transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

FINAL IMPACT ASSESSMENT TEMPLATE (PHASE 2)

MARCH 2018

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The Final Impact Assessment [ECONOMIC REGULATION OF TRANSPORT BILL, 2018]

The Final Impact Assessment provides a more detailed assessment of the ultimately policy/legislative/ regulations/ other proposal. In addition, it identifies **(a)** mechanisms for monitoring, evaluation and modification as required; and **(b)** a system for managing appeals that could emerge around the implementation process.

1. THE PROBLEM STATEMENT/ THEORY OF CHANGE

1.1 Summary of Proposal, Problem and Root Causes

The proposed policy initiative is the introduction of a Single Transport Economic Regulator (STER) in the road, rail, maritime and aviation sectors of the transport industry. The introduction of such a regulator is envisaged in a number of key policy documents, as follows:

- The **National Development Plan (NDP)** requires that the "state must also put in place appropriate regulatory and governance frameworks so that … (economic) infrastructure is operated efficiently and tariffs can be set at appropriate levels"
- The **Transport White Paper** envisages a government role in regulating monopolies, specifically in the state airports, the ports, and road and rail concessions; and provides for the establishment of regulatory structures as needed
- The **Medium-Term Strategic Framework (MTSF) Action Plan** emphasizes a need for regulatory reforms to provide certainty and spur investment, and dwells on the importance of transport efficiency and competitiveness. To this end, it suggests a review and possible consolidation of existing regulators, with the goal of establishing a Single Transport Economic Regulator.

South Africa needs to ensure the efficiency and cost-effectiveness of its transport system in order to meet its economic and social goals. At present, international comparisons suggest that transportation comprises an unacceptably high proportion of logistics costs. Internationally, transport costs on average comprise less than 40% of overall logistics costs. This can be considered to be a benchmark of international logistics competitiveness. Worryingly, in South Africa transport costs are the main element in logistics costs. The transport component of logistics costs has steadily increased to over 60% over the last decade (CSIR, 2014). This suggests that the preconditions for efficiency and cost-effectiveness do not

as yet exist in the sector. While some of the cost differential may be explained by different operating costs in the South African transport environment, it is highly unlikely that this provides the full explanation. For example, it is suggestive that in areas where competition is almost non-existent, such as automotive and container transport, "*South Africa has one of the highest levels of port tariffs … in the world; from more than double to almost four times the global average"* while in the coal environment, where the port terminal is owned by the shippers, port tariffs are *"significantly lower than the global average."*[1]

The institutional framework of transportation is characterised in many sectors by the presence of state owned entities, which typically have some degree of market power over either the infrastructure or services which they operate (the extent to which private sector operators experience dominance in other modes and sub-sectors is much more limited). Thus in much of the transport sector, competitive forces do not play a role in safeguarding efficiency and cost-competitiveness. State oversight of State-Owned Companies (SOCs) can in principle provide this discipline, but in practice has failed to do so. Economic regulation can likewise play this role, but such regulation as exists has to date been fragmented and incomplete. The introduction of competition itself is often either not feasible, because of the existence of natural monopolies in the sector, or not desirable from the point of view of wider policy objectives.

A number of key themes requiring some kind of intervention can be identified in each of the aviation, maritime, rail and road modes, as follows:

Aviation: the 1990 Domestic Air Transport policy focused on ensuring that "competitive forces" were the main factor driving the sector. As part of this deregulation aviation infrastructure was "commercialised" by transferring assets and responsibilities to the Airports Company Limited (ACL) (now Airports Company South Africa (ACSA)) and Air Traffic and Navigation Services (ATNS), respectively responsible for maintaining nationally owned airport infrastructure and air traffic services and infrastructure. Airline infrastructure was to be regulated to ensure that infrastructure shareholders received a fair return on investment, and that the companies were run in an efficient manner that placed a minimal cost on the aviation industry. Stakeholders have however highlighted and questioned a number of issues

[1] IPAP 2014/15-2016/17)

regarding the most appropriate methodology for funding capital expenditure by both ATNS and ACSA. For example, airline operators have suggested that the current methodology incentivises over-investment of capital, leading both ATNS and ACSA to invest more than required by the ultimate users (airline operators and passengers) to the cost of the aviation sector. On the other hand, ACSA has pointed out that the lack of an independent appeals process makes it difficult to resolve technical disputes of this nature.

Maritime: As ports operate more efficiently, moving cargo becomes cheaper and quicker. This is especially important in South Africa where the country' largest trading partners are not on the same continental land mass. The Ports Regulator of South Africa (PRSA) identifies several challenges in the structure of the South African ports system, including the fact that Transnet holds a statutory monopoly as the sole provider of marine infrastructure; Transnet Port Terminals dominance of certain areas of cargo handling services; and the vertical relationship between Transnet National Ports Authority (TNPA) and Transnet Ports Terminals (TPT). NATMAP: National Transport Master Plan (2011) suggested that profitable port, harbour, and pipeline operations are being used to cross-subsidize other parts of Transnet. It further concludes that the process and criteria of cross subsidisation is not clear. The NDP argues that port charges are globally uncompetitive and *"[p]oor performance is largely due to the absence of competition in terminal operations and Transnet's business model, which uses surplus generated by ports to fund investments elsewhere."*[2]

Rail: As in the maritime sector, rail is a vertically integrated sector where infrastructure provision and operations are undertaken by the same company (Transnet Freight Rail (TFR) in the case of freight, and the Passenger Rail Agency of South Africa (PRASA) in the case of passenger). Levels of private sector involvement/competition are however much more limited than in the maritime sector. Available rail data shows that since 1980 general freight has been in steady decline, as rail has sustained increasing competition from road. This is in contrast to coal and iron ore data which shows a steady increase over time from 1980 to present day. Passenger volumes by rail have fallen mainly relative to the mini-bus taxi industry. The rail network requires a high fixed cost investment, which is difficult to duplicate. For these and other reasons, the provision of rail infrastructure can be characterised as having

[2] NDP (2012:187)

natural monopoly features. In South Africa, this natural monopoly is reflected in a de facto monopoly on freight services by Transnet. Economic decisions around access and pricing are mostly under the unilateral ambit of Transnet. To this end, it appears that non-competing services (such as private passenger lines) are generally freer to utilise the main network, while requests by competing private freight operators are typically denied.

