises the operator to go to an area where the price is surging, which results in supply increasing in that area, which in turn brings prices to an equilibrium. Thirdly, e-hailing operators are also incentivised to work on public holidays such as Christmas and New Year’s Eve, with an expectation of higher fares and earnings.85 Overall,

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78 Regardless of the length of the trip or number of passengers. The base fare is designed to cover the cost of traveling to pick up a passenger, generally is a short distance within 2 kilometres.
79 Is charged according to the total time taken to complete the trip. The per minute charge takes into account the value of a driver-partner’s time and is intended to provide the operator with cost recovery of the additional costs associated with heavy traffic.
80 Is charged according to the total distance covered by the trip. The rate per km takes into account the running cost of the vehicle. The fare charged on per km and per minute at calculated from the moment that the operator starts the trip and will continue until the operator ends the trip.
dynamic pricing allows e-hailing operators to go to areas where demand is high, thus resulting in greater vehicle utilisation. This in turn leads to an increase in fare paying trips and operator’s earnings, which consequently result in lower fares for the passengers.\textsuperscript{86}

4.13. Uber indicated that it divides cities into hexagonal zones, to ensure that a change in fare is accurate and effective.\textsuperscript{87} Each zone has its own dynamic price multiplier, based on the real time demand and supply in that zone. The system frequently updates fares based on the latest, real time conditions in each geographic area. Uber submits that dynamic pricing is not simply implemented city-wide, but targeted to very small hexagonal areas. As such, e-hailing operators are notified when demand increases through an in-app map, which shows the busiest areas. In some instances, e-hailing operators are provided with advance information about upcoming events which can improve their earnings. Figure 2 shows the geographic dispersion of trips subject to dynamic pricing in Cape Town and Johannesburg. The darker areas indicate zones subject to dynamic pricing.

\textbf{Figure 2: Trips subject to dynamic pricing in Cape Town and Johannesburg}

\textsuperscript{88} Uber-Submission by Webber Wentzel (Uber Lawyers) 4 August. 2019

4.14. Figure 3 illustrates dynamic pricing during Ed Sheeran’s Concert. No dynamic pricing is observed during most of the afternoon, and into the night. After midnight, when concert goers were leaving the venue, demand for services increased triggering dynamic pricing. The surge multiplier reached a peak of \( \times \) (times) between 11pm and 12 midnight. This led e-hailing operators to respond and come to the area and by 1am, no surge multiplier was observed. Dynamic pricing ceases after the spike in demand is met, and pricing returns to the normal level.\textsuperscript{88}
4.15. An illustration of how dynamic pricing works is reflected on the Global Citizen concert in Johannesburg (Figure 4). Before the dynamic pricing kicked in, per cent of requests between 6pm and midnight were completed (per cent of the requests were not completed). E-hailing operators were not willing to sign into the platform or accept trips from passengers. Shortly after midnight, when the concert ended, a surge in demand resulted in dynamic pricing, which encouraged e-hailing operators to come onto the platform. By 2am dynamic pricing was close to . This illustrates that dynamic pricing incentivises the e-hailing operators to respond to passenger requests and, within a short space of time, once demand has been met, normal fares kick in.89

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89 Uber-Submission by Webber Wentzel (Uber Lawyers) 4 August 2019
4.16. Until recently, Uber had different maximum surge multipliers in different cities across South Africa. The caps have been standardised across South Africa, at a maximum multiple of \(x\). Bolt’s multiplier is capped at \(y\). Uber’s dynamic pricing works by increasing prices for passengers by a stated multiple (e.g. 1.1x and 2.5x) above the standard price, based on the level of demand for rides relative to the supply of operators available in a local area. For example, the cost of an Uber from 77 Meintjies Street, Sunnyside, Pretoria, to Menlyn Mall during normal levels of demand would cost approximately R86. However, during peak hours the cost of the trip at 1.1x or 2.5x multiples would be approximately R95 and R216 respectively.\(^{90}\) Uber submits that dynamic pricing is rarely activated, and only accounted for \(z\) of all rides in South Africa in 2018.\(^{91}\)

**Potential concerns of dynamic pricing**

4.17. While there are justifications for dynamic pricing, the Commission has also observed that dynamic pricing may surge so high that it may be detrimental to the passengers.\(^{92}\) Dynamic pricing normally kicks in at the worst possible time for passengers, for example, when it is raining, or at night after a major event. There are also concerns that dynamic pricing may lead to overcharging passengers.\(^{93}\) According to Bolt, the passengers may end up paying ten times more. The Commission has observed that, on 2 December 2018, after the Global Music Festival, passengers were left stranded because of dynamic pricing. Some concert goers were charged over R1000, compared to a normal cost of around R200.\(^{94}\) However, Uber committed to refunding affected passengers, and attributed the problem to network coverage challenges and traffic flow mismanagement at the event.

**Pricing strategies between e-hailing and metered taxis**

4.18. The comparison of prices between e-hailing services and metered taxis may vary from 100 to 200 per cent, depending on the distance and time of travel. Table 2 shows price differences between metered taxis and Uber, on selected routes. The impact of price differences will be considered under the competition dynamics section.

<table>
<thead>
<tr>
<th>Routes</th>
<th>Distance</th>
<th>Uber X</th>
<th>Metered taxis</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sandton Gautrain station - Fredman drive</td>
<td>1km</td>
<td>R20</td>
<td>R70</td>
<td>250%</td>
</tr>
<tr>
<td>Sandton Mall - Rosebank Mall</td>
<td>5.2km</td>
<td>R62</td>
<td>R158</td>
<td>155%</td>
</tr>
<tr>
<td>Kingsway campus Auckland Park - Park Station</td>
<td>6.5km</td>
<td>R60</td>
<td>R100</td>
<td>67%</td>
</tr>
<tr>
<td>Sandton - OR Tambo International Airport</td>
<td>36.5km</td>
<td>R260</td>
<td>R450</td>
<td>73%</td>
</tr>
<tr>
<td>Rosebank Mall - University of Pretoria</td>
<td>54.6km</td>
<td>R450</td>
<td>R660</td>
<td>47%</td>
</tr>
</tbody>
</table>

*Source: Dube S.C, 2015\(^{95}\)*
4.19. As can be seen above, price differences are more pronounced for shorter distances. For example, Uber charges approximately 250 per cent less than metered taxis for a 1km journey. The difference in prices charged narrows as the distances increase. Irrespective of the distance, Uber prices remain significantly lower than metered taxis. Mr. Lehman submitted that metered taxi operators in Durban (specifically Mozzie Cabs and Zippy Cabs) ceased operations due to uncompetitive prices compared to e-hailing operators.\textsuperscript{96} The impact of these pricing differences and pricing strategies will be considered in detail, as part of the competitive assessment in Chapter 6 below.

4.20. Metered taxi operators are of the view that e-hailing companies use predatory pricing to take metered taxis out of business. Allegations of predatory pricing raise complex questions in competition economics and law, and represent a challenge for competition authorities. The Commission has previously investigated a complaint of predatory pricing against Uber and decided not to pursue the case as the complaint was lodged within one year of Uber commencing its operations in South Africa. Given the short duration, the Commission was of the view that it was unlikely to establish anti-competitive effects. The welfare-enhancing benefits arising from digital platforms and their network externalities must be encouraged and preserved; to the extent that they are not leading to competition distortions.

