

TAXI INDUSTRY REGULATION

RE-IMAGINING TOMORROW'S
TAXI INDUSTRY

"Good regulation should be
conductive to business and
to customer protection."
– Jamie Dimon



transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

Ver 1, 11 September 2020



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The Department of Transport

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Disclaimer

This discussion document is only intended to guide discussion and debate on topical issues towards the development of a blueprint for the taxi industry of the future.

Nothing contained in this document represents any official position of government or industry representative bodies. It merely provides information as a basis for dialogue and engagement.

Introduction

1. The NTTT Final Recommendations identified the core tenets of the regulatory framework as follows:
“There is clearly a need for a structure for regulation and control of the present operators and associations, recognized by government by statute, that creates an effective and realistic permit system that can be properly policed. The pressure resulting from a regulatory system that is poorly structured, managed and enforced has emerged as an urgent issue needing immediate attention.”
2. Tremendous progress has been made over the years in regulating the industry and implementing a regulatory framework. What was agreed to in the NTTT found expression in the National Land Transport Transition Act of 2000 (“the Transition Act”). The Transition Act put in place the building blocks of the regulatory framework, which dealt with the migration from the permit system of the Road Transportation Act of 1977 and introduced operating licences with a finite lifespan.
3. A new institutional arrangement, signalling a clean break from the 1977 dispensation was ushered in when the Transition Act was promulgated in 2000. The Permit Board was replaced by the Operating Licensing Board and the National Transport Commission was replaced by the Transport Appeal Tribunal. The Act also created Provincial Taxi Registrars as a custodian for registration of taxi associations and Code of Conduct. A framework for public transport law enforcement was similarly introduced and implemented.
4. Taking due regard of the fact that public transport is a Schedule 4 competence, each Province passed and promulgated its own laws to regulate the taxi industry except for the Western Cape, which merely amended the Road Transportation Act of 1977, which was earlier devolved to Provinces.
5. The Transition Act was repealed by the National Land Transport Act of 2009 (“the NLTA”). While the building blocks of the regulatory framework were taking shape with different Provinces at different levels of progress, a new institutional arrangement was introduced. This had the effect of rewinding the clock in some instances, as the Transitional Act arrangements had to give way to new institutions. One of the most glaring implications is the establishment of the National Public Transport Regulator as the authority responsible for regulating inter-provincial operations. Despite the fact that since its inception, it has never exercised its full mandate and only focused on tourist services, the Minister has since mandate the new NPTR appointed on 1 August 2020, to fully exercise its mandate.
6. The Provincial Regulatory Entities (PREs) do not function based on a common standard as envisaged in the law. Similarly, the disestablishment of the Provincial Taxi Registrars created a vacuum and removed the only basis for regulating taxi associations and enforcing adherence to a Code of Conduct by individual operators.

7. The Transport Appeals Tribunal continues to exercise its mandate, and is responsible for adjudicating appeals lodged against the decisions of the PREs, the NPTR and the Municipal Regulatory Entities (MREs). A challenge that has arisen over time relates to the quality of the appeals process, resulting in rulings that undermine, rather than strengthen the system, thus exacerbating conflicts on the ground. The Minister has since paid attention to the matter and appointed a Tribunal with seasoned members and diverse skills.
8. The unintended consequence of the timing of the introduction of the NLTA was that it prolonged the transition that was meant to have been concluded under the Transition Act. Eleven years on, and twenty-four years since the acceptance of the Final Recommendations of the NTTT, the industry remains untransformed.
9. The key tenets of the regulatory system are:
 - Operating Licences
 - Institutional Arrangements and
 - Law Enforcement