Road: The provision of road infrastructure is undertaken on a non-commercial basis by provincial government, and on a commercial basis by a state owned enterprise, South African National Roads Agency Limited (SANRAL). However, since the fuel fund for road infrastructure is no longer ring-fenced for that purpose, South Africa's road network has been severely underfunded. Increased reliance has been placed on a user pays principal in road financing, with an emphasis on the collection of tolls on the SANRAL network. SANRAL determines whether toll contracts go out on competitive tender, or are retained by SANRAL (and thus are not subjected to competition). Competition between potential concessionaires for a new contract does help to constrain prices, but this price discipline may weaken over time as circumstances change. Moreover, the Minister of Transport is currently required to approve SANRAL tariffs, but has limited capacity in the Department to advise the Minister on such matters.

Economic analysis carried out for the Department of Transport (DoT) suggests that the impact on the wider economy of improving economic outcomes in the transport sector would be substantial. The assumptions used by the model are a conservative 5% decrease in the cost of transportation provided by SOCs, together with a 1% increase in SOC efficiency and investment levels, all of which could feasibly be associated with the successful introduction of economic regulation. The net impact of these changes would amount to an increase in GDP of 0.1%, which would add R3.5 billion to baseline GDP in 2014. Similar changes are seen for the rest of the prediction period.

1.1.1 Problems and Root Causes

The policy problems addressed by the policy proposal and their root causes are summarised in the table 1.1 below.

Table 1.1: Problems and Root Causes

Problem	**Root causes**
In South Africa, transport costs are unacceptably high, and sections of the transport market are highly inefficient, which impacts on achievement of economic growth objectives.	Large areas of the transport market experience little or no competition, and oversight mechanisms are insufficient to address these issues.
Aviation: tariff regulation methodologies vary over time	No specialised appeals process Lack of continuity due to part time regulatory structures
Maritime: the ports system remains expensive by international standards, and efficiency is sometimes of concern	The split between the TNPA and TPT envisaged by the Ports Act has not been implemented. This limits the ability of the TNPA to effectively regulate Transnet Ports Terminals, and creates an incentive for it to profit seek. High profits from Transnet's ports divisions are being used to cross-subsidise its rail operations. No alternative source of such funding is currently available. There is no independent specialist dispute mechanism for the PRSA.
Rail: dwindling modal shares with passenger and freight moving increasingly to road	Rail operations and infrastructure are both owned by a single, essentially monopolistic provider, with inadequate oversight of achievement of efficiency objectives in particular. Existing oversight structures at the Department of Public Enterprises (DPE) and DoT are insufficient to compensate for the lack of efficiency incentives created by market structure. The DoT does not have sufficient internal capacity to oversee access negotiations between rail operators and infrastructure owners effectively. Appropriate access conditions are a precondition for introducing competition into the sector, which has been discussed on branch lines.
Road: the funding of road infrastructure has become problematic	While the preferred method of funding large roads is pay-as-you-go tolling systems, public acceptance of such systems is increasingly poor. SANRAL provides

Problem	Root causes
	oversight of tolling levels on concession contracts, but where SANRAL operates toll roads itself, the DoT provides oversight on pricing. The DoT has limited technical capacity to do so effectively.

1.2 Intended Outcomes of the Proposal

The intended outcome of the policy proposal is improved efficiency and more competitive pricing in the transport sector. The key targeted metric is the proportion of logistics costs comprised by transport costs, which is currently too high.

The means by which this will be achieved is as follows:

- Existing economic regulators in the transport sector will be consolidated into a single entity
- That entity will be given scope to regulate all areas of the market where competition is inadequate to ensure efficient market outcomes
- Prices and service standards will be set by the regulator in regulated markets. The prices and services standards set will more closely resemble the market outcomes that would be experienced in competitive markets, and may in some cases (especially where access conditions are regulated) increase levels of competition
- Investigation capacity and an independent appeals mechanism will be established to address the specific complaints of transport users and operators

Improved transportation sector outcomes should feed through to improved growth outcomes for the economy as a whole. Most of South Africa's trading partners (by value) are not based in Africa, and thus most of our imports and exports move through the ports system. In addition, the mining industry relies on cheap and efficient transportation by rail and road to compete on international markets, as does to a lesser extent, most manufacturing. Finally, the tourism industry and other forms of trade in services are heavily dependent on an effective aviation sector. The proposal thus will affect economic outcomes via multiple channels.

1.3 Impact of Proposal on Various Social Groups

Table 1.2: Proposal Impact on Social Groups

Groups that will benefit	How will they be affected?
Importers and exporters	As most of South Africa's trade partners (by value) are not based in Africa, the bulk of our imports and exports travel through the ports system. Improved efficiency and cost competitiveness due to improved regulator of the ports system will thus benefit most importers and exporters.
Domestic freighters	Transport comprises a large proportion of the final costs of many goods. The proposal will improve the efficiency and pricing outcomes of the road and rail systems, which move the bulk of domestic freight, and should thus contribute to lower prices of a number of consumer and intermediate products.
Mining sector	Bulk exports in the mining sector in particular often travel via rail, and the ability of mining companies to compete in international markets is highly dependent on an efficient and cost-competitive logistics system. The regulator will improve logistics outcomes and thus support mining exports.
Commuters	The proposal will affect outcomes both in road tolling systems and commuter rail, and should improve transparency, efficiency and pricing outcomes.
Tourism sector	The aviation sector plays a major role in enabling the tourism industry, and improved pricing and efficiency outcomes in aviation will thus benefit the tourism industry.
The unemployed	Economic modelling suggests that the introduction of regulation, and the associated improvement in prices and efficiency in the transport sector, should be associated with increased economic growth. This is likely to lead to job creation.
Households earning R7000 a month or less	Transport costs comprise a large proportion of food costs,[3] which are a disproportionately large share of spending for poor households. A more efficient and cost competitive transport system due to the introduction of economic regulation is thus likely to be equivalent to an increase in real spending power for the very poor.
Small and Medium Enterprises (SMEs)	Studies suggest transport costs are higher for SMEs than for larger firms.[4] A more efficient and cost competitive transport system due to the introduction of economic regulation is thus likely to disproportionately benefit SMEs.