**Price regulation vs deregulation – an international perspective**

4.21. Given the price differences between e-hailing and metered taxis, the Commission sought to understand whether prices are regulated or not in other jurisdictions. The Commission observed that countries like Hungary, Lithuania, Slovakia and Sweden have deregulated metered taxi fares. In Hungary and Slovakia, fares are not regulated either at the national or municipal level. Metered taxi services set their own fares. In Lithuania, the general rule set by the Road Transport Code is that metered taxi operators are free to determine their fares, and are required to communicate the fares to the relevant municipal authorities – and have them published accordingly. Any change in the fares must be communicated five days in advance. In Sweden fares are freely set, however; maximum fares are imposed from and to the airport – to protect tourists and visitors from being overcharged by metered taxi operators.\textsuperscript{97}

In 2017, the Finland Ministry of Transport and Communication took a decision to deregulate metered taxi fares, however; passengers are informed about how the fares will be calculated before the trip.\textsuperscript{98} In Ghana, metered taxi fares are not regulated, leaving the metered taxi industry to negotiate their own fares with passengers.\textsuperscript{99}

4.22. Various jurisdictions still regulate maximum and minimum fares. In the USA, dynamic pricing is capped in cases of natural or man-made emergencies. Uber has reached an agreement with the New York Attorney General to cap price increases at 3.5Xs (times) the base fare for UberX, and 2.5Xs the base price for Uber Black – when a state of emergency has been declared. According to Uber, this cap policy is applicable throughout the USA. However, when there is no emergency, dynamic pricing can lead to very high multipliers (historically up to approximately 10Xs the base fare).\textsuperscript{100}

\textsuperscript{96} Metered Taxi Companies (Zippy Cabs, Mozzie Cabs, and Cruise Taxi App). Oral submission from Mr Lehman. KwaZulu-Natal hearings. 28 June 2018. Page 5

\textsuperscript{97} European Commission. 2016. Study on passenger transport by taxi, hire car with driver and ridesharing in the EU.

\textsuperscript{98} Uutse 2018 Taxi market liberalisation set to alter fares and services in July. https://yle.fi/uutiset/osasto/news/taxi_market_liberalisation_set_to_alter_fares_and_services_in_july/10192384


4.23. In Austria, metered taxi fares are fixed, and dispatch centres are not authorised to offer discounts for the pre-booked segment of the market. In France, fixed fares are applicable for trips to and from Paris airports since 1 March 2016. The maximum fares are regulated according to the categories of vehicles. Similarly, in Spain, the local authorities set the maximum fares in consultation with metered taxi associations; based on national legislation. Fixed fares were introduced for trips to and from airports, and from other points in Barcelona and Madrid.\(^{101}\) In Germany, local transport authorities set fixed fares for metered taxis. In Berlin, Uber provides two options: UberX or UberTAXI. With UberX, passengers pre-book a trip with an Uber operator. For UberTAXI, passengers can pre-book a trip with a regular taxi operator and be charged in accordance with the Berlin Taxi Tariff regulation.\(^{102}\)

4.24. In Kano, Nigeria metered taxi fares are regulated, leaving very little room for bargaining. Airport metered taxi operators are required to register with the Kano Airport Taxi Association, and pay an annual fee.\(^{103}\) In Kenya, Nairobi, there is a plan to regulate the metered taxi industry by making it a requirement that metering systems be installed in all metered taxis.\(^{104}\) In India, metered taxi fares can be regulated by the State Transport Department. The State Transport Department of India can also set the minimum as well as maximum fares charged by e-hailing companies (with the exception of the tariffs of deluxe/luxury UberBlack) which is not regulated, and the fares are subjected to market forces.\(^{105}\)

4.25. In Brazil, metered taxi tariffs are regulated, with local governments determining fares. A prescribed fare structure which caters for evenings and weekends is used.\(^{106}\) In São Paulo, e-hailing services are required to fix the tariffs to be charged.\(^{107}\)

4.26. Regulation of fares seems to introduce administrative burdens for authorities, and it is inflexible means to addressing changing market dynamics. Price regulation, in general, acts as a disincentive for innovation.
5. Barriers to Entry

Introduction

5.1. This section provides an assessment of barriers that may prevent new entrants from entering and competing effectively with existing operators. Firstly, this section discusses network effects as an economic barrier to entry. Secondly, brand loyalty and ‘first mover’ advantages are discussed. This is then followed by a discussion of pricing strategies. The barriers to entry assessment will provide a framework to assess the competitive dynamics in each mode of public transport (intramodal competition) and between modes (intermodal competition).

5.2. Understanding the barriers to entry when assessing the state of competition in any market is imperative. Competition requires rivals, and in markets where the barriers to entry are high, rivalry is limited. Limited rivalry in markets, among other things, heightens potential abuse or stabilises anti-competitive conduct. The barriers to entry and expansion in the e-hailing market include network effects, brand loyalty and pricing strategies.

Network effects

5.3. Digital platform markets such as e-hailing services thrive on network effects or network externalities. Network externality is defined as “the benefit gained by incumbent users of a group when an additional user joins the group. The group can be thought of as a “network” of users, hence the term “network externality”. Economic theory suggests that there are two types of network effects, namely direct and indirect. Direct network effects occur when the value of a good or service increases with the number of users/consumers; while indirect network effects occur when the value a consumer derives from a good or service increases with the number of additional users of an identical complementary good.

5.4. Markets with network effects have some features that are absent in traditional markets. The number of people using the network is a key indicator of the benefit of buying into a good or service at its early stage of development. The network operator has an incentive to grow the network, and in particular to encourage take-up in the early years, using penetrative pricing. Economies of scale are required for the network to be efficient. The requirement for economies of scale increases barriers to entry and expansion, because of the “winner takes all” or “winner takes most” phenomena associated with platform markets.

5.5. Several potential entrants in the e-hailing market failed to recruit a substantial number of operators to their platform. For example, startups such as SnappCab Ryda, Scoop a Cab, and Cabbie had to close down, because they were unable to compete for operators and passengers with the established e-hailing companies. Some players in the metered taxi industry introduced their own apps, such as YooKoo Passenger and Cruise App, both of which also struggled to attract a large number of subscribers to their platforms. Passengers are often reluctant to register with unknown and new e-hailing companies.

Brand loyalty and ‘first mover’ advantage

5.6. Uber pioneered public transport e-hailing and developed brand loyalty in the process. Uber has solidified its presence by entering into strategic partnerships with well-known institutions, such as banks and airlines. For instance, First National Bank customers can earn and spend eBucks on their Uber rides. South African Airways (SAA) Voyager has also collaborated with Uber, so its passengers can pay for their rides with their SAA Voyager miles. All of these partnerships have increased awareness of Uber’s brand, and have given it more legitimacy with passengers.
5.7. Given Uber’s strategic partnerships with recognised brands in South Africa, any potential entry would have to invest a substantial amount to advertise their brand, or partner with equally strong brands. The Commission learnt that, although it may cost between R30000 to R200 000 to develop an app, advertising costs are exorbitant. An estimated R20 million would be required to market the app across South Africa – to the level of well-established e-hailing companies such as Uber and Bolt.116

5.8. The Commission, however notes that network effects do not always preclude the entry of new firms, as new firms may still be able to enter the market by exploiting a slightly different segment of the market. Bolt managed to enter the market and offered operators better incentives (reduced its commission) and for passengers, lower fares. inDriver started in Cape Town and launched in Johannesburg in May 2019, and has 3,000 new e-hailing operators.117 inDriver is still relatively unknown and has not yet achieved economies of scale required for platform markets. Despite the limited entry, Uber still has strong brand loyalty, and still enjoys the ‘first mover’ advantage.

Conclusion on barriers to entry

5.9. The barriers to entry in platform markets are high due to incumbency advantages, strong network effects, and brand loyalty. Incumbency advantage may lead to monopolisation by a single network, and increasing concentration.118 Network effects may also give rise to “negative feedback effects when a dominant firm has built up a large user base by subsidising connections, and then seeks to exploit users at a later stage by raising prices”.119 Economic literature suggests that a dominant firm is constrained by the risk of losing sales on the other sides of the market,120 especially where there is a potential for multi-homing (i.e. the parallel usage of different platforms), and lower switching costs between the platforms.121 The Commission received submissions during the public hearings which indicate that e-hailing operators register for both Uber and Bolt, and then decide which app to turn on at a particular point in time.

