Uber

The Chairperson
The Portfolio Committee on Transport
Attention: Mr. M J Zwane, MP and Valerie Carelse
per email: vcarelse@parliament.gov.za

31 July 2020

Dear Chairperson,

RE: UBER'S SUBMISSION ON THE ECONOMIC REGULATION OF TRANSPORT BILL, 2020

1. **Introduction**

1.1 Uber BV ("**Uber**") welcomes the opportunity to make these submissions on the Economic Regulation of Transport Bill, 2020 (the **"Bill"**).

1.2 As per our previous submissions made with regard to the Economic Regulation of Transport Bill, 2018 (the **"2018 Bill"**), dated 23 November 2018 and attached hereto as **Annexure "A"** (the "**2018 Submissions**"), Uber supports the objects and purports of the Bill which are, amongst others, to ensure operational and price efficiency amongst transport operators in South Africa. In order for the Bill to be enforceable and effective, Uber notes that the Bill should take into account the views of legitimate stakeholders. Uber, as an affected and interested stakeholder in the transport industry, has previously made submissions to (i) the Department of Transport ("**the Department**") relating to the National Land Transport Amendment Bill and to the 2018 Bill; and (ii) to the Competition Commission (the **"Commission"**) during the Public Passenger Transport Market Enquiry. By taking this opportunity to make these submissions, Uber seeks to engage meaningfully and constructively with the Department to ensure that the Bill is beneficial for all its stakeholders.

1.3 In our opinion, clarity as to what markets, entities and facilities are to be governed by the Bill is needed. However, out of the abundance of caution and in line with our

2018 Submissions, we have assumed for the purpose of these submissions that Uber will potentially fall under the consideration of the Bill in terms of clause 4(2) of the Bill.

1.4 We have structured these submissions as follows:

1.4.1 we have reiterated Uber's position insofar as it relates to the submissions we have previously made in terms of the 2018 Bill;

1.4.2 we have considered the changes (if any) between the 2018 Bill and the most recent version of the Bill;

1.4.3 we have considered the Final Impact Assessment: Economic Regulation of Transport Bill, 2018; and

1.4.4 we have provided general closing comments on the Bill.

2. Reiteration of 2018 Submission

2.1 Uber had made comprehensive submissions on the 2018 Bill in terms of its 2018 Submissions. For the ease of reference, these 2018 Submissions are appended here as **Annexure "A"**. Unless otherwise stated herein, and notwithstanding the fact that references to applicable sections may have changed in the Bill when compared to the 2018 Bill, where the content of those sections remain the same and/or substantially similar to those of the 2018 Bill, Uber's position, as detailed in its 2018 Submissions, remains current and valid in so far as it may apply to the Bill.

3. Comparison of the Bill and the 2018 Bill

3.1 From a high level consideration of the Bill, it would seem that there has not been a significant change to the Bill when compared to the 2018 Bill. The only change that is immediately apparent is the minor consolidation and rearrangement of sections. For illustration purposes, when one considers section 5 of the 2018 Bill and compares it to sections 5, 6 and 7 of the Bill, it can be noted that the three sections of the most recent text of the Bill speak to the same and/or substantially content as the single section in the 2018 Bill.

3.2 Furthermore, upon closer inspection of the text of the Bill in comparison with the text of the 2018 Bill, it is clear that, apart from minor grammatical and other such changes, there is no significant difference between the texts of the 2018 Bill and the more recent Bill.

3.3 For the purposes of this submission, we had considered the text of those sections that formed part of our previous analysis in our 2018 Submissions to determine if the text of such sections had been amended or otherwise updated. This comparison is attached hereto as **Annexure "B"**.

3.4 In comparing the relevant sections between the 2018 Bill and the more recent Bill, it is clear that there has been no significant change between the two versions since Uber's 2018 Submissions. It is Uber's submission that any changes made to the text of the relevant sections in the Bill and canvassed in our 2018 Submissions, neither cure the issues previously highlighted nor detract from the validity of such 2018 Submissions.

3.5 As such, and as stated earlier in paragraph 2.1. above, Uber wishes to reiterate its previous position as contained in its 2018 Submissions, in particular, those submissions as they relate to:

3.5.1 concurrency of jurisdiction;

3.5.2 price controls; and

3.5.3 the access to information.