[3] For example, one study found that 55% of the cost of imported wheat flour in Ecuador was logistics and transport cost (Guasch, J.L. 2010. *Logistics for Competitiveness*).

[4] Centro Logístico de Latinoamerica, Bogota, Colombia. Benchmarking 2007: Estado de la Logística en America Latina Anexo, María Rey, Logistic Summit 2008. As quoted in Guasch, J.L. 2010. *Logistics for Competitiveness.*

Groups that will benefit	How will they be affected?
Rural development	The existence of regulatory capacity in rail is likely to facilitate the process of involving the private sector in branch line operations. To the extent that this occurs in rural areas, it will improve rural transportation systems and thus rural development.
Government: National Treasury and DoT	It is anticipated that the regulator will receive funding from national government in the first years of operation, thus incurring direct costs to the fiscus. This phase should however be temporary. In the medium to long term, the regulator will fund itself from levies imposed on regulated entities. The Transport Council will receive secretariat services from the DoT.
Regulated transport operators	Once the regulator is established, it will be funded by fees levied on the companies it regulates.

1.4 Behavioural Changes Required

Behavioural changes will be required in a number of areas, as follows:

Regulated entities: at present, in sectors such as rail, roads and (to a lesser extent) ports, entities which control the vast majority of market activity are largely self-regulating. Self-regulating behaviours need to be replaced by a model of compliance with independent regulatory oversight. The introduction of economic regulation will only be effective if it succeeds in changing the behaviour of the regulated transport companies, in terms of both the price and quality of services supplied. The regulator will have a number of powers available to it, as follows:

- The ability to appoint inspectors and investigators;
- The ability to issue subpoenas;
- The authority to enter and search under warrant;
- Any person convicted of an offence in terms of the Act, will be liable to a fine or to imprisonment for a period not exceeding 5 years, or to both a fine and imprisonment; and
- If entities do not comply with the regulator, the regulator may direct a reduction in the price control they are subject to, as a temporary punitive measure.

Government oversight departments: self-regulation by entities is at present complemented by oversight from two key government departments, namely the DoT and the DPE. The establishment of an independent regulator will to some extent remove powers of oversight

from these departments and vest them in the regulator. The DoT will then need to play a role overseeing the performance of the regulator, albeit in such a way as to not compromise regulatory independence. These changes will require both behavioural differences and staffing and systems changes, which the DoT is already preparing for. The DPE will continue to provide oversight as the shareholder of transport SOCs, and no specific staffing changes are envisaged as a result of the implementation of the STER.

Transport regulators: the transport regulators already existing in the sector will need to consolidate into a single organisation and extent their scope of actions, which will require a range of behavioural changes. Success in achieving this consolidation, and retaining staff and skills while doing so, will affect the ability of the regulator to perform to requirements, particularly directly after inception. In addition, the regulator will attempt to improve transparency in the sector, which will make the regulator itself more predictable, and may facilitate the bargaining power of customers. The basis for regulatory decisions will be made available in published documents, and the regulator will release non-confidential data supplied by operators on the size and level of activity seen in the sector.

Transport users: the proposal will introduce an independent review and appeal mechanism into the transport system. For this to have maximum impact, transport users will need to be prepared to use this mechanism to contest outcomes in the sector. It will be possible to lodge complaints at the Regulator itself, or to appeal or review decisions of the Regulator at the Council. Complaints lodged with the Regulator have the potential to result in extensions of the scope of the Regulator to areas of the market found to not be competitive.

1.5 Priority groups

The following groups have been identified inside and outside of government, whose behaviour will have to change to implement the proposal

Table 1.3: Behavioural Change of Priority Groups

Groups inside and outside government whose behaviour will have to change	**Behaviour that must be changed**	**Main mechanisms to achieve the necessary changes.**
Regulated entities which are already subject to regulation - TNPA, ACSA, ATNS and SANRAL	Some changes may be required as regards data collecting and reporting processes.	The regulator will put in place regulations as regards data requirements and regulatory determinations. These regulations will where possible be based on existing regulatory systems to minimise disruptions. Where changes are required, they will be subject to public discussion, and the enforcement mechanisms will be available to ensure compliance.
Regulated entities which are not already subject to regulation – TFR, TPT and PRASA	These entities currently report only limited data to the DoT and DPE, and comply only with the service quality requirements of the shareholders' compact.	The regulator will develop regulations as regards data requirements and regulatory determinations. These regulations will be subject to public discussion, and the enforcement mechanisms discussed in section 1.4 above will be available to ensure compliance.
Government departments: Department of Transport and Department of Public Enterprises	SOCs in transport are overseen by the DoT as the policy Department and (in some cases) by the DPE as the shareholder Department.	The introduction of the STER will provide for the establishment of an independent and competent authority that has primary responsibility for overseeing the efficiency of the transport sector; and for addressing pricing and access complaints against specific operators. The DoT is already planning for the systems and personnel changes which are likely to be required.
Existing regulators in transport	Staff at existing regulators follow procedures and processes which will change going forward.	Planning for staff transition processes is already underway.

Groups inside and outside government whose behaviour will have to change	Behaviour that must be changed	Main mechanisms to achieve the necessary changes.
Transport users	The proposal will introduce an independent review and appeal mechanism into the transport system. For this to have maximum impact, transport users will need to be prepared to use this mechanism to contest outcomes in the sector.	It will be possible to lodge complaints at the Regulator itself, or to appeal or review decisions of the Regulator at the Council. Complaints lodged with the Regulator have the potential to result in extensions of the scope of the Regulator to areas of the market found to not be competitive.

1.6 Consultations

1.6.1 Consultations towards the development of the Bill

Table 1.4 below represents views of the stakeholders consulted during the development of the current Bill before submission to Cabinet to approval for public consultations. The table demonstrates that there was rigorous consultations with the stakeholders before putting it out for public comments.