116 Ntuzza Cap - Oral submission from Mr Mfaka, dated 27 August 2018. Page 31 and 33
118 Tipping is considered as the increase in a firm’s market share dominance caused by indirect network effects. Monopolisation of single network.
120 Evans, D. 2016. Multisided Platforms, Dynamic Competition and the Assessment of Market Power for Internet-Based Firms.
6. Competition assessment

Introduction

6.1. Having considered barriers to entry discussion, the next sections will assess competition dynamics (i) between e-hailing companies, and (ii) between metered taxis and e-hailing services.

Competition between e-hailing companies

6.2. This section presents the market shares of the two largest e-hailing companies (Uber and Bolt) in South Africa. Other e-hailing companies have insignificant presence at this point in time. Competition for e-hailing services occurs in two stages. Firstly, in recruiting the operators, and secondly in acquiring the passengers. Independent operators switch between e-hailing companies based on projected earnings potential. On the other hand, passengers consider prices, the ease of using the app, quality and safety of the service as factors in the decision to switch. Market shares in this section are estimated using the number of trips completed during the specified period, as shown in Table 3.

Table 3: Uber and Bolt market shares (number of trips) from 2016 to 2019

<table>
<thead>
<tr>
<th>Years</th>
<th>% shares per city</th>
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<tr>
<td></td>
<td>Durban</td>
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<tr>
<td></td>
<td>Uber</td>
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<tr>
<td>2016</td>
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<tr>
<td>2017</td>
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<tr>
<td>As at March 2018</td>
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<tr>
<td>2019</td>
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<td>Total</td>
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</table>

Source Commission’s calculation based on Uber and Bolt submissions 2020.

6.3. The market share analysis in Table 3 reveals that Uber has been a dominant player in the e-hailing market in South Africa. Bolt has been expanding since its entry in 2016, reaching market share of in South Africa between 2016 and 2019. Using the total revenue generated in South Africa, Uber’s market share for 2017 and 2018 is and respectively. Bolt’s market share, based on revenue generated in South Africa, was in 2017 and increased to in 2018. Irrespective of the way in which market shares are calculated, Uber is a dominant player in the e-hailing market in South Africa.

6.4. There are other e-hailing companies that operate on a small scale, and are ineffective competitors of established companies such as Uber and Bolt. These services do not appear to have constrained Uber and Bolt, as they have not yet attracted sufficient economies of scale.

Competition between metered taxis and e-hailing services

6.5. For purposes of this assessment, the key question is whether metered taxis and e-hailing services constrain one another. The Commission received several submissions suggesting that there is intense competition between metered taxis and e-hailing services. Other submissions indicated that e-hailing services and metered taxis target different market segments. E-hailing services are presumed to be targeting passengers that switch from private car use, and this market was not serviced by metered taxi services.
6.6. Evidence presented to the Commission portrays resentment by the metered taxi industry towards e-hailing services, due to the perceived asymmetric regulatory environment which puts restrictions on metered taxis. Metered taxis argue that area restrictions imposed by the NLTA put them at a competitive disadvantage, as e-hailing services are not restricted to specific geographic areas. As a result, violence between the metered taxi industry and e-hailing operators is a common feature. The increase in the usage of e-hailing services has led to the decrease in the use of metered taxis. As a result, some established metered taxi companies have been forced to close, while others have had their revenues decline. For instance, in Durban, two prominent metered taxi companies, Mozzie Cabs and Zippy Cabs, closed. Mozzie Cabs had been in business for around 22 years, operating a fleet of 43 taxis; with a staff complement of around 150 employees. Zippy Cabs had been in the market for 30 years, operating a fleet of 10 metered taxis with a staff complement of 40 employees. According to Mr Lehman, Mozzie Cabs was marginally profitable until the advent of e-hailing services in South Africa. In Port Elizabeth, Hurter Cabs, which operated for 70 years, also closed down.

6.7. While other metered taxi operators exited the market, some metered taxi operators with compliant vehicles joined the e-hailing services. One of Uber’s requirements for new operators is that the operator’s vehicle must meet Uber’s specific quality standards, which includes having newer vehicles. The majority of the metered taxi operators have older vehicles and are unable to join the e-hailing services, which further increases the level of resentment. Some metered taxi operators launched app-based services to respond to competition from e-hailing services. Apps that were launched include: Yookoo Ride in Johannesburg, PointA2B in Tshwane, and Emergency Taxi app. The WeRide app was launched in March 2018, and has value-added services such as the Interactive Voice Response (IVR) system as part of its services offering. In 2018, the Ntuzu app was launched in the Eastern Cape. inDriver App was launched in Cape Town and Johannesburg/Pretoria in 2019. YoTaxi was launched in Durban. The launch of these apps represents attempts to try and respond to competition from the major e-hailing services.

6.8. Although some players in the transport industry view metered taxis as being in competition with e-hailing services, Uber is of the view that e-hailing service operators have reached wider customer base which, for the most part was not serviced by metered taxis upon its entrance. A survey, conducted by Ipsos on behalf of Uber, suggested that large proportion of Uber’s riders in Cape Town had never used metered taxis before, compared to smaller group that switched away from using metered taxis to using Uber. The survey found that:

6.8.1. more than half of Uber users (53%) had never used a metered taxi before the advent of Uber;
6.8.2. 15% of users had used metered taxis regularly prior to using Uber; and
6.8.3. 9% of users that do not use Uber but intend to do so in the future, as a result of the introduction of cash as a means of payment for Uber rides, had used a metered taxi before.

6.9. Uber concedes, however, that although various providers of public passenger transport use different business models, they compete for the same pool of potential passengers.

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131 Mzekandaba, S. 2018. Three’s a crowd as new taxi app enters SA https://www.itweb.co.za/content/mQwkoq6K6Pgv3r9A. (Accessed on 13 October 2018.)
Uneven regulatory regime in relation to area restrictions impacts metered taxi industry

6.10. In terms of Section 66(1)(a-c) of the NLTA, metered taxi operators are required to apply for an area-based operating license specifying an area of operation (defined radius), allocated taxi ranks, terminal, pick-up and dropoff points. In the case of e-hailing, which is treated as a sub-category of metered taxi services, the radius is not explicitly defined and e-hailing operators may cut across different municipal boundaries. Section 66(1)(a) of the NLTA and Section 66A(1)(b) of the Amendment Bill permits (but does not mandate) regulatory entities to specify within an operating licence an area for picking up passengers (“the pick-up area”). However Sections 66(1)(b) and (c) of the NLTA create the pre-booked exception for metered taxis to the pick-up area requirement as follows:

6.10.1. if the operating licence or permit specifies such an area, the vehicle may leave that area if, on the return journey, it is to carry the same passengers that it carries on the outward journey or if the vehicle is to return empty; and

6.10.2. the vehicle may pick up passengers outside of that area, if the fare is pre-booked and the passengers will return to such area (“the pre-booked exception”).

6.11. In practical terms, the application of the pre-booked exception would mean that, if a metered taxi operating licence specifies that a pick-up area is the Johannesburg metropolitan area, a metered taxi operator may pick up passengers anywhere within the Johannesburg metropolitan area. But in order for the pre-booked exception to apply to a metered taxi operator whose operating licence specifies his or her pick-up area is the Johannesburg metropolitan area, the metered taxi operator may pick up a passenger in the Johannesburg metropolitan area and drop off such a passenger in Pretoria – but once the operator is in Pretoria, he or she may pick up another passenger in Pretoria provided that the passenger pre-books the fare/trip and that the operator drops off the passenger in the Johannesburg metropolitan area because that is the operator’s specified pick-up area. Therefore Section 66(1) of the NLTA permits a metered taxi operator to transport passengers outside of his or her pick-up area; only if one of the the pre-booked exception is met.