3.6 It is also important to note that the Competition Commission has made several interim recommendations in response to the Public Transport Market Inquiry. Among those interim recommendations, the Commission has recommended against the implementation of price regulations insofar as they had been proposed for e-hailing operators. In light of this, it is submitted that a similar approach be considered by the Department of Transport.

4. The Socio-Economic Impact Assessment of the 2018 Bill

4.1 In its 2018 Submission, Uber reserved the right to comment further pending the publication of the then yet-to-be-published Final Socio-Economic Impact Assessment

of the 2018 Bill ("SEIAS"). As the final SEIAS has now been published, Uber wishes to bolster its 2018 Submissions as follows.

4.2 In terms of the Problem Statement of the final SEIAS, it is clear that the introduction of the 2018 Bill, and the more recent Bill, were in response to the Government seeking to "*ensure the efficiency and cost-effectiveness of [South Africa's] transport system in order to meet its economic and social goals.*"

4.3 In consideration of the intended ambit of the SEIAS, it becomes apparent that the all-encompassing nature in which the Bill may be applied (as contemplated by section 4(2)), is not as was intended by the legislature. It is our submission that, in seeking to regulate operators who have a wider, national importance such as the South African National Roads Agency ("SANRAL"), the Airports Company of South Africa ("ACSA") and South African Airways ("SAA"), the legislature is proposing law that may have an unanticipated and unintended effect on stakeholders in the private sector; stakeholders it had not considered in its drafting of the Bill.

4.4 It is our submission that section 4(2) of the Bill be amended so as to limit the application of the Bill to those entities that the Government had intended the proposed law apply ro and as more fully described in the SEIAS.

5. **Conclusion**

5.1 We would like to take this opportunity to thank the Department for allowing us the opportunity to make submissions on this important piece of proposed legislation. Uber appreciates having been given this opportunity to make these submissions. We are willing to amplify any of the submissions that we have made and would welcome an opportunity to make oral submissions at the appropriate time so that our proposed amendments can be canvassed more fully.

5.2 Uber reserves the right to amplify, retract or otherwise modify these and any other submissions previously made by it.

UBER

Uber

The Director-General
Department of Transport
Attention: Mr Moeketsi Sikhudo
per email: ster@dot.gov.za

23 November 2018

Dear Director-General,

Comments on the Economic Regulation of Transport Bill, [2018]

1. Introduction

1.1 Uber BV ("**Uber**") welcomes the opportunity to make these submissions on the Economic Regulation of Transport Bill, [2018] ("the **Bill**").

1.2 Uber supports the objects and purports of the Bill which are, amongst others, to ensure operational and price efficiency amongst transport operators in South Africa. In order for the Bill to be enforceable and effective, Uber notes that the Bill should take into account the views of legitimate stakeholders. Uber, as an affected and interested stakeholder in the transport industry, has previously made submissions to the Department of Transport ("the **Department**") relating to the National Land Transport Amendment Bill and has made submissions to the Competition Commission during the Public Passenger Transport Market Inquiry. By taking this opportunity to make these submissions, Uber seeks to engage meaningfully and constructively with the Department to ensure that the Bill is beneficial for all its stakeholders.

1.3 We have assumed for the purpose of these submissions that Uber, may potentially fall under the consideration of the Bill in terms of clause 4(2) of the Bill.

1.4 We have structured these submissions as follows:

1.4.1 provide a brief background of Uber's operations within South Africa;

1.4.2 consider the question of concurrency of jurisdiction between the Transport Economic Regulator ("the **Regulator**") and the Competition Commission ("the **Commission**");

1.4.3 the potential impact of price controls set out in clause 9 of the Bill on Uber's operations; and

1.4.4 general comments on the Bill.

2. Background

2.1 The Department will no doubt already be aware of how the Uber application operates due to our engagement with the Department in relation to the National Land Transport Amendment Bill. Consequently, we have chosen to provide a short background for context only.

2.2 Uber is a global technology company providing lead generation services in the road-based public transport industry. In mid-2013 it commenced operations in South Africa. Through using Uber's technology, it's application or "app", drivers (who are either transportation providers themselves or are employed by the transportation providers) can connect with potential passengers.

2.3 Uber competes with a number of alternative public transport providers such as metered taxis, car rental companies, point-to-point private hire companies, other app-based services, and privately-owned vehicles. In so doing, it is expanding the market for private hire vehicles and providing scope for new e-hailing rivals to emerge.