Table 1.4: Consultations towards the Bill Development

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have amendments been incorporated
1. Government Departments and Agencies				
Department of Public Enterprises	They have questioned the expanded scope (to include Transnet Freight Rail, Transnet Ports Terminals and the focus on public entities only. They have also raised concern about the potential uncertain cost that the STER will impose on regulated entities, and about perceived policy uncertainty in some affected areas of the transport market, which have been workshopped but are unresolved.	Categorically support	Exclusion of Transnet Freight Rail and Transnet Ports Terminals from the scope of the regulator	No
National Treasury	Greater efficiency in transport due to economic regulation can benefit the wider economy. Comfortable with the funding model proposed (initial Treasury funding, then self-funding).	Support	A number of amendments proposed as regards structuring and financing the regulator. They have also raised questions about the exclusion of Cross-Border Road Transport Agency.	Partially – CBRTA not included in scope
CIPC	No specific view as not directly impacted	Support	Provided input on regulatory structure	Yes

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have amendments been incorporated
Competition Commission	Effective sector regulation can complement the role played by competition authorities	Support	Provided input on regulatory structure	Yes
PIC	No specific view as not directly impacted	Support	Provided input on regulatory structure	Yes
ICASA	No specific view as not directly impacted	Support	Provided input on regulatory structure	Yes
NERSA	No specific view as not directly impacted	Support	Provided input on regulatory structure	Yes
Transnet CEO	They have questioned the expanded scope (to include Transnet Freight Rail, Transnet Ports Terminals and PRASA) and the focus on public entities only. They have also raised concern about the potential uncertain cost that the STER will impose on regulated entities, and about perceived policy uncertainty in some affected areas of the transport market, which have been workshopped but are unresolved.	Categorically support	Exclusion of Transnet Freight Rail and Transnet Ports Terminals from the scope of the regulator	No
Transnet Freight Rail	Do not feel that Transnet Freight Railshould be included in the scope of the regulator. Feels that road freight operates at an advantage to rail due to not having to fund its own infrastructure, which is not being addressed by this legislation.	Oppose	Exclusion of Transnet Freight Railfrom the scope of the regulator. Inclusion of road freight operators in scope of the regulator.	No
Public Transport Regulator	Their legislation requires them to undertake some economic regulation of the public transport sector, which they currently do not have the capacity to do so. The potential of incorporating this into the mandate of the STER has thus been flagged.	Support	Recommend inclusion of some public road transport regulation functions into the scope of the STER	No
Cross-Border Road Transport Agency	Participated in Steering Committee. Endorse process and Bill.	Support	Did not provide a specific proposal	NA

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have amendments been incorporated
Transnet Port Terminals	Do not feel that Transnet Ports Terminals should be included in the scope of the regulator. Feel that private terminals and Richards Bay Coal Terminal in particular should be included in the scope of the regulator. Concerned about competition at shipping line level as well. These issues have been workshopped but are unresolved.	Oppose	Exclusion of Transnet Ports Terminals from the scope of the regulator. Inclusion of private terminals and shipping lines in scope of the regulator.	No
Transnet National Ports Authority	Feel that the main constraint and cost in maritime transport arises from international shipping lines, and that these too should be regulated. These issues have been workshopped but are unresolved.	Oppose	Inclusion of private terminals and shipping lines in scope of the regulator.	No
Ports Regulator	Greater efficiency in transport can be achieved by extending the scope of economic regulation and improving regulatory design at existing institutions	Support	Provided input on regulator structure, pricing methodologies and wider regulatory design questions	Yes
SAA	SAA should be promoted as a national carrier	Did not provide a specific view	Did not provide a specific proposal	NA
ATNS	Permanent regulatory capacity will improve the consistency of regulation, and better appeals functionality is needed.	Support	Did not provide a specific proposal, but highlighted need for appeals mechanism	N/A
ACSA	Permanent regulatory capacity will improve the consistency of regulation, and better appeals functionality is needed.	Support	Provided detailed comments on the Bill	Partially

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have amendments been incorporated
Aviation Regulating Committee	Greater efficiency in transport can be achieved by extending the scope of economic regulation and improving regulatory design at existing institutions	Support	Provided input on regulator structure, pricing methodologies and wider regulatory design questions	Yes
SANRAL	Intrusive regulation of existing concessions could destabilise the road system. Some oversight of toll setting on SANRAL roads would however be useful to improve regulatory certainty.	Support	Input on dealing with concession contracts and regulatory design	Yes
2. Business				
Chamber of Mines	Feel there is room for improvement in transport efficiency and price competitiveness, which the regulator may be able to achieve.	Support	Better access and pricing transparency. Introduce meaningful competition in heavy haul long distance freight rail for the mining sector.	Partially
Timber Industry	Feel there is room for improvement in transport efficiency and price competitiveness, which the regulator may be able to achieve. May assist in shifting timber off roads and onto rail.	Support	Concessioning of safe, reliable branch rail lines. Better access and pricing transparency.	Partially
Southern African Rail Association	Did not provide a specific view	Did not provide a specific view	Did not provide a specific proposal	NA

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have amendments been incorporated
SA RoadRail Association	A STER might lend itself to better coordination of rail gauges between South Africa and the rest of Africa. A common rail gauge would save costs, and the "Standard Gauge" could allow for double-stacked containers increasing efficiency further in SA. However SA changing to Standard Gauge would be costly and is probably unrealistic.	Support	Did not provide a specific proposal	NA
Grindrod	Feel improvements to the ports regulation environment are warranted. Concerned that Transnet is both regulator and player in sector.	Support	Better access and pricing transparency. Regulatory solution for conflict of interest in market structure.	Yes
Sheltam	Did not provide a specific view	Support	Did not provide a specific proposal	NA
Richards Bay Coal Terminal	Feel improvements to the ports regulation environment are warranted. Concerned that Transnet is both regulator and player in sector. Concerned that excessive regulation of their business may be destabilising.	Support	Better access and pricing transparency. Regulatory solution for conflict of interest in market structure.	Yes
N3TC	Concerned that excessive regulation of their business may be destabilising.	Support	Did not provide a specific proposal	NA
TRACN4	Concerned that excessive regulation of their business may be destabilising.	Support	Did not provide a specific proposal	NA
Bakwena	Concerned that excessive regulation of their business may be destabilising.	Support	Did not provide a specific proposal	NA
Ocean Africa Container Lines	Feel improvements to the ports regulation environment are warranted.	Support	Did not provide a specific proposal	NA
Bidvest Freight	Feel improvements to the ports regulation environment are warranted. Concerned that Transnet is both regulator and player in sector.	Support	Better access and pricing transparency. Regulatory solution for conflict of interest in market structure.	Yes