6.12. When licences are issued by the relevant PREs in terms of Section 66 of the NLTA, licences provide for a pick-up area within the municipal boundary of the relevant municipality or, in the case of Cape Town, within a radius of 35 kilometres (from a specific base). There are therefore two scenarios that are not currently permitted by Section 66(1). The first scenario is when an operator whose designated pick-up area is the City of Tshwane, picks up a passenger in Pretoria for dropping off at OR Tambo International Airport – which is in the City of Ekurhuleni. If, on arrival at the airport, the operator picks up a new passenger going to the City of Johannesburg instead of the City of Tshwane, such a trip is currently not permitted in terms of section 66(1) of the NLTA. The second scenario is when an operator picks up a passenger in Johannesburg and takes them to the airport, which falls within the Ekurhuleni Metropolitan Municipality. If, on arrival at the airport, he or she picks up another passenger who does not want to return to Johannesburg but rather wants to be dropped off in Benoni, which is in the Ekurhuleni municipality, such a trip is prohibited under the current law – the operator will not be permitted to take the passenger to Benoni.

6.13. In practice, the effect of Section 66 of the NLTA on metered taxi operators is that, on completion of the journey, if a metered taxi operator has travelled beyond municipal boundaries, the metered taxi operator must return to the designated pick-up point without any passenger; unless the metered taxi operator carries the same passengers as those on the outward journey and if the fare is pre-booked and the passengers will return to such

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138 Section 66A(1)(b) of the Amendment Bill [B7 D-2016] provides:
   (1) In the case of electronic hailing services—
   (a) …
   (b) the regulatory entity granting an operating licence for such service may specify the area for picking up of passengers, subject to section 57(5).
The DOT submitted that both the NLTA and the Amendment Bill subjects both metered taxi operators and e-hailing operators to similar provisions, insofar as predetermined pick-up areas are concerned. Even though the DOT is correct to submit that the provisions of Section 66 of the NLTA apply to both e-hailing services and metered taxi operators, by virtue of them operating in terms of a metered taxi operating licence, e-hailing operators in Gauteng are able, due to the technology they use, to reduce the distance between the last dropoff and the next pick-up beyond municipal boundaries – in Tshwane, Johannesburg, and Ekurhuleni Municipalities – in contravention of the law.

Therefore, some metered taxi operators have raised a concern that e-hailing services are able to operate with no area restrictions, while metered taxi operators are required to operate in designated/pick-up areas. Metered taxi operators submit that the e-hailing operator’s conduct is in violation of the current Section 66 of the NLTA, which provides that, on completion of the journey, an e-hailing operator must return to the designated pick-up point without any passenger, unless the e-hailing operator carries the same passengers as those transported on the outward journey.

In its current form the Amendment Bill which has been sent to the President is likely to reinforce the metered taxis operators concern in that it envisages a dual differential regulatory regime for both metered taxis and e-hailing services. During the NCOP deliberations on the Amendment Bill the DoT had sought to create a single regulatory regime (i.e. pre booked exceptions as discussed above) for both e-hailing and metered taxi services by introducing Clause 40 of 66A(2)(a) and 66A(2)(b) to the Amendment Bill. The proposed Section 66A(2)(a) and 66A(2)(b) of the Amendment Bill provided that an e-hailing vehicle may pick up passengers outside of an area if the fare was pre-booked and the passenger would return to that area. During the NCOP deliberations it was submitted that restrictions such as those in the proposed Section 66A(2)(a) and 66A(2)(b) of the Amendment Bill reduced competition and inhibited more efficient models such as e-hailing which lowered prices and increased employment. It was further submitted that these restrictions were no longer suitable in the face of new business models, such as those of e-hailing adopted by e-hailing firms. Uber proposed that legislators must implement the Amendment Bill in recognition of the fact that the ways in which metered taxis and e-hailing vehicles operated had changed.

On further deliberations of the proposed amendments on 19 February 2019, the DoT submitted that having considered the concerns raised by NCOP members in the previous meetings where the propose Section 66A(2)(a) and 66A(2)(b) of the Amendment Bill was discussed, it felt that the concerns of NCOP members were fair. Consequently, the DoT proposed the deletion the proposed Section 66A(2)(a) and 66A(2)(b) of the Amendment Bill. The effect of this deletion was that e-hailing operators were not going to be subjected to the same pre booked exceptions applicable to metered taxis. As such Section 66(1)(b) and (c) of the NLTA which created pre-booked exceptions for metered taxis as discussed above has been retained in the Amendment Bill.

The Commission is of the view that the proposed dual differential regulatory regime as envisaged in the Amendment Bill sent to the President for assent may not be justified in circumstances where there is competition between metered taxis and e-hailing. The Commission has already indicated above that the entry of e-hailing services led to a decline in revenue and, in some instances, closure of some metered taxi business. The Commission is therefore of the view that the the proposed dual differential regulatory regime as envisaged in the Amendment Bill will result in an uneven competitive landscape.
Self-imposed area restrictions

6.18. The wording of Section 66 of the NLTA as discussed above, suggests that metered taxi operators are not restricted to predetermined pick-up or dropoff areas – within boundaries of the relevant municipalities in which they are licenced to operate. In addition, there is no barrier in the NLTA for the hailing of a metered taxi on the street, as this practice is permitted through the definition of a metered taxi as one which "is available for hire by hailing while roaming, by telephone or otherwise". Therefore, licensed metered taxis remain free within their municipal boundaries, and are not restricted or legally obliged to operate from ranks. Insofar as some metered taxi operators have complained that they are restricted to operate from ranks, this appears to be as a result of additional restrictions imposed by the metered taxi associations. Metered taxi operators have historically self-enforced a business model based on a rank system, even though they are permitted by the NLTA to roam within their designated areas.\textsuperscript{143}

6.19. As indicated above in Chapter 2, there are two groups of metered taxi operators: those who operate as private metered taxi companies, and those who operate as individual or sole proprietors. The Commission has received submissions to the effect that those operators adopting a rank-based business model are mainly individual or sole proprietors, as opposed to those operating under a private metered taxi company's business model.

Stakeholders views on the removal of area restrictions

6.20. Bolt submits that imposing area restrictions to e-hailing and metered taxi operators is not only anti-competitive but also counter-productive, and constitutes a regression in policy-making. Bolt however also cautions that removal of area restrictions for metered taxis may create more problems, such as oversupply of metered taxis at specific pick-up areas or taxi ranks, which in turn may result in congestion (such as at airports or train stations) and violence. Bolt further submits that the removal of area restrictions for metered taxis may constitute an unconstitutional infringement on the rights and mandate of the provinces, as enacted by the PREs.

6.21. Uber supports the removal of area restrictions and submits that this will ensure that no category of service has an unfair advantage. In the same vein, Uber is strongly opposed to imposing area restrictions, on the basis that the entire logic of an e-hailing system will be negated unless the specified area is extremely wide e.g. Gauteng or Western Cape.

6.22. The Tshwane Metered Taxi Council, and representatives of the metered taxi operators in Ekurhuleni, support the removal of area restrictions because they are of the view that area restrictions result in higher prices – to the detriment of passengers. They also submitted that area restrictions prevent metered taxi operators from picking up passengers outside their designated areas, thus resulting in metered taxi operators having an average of 50 per cent of unpaid kilometres on a return journey.\textsuperscript{144} Some metered taxi operators from Cape Town\textsuperscript{145} and Durban\textsuperscript{146} support the removal of area restrictions.

6.23. The DOT does not support the removal of area restrictions, arguing that the imposition of area restrictions is a valuable tool to assist in avoiding conflict in the industry.


\textsuperscript{144}Meeting between the Commission and Mr Tsibo Shange and Mr Magaono on 28 May 2019

\textsuperscript{145}Mr Drummond email correspondence dated 06 June 2019

\textsuperscript{146}Email correspondence from Paul Lishman of Mozzie Cabs 18 June 2019
Submissions on area restrictions by stakeholders during the National Council of Provinces’ public hearings

6.24. The Amendment Bill was introduced to the National Assembly, and later transferred to the NCOP. In both houses public hearings were held, to allow the public and stakeholders to make submissions. Industry players, including Uber SA, Bolt147, Uber Operators Guild, TransForum, the South African E-hailing Association (SAEHA), and SAMTA made submissions. During these public hearings, three main concerns were raised in relation to the Amendment Bill, one of which was area restrictions. On area restrictions, the main issue raised was that area restrictions reduce competition and inhibit more efficient business models. Furthermore, it was submitted that new business models arising from digitisation render area restrictions outdated.