2.4 Uber has also expanded the market by providing services in areas previously under-served by public transport, thereby benefiting passengers traveling in poorer areas. Uber's business model has stimulated economic activity and created significant new opportunities for self-employment for driver-partners. The socio-economic benefits from using Uber's technology also include increased road and personal safety for drivers and riders through the use of GPS tracking, increased incident reporting and dissuading drunk driving.

3. **Concurrency of jurisdiction**

We are concerned that the Bill does not fully allow for instances in which two or more decision makers have authority to decide on the same dispute or subject matter (concurrent jurisdiction).

Uber's concern is that the Bill allows for instances in which two or more decision makers, in this case the Regulator and the Competition Commission, have the authority to decide on the same subject matter (concurrent jurisdiction). While the Bill provides for such concurrent jurisdiction, the Competition Act only allows for concurrent jurisdiction is specific circumstances. The proposed legislation will thus not only create confusion but also means that the two acts are conflicted without an indication of which one will prevail. Furthermore, the Bill aims to extend the powers of the Competition Commission.

3.1 Clause 2(4) of the Bill provides a list of laws that will be overridden by the Bill, once it is enacted, if there is a conflict. The Competition Act, 89 of 1998 (the "Competition Act") is not included in this list. Therefore, issues of concurrency between the jurisdiction of the Regulator and the jurisdiction of the Commission arise in the Bill. Such issues arise in both clauses 4 and 41 of the Bill, and are discussed below.

3.2 It is necessary to note here that the Competition Act provides for concurrent jurisdiction in relation to specific conduct. Section 3(1A)(a) of the Competition Act provides:

> "*in so far as this Act applies to an industry, or sector of an industry, that is subject to the jurisdiction of another regulatory authority, which authority has jurisdiction in respect of conduct regulated <u>in terms of Chapter 2 or 3 of this Act</u>, this Act must be construed as establishing concurrent jurisdiction in respect of that conduct.*"

Chapter 2 of the Competition Act relates to prohibited practices and Chapter 3 of the Competition Act relates to merger control.

3.3 The Competition Act goes on to provide (in Section 3(1A)(b)) that the manner in which concurrent jurisdiction is to be exercised must be managed in accordance with an agreement concluded in terms of the Competition Act[1].

3.4 Consequently, in order for a concurrent jurisdiction regime to apply to the Commission, at least two requirements must be met[2]:

3.4.1 the industry or sector must be subject to the jurisdiction of a regulatory authority. This requirement is quite clearly satisfied by the Bill and its creation of the Regulator; and

3.4.2 the second requirement is that the regulatory authority must have jurisdiction in respect of conduct regulated under chapter 2 or 3 of the Competition Act, i.e. prohibited practices or merger control. This requirement is <u>not</u> satisfied by the Bill.

The Bill grants the Regulator and the Commission concurrent jurisdiction where this is not provided for under the Competition Act.

3.5 The Competition Act limits the allowance for concurrent jurisdiction to situations where the other authority, in this case the Regulator, has jurisdiction to judge the competition aspects of (anticompetitive) conduct or to review mergers.

3.6 Clause 4(4) of the Bill provides for the circumstances in which the Minister of Transport may declare whether the Bill applies to a market, entity, facility or service where the preconditions for competition do not exist in the market for the facility or service concerned:

> *"When making a determination in terms of subsection (2)(b), the regulator must have found that-*
>
> *(a) at least one firm operating in the market has market power; or*
>
> *(b) a facility or resource in the market is an essential facility*
>
> *after having received and considered -*
>
> (i) *an opinion from the Competition Commission*

[1]Under sections 21(1)(h), 82(1) and 82(2) of the Competition Act, with Section 21 giving the Commission the responsibility to negotiate agreements with regulatory authorities, and Section 82 dealing with the Commission's relationship with other agencies and what the aforementioned agreements must contain.
[2] according to section 3(1A)(a) of the Competition Act

(aa) after conducting a market inquiry in terms of section 43A of the Competition Act; or

(bb) on the basis of the Competition Tribunal finding anti-competitive abuses have occurred within the relevant market; or

(ii) *a report from the market inquiry, conducted by the Regulator in terms of section 41(2)(b)."*

3.7 However, the powers of the Regulator conferred under Section 4(4) of the Bill correlate to the Competition Commission's market inquiry powers (Chapter 4A of the Competition Act), bringing it in conflict with the concurrent jurisdiction provisions of the Competition Act discussed above) as the Commission can only have concurrent jurisdiction with another regulator in terms of its powers under chapters 2 and 3 of the Competition Act.