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have amendments been incorporated
CapeSpan (Fresh Produce)	Feel improvements to the ports regulation environment are warranted. Concerned that Transnet is both regulator and player in sector.	Support	Better access and pricing transparency. Regulatory solution for conflict of interest in market structure.	Yes
Lanseria Airport	Feel improvements to the aviation regulation environment are generally warranted. Uncertain about how private infrastructure owners would be regulated.	Support	Did not provide a specific proposal	NA
AASA (Airlines Association of South Africa)	Highlighted a need for better regulation of air infrastructure, given the direct impact this has on airline operating costs and viability.	Support	Did not provide a specific proposal	NA
BARSA (Board of Airline Representatives of South Africa)	Highlighted a need for better regulation of air infrastructure, given the direct impact this has on airline operating costs and viability.	Support	Did not provide a specific proposal	NA
Comair Ltd	Felt improvements to regulatory environment of air infrastructure would help ensure equal treatment of airline operators by publicly-owned infrastructure operators.	Support	Did not provide a specific proposal	NA
SA Airlink	Feel improvements to the aviation regulation environment are warranted, particularly as regards investment incentives and regulatory independence.	Support	Did not provide a specific proposal	NA

1.6.2 Cabinet Inputs

Table 1.5 below reflects to the comment made by Cabinet when it approved the Bill for public comments

Table 1.5: Cabinet Inputs

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have amendments been incorporated
Cabinet	Factor ports tariffs into the Bill	Categorically support	No need for amendments as the Bill caters for the inclusion of port tariffs.	No need

1.6.3 Public Commentary Period Comments

To date, no substantial comments have been received as yet. The 30 days public commentary period started on 12 February and ends on 13 March 2018. There is an expectation for some comments to reach the Department towards the deadline of the public commentary period.

Table 1.6: Public commentary period inputs

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have amendments been incorporated
		Categorically support		

1.7 Dispute System

Prior to promulgation of the Act, disputes as regards the content of the proposal will be dealt with through continuous engagements. The project Steering Committee has played a role in facilitating/processing such inputs to date. It includes representatives of the following organisations:

- The Department of Transport
- The Department of Public Enterprise
- National Treasury
- The Ports Regulator of South Africa
- The Cross Border Road Transport Agency
- The National Public Transport Regulator
- The Rail Safety Regulator

Going forward, the Steering Committee will continue to play a role in dispute resolution. In addition, the NEDLAC process will provide a public forum for such dispute resolution (NEDLAC has not yet been consulted in this regard). These institutions will also play a role should disputes arise during the **implementation** phase.

The dispute system put in place by the proposal itself, **post-implementation**. Appeals can be made to a specialist court/tribunal, which is stocked with the necessary expertise to adjudicate appeals of economic regulation decisions. The STER will thus have an appeal mechanism via the Transport Economic Council.

Members of the public will be able to complain to the Transport Economic Regulator about behaviour by sector operators, and if the Regulator considers their complaints to have merit, they may pursue them at no additional cost to the individual concerned. However, appeals of the decisions of the Regulator will have to be pursued at the Council, and the costs of doing so are likely to be prohibitively high for most private individuals. Given the potential of spurious appeals and reviews to be used to frustrate and delay the implementation of regulatory decisions, it is felt to be appropriate to keep barriers to such systems fairly high.

It should be noted that this dispute system was designed after extensive research into local and international precedent, and consultations with ICASA, NERSA, the CIPC, the Competition Commission and the PIC as regards their experience of such systems.

2. IMPACT ASSESSMENT

2.1 Costs and Benefits of Implementing the Proposal

Group	Implementation costs	Cost of changing behaviour	Costs/benefits from achieving desired outcome	Comments
Government Departments: National Treasury, DPE, DoT	The additional costs associated with introducing the STER range from R78m in the low scenario, to R133m in the high scenario. National Treasury will need to fund the regulator at inception. Some changes in staffing at the DoT and DPE in particular may occur as the regulator is established.	Some awareness initiatives may need to be conducted internally as regards changes in the relationship between the regulated SOCs and the state.	The improved oversight model created will allow better price and service level outcomes in the sector, thus improving the ability of the DoT and the DPE to meet their goals as regards the efficiency of the transport sector, and the Treasury as regards promoting economic growth. The potential benefits to the economy are in the order of a 0.1% increase in GDP (equivalent to a R3.5 billion addition to baseline GDP in 2014).	
Regulated entities which are already subject to regulation - TNPA, ACSA, ATNS and SANRAL	Some changes may be made as regards data reporting and collecting requirements, although as far as possible continuity with previous regulatory systems will be maintained. Such changes as do occur may involve implementation costs.	Again, some change may be required to behaviour as regards data reporting and collecting requirements.	Once the regulator is established, it will be funded by fees levied on the companies it regulates. These costs will be counter-balanced by improvements in the quality and predictability of the regulatory regime.	

Group	Implementation costs	Cost of changing behaviour	Costs/benefits from achieving desired outcome	Comments
Regulated entities which are not already subject to regulation – Transnet Freight Rail, Transnet Ports Terminals and PRASA	There are likely to be some implementation costs associated with implementing the required behavioural changes as regards changed data reporting and collecting requirements, and compliance with service standards and price determinations.	There are likely to be some changes to operational costs associated with implementing the required behavioural changes as regards changed data reporting and collecting requirements, and compliance with service standards and price determinations. Either costs or savings may be realised in the medium to long term.	Once the regulator is established, it will be funded by fees levied on the companies it regulates. In order to improve the efficiency and cost effectiveness of the transport system, the regulator will impose requirements on operators in terms of price levels and quality of service. While care will be taken to ensure that prices are commercially sustainable, operator profit levels may be affected, and the operating environment is likely to become more demanding.	
Existing regulators in transport	The PRSA and Aviation Committee will need to be reorganised and combined with the Regulator, which will incur costs in terms of management time, change management processes, and so forth.	New procedures and practices will need to be developed, particularly as regards regulating new sectors/entities. This will require upskilling of existing staff and hiring of new staff.	The regulatory system will benefit from increased capacity, improved funding methods, greater continuity in staffing and procedures, and a specialist appeal and review body.	
Transport users	A stakeholder communication plan has been prepared, and some public awareness campaigns may be required.	The proposal will introduce an independent review and appeal mechanism into the transport system. For this to have maximum impact, transport users will need to be prepared to use this mechanism to contest outcomes in the sector.	Transport system users will directly benefit from improved price and efficiency outcomes in the sector. They will also indirectly benefit from improved economic growth prospects associated with an improved transport sector.	

