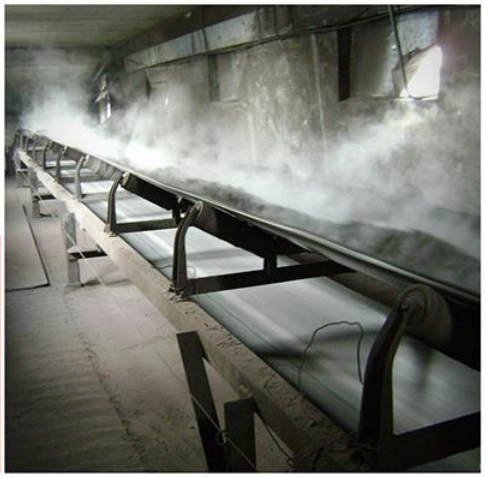
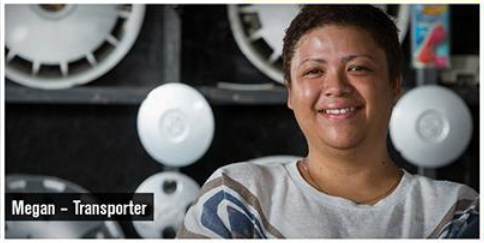
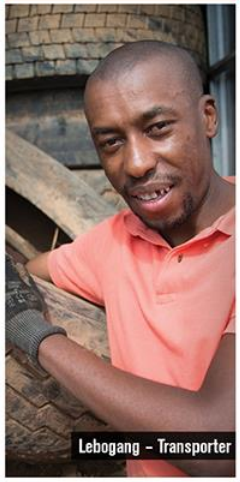
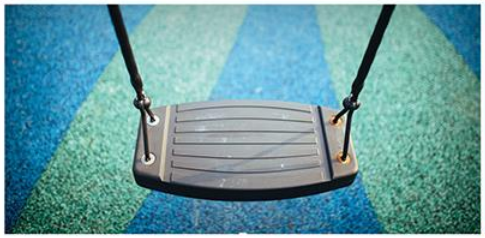
FLEISHMANHILLARD







PRESENTATION TO THE STANDING COMMITTEE ON FINANCE
30 AUGUST 2016



WASTE INTO WORTH

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RECYCLING AND ECONOMIC DEVELOPMENT INITIATIVE OF SOUTH AFRICA

Green economy

- Green economy is a radically innovative way of-
  - protecting the environment
  - while at the same time creating a self sustaining industry (and jobs) that collects and processes waste
  - turning something without value (which is why it is dumped) into something with value

- It requires a legislative scheme under which-
  - an independent entity is responsible for the creation of the industry
  - the State bears no financial responsibility
  - the producers of waste provide the funds
  - the State has supervisory power to ensure implementation and financial propriety

REDISA

- The REDISA Plan approved by the Minister of Environmental Affairs under the Waste Act-
  - seeks to create a self-sustaining industry over time in which tyres are collected, stored and processed
  - takes on the environmental responsibility of producers of waste tyres and on their behalf establishes small businesses and cooperatives to collect, transport, store and process waste tyres
  - is funded by those producers who in turn pass some of the cost onto tyre dealers and users

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REDISA PLAN

- The plan is for renewable periods of five years
  - the first period ends in December 2017

- The plan provides targets in respect of-
  - diverting waste tyres from dumps (environmental target)
  - establishing small black businesses (transporters, depot owners, processors)
  - jobs (pickers, employees of the small businesses)

Diverting waste tyres from landfill

- At the commencement of the Plan only 4% of waste tyres were diverted from landfill

- Over 60% are being diverted from landfill
  - 139 148 tonnes of waste tyres

- In order to that REDISA NPC has to establish and contract with-
  - cooperatives and transporters to collect waste tyres
  - depots to store waste tyres
  - processors to process waste tyres

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Businesses and Jobs

- 3286 jobs created
- 226 SMME's have been created
  - 22 depots established of which 21 are black owned
  - 76 transporters contracted of which 75 are black owned
  - 74 micro-collector cooperatives
- Supplies and subsidises 16 recycling processers

REDISA NPC
RECYCLING AND ECONOMIC DEVELOPMENT INITIATIVE OF SOUTH AFRICA

Budget speech May 2016

“ The REDISA waste tyre Management Plan launched in 2012 has been cited internationally as best practice for waste management”