3.8 Section 4(4) of the Bill therefore essentially extends the ambit of the Competition Commission's powers beyond those which the Competition Act confers on the Commission. As such, this provision is in conflict with the Competition Act.

3.9 Furthermore, under the current wording of clause 4(4)(ii), the Regulator could conduct its own market inquiry into any market, even where such a market has already been investigated by the Commission. This type of dual inquiry on one market or entity is not reasonable, desirable or fair.

3.10 Clause 4(4) thus not only instils powers in the Commission that were not previously envisaged by the Competition Act (and as such should be deemed invalid), but also provides no clarity around how the concurrency of the Commission and the Regulator's jurisdiction would work practically (on the assumption that the provisions are valid), in relation to the determination of an entity or market coming under the jurisdiction of the Bill and the Regulator.

Market inquiries fall under chapter 4A of the Competition Act and so the Commission should not be subject to concurrency in relation to its powers in this regard.

3.11 The Bill at Clause 41(2) further provides for the Regulator to request that the Commission considers whether particular entities, markets, facilities or services within the transport sector are failing to function competitively or are characterized by anti-competitive behaviour, or the Regulator can conduct a market inquiry itself. This provision therefore once again grants concurrent jurisdiction to the Commission

and the Regulator contrary to the provisions of the Competition Act, as discussed in detail above. It is worth noting that the Commission is currently carrying out a market inquiry of this very nature into the transport sector.

4. **Price Controls**

4.1 The Bill aims to make every "regulated entity," being any entity subject to the legislation listed in clause 2(4) of the Bill, or any entity in the transport sector that the Regulator deems to be a firm with market power or an essential facility, subject to price regulation in accordance with a price control determined by the Regulator.

4.2 The Bill at clause 9(2) seeks to give the Regulator significant powers in relation to the determination of price controls. In addition, regulated entities are required to submit proposals to the Regulator requesting approval of their price controls for the services that they offer. Uber and e-hailing services in general cannot operate under price control provisions as such provisions are problematic because:

4.2.1 they go against the core business model of e-hailing services, as discussed below; and

4.2.2 they may represent an over intrusion on market participants' Constitutional right of freedom of trade.

E-hailing cannot accommodate and does not need price controls.

4.3 E-hailing services such as Uber are based on a relatively new innovation in public transport services. E-hailing services operate in two-sided markets for local transportation, i.e. they must compete for both riders and drivers. A rider will only use the service if he does not have to wait too long for a car, and a driver will only sign up to a service where there are enough riders to make use of her services. The challenge for the technology company such as Uber, therefore, is to make its service (or application) attractive to both riders and drivers, delivering short wait times for riders, and numerous riders for drivers.

4.4 This is further complicated because there are likely to be material "feedback effects" between the two sides. For example, a rider will look for a service that offers low prices, and a driver will prefer a service that offers high fares; therefore price changes need to take into account these competing interests.

4.5 Dynamic pricing, the key benefit this technology brings, is at the core of e-hailing services, and is inherently more efficient than price regulation. When there is higher demand for e-hailing services fares rise because more driver-partners come on board or move to areas of higher demand (e.g. because a large sporting event has just ended and more riders wish to travel at the same time). At the same time, riders either have the option to pay more to avoid the long wait times caused by the congestion, or to wait for the congestion to ease and pay lower prices, or to seek alternative forms of transport. In short, prices adjust in relation to market conditions, nullifying the requirement for price controls.

Does clause 9 implicate market participants' right to freedom of trade?

4.6 Section 22 of the Constitution of the Republic of South Africa, 1996 ("the **Constitution**"), provides as follows:

> "*Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law."*

4.7 Referring to the equivalent to section 22 of the Constitution in the interim Constitution (section 26 thereof), the Constitutional Court in *S v Lawrence*[3] said the following:

> "*Section 26 should not be construed as empowering a court to set aside legislation expressing social or economic policy as infringing 'economic freedom' simply because it may consider the legislation to be ineffective or is of the opinion that there are other and better ways of dealing with the problems. If section 26(1)*[4] *is given the broad meaning for which the appellants contend, of encompassing all forms of economic activity and all methods of pursuing a livelihood, then, if regard is had to the role of the courts in a democratic society, section 26(2)*[5] *should also be given a broad meaning. To maintain the proper balance between the roles of the Legislature and the courts section 26(2) should*

---

3 *S v Lawrence* 1997 (4) SA 1176 (CC) at paragraph 44.