6.25. The South African E-hailing Association (SAEHA), representing over 600 e-hailing operators, expressed concerns that area restrictions would not only restrict e-hailing operators to certain areas, but also that passengers would not be able to access the service beyond certain points. This, according to SAEHA, would make certain destinations inaccessible.149 TransForum, which made submissions on behalf of 3000 Uber operators, submitted that area restrictions could be used to artificially restrict operational areas – thereby impacting the overall level of service to the passengers.150 Bolt submitted that area restrictions imposed unwarranted restrictions on e-hailing services, and supported the proposal to effect an amendment that would allow operators to pick up passengers outside designated areas, if the trip is pre-booked. The DOT supported Bolt’s proposal for operators to be allowed to pick up passengers outside designated areas, if the trips are pre-booked.151

6.26. Following these discussions, the Amendment Bill was passed by the NCOP on 28 March 2019, and returned to the National Assembly. On 7 May 2019 the Amendment Bill lapsed, in terms of National Assembly Rule 333 (2), because the Amendment Bill was not finalised by both houses when the term of the fifth Parliament came to an end.152 On 29 October 2019, the Amendment Bill was revived by the National Assembly, and is currently under consideration.153 On 10 March 2020 the Amendment Bill was passed by both Houses and sent to President for assent.

Summary of the (in)efficiencies of area restrictions

6.27. The original intention behind the area restrictions was to provide adequate levels of service to each part of a city, and to limit supply in an area. In addition, area restrictions were motivated in the belief that they lead to a potential decrease in congestion and pollution. Furthermore, it was believed that area restrictions will help operators earn a reasonable income while providing a quality service, given that there are low barriers to entry.155 The question is whether any of these justifications are still relevant today?

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151 See https://pmg.org.za/committee-meeting/27148/ (Accessed on 13 February 2020)
152 Lapsing of Bills on last sitting day of annual session or term of Assembly or when Assembly is dissolved

(2) All Bills before the Assembly or any Assembly committee on the last sitting day of a term of the Assembly or when Assembly is dissolved, lapse at the end of that day.
153 See https://pmg.org.za/hansard/29297/ last accessed on 30 January 2020
6.28. Area restrictions create an uneven competitive environment between metered taxis and e-hailing services. It was submitted during public hearings that the outcome of the prevention of operators from picking up passengers outside their designated areas, is that metered taxis have an average of 50 percent unpaid kilometres.\textsuperscript{156} As such, the same area restrictions also undermine greater efficiency for metered taxis, pushing up their costs and, ultimately, higher prices to the detriment of consumers. Area restrictions also preclude a metered taxi from responding to an increase in demand in a particular area, if it falls outside his/her area of operation. This increases metered taxis' operating costs, which may lead to higher fares as metered taxi operators would have to recoup the costs from passengers.\textsuperscript{157} Through their use of technology, e-hailing services reduce the distance between the last passenger dropoff and the next passenger pick-up, thereby reducing operational costs – including low call out fees. In addition, the e-hailing business model also achieves high levels of operator and vehicle utilisation, relative to metered taxis.\textsuperscript{158}

Review of international practice on area/geographic restrictions

6.30. A review of international practice indicates that in most European Union member states, licences are subject to geographical restrictions, while in other member states they seem to be moving away from area restrictions. In Bulgaria and Cyprus, the geographical restriction is within a municipality (local), since the taxis may only carry passengers in their area of authorisation.\textsuperscript{160} In Brazil, a taxi may not offer services outside of its taxi stand, unless the operator has a special additional licence for this purpose.\textsuperscript{161} In Denmark, the geographical market is generally limited to the municipality that issued the licence. Traditionally, taxi services (and commercial road transport in general), were tightly regulated in Denmark. However, a revision of the Danish regulatory framework of taxi services was adopted by the Danish Parliament, in January 2018. Some of the main changes were the abolishment of the geographic restriction.\textsuperscript{162}

\begin{itemize}
\item \textsuperscript{156}Oral submission by Mr Mongrate. 21 June 2018. Page 124. This assertion was also confirmed by SAMTA.
\item \textsuperscript{157}Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 76-77.
\item \textsuperscript{158}Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 76-77.
\item \textsuperscript{159}European Commission Study 26 September 2016 on passenger transport by taxi, hire car with driver and ridesharing in the EU available at \url{https://bit.ly/2zM0R2t}. (Accessed on 22 June 2019)
\item \textsuperscript{160}European Commission Study 26 September 2016 on passenger transport by taxi, hire car with driver and ridesharing in the EU available at \url{https://bit.ly/2zM0R2t}. (Accessed on 22 June 2019)
\item \textsuperscript{161}Visser, J and Bakker 2015. International comparison of taxi regulations and Uber. KIM Netherlands Institute for Transport Policy Analysis. \textit{Journal on Researchgate}.
\end{itemize}
6.31. The Commission has also observed that most countries are moving away from imposing area restrictions on metered taxis. In Finland, a decision has been taken that metered taxi operators will no longer be tied to a zonal operation (area restriction), with operating licences valid throughout the country.\(^{163}\) In London, zones were previously used, based on licence conditions imposed on operators by the London Cab Order 1934. The United Kingdom Department of Transport recommended the removal of zones, finding that zoning tends to diminish the supply of taxis and limits passengers’ choices. Removal of zones promotes fuel efficiency, due to the eradication of empty trips.\(^{164}\)

6.32. In Italy, private chauffeured vehicles (equivalent to metered taxis in South Africa) must return to their bases after dropping off a passenger. This is likely to change, as the Italian Transport Regulation Authority favours the adoption of a new framework in which traditional taxi services, private hire car services and new ridesharing services would compete in the same market. The Italian Transport Regulation Authority has advocated for the removal of the restrictions that require the private hire vehicle to return to its base, after dropping off.\(^{165}\) Germany still requires metered taxis to be restricted to certain geographical areas. In 2018, Germany’s Transport Minister indicated an intention to remove the rule that requires taxi operators to return to their rank or base, after every dropoff.\(^{166}\)

6.33. In Sweden, there are no geographic restrictions on taxis operating under licences that are issued by the National Transport Agency, and these licences are valid for the whole national market. In the Netherlands, taxis are not subject to geographical restrictions; except for Amsterdam Schiphol Airport. In Poland, there are three types of licences, according to the geographical areas: 1) a particular municipality; 2) the area of neighbouring municipalities – after the prior conclusion of an agreement between them; and 3) the capital city of Warsaw.\(^{167}\) In Nigeria, as a result of negotiations between the Nigerian Transport Authorities and Bolt, Bolt operators are permitted to operate within the vicinity of the airports; but there are no restrictions to dropping off passengers.\(^{168}\)

6.34. In Ghana, the District Assembly issues permits which allow taxis to operate in areas beyond the District Assembly’s jurisdiction. As such, taxis are free to operate as floating taxis – as there is no obligation for them to return immediately to their station after having dropped off all their passengers.\(^{169}\)

Conclusion on competition between metered taxis and e-hailing

6.35. The entry of e-hailing services led to a decline in revenue and, in some instances, closure of some metered taxi business. Area restrictions placed on metered taxis result in an uneven competitive landscape. This is because metered taxis operate within area confines, while the e-hailing services operate anywhere, without area restrictions. This has had a negative effect on the metered taxi business, in relation to employment and the ability to compete fairly. Some countries have been moving away from area restrictions, given the anti-competitive effect these restrictions have on the metered taxi services.


\(^{168}\)Bolt Submission to the Competition Commission dated 02 May 2019.