Budget speech May 2016

Minister of Environmental Affairs

Budget speech May 2016

REDISA NPC
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Nature of the Plan

- It has a time horizon of several years
  - leases of depot premises (3 to 5 years)
  - incubation of and support for small businesses (1+ years)
  - contracts with depot owners and transporters (2 to 3 years)
  - establishing a product testing institute in conjunction with NMU (construction and implementation – 3 years)
- It is able to enter such contracts because it is assured of a monthly fee from producers-
- for at least 5 years and
- subject to Ministerial review at the end of 2017, for a further 5 years

The tyre levy proposed in the 2015 Budget is intended to reduce waste, while encouraging reuse, recycling and recovery, and discouraging disposal into landfills. This levy will be implemented at a rate of R2.30/kg of tyre, effective 1 October 2016. The levy will replace the current fee arrangements for tyres, as regulated by the Department of Environmental Affairs

Treasury presentation April 2016

REDISA NPC
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Change in funding model

- Section 13 of the Bill fundamentally changes the funding model under the approved Plan
- The purpose of the Bill is to replace the monthly fee paid by producers directly to REDISA with an environmental levy
- The replacement of the fee with a levy means that the funding of the REDISA Plan is-
  - subject to appropriation and a DEA allocation on an annual basis and accordingly uncertain
  - that its time horizon is radically shifted from a 5 year or longer time horizon to one year
  - its own budget and planning for the year is severely constrained
  - it will have to alter its contracting periods which will lead to an unwillingness to invest in the waste industry
  - lack of certainty will hamper the full realisation of both its environmental and non-environmental obligations under the Plan, particularly the creation of small businesses and jobs

Reason for the change

- Treasury has made it clear that the fees paid in terms of the approved Plan are a tax for the following reasons-
  - no fee is authorised by the legislation
  - the fee is compulsory
  - there is no ‘quid pro quo’ – no reciprocal benefit for the fee paid

Why the fee is not a tax

- Example of a bargaining council under the LRA-
  - a council is established in terms of the LRA
  - it performs public functions such as dispute resolution and the provision of benefits
  - the Minister extends a collective agreement to all employers and employees in the sector obliging them to fund the bargaining council
  - the fee paid is paid directly to the council

Failure to fund REDISA from 1 October

- No provision has been made by Treasury to fund REDISA for the balance of this financial year (6 months)

- Obligations and targets under the Plan are premised on 5 years of income.

- The effect of cutting off REDISA's funds mid-term without providing it with alternative funding means a 10% reduction in its funding

Impact of cutting off the funds on 1 October

- Board of REDISA in accordance with principles of good governance take measures such as-
  - not entering into new contracts or renewing contracts with small businesses which may go out of business
  - cutting back on its establishment and support for small businesses
  - cutting back on subsidising processors to remediate tyres
  - putting on hold the current phase of the roll out of the Plan

Impact of cutting off the funds on 1 October

- The cutting off funds and a slow down will mean that the entire network will fall apart
  - there is insufficient value in waste tyres for the industry to be self-sustaining at this stage
  - the slowing down of processing will mean that existing depots will reach capacity in months
  - the non-renewal of transporter contracts will mean stockpiling at tyre dealers
  - the waste tyres will be diverted to dumps

Retreaders and exporters

- REDISA Plan provides for credits and refunds for producers who export tyres
  - because exported tyres do not constitute an environmental liability for South Africa
- It does not impose a levy each time a tyre is retreaded
  - because environmental policy underlying the Waste Act is to-
    - prolong the use of a product that turns into waste and
    - re-use of waste products

Constitutionality of section 13

- REDISA's legal advice is that the imposition of the levy is unconstitutional because it is irrational and liable to be set aside under the principle of legality (rule of law)
  - failure to consult with REDISA and the waste industry before the decision was taken in 2015 to replace the fee with a levy
  - the underlying reason is based on a mistake of law – the fee is not a tax
  - it purports to be a bill contemplated in section 13B of the Waste Act when it is and cannot be such a bill.
  - it cuts off REDISA's funds mid term without providing it with alternative funding to meet its obligations under the Plan

Conclusion

- It is evident that the full implications of the imposition of the levy in terms of section 13 of the Bill has not been thought through

- Recommendation

  – that section 13(2) and Part III of Schedule II be deleted because it is unconstitutional
  – *Alternatively* in the light of the impact of the imposition of a levy without alternative funding for the next 6 months, that the proposal be deferred to next year for fresh consideration

THANK YOU