4 Section 26(1) of the Interim Constitution, 1993 provides that "*[e]very person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in the national territory*."

5 Section 26(2) of the Interim Constitution, 1993 provides that "*[s]ubsection (1) shall not preclude measures designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality*."

be construed as requiring only that there be a rational connection between the legislation and the legislative purpose sanctioned by the section."

4.8 The Constitution does not explicitly require trade to be regulated rationally. However, as noted above, the Constitutional Court has incorporated this requirement into the right to a free trade. The threshold for review in this regard is relatively low since there can be no complaint under section 22 of the Constitution as long as the regulation of a trade is rational. This has been emphasised by the Constitutional Court in a long line of cases.[6]

4.9 The Department will need to show that the determination of price controls by the Regulator envisaged in clause 9 of the Bill is rational by showing that the price controls are rationally related to the outcome the Bill is seeking to achieve.

4.10 Given that e-hailing cannot operate under such price controls, our submission is that the price controls constitute stringent regulation of a private entity's pricing. This infringes on Uber's right to freedom of trade. Although clause 9 of the Bill includes a provision that aims to ensure that fair price controls be imposed on the regulated entities, this does not go far enough in ensuring that the interests of the regulated entity are accounted for. To enable the Regulator to set price controls that may limit the total amount of revenue a regulated entity may raise from the facilities and services offered by it (clause 9(2)(a)) is a significant overreach of a governmental regulator's authority and can have disastrous effects on the regulated entity, and in Uber's case, the thousands of jobs that it offers.

5. General Comments

Access to information

5.1 Clause 11 of the Bill provides that regulated entities must provide the Regulator with a widely stated list of information. The Regulator is also permitted to request information that it reasonably required including confidential information.

---

[6] See *Affordable Medicines Trust and others v Minister of Health and others* 2006 (3) SA 247 (CC) at paragraph 78; *Pharmaceutical Manufacturers Association of SA and another: In re Ex Parte President of the Republic of South Africa and others* 2000 (2) SA 674 (CC) at paragraph 90; *Albutt v Centre for the Study of Violence and Reconciliation, and Others* 2010 (3) SA 293 (CC) at paragraph 51 and *Democratic Alliance v President of the Republic of South Africa 2013 (1) SA 248 (CC)* at paragraphs 31 and 32.

5.2 The Promotion of Access to Information Act, 2 of 2000 ("PAIA"), already makes provision for people to request records from private bodies. Private bodies are obliged to grant access to their records if such information is required by a person to exercise its rights. Private bodies are entitled to refuse access to their records on certain grounds.

5.3 We submit that clause 11 is inappropriate since PAIA, an existing piece of legislation, provides a mechanism via which the Regulator can request access to the records of private bodies. Accordingly we propose that clause 11 should be amended by making its provisions subject to PAIA, and should provide that the Regulator may request information from regulated entities via the processes provided for within PAIA.

The Socio Economic Impact Assessment System process

5.4 In 2015 the Cabinet approved the Socio Economic Impact Assessment System ("the SEIAS") which is facilitated by the Department of Planning Monitoring and Evaluation ("the DPME"). The key goal of the SEIAS is to develop and understand the socio-economic rationale for legislation and anticipate the state of readiness of the legislation. SEIAS applies to new legislation.

5.5 Through our attorneys we have contacted the DPME and have received confirmation that an interim SEIAS was undertaken and that a new SEIAS will take place once public comments are received on the Bill. We reserve our right to supplement our submissions upon receiving access to the interim and final SEIAS reports. Access to the SEIAS reports would allow us to comment on the rationale for the Bill and have regard to whether the quantifiable consequences and externalities of the Bill were properly considered.

6. **Conclusion**

Uber appreciates having been given this opportunity to make these submissions. We are willing to amplify any of the submissions that we have made and would welcome an opportunity to make oral submissions at the appropriate time so that our proposed amendments can be canvassed more fully.