7. Other emerging issues

Introduction

7.1. This section analyses (i) the role played by digitisation in shaping employer/employee relations and (ii) the extent to which e-hailing companies account for taxation in South Africa. The issues under discussion in this section are emerging issues, that go beyond the ToR of this market inquiry. As such, the Commission is not going to make findings and recommendations on these emerging issues, save to note and make certain observations.

The impact of digitisation on employment relations

7.2. Uber and Bolt submits that digital platforms in the transport sector have created employment for unemployed individuals seeking full-time employment, and have provided an opportunity for already employed individuals seeking to supplement their incomes. Uber indicates that, unlike in other countries, the majority of the e-hailing operators in South Africa using its platform tended to be predominantly full-time operators – and not those that seek supplementary income options. As such, digitisation has not only brought challenges to transport regulators, but also extended to implications for labour laws. The question of whether independent contractors and/or e-hailing operators are typical employees who should be governed by employer/employee-related laws – has been controversial in many jurisdictions worldwide, with South Africa being no exception.

7.3. Digitisation has brought on the rise of the so-called “ubarianisation” – where there are independent workers who are detached from any work contract, and often paid based on tasks performed. This has marked the demise of traditional labour relations and stable work contracts, as digital platforms do not act like traditional employers and do not bear any collective responsibility for the protection of employees. E-hailing companies have responded to suggestions that they should take responsibility for labour issues by indicating that they are not taxi operators but rather technology companies, leaving operators individually responsible for their safety – and other labour-related issues that would ordinarily be safeguarded by the employers as per labour laws.

7.4. South African labour law regulates employee/employer relationships, but does not apply to the rights of independent contractors in the context of e-hailing services – where no formal employment contracts exist. This is not particularly controversial, given the fact that at the time of the promulgation of labour laws, these new technologies had not yet been conceived. The effect of this lack of labour law regulation puts e-hailing companies in a position where they determine the rules of engagement with the operators. E-hailing operators are often in a weaker bargaining position and have no pensions, sick leave, or decent work conditions. These operators allege that they can have their accounts deactivated from the platform without any recourse, work long hours in order to secure decent earnings, and have no influence on fare setting – despite the fact that they own their vehicles and they are subjected to all operating costs.

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170Uber Submission by Webber Wentzel (Uber Lawyers) dated 07 September 2017. Page 80
Table 4: Gross and net earnings for trips less than 2km (June 2014 to October 2018)

<table>
<thead>
<tr>
<th>Period</th>
<th>Uber X</th>
<th>Bolt</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>fare&gt;2km</td>
<td>Commission</td>
</tr>
<tr>
<td>Jun 2014</td>
<td>R20</td>
<td>20%</td>
</tr>
<tr>
<td>Jun 2016</td>
<td>R20</td>
<td>25%</td>
</tr>
<tr>
<td>Dec 2017</td>
<td>R20</td>
<td>25%</td>
</tr>
<tr>
<td>Aug 2018</td>
<td>R25</td>
<td>25%</td>
</tr>
<tr>
<td>Oct 2018</td>
<td>R25</td>
<td>25%</td>
</tr>
<tr>
<td>June 2020</td>
<td>R25</td>
<td>25%</td>
</tr>
</tbody>
</table>

Source: Uber Blog, Bolt submission and the Commission's own calculations.
7.5. During public hearings, e-hailing operators submitted that on entry into South Africa, e-hailing companies promised lucrative self-employment opportunities and this did not materialise. The operators claimed that their earnings are below minimum wage, and they cannot quit as some have invested in vehicles. The vehicle resale value is insufficient to repay the initial car purchase loan and are therefore forced to remain in the business. Operators submitted that short trips are less profitable and the e-hailing companies are reluctant to increase fares. Uber operators’ gross earnings between 2016 and 2017 has been consistent at R20 for trips less than 2km and Uber has since increased the minimum fare per trip to R25, from August 2018. Bolt operators’ earnings have been stagnant at R20 for trips less than 2km for the period 2014 to 2018. Table 4 shows the gross and net earning for short distances, over time.

7.6. Operators allege that Uber has unilaterally withdrawn some of the incentives it gave operators when it entered the South African market. Uber submits that the incentives were provided to compensate for initial lower levels of vehicle utilisation, while the market grew. Uber further submits that these incentives were essential to ensuring sustainable fares to support operators’ earnings, and to maintaining low waiting times for first-time passengers. Therefore, as soon as the market grew, or passenger volumes became high in support of high vehicle utilisation, these incentives became unnecessary.

7.7. indicated that it still has other incentives such as hourly guarantees, trip bonuses, and tiered service fees. However, unlike in 2013, these incentives are now temporary and therefore uncertain. From the Commission’s public hearings, it was clear that operators were not consulted on any changes affecting their relationship with Uber, and felt ignored and marginalised. During public hearings, e-hailing operators submitted that Uber and Bolt set their fares so low because they do not own the vehicles, and the changes in fuel prices and other operating costs are not fully accounted for. In addition, they also complained that the fares are too low and unsustainable, leaving them with reduced earnings. A high level analysis conducted by the Commission indicates that gross earnings per hour have increased marginally between 2018 and 2019. Uber operators’ average gross earnings per hour increased from per hour in 2018, to per hour in 2019. Bolt operators’ average gross earnings per hour increased from per hour in 2018, to per hour in 2019.

Supply of e-hailing operators

7.8. During public hearings, operators alleged that Uber and Bolt were flooding the market with vehicles and requested DOT to regulate e-hailing companies, and restrict the number of vehicles that are in the market. Uber submits that it restricts the number of vehicles on its platform, if the supply is higher than demand. Uber utilises a waiting list to control the number of e-hailing operators on the platform, and the waiting list is based on the date of sign-up. However, Bolt submits that the market for e-hailing services is not saturated, although the number of e-hailing operators using their platform has increased since 2016. Bolt submits that the average earnings-per-hour ("EPH") of an operator has remained consistent. For this reason, Bolt has not put a restriction on accepting new e-hailing operators onto its platform, since it is still in a high growth phase.
Labour law protection of e-hailing operators: an international perspective

7.9. In this section, the Commission provides an analysis of how courts and agencies in various countries have assessed the question of whether e-hailing operators are typical employees; who fall within the scope of employment laws.

7.10. In the United Kingdom, this question was considered by the Employment Tribunal in Aslam v Uber B.V and Others (Aslam). In Aslam, the Employment Tribunal was called on to determine whether Uber operators are deemed to be workers with certain rights, rather than being independent contractors. The dispute, in this case, began when a group of nineteen Uber operators, backed by a trade union, initiated proceedings against Uber — arguing that they were entitled to the national minimum wage and paid holidays. The Employment Tribunal ruled that any operator who (i) had the Uber app switched on; (ii) was within the territory in which he was authorised to work; and (iii) was able and willing to accept assignments, was, for so long as those conditions were satisfied, a “worker”. Uber appealed the Employment Tribunal’s decision, but lost its appeal in December 2018; when the Court of Appeal dismissed its appeal.

7.11. A similar decision was reached in Switzerland, by the Suva Social Security Agency. In this case, the Social Security Agency looked to the actual control which Uber enjoyed over its e-hailing operators, and concluded that this, coupled with the relative absence of indications that they were independent contractors, meant that they were employees.

7.12. In France, the Paris Court of Appeals held that Uber operators did not fulfill the conditions required to be considered as self-employed workers, namely:

7.12.1. The free determination of the conditions for exercising transport service is entirely governed by Uber, which centralises them, and allocates to operators requests for transport services via algorithms.

7.12.2. Uber prohibits the picking up of other passengers outside the application system. The Court also found that fares are fixed contractually, through the platform’s algorithms.

7.12.3. The exists a relationship of subordination between the Uber operator and the platform.

Impact of digitisation on taxation

7.13. Many countries are grappling with the complexities of determining relevant corporate tax for services that operate in platform markets. Digital platforms operate in multiple jurisdictions simultaneously, with varying tax regimes. Both Uber and Bolt have submitted that payments made by passengers (in the case of e-hailing services) are “transferred” to their respective parent companies overseas, after which the parent will “return” a portion to pay the operators’ share. In addition, the parent company pays the subsidiary some fees for undertaking a service on behalf of the parent company.