Operating Licences

10. Operating Licences are the key lever to regulate the taxi industry as these determine access to economic activity and a barrier to entry. The struggles of the taxi industry since time immemorial have always revolved around the right to conduct business.¹The first taxi permits were area-based and authorised taxi drivers to operate in regions with a radius of 100 kilometres around a central point. Competition for passengers was fierce and there was conflict between drivers over ownership of routes.
11. Permits, which were later converted to operating licences under the Transition Act have always been at the centre of intense engagements between government and industry.
12. The NLTA which created PREs as successors-in-law of the Operating Licence Boards (OLBs) moved away from constituting PREs as independent bodies, made up of external persons to constituting PREs made up of departmental officials. This measure was heavily contested by industry with allegations of high levels of corruption, maladministration and toxic management practices in the issuance of operating licenses. This matter has since been addressed in the NLTA Amendment Act passed by Parliament in March 2020. Members of the PRE or NPTR must be non-executive and accountable to the Head of Department in the performance of their functions. They may be appointed either on part-time or full-time basis guided by the operational requirements of the Regulator in question.
13. The issuing of operating licences by PREs is facing many challenges which are a cause of frustration for many prospective operators. The law requires of the PREs to process applications for new operating licences within 60 days of the application. However, this provision of the law is rarely complied with by the PREs due to capacity challenges and lack of responsiveness from relevant municipalities. Where municipalities fail to respond within 30 days of the request, the NPTR or the PRE, as the case may be, are required to finalise the application in their own discretion. More often than not, the PRE would grant the operating licence, in the absence of a response from a relevant

¹ Wolf, S.E., Joubert, J.W. (2013). A people-centred view of paratransit in South Africa. *Cities*, 35, 284-293

municipality advising otherwise based on its transport plans. This gives rise to a situation where the issuing of a significant number of operating licence is not guided by transport plans, thus raising a real possibility of flooding an already saturated market. This creates a perverse incentive for conflict and violence as the balance between demand and supply is not adequately regulated.

14. In its market study, the Competition Commission made the following recommendations, which remain a subject of ongoing engagement with government:

²An overhaul of the issuing of 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 assessment. In addition, the Commission recommends all pending applications should be processed and finalised expeditiously given that a significant number of operators are already operating illegally. This will free 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;

DOT should upgrade the National Land Transport Information System urgently to improve efficiencies;

The PREs should utilise additional communication channels to reach 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;

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;

Registration of Associations, Members and Non-Members

18. The NTTT Final Recommendations have always recommended that registration should be done both at Provincial and National levels. However, the Transition Act only empowered Provinces to undertake this function, leaving a gap in relation to Associations that took on a national character such as federal bodies. However, the NLTA Amendment Bill now empowers the NPTR to undertake this function in line with its mandate.
19. Consideration must be given to empowering and providing adequate capacity to the NPTR and the PREs in the undertaking of the registration function. It may be a bridge too far to expect the PREs in their current configuration should take on this responsibility, considering the capacity constraints. An option for consideration is an empowering provision that enable the NPTR and the PREs to:

Appoint a Panel of Assessors. Two options are provided below:

2 Competition Commission South Africa, 19 February 2020. Market Inquiry Into Land Based Public Passenger Transport

OPTION 1:

19.1 Appointment of a part-time Panel of Assessors of not more than 4 persons as a subordinate structure of the NPTR or PRE, to assess registration applications, deregistration of Associations or their members or non-members. In addition, the Panel should be empowered to evaluate any violation of the Code of Conduct prescribed by the Minister and/or the MEC, as the case may be, and make a determination as to whether the NPTR or PRE should withdraw or suspend the operating licence in terms of section 79 or any other relevant section of the NLTA. The Panel will not have any decision-making powers, but will rather make its recommendations to the NPTR or PRE, as the case may be, for final decision-making.

OPTION 2

19.2 Members of the NPTR or PRE be empowered to appoint, among their number, no more than 4 members to serve as a Panel of Assessors to assess registration applications, deregistration of Associations or their members or non-members. In addition, the Panel should be empowered to evaluate any violation of the Code of Conduct prescribed by the Minister and/or the MEC, as the case may be, and make a determination as to whether the NPTR or PRE should withdraw or suspend the operating licence in terms of section 79 or any other relevant section of the NLTA. The Panel will not have any decision-making powers, but will rather make its recommendations to the NPTR or PRE, as the case may be, for final decision-making.

20. A Framework for Devolution of Operating Licence Function to Municipalities must be canvassed with SALGA and National Treasury with clear time lines for the establishment of Municipal Regulatory Entities.