Group	Implementation costs	Cost of changing behaviour	Costs/benefits from achieving desired outcome	Comments
Non-regulated transport operators	No implementation costs.	No costs of changing behaviour.	Non-regulated transport operators typically either compete with, sell to, or buy from the entities which will be regulated in terms of the proposal. Better regulation of these entities will thus change the operating environment of these non-regulated entities, typically for the better. Expected changes include improved ability to compete in markets which are currently non-contestable, improved input prices and improved service standards from suppliers.	

2.2 Budget and Staffing Implications

Instituting the STER will require significant outlays to ensure that the regulator has sufficient resources to function well. Without sufficient funding, the regulator will not be able effectively improve economic outcomes in the transport sector.

The STER will include the operations of the Aviation Regulation Committee and the Ports Regulator. The current operating costs of these two institutions must thus be excluded from the calculation of the implementation costs of the STER. For the 2013/14 financial year, the adjusted appropriation for the PRSA amounts to R15.9m, while the expenditures associated with the Aviation Regulating Committee amounted to R6.4m.

The costs of two scenarios are now teased out, as follows:

- **Low case**: this scenario assumes that the STER has relatively low levels of staffing (as is likely to be the case in the first three years or so of operation, as recruitment takes place), and that staff are paid at average public sector wages
- **High case**: the STER is fully and comprehensively staffed, as is likely to be the case from around year five of its operation, and that staff are paid at wages benchmarked against other regulators (in other words, in excess of average public sector wages)

The results are as shown in the tables below. In the low case scenario, total employment at the STER is only 90 individuals, of which 78 are employed at the Transport Economic Regulator (TER). In the high case, this rises to 145 individuals, of which 133 are at the TER. Excluding the current costs of the Ports Regulator and the Aviation Committee, the additional costs associated with introducing the STER range from R78m in the low scenario, to R133m in the high scenario. These costs compare well to the realised costs of implementing economic regulation at other regulators. For example, NERSA incurred expenditures of R242.5m in the 2013/14 financial year, and the adjusted appropriation for ICASA in 2013/14 was R 390.6m, which was budgeted to increase to R414.5m by 2016/17.

Table 1.1: Employee numbers, low case scenario

Number of employees (sub-totals) (TER)	Total employee numbers
Chief Executive Officer and support staff	13
Legal services	7
Economic regulation	42
Financial services	6

Corporate services	10
TER	**78**
TER Board Members	5
TEC Council Members	7
Total	**90**

Table 2.2: Total cost, low case scenario (rands)

Summary of economic classification (TER)	2019/20	2020/21	2021/22
Total current payments	*89 699 763*	*94 543 806*	*99 554 628*
Compensation of employees	66 999 331	70 349 298	74 077 811
Chief Executive Officer	9 625 495	10 106 770	10 642 429
Legal services	7 072 510	7 426 135	7 819 721
Economic regulation	40 486 165	42 510 473	44 763 528
Finance and corporate services	9 815 162	10 305 920	10 852 134
Goods and services	22 700 432	24 194 508	25 476 817
Total payments for capital assets	*10 160 237*	*2 915 076*	*3 069 575*
TOTAL (TER)	99 860 000	97 458 882	102 624 203
Compensation of Council (TEC)	444 261	468 695	493 536
TOTAL (STER)	**100 304 261**	**97 927 577**	**103 117 739**
Appropriation for the Ports Regulator and the Aviation Committee in the 2013/14 financial year	22 270 033	22 270 033	22 270 033
TOTAL (STER) – adjusted	***78 034 228***	***75 657 544***	***80 847 706***

Table 2.3: Employee Numbers, High Case Scenario

Number of employees (sub-totals) (TER)	Total employee numbers
Chief Executive Officer and support staff	22
Corporate services	20
Economic regulation	68
Financial services	14
TER	*133*
TER Board Members	5
TEC Council Members	7
Total	**145**

Table 2.4: Total Cost, High Case Scenario (rands)

Summary of economic classification (TER)	2019/20	2020/21	2021/22
Total current payments	139 688 319	144 993 517	152 013 794
Compensation of employees	111 940 386	117 537 406	123 414 276
Chief Executive Officer	16 843 513	17 685 689	18 569 973
Corporate services	13 333 972	14 000 670	14 700 704
Economic regulation	63 112 291	66 267 905	69 581 301
Finance and legal services	18 650 611	19 583 142	20 562 299
Goods and services	27 747 933	18 291 634	20 560 419
Total payments for capital assets	14 432 620	2 765 566	2 856 841
TOTAL (TER)	*154 120 939*	*147 759 083*	*154 870 635*
Compensation of Council (TEC)	439 247	462 527	487 504
TOTAL (STER)	*154 560 187*	*148 221 610*	*155 358 139*
Appropriation for the Ports Regulator and the Aviation Committee in the 2013/14 financial year	22 270 033	22 270 033	22 270 033
TOTAL (STER) - adjusted	**132 290 154**	**125 951 577**	**133 088 106**

Without adequate funding, the STER is unlikely to achieve the technical competence necessary to fully realise the economic benefits accruing from high-quality regulation. A key component of such adequate funding will be flexibility on staff remuneration rates. The skills required by the regulator will be in high demand at the regulated entities, and staff retention will require the ability to pay a premium for skills. At the staff remuneration rates in the low scenario, therefore, there is some doubt that the full quantum of potential economic benefits will be realised.

2.3 Implementation and Compliance Costs

The introduction of a STER will consolidate the operations of the aviation Regulating Committee and the PRSA, which will help to share overhead costs between these institutions (and the new regulatory capacity created in road and rail).