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185Uber appealed the decision of the Court of Appeal to the Supreme Court. On the 19 February 2021 the Supreme Court unanimously dismissed Uber’s appeal. The Supreme Court found that an Uber driver is a “worker” for the purposes of employment legislation which gives “workers” rights to be paid at least the national minimum wage, to receive annual paid leave and to benefit from certain other labour law protections.
187Available here https://www.reuters.com/article/swiss-uber/uber-operators-are-employees-eligible-for-company-social-security-contribu-
tions-swiss-agency-idUSL5N1EV0JU (Accessed on 21 June 2019)
188Kavali L. French court: Uber and operators tied by ‘work contract’ available at https://www.politico.eu/article/french-court-uber-and-operators-
7.14. It is alleged that this system is preventing many countries from collecting corporate taxes on income derived from those countries. Even when taxes are collected in countries where the services are rendered, the average tax rate for digital companies is lower than it is for traditional companies.\(^{189}\) This has serious implications for government tax revenue. In 2017, the European Commission reported that digital platform companies pay less than half of what brick and mortar businesses pay.\(^{190}\)

7.15. The same sentiments expressed globally have been raised in South Africa, by several stakeholders. Gauteng Metered Taxi operators are of the view that e-hailing companies do not pay corporate and Value Added Tax (VAT) on the booking fees, and this seems to be unfair to metered taxis – who are supposed to pay such taxes.\(^{191}\) SAMTA shares the view that the government may not be receiving adequate taxes from e-hailing companies.\(^{192}\) The Commission noted, from Uber and Bolt submissions, that corporate tax paid appears to be disproportionately low compared to the revenue they generated in South Africa. However, on 1 April 2019, South Africa implemented new tax rules designed to deal with the tax challenge posed by digitisation of markets. The new definition of ‘electronic services’ was amended to introduce the new VAT regime for cross-border e-commerce transactions. The change in the law meant that non-resident entities are now required to register as a taxable vendor.\(^{193}\)

7.16. In addition, the DoT in its National Taxi Lekgotla 2020 Discussion Document, has submitted through the Amendment Bill it has taken decisive step towards regulating e-hailing services. Such regulation will include inter alia that e-hailing companies should only participate in the South African market if they operate through a South African registered company; secondly that e-hailing companies financial transactions must be through a South African registered bank and lastly that (c) the South African company through which the e-hailing company will be trading will ensure that at least 25 per cent equity is held by the corporate entity chosen as empowerment vehicle of choice at all times.

7.17. The Commission is of the view that this move will address the concerns raised by a number of stakeholders during the public hearings. The Commission notes that following the change in the law, both Uber and Bolt are now VAT registered vendors. On corporate tax, the Commission is of the view that this issue may be better dealt with by tax authorities.

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192 SAMTA - Oral submission by Mr Moodly, dated 29 June 2018. Page 115
8. Provisional Findings and Recommendations

8.1. The Commission made the following provisional findings for public comments:

8.1.1. Area restrictions contained in Section 66 of the NLTA are inefficient and distort competition between e-hailing operators and metered taxi operators.

8.1.2. On fare determination for metered taxis – despite the existing legislative framework providing guidelines on how metered taxis can set their fares, neither the Minister nor the MEC regulates fare structure.

8.1.3. Substantial backlogs in the application of operating licences at various PREs exist, due to the inefficiencies and capacity constraints experienced at PREs. This has led to a significant proportion of e-hailing operators and metered taxi operators operating without valid operating licences, and thus operating illegally.

8.1.4. The Commission has observed that the relationship between e-hailing companies and e-hailing operators is not governed by any labour laws.

8.1.5. The Commission has also observed that metered taxis operators are currently fragmented, without a nationally recognised body advancing the interests of the industry. The fragmentation may be due to the differences in the metered taxi groupings

8.2. The Commission provisionally recommended the following:

8.2.1. **On area restrictions**: the Commission recommended the complete removal of area restrictions as prescribed in Section 66 of the NLTA. Area restrictions reduce competition, their rationale is incompatible with the evolving nature of digital markets, and they may constrain both e-hailing operators and metered taxi operators.

8.2.2. **On price-setting mechanisms**: the Commission recommended that the legislature delete Section 66(3) of the NLTA, which allows MECs or the Minister, together with the planning authority, to determine a fare structure for metered taxi services. No price regulation for metered taxis is recommended.

8.2.3. **On backlogs of operating licences**: the Commission recommended:

8.2.3.1. An overhaul of the issuing of operating licence regime, and removal of quantity restrictions. This would mean that operators will still be required to apply for roadworthy permits, but their operating licence applications will not be denied based on supply and demand.

8.2.3.2. That the PREs and planning authorities increase capacity to deal with backlogs.

8.2.3.3. That planning authorities and provinces enter into MoUs to jointly exercise their respective powers and functions, as contemplated in Section 12 of the NLTA. This joint exercise or performance of their respective powers and functions may be regulated by an agreement between the parties, but this exercise would still require both spheres of government to be sufficiently capacitated; and

8.2.3.4. Metered taxi associations are empowered to represent the interests of the industry. The DOT and PREs should assist the industry to establish a national association of metered taxis. A formalised structure for metered taxis will assist with consultations with the government, and advance their interests in the industry in light of the digitisation of the market.
9. Stakeholder submissions in response to the provisional report

**Recommendation 1: Removal of area restrictions.**

9.1. Uber supports the removal of area restrictions for both e-hailing and metered taxis as this will allow consumers and drivers to move freely around without restrictions thus increasing economic opportunities. Furthermore Uber submits that the removal of area restrictions will also ensure that no category of service has an unfair competitive advantage. Finally, Uber submits that designated pick-up areas at airports and other national key points should have some restrictions and these should be assessed on a case-by-case basis.

9.2. Bolt agrees with the removal of area restrictions but notes that the removal should apply to only e-hailing services as it is supported by their business model. Bolt submits that removal of area restrictions for metered taxis may create more problems such as oversupply of metered taxis at specific pick up areas or taxi ranks, which in turn may result in congestion (such as at airports or train stations) and violence. It argues that removing the applicability of area restrictions entirely on metered taxis categories would be disadvantageous for all parties concerned. Bolt further submits that the removal of area restrictions may constitute an unconstitutional infringement on the rights and mandate of the provinces, as enacted by the PREs.

9.3. Gauteng PRE does not necessarily disagree with the Commission’s recommendation but cautions that for e-hailing and metered taxis to operate nationally, these services should be regulated by the National Public Transport Regulator and not by PREs as this responsibility will go beyond the intra-provincial mandate. The National Public Transport Regulator is not yet fully functional.

9.4. The recommendation is not supported by the Gauteng Metered Taxi Association (GMTA), Mr. Drummond, a metered taxi operator, and SAMTA. The GMTA submits that the pre-determined pick-up area brings order and control in the areas identified by the municipality. Mr. Drummond a metered taxi operator, submits that by allowing e-hailing and metered taxi operators to operate nationally will lead to an influx in e-hailing operators. Subsequently, this may be to the detriment of local metered taxis, whose business model is geared towards serving local commuters. SAMTA submits that the Commission ought to consider international standards, such as in New York City, where there are time limits on e-hailing service to cruise or park without a passenger. In addition, e-hailing services can pick up passengers but are not allowed to park in New York City centres.

9.5. The Tshwane Metered Taxi Council and representatives of the metered taxi operators Ekurhuleni also support this option because they are of the view that area restrictions results in higher prices to the detriment of passengers. They also submitted that area restrictions prevent drivers from picking up passengers outside their designated areas thus resulting in metered taxis having an average of 50 percent of unpaid kilometres on a return journey.