Planning

21. The NLTA mandates the Minister and MEC to provide support and ensure adequate resourcing of municipalities in the exercise of their Transport functions. Developing adequate capacity at local government level to give effect to the country's land transport policy has proven to be a major challenge, negatively affecting public transport regulation and enforcement. Lack of progress in the establishment of Municipal Regulatory Entities as envisaged in the NLTA is a direct consequence of this failure.
22. Consequently, the issue of ownership and management of ranking facilities continues to be a challenge. There has been consensus that ownership of ranking facilities is a function of local government. By extension, this requires municipalities to plan for and maintain such facilities.
23. Sections 28(1)(d), 57(1)(c), 57(2)(b)(ii) and 75(4) outline the role of local government on matters relating to ranking facilities. Some of these provisions include the implementation of a user-charge principle, which means users of these facilities have to pay for their upkeep. In some Provinces, rank management practices have been incorporated into the regulatory framework through by-laws. However, there is no consistent and uniform approach on this matter across municipalities.
24. It is common cause that there is currently no framework to guide planning authorities in making determination on surplus or oversupply of minibus taxis and this inevitably results in inefficiency in the allocation of routes and possible

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.

25. In a number of cases, taxi operators deviate from the routes authorised by the operating licence to service the identified demand created by new developments. Lack of coordination of plans between the planning authorities and developers give rise to opportunistic practices on the part of associations and where several associations are competing for operations, this usually sparks conflict due to overtrading. Overtrading reduces profitability of routes thus creating a level of frustration and intolerance among operators resulting in tension escalations.
26. Consideration should be given to the development of a standardised framework for ownership and control of ranking facilities which must be canvassed with SALGA. This must be linked to the review of the overall planning framework and how municipalities process operating licence applications where their concurrence is required.
27. Similar consideration should be given of elevating the ownership of some of these facilities to the provincial and/or national sphere of government, in the context of major provincial or national hubs.

Regulating eHailing Services

26. ³...the existing taxi system in the majority of cities is pretty much follows the pattern of last century thinking and therefore, it is being challenged by companies such as Uber that has taken advantage of innovation, technology, marketing strategies and a peculiar interpretation of current legislation possibilities and limitations, for purposes of offering services that in many aspects are superior to their traditional ones provided and which are in high demand by users.
27. ⁴...the regulation approved to companies such as Uber and Cabify in Mexico City, were the following:
 - Platforms must register with the Secretary of Mobility through the payment of 4 617.50 national currency (ZAR3,594.45).
 - Car operators must be registered to receive a permit to offer their services.
 - Drivers must contribute 1.5% of each ride to a transportation fund created by the Government of the Federal District “The Taxi, Mobility and Pedestrian Fund” destined to the public works related to mobility.
28. eHailing mobility service has become popular and preferable by a considerable segment of the society. Users prefer the convenience provided by eHailing service, its safety and security incentives and the fact that it fits perfectly into the user’s schedule and location comfortability.
29. eHailing is also viewed as a reasonable mobility choice particularly for the users

3 ML Puche, 1 July 2016. Master Thesis: Regulating eHailing Services: the case of Uber regulation in Mexico City and Bogota
4 Ibid

in the business class. The mainstream public transport has been criticized for exposing users to all sorts of discomfort, e.g. where a traveller/passenger finds him/herself sitting next to an alcohol abuser, or struggle to reach destination with ease due to lack of assistance from a somewhat rude driver.

30. In taking a decisive step towards regulating eHailing services, the following factors must be taken into consideration:
- The interest of public: The extent to which the public require the service (demand driven/ demand orientated approach). Public interest is of utmost importance as the public remain the consumer of public transport services.
 - The need to ensure co-ordination of all forms of public transport to provide choice alternatives to all classes of public transport users. The roles of the different services must be clearly defined in the public transport value chain.
 - The need to achieve an economically sound balance between various public transport modes.
31. Like many countries around the world, South Africa is in the process of regulating the eHailing services. The NLTA Amendment Bill brings the eHailing services into the same arena as metered taxis and allows these to operate either a meter or an ehailing application interchangeably. The law further empowers the Minister to make regulations for standards or requirements for ehailing applications or similar technology. This effectively creates ehailing as a sub-set of the metered taxi category for purposes of operating licences.