At inception the Transport Economic Council will rely on secretariat services provided by the DoT, in order to minimise costs. However, if the Council experiences sufficient case flow to warrant setting up a permanent secretariat, the legislation allows for this.

Compliance costs will primarily be incurred by regulated entities, who will need to collate and report data in a prescribed format, and then comply with price and service standard

regulations. Care will be taken to ensure that the cost of compliance is minimised, in the following ways:

- The Act requires the Regulator to only regulate where the benefit of regulation outweighs its cost
- The Regulator will be able to customise the level of regulation needed for each entity, as appropriate. Light-touch regulatory regimes may thus be used for entities which require less heavy oversight, which will tend to reduce compliance costs
- Regulatory reporting requirements will be workshopped with operators before finalisation, and considerations as regards reducing the cost of compliance will be taken into account
- Should competition levels in a given market increase, the Regulator will be able to reduce its scope and de-regulate a given sector. Again, this will tend to reduce compliance costs.

2.4 Legislative Risks

2.4.1 Cross subsidy in Ports and Rail

The process of designing the STER has as much as possible remained neutral as regards other policy questions within the transport sector. The manner in which these issues are resolved may therefore impact on the operations of the Regulator going forward. The policy issue which is of greatest risk to the effectiveness of the STER is probably how to deal with the cross subsidy between the ports and rail divisions of Transnet. Economic regulation maximises efficiency when such cross subsidies do not occur. However, TFR may not be sustainable without some subsidisation.

The approach taken to ensure that the Regulator does not destabilise the sector, but is still able to improve efficiency, is as follows:

- The Bill allows the Regulator to take into account security of supply concerns when setting price controls. This will allow the cross-subsidy to continue as required for the foreseeable future.
- The Regulator will however be able to require Transnet to institute divisional accounts, and provide greater transparency on the size of the cross subsidy and operational efficiency in rail. This should provide greater clarity on how much money is involved, and whether these funds are being spent efficiently. Ideally the size of

the cross subsidy should be reduced if possible over time, in order to improve cost competitiveness in the ports sector.

2.4.1 Insufficient Scope for the Regulator at Inception

During consultations, the issue of extending the scope of the Regulator to cover TFR and TPT in particular has been subject to substantial contestation. During the public consultation process there is thus some risk that these two entities will be removed from the scope of the Regulator as envisaged in the Act. If this occurs, the ability of the Regulator to meaningfully impact on economic outcomes in two key transport sectors will be substantially compromised. The full economic benefits associated with the introduction of the Regulator will thus not be realised.

If these two entities are not included at inception, the legislation does still offer the potential for extending the scope of the Regulator at a later stage, if research is conducted on the market concerned and a case for regulation is made. However, the processes required to do so will be time-consuming and resource intensive, and thus this potential does not fully address the potential damage caused by insufficient scope at inception.

2.4.2 Scope creep

There is potential for scope creep to undermine the efficiency of the Regulator. During consultations, a number of areas of potential additional scope for the Regulator were mentioned, including the following:

- The addition of areas of competence currently covered by other regulators, such as the Cross-Border Road Transport Agency and National Public Transport Regulator
- The inclusion of sectors of the economy which do not display obvious competition concerns, such as road freight operators
- The inclusion of licensing powers for the Regulator

The wider the scope of the Regulator at inception, the greater the technocratic task it faces, and the more difficult it will be for it to reach full operating capacity. Care has thus been taken in the design of the Regulator to ensure that scope creep is avoided as much as possible. In some areas, scope creep may also introduce conflicts of interest in regulatory performance. For example, it is arguably best to keep licensing functions out of the Regulator, which will better allow the Regulator to focus on monitoring compliance with license conditions.

2.4.3 Technocratic competence of the Regulator

The Regulator will need substantial technocratic skills to perform well. Its ability to find and retain those skills will depend on a number of factors. Of particular importance will be the following:

- retention of skilled staff currently employed at the Ports Regulator, for which succession planning is underway
- the ability to staff key senior positions with skilled and experienced staff, which may require hiring some non-South Africans at the inception of the agency
- adequate funding of the Regulator as a whole

In addition, poor regulatory design decisions have the ability to substantially hamper the effective operation of the regulator. A particular concern is an interventionist Board, with tendencies to over-rule technocratic decisions made by the Regulatory Panel. The current design of the Regulator as envisaged in the Act takes care to avoid this as much as possible.

It should be noted that the existence of a specialist appeals body is part and parcel of the system ensuring technocratic competence at the STER, as without such specialised appeals functionality, non-specialist courts are likely to intervene inappropriately in regulatory decisions. However, the existence of the appeal and review process itself does create some risks, particularly as regards the use of spurious reviews and appeals to delay and frustrate regulatory decisions. For this reason, regulatory decisions may be implemented while appeals are being heard (unless the Council chooses to suspend them).

3. MANAGING RISKS

3.1 Risk Management Measures

Identified risk	Mitigation measure
Cross subsidy in ports and rail	The approach taken to ensure that the Regulator does not destabilise the sector, but is still able to improve efficiency, is as follows: • The Bill allows the Regulator to take into account security of supply concerns when setting price controls. This will allow the cross-subsidy to continue as required for the foreseeable future • The Regulator will however be able to require Transnet to institute divisional accounts, and provide greater transparency on the size of the cross subsidy and operational efficiency in rail. This should provide greater clarity on how much money is involved, and

	whether these funds are being spent efficiently. Ideally the size of the cross subsidy should be reduced if possible over time, in order to improve cost competitiveness in the ports sector.
Insufficient scope for the Regulator at inception	If TFR and TPT are not included in the scope of the regulator at inception, the legislation does still offer the potential for extending the scope of the Regulator at a later stage, if research is conducted on the market concerned and a case for regulation is made. However, the processes required to do so will be time-consuming and resource intensive, and thus this potential does not fully address the potential damage caused by insufficient scope at inception.
Scope creep	Options analysis was conducted to determine the risks associated with various scope design decisions, and regulatory design choices were workshopped with representatives of current South African regulators to finalise decisions.
Technocratic competence of the Regulator	Options analysis was conducted to determine the risks associated with various regulatory design decisions, and regulatory design choices were workshopped with representatives of current South African regulators to finalise decisions. An independent funding model was chosen, with appropriate checks and balances. An independent appeal and review process is allowed for, and regulatory decisions may be implemented while appeals are being heard (unless the Council chooses to suspend them).