9.6. The DoT has not yet explicitly commented on this particular recommendation but has published a discussion document on taxi industry regulation. The discussion document alludes to the NLTA Amendment Bill seeking to bring e-hailing services into the same arena as metered taxis allowing these to operate either as metered or e-hailing applications. In addition, the NLTA to further empower the Minister of Transport to make regulations concerning the standards or requirements for e-hailing applications or similar technology. Consequently, creating e-hailing as a sub-set of the metered taxi category for purposes of operating licences.
Recommendation 2: On price setting mechanisms – no fare regulation and legislature remove Section 66(3) of the NLTA.

9.7. Bolt supports this recommendation and argues that fare regulation will distort the market dynamics. Bolt further submits that fare regulation it will be disadvantageous for consumers as well as players in the market given that the South African market is developing and growing with the introduction of new technologies. SAMTA is of the view that the removal of fare setting powers will not affect the competitive dynamics between e-hailing and metered taxis as other cities such as Durban already do not have fares determined by government. SAMTA further submits that the issue is not to regulate fares but rather to curtail e-hailing service proliferation.

9.8. E-hailing Operators Interim Committee (representing some of the e-hailing operators/drivers) submits that e-hailing companies should involve them in fare determination so that all operating costs are taken into account. Mr Drummond submits that the fares must be regulated for both e-hailing and metered taxis with the maximum fare be capped at R18 per km. The City of Cape Town does not support price deregulation on the basis of achieving a standardised pricing framework that will indicate the minimum and the maximum price that will increase with inflation.

Recommendation 3: The Commission recommends an overhaul of the issuing of operating licence regime and removal of quantity restrictions.

9.9. This recommendation is supported by Bolt and Uber. Uber submits that its technology allows it to set certain geographic areas in which driver partners can accept and receive requests in order to reduce influx of operators in an area or specific towns. Bolt highlights that for effective and consistent implementation, there must be direct engagements between the DoT and PREs to set parameters on this should be implemented. Bolt further submits that quantity restrictions only serve to deny prospective drivers and passengers access to the market, artificially create scarcity, undermines the principle of competition, fairness and ultimately lead to fare increases for consumers in the long run.

9.10. The recommendation is not supported Free State Police, Roads and Transport Department, Western Cape Department of Transport and Public Works and the City of Cape Town. These provincial transport department’s concern is that the removal of quantity restrictions will lead to the possible increase in violence between the metered taxis, e-hailing operators and possibly the minibus taxi industry. The City of Cape Town submits that the removal of quantity restrictions would require an amendment of the NLTA.

9.11. The DoT published a discussion document on taxi industry regulation which signals its determination to review the regulatory framework for operating licences given the existing challenges. The Gauteng PRE submits that the issue of not assessing the demand and supply will harm the important objective of ITPs, leading to oversaturation. As a result, the Gauteng PRE submits that should conflict arise because of the unregulated market the regulators will not be able to contain the conflicts. It, therefore argues against issuing of operating licences without considering the supply and demand.

Recommendation 4: The DOT and PREs should assist the industry to establish a national association of metered taxis.

9.12. The City of Cape Town support the strengthening of stakeholder relations with the metered taxi industry, however the City submits that it cannot force these operators to join any recognised body (in the absence of legislation making registration a requirement).

9.13. During engagements with e-hailing operators, the Commission noted that the operators are fragmented without any formal structure to represent their interests. The operators expressed the need for them to get assistance to form a representative body to advance their interests.
The Commission’s Response

Recommendation 1: Removal of Area restriction

10.1. The Commission notes that area restrictions are still being perpetuated in the Amendment Bill sent to the President for assent. Section 66(1)(b) and (c) of the NLTA which create the pre-booked exception applicable to metered taxis has been retained in the Amendment Bill but not equally applicable to e-hailing services. The Commission is of the view that the proposed dual and differential regulatory regime envisaged in the Amendment Bill does create an uneven competitive environment between metered taxis and e-hailing. The Commission has already identified the intense competition between metered taxis and e-hailing services as evidenced by decline in revenue and, in some instances, closure of some metered taxi business due to the expansion of e-hailing services. The Commission is therefore of the view that the proposed dual differential regulatory regime in the Amendment Bill will result in an uneven competitive landscape and may also lead to violence.

10.2. Having considered the objections raised by stakeholders the Commission remains of the view that area restrictions create an uneven competitive environment between metered taxis and e-hailing services. In addition, area restrictions also undermine the prospects for greater efficiencies for metered taxis pushing up their costs and ultimately higher prices to the detriment of consumers. Area restrictions also preclude a metered taxi from responding to an increase in demand in a particular area if it falls outside his/her area of operation. This increases metered taxis’ operating costs, which may lead to higher fares as metered taxi operators would have to recoup the costs from passengers. Thus in the Commission’s view, these markets are best served without area restrictions.

Recommendation 2: On backlogs at PREs, the Commission recommends an overhaul of the issuing of operating licence regime and removal of quantity restrictions

10.3. Having considered objections raised by stakeholders, the Commission maintains the view that these markets are best served without quantity restrictions. The current operating licensing regime is characterised by inefficiencies at the PRE’s with backlogs in the issuing of operating licences and at planning authorities who are unresponsive in terms of providing directives to the PREs. Planning authorities are unable to provide directives to the PREs because of lack of capacity to develop and implement integrated transport plans to inform the directives. These integrated transport plans are primarily used as a scientific basis to quantify demand and supply of public transport. Even though PREs are allowed in terms of the law to dispose of applications without considering directives from planning authorities, PREs have been cautious in adopting that approach. The Commission’s view is that if this situation continues public transport will continue to be marred by inefficiencies and illegal operations.

10.4. Despite the Commission’s view on the removal of quantity restrictions, the Commission is also cognisant of the other objectives that the legislature had in mind when enacting quantity restrictions. These objectives include inter alia the management of congestion, public safety, protection of passengers and mitigation of violent altercations between operators. Having considered all these objectives, while the market is best served without quantity restrictions, the Commission’s view is that quantity restrictions are necessary to achieve some policy objectives and public interest considerations such as mitigate violence as a result of oversaturation. The Commission is persuaded that, quantity restrictions may still be imposed.
11. Final Recommendations

11.1. The Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The regulatory dispensation in the Amendment Bill for e-hailing services should be extended to metered taxis in respect of the following:

11.1.1. The Amendment Bill does not impose any area restrictions for e-hailing services and this should be extended to metered taxis to create an even competitive environment.

11.1.2. The Amendment Bill does not regulate fares for e-hailing services and therefore, the Commission recommends that the legislature delete Section 66(3) of the NLTA which allows MEC or Minister together with the planning authority to determine a fare structure for metered taxi services. No price regulation for metered taxis is recommended as the Amendment Bill does not regulate e-hailing fares. This is essential to create an even competitive landscape.

11.2. On backlogs of operating licences, the Commission recommends:

11.2.1. The Commission recommends that capacity at PREs and planning authorities be increased and all existing applications for operating licences which are still pending upon the completion of this market inquiry must be finalised within six months from the date of publishing a report of the inquiry in the Gazette. Capacity may be improved if planning authorities and PREs enter into memoranda of understanding (MoUs) to jointly exercise their respective powers and functions, as contemplated in Section 12 of the NLTA.

11.3. On empowering metered taxis and e-hailing operators- metered taxi associations and e-hailing operators should be empowered to represent the interests of the industry in the following manner:

11.3.1. The DOT and PREs should assist the industry to establish a national association of metered taxis and e-hailing operators. A formalised structure for both metered taxis and e-hailing operators will assist with consultations with the government, and advance their interests in the industry in light of the digitisation of the market;

11.3.2. DOT should assist metered taxis in conducting market research studies, business development, innovation and deployment of technology to modernise the metered taxi industry.

11.4. On promotion of entry for female operators

11.4.1. DOT and PREs should develop an empowerment policy to encourage female operators to enter in the metered taxis and e-hailing services through prioritisation in the issuance of operating licences.