Illegal Operators



32. There are approximately 200,000 mini-bus taxis in South Africa. According to the information on the Department's National Land Transport Information System (NLTIS) there are 137,000 legal taxis operating in the country with the relevant operating licence spread out across Provinces as follows:

| | |
|---------------|--------|
| Gauteng | 35,000 |
| Western Cape | 20,000 |
| Kwazulu-Natal | 23,000 |
| Free State | 8,000 |
| Limpopo | 12,000 |
| Mpumalanga | 15,000 |
| Eastern Cape | 12,000 |

| | |
|---------------|--------|
| Northern Cape | 2,000 |
| North West | 10,000 |

33. The total number of illegal taxi vehicles, operating without Operating Licences is estimated to be anything between 63,000 to 100,000.
34. A vast number of these illegal operators operate with a Receipt (“Slips”) that serve as proof of payment for the application for the Operating Licence (OL) from the Provincial Registering Entities (PREs), but these applications have not been finalised beyond the prescribed 60 days.
35. The prevalence of illegal operators affect the industry and government in many ways and is a fast growing challenge that needs to be tackled decisively. Firstly, they shrinks the revenue base by complicating the supply side through uncontrolled entry into the market; Secondly, they provide perverse incentive for conflict; Thirdly, they worsen the industry safety profile as they are more prone to employing illegal and dangerous tactics to get customers and maximise profits; e.g driving without drivers licence or Professional Driving Permit (PrDP); Fourthly, they distort planning, and by extension adversely affect the efficacy of planning and law enforcement; Fifthly, they perpetuate criminality. e.g. insurance fraud in the event of crashes
36. Associations are also complicit in perpetuating illegal operations by actively recruiting illegal operators and protecting them, at times using the threat of violence to force the hand of authorities to grant these operators operating licences. Associations found to be engaging in this activity should face the ultimate penalty of deregistration with members losing their operating licences.
37. One of the most prominent forms of illegal operations that is prevalent in most townships relates to the operations of sedans, popularly known as “4+1s” or “amaphela”. The service is justified by the passengers’ need for rapid movement.
38. Another form of illegal operation prevalent in the industry is operations by joint venture agreements (JVs). These agreements occur outside the purview of the law and no involvement of regulatory authorities. Conflicts arise particularly where parties no longer find them desirable or suddenly feel that the arrangement is prejudicing their profitability. This usually happens where the JV agreement was concluded under the auspices of a dethroned executive and the new executive is not in favour of the agreement.
39. In order to deal decisively with the challenge of illegal operations, it is imperative that operators who operate without operating licences must be subjected to severe penalties which may include monetary penalties, impoundment of vehicle, suspension of drivers’ licence or a combination.
40. However, due to the significant number of illegal operators, implementing these measures may require a dispensation that may include an amnesty for those currently in the system, considering the sheer volume of illegal taxis. This should come with a proviso that they demonstrate that they have at least applied for an operating licence and the delay is therefore not of their own making.

41. Such a dispensation would have to be underpinned by a nationwide moratorium on the issuing of new operating licences. However, the lifting of the moratorium may be subject to Provinces, PREs and municipalities implementing certain measures and finalising certain tasks such as demand and supply surveys and update of integrated transport plans.

Law Enforcement

42. The current fragmented approach which relies on the capacity of individual provinces to enforce public transport laws and weak support from the SAPS creates a culture of impunity. The RTMC, working with the RTIA, issuing authorities and the SAPS must be mandated to develop an Integrated Public Transport Law Enforcement Framework, which will consolidate the law enforcement effort across the value chain.
43. The different configuration of Provincial Departments of Transport where in one Province traffic law enforcement is located in a Department that is not responsible for Transport operates exacerbates this problem. In other instances, the internal organisational arrangements in a Provincial Department, where related functions are placed in different Chief Directorates or components contributes to the fragmentation. Consideration should be given to requesting the Department of Public Service and Administration (DPSA) to initiate a process to standardise organisational structures of Provincial Departments of Transport in consultation with relevant Premiers. This will go a long way in ensuring uniformity in the execution of land transport policy.
44. The involvement of government officials and officials responsible for law enforcement like traffic and police officer in the taxi business is a major contributor to weakened law enforcement. While the law prohibits these officials from getting involved in the taxi business, their involvement continues unabated through intermediaries. These officials must be exposed and face severe penalties.



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