3.2 Monitoring and Evaluation Mechanisms

The draft legislation includes a requirement for the Department to conduct a review of the exercise of the functions and powers of the Regulator and of the Council at least once every five years, to determine whether the STER is achieving the purpose of the Act as stated in s3. This will be a core component of the monitoring and evaluation (M&E) framework for the STER. The legislation does not mandate the form which this review is required to take, but it is anticipated that regulatory impact assessment will be one of the options considered.

The staff who will design and oversee monitoring and evaluation efforts will be based in the DoT. In advance of the implementation of the STER, minor changes to the DoT structure will be required to establish the secretarial capacity needed to support the activities of the Council, and to monitor and evaluate the performance of the Regulator. These staffing needs and the resulting structural changes have been fully assessed and a memorandum has been prepared. This memorandum clearly sets out the specific functions and positions that will need to be created to fulfil these M&E requirements.

International practice suggests that regulatory credibility is enhanced by the supply of sector information to the public. The STER will thus ensure that it regularly reports on sector performance, and makes that information publicly available, ideally via the internet. The institution itself will therefore help to improve the availability of data on its own performance,

which will be freely available to government, academia and other members of the public to assess whether sector performance is in fact improving. The STER will encourage the use of this data by local and international academics to assess whether the regulator is positively impacting on sector performance, for example via participation in academic conferences.

4. SUMMARY

4.1 Impact of the proposal on national priorities

Priority	Impact
Social cohesion	Impact on social cohesion will be felt indirectly, as the proposal improves economic growth prospects and employment creation. Where Previously Disadvantaged Individuals (PDI) communities experience costs in terms of being located far away from amenities and jobs, greater transport system efficiency will help redress the impact of this.
Security (Safety, Food, Financial and etc.)	Impact on security (and particularly food security) will be felt indirectly, as the proposal improves economic growth prospects and employment creation
Economic growth and investment	Economic analysis carried out for the DoT suggests that the impact on the wider economy of improving economic outcomes in the transport sector would be substantial. The modelling exercise assumed a conservative 5% decrease in the cost of transportation provided by SOCs, together with a 1% increase in SOC efficiency and investment levels, all of which could feasibly be associated with the successful introduction of economic regulation. The net impact of these changes would amount to an increase in GDP of 0.1% in 2014, which would add R3.5 billion to baseline GDP in 2014. Similar changes are seen for the rest of the prediction period.
Economic inclusion (employment creation and equity)	Improved economic performance associated with greater transport efficiency is likely to result in employment creation, thus improving economic inclusion outcomes
Environmental sustainability	Impacts on environmental sustainability may be felt indirectly, if improved rail performance results in a modal shift of South Africa's freight burden from road to rail, as rail is typically less emissions intensive.

4.2 Social and Economic Groups

The following social and economic groups are expected to benefit most and bear the most cost. The groups are presented in order of highest expected benefit or cost.

Main beneficiaries	Main cost bearers
1. Importers and exporters 2. Domestic freighters	1. Regulated transport operators 2. National Government

3. Mining sector 4. Households earning R7000 a month or less 5. Small and emerging enterprises 6. The unemployed 7. Commuters 8. Tourism sector 9. Rural development	

4.3 Costs, Benefits and Risks Mitigation Risks

4.3.1 Key Cost Reduction Measures

The Council Secretariat will be provided by the DoT, unless the cash flow of the Council is sufficient to motivate for a separate secretariat. This measure is designed to avoid unnecessary proliferation of institutions and reduce costs.

The Bill requires the Regulator to exercise its functions in the most cost-efficient and effective manner possible. The DoT will have oversight of its performance in this regard.

4.3.2 Key Benefit Maximisation Measures

The independent funding of the regulator is likely to be a central driver of its long term success, as it will allow it to develop sufficient capacity to fully execute its legislative mandate. Regulators who do not have independent funding sources tend to struggle to maximise the available benefits of sector regulation.

Economic regulation improves efficiency the most when price controls are set accurately. This requires high levels of technocratic expertise, good decision making procedures, and robust means of testing decisions (including an appeals and review process). The large number of design decisions which contribute to a robust, independent, transparent and adequately resourced Regulator, as envisaged in the Bill, are thus jointly key to the achievement of the benefits envisaged.

4.3.3 Risk Mitigation Measures

The risk of destabilising the cross subsidy from ports which may be required to keep the rail system operational has been mitigated by allowing the Regulator to take into account sustainability concerns when setting price controls.

The risk of poor regulatory decisions being made has been mitigated by putting in place a robust appeals mechanism.

4.4 Areas for Additional Research

A better understanding is needed of the size of the cross subsidy between ports and rail divisions of Transnet. The Regulator should produce analysis of this issue once it is

operational, which should aim to ensure that the efficiency of the subsidy is maximised, and the size of the subsidy is as low as is consistent with meeting other policy goals.

4.5 Contact details

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GLOSSARY OF ABBREVIATIONS

AASA	Airlines Association of South Africa
ACL	Airports Company Limited
ACSA	Airports Company of South Africa
ATNS	Air Traffic Navigation Systems
BARSA	Board of Airline Representatives of South Africa
CBRTA	Cross Border Roads Transport Agency
CIPC	Companies and Intellectual Property Commission
DPE	Department of Public Enterprises
DoT	Department of Transport
GDP	Growth Domestic Product
ICASA	Independent Communications Authority of South Africa
M&E	Monitoring and Evaluation
MTSF	Medium-Term Strategic Framework
NDP	National Development Plan
NEDLAC	National Economic Development and Labour Council
NERSA	National Energy Regulator of South Africa
NPTR	National Public Transport Regulator
PIC	Public Investment Corporation
PRSA	Ports Regulator of South Africa
PRASA	Passenger Rail Agency of South Africa
SAA	South African Airways
SANRAL	South African Roads Agency Limited
SMEs	Small and Medium Enterprises
SOCs	State-Owned Companies
STER	Single Transport Economic Regulator
TEC	Transport Economic Council
TER	Transport Economic Regulator
TFR	Transnet Freight Rail
TNPA	Transnet National Ports Authority