UBER

Annexure "B"
Tabulated Comparison of Changes in Text between 2018 Bill and 2020 Bill

	Topic	2018 Bill Section Reference and Text	2020 Bill Section Reference and Text
1.	**Concurrency of Jurisdiction**	s2(4) "*In respect of any matter arising under this Act, the provisions of this Act prevail in the case of an inconsistency between any provision of this Act, and a provision of–* *(a) the South African National Roads Agency Limited and National Roads Act, 1998 (Act. No. 7 of 1998);* *(b) the National Road Traffic Act, 1996 (Act No. 93 of 1996);* *(c) the National Land Transport Act, 2009 (Act No.5 of 2009);* *(d) the National Ports Act; 2005 (Act No. 12 of 2005);* *(e) the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);* *(f) the Air Traffic and Navigation Services Act, 1993 (Act No. 45 of 1993); or* *(g) the Airports Company Act, 1993 (Act No. 44 of 1993).*"	s2(4) "*In respect of any matter arising under this Act, the provisions of this Act prevail in the case of an inconsistency between any provision of this Act, and a provision of* ***any other transport legislation.***"
		s4(2)(b) "*The Minister, in consultation with the Regulator, by notice in the Gazette, may declare that this Act applies to any market, or any entity, facility or service, irrespective whether privately or state owned, within the transport sector, if the Minister has determined that either of the following circumstances apply:* *(a) […] or* *(b) the preconditions* ***for competition*** *do not exist in the market for the facility or service concerned.*"	s4(2)(b) "*The Minister, in consultation with the Regulator, by notice in the Gazette, may declare that this Act applies to any market, or any entity or facility, irrespective whether privately or state owned, within the transport sector, if the Minister has determined that either of the following circumstances apply—* *(a) […]; or* *(b) the preconditions* ***for efficiency and cost-effectiveness*** *do not exist in the market concerned.*"

		s4(4) "*When making a determination in terms of subsection (2)(b), the regulator must have found that-* *(a) at least one firm operating in the market has market power; or* *(b) a facility or resource in the market is an essential facility, after having received and considered–* *(i) an opinion from the Competition Commission -* *(aa) after conducting a market inquiry in terms of* ***Section 43A of the Competition Act;*** *or* *(bb) on the basis of the Competition Tribunal finding that anticompetitive abuses have occurred within the relevant market; or* *(ii) a report from the market inquiry, conducted by the Regulator in terms of Section 41(2)(b).*"	s4(4) "*When making a determination in terms of subsection (2)(b), the Regulator must have found that—* *(a) at least one firm operating in the market has market power; or* *(b) a facility or resource in the market is an essential facility, after having received and considered—* *(i) an opinion from the Competition Commission—* *(aa) after conducting a market inquiry in terms of* ***chapter 4A of the Competition Act****; or* *(bb) on the basis of the Competition Tribunal finding that anti-competitive abuses have occurred within the relevant market; or* *(ii) a report from the market inquiry, conducted by the Regulator in terms of section 43(2)(b).*"
		s41(1)(a) "*The Regulator must––* *(a) negotiate and conclude an agreement with the Competition Commission to co-ordinate and harmonise the exercise of jurisdiction over competition matters, and to ensure consistent application of the principles of this Act; and..*"	s43(1)(a) "*The Regulator must—* *(a) negotiate and conclude an agreement with the Competition Commission to coordinate and harmonise the exercise of jurisdiction over competition matters, and to ensure consistent application of the principles of this Act; and...*"
		s41(2) "*At any time, the Regulator, on its own initiative or in response to a request from the Minister in terms of Section*	s43(2) "*At any time, the Regulator, on its own initiative or in response to a request from the Minister in terms of section*

		43(1) – *(a) may request the Competition Commission to consider whether particular entities, markets, facilities or services within the transport sector are failing to functioning competitively or are characterized by anticompetitive abuses; or* *(b) conduct a market inquiry––* *(i) if it has reasonable grounds to suspect that any feature or combination of features of the market within any transport sector prevents, distorts or restricts competition or leads to anti-competitive outcomes within that market or the economy; or* *(ii) to achieve the purposes of this Act.*"	*45(1)—* *(a) may request the Competition Commission to consider whether particular entities, markets, facilities or services within the transport sector are failing to function competitively or are characterised by anti-competitive abuses; or* *(b) conduct a market inquiry—* *(i) if it has reasonable grounds to suspect that any feature or combination of features of the market within any transport sector prevents, distorts or restricts competition or leads to anti-competitive outcomes within that market or the economy; or* *(ii) to achieve the purposes of this Act.*"
2.	**Price Controls**	s9(2) "*The price control for a regulated entity may comprise––* *(a) a schedule of tariffs, charges, fees, tolls or other amounts that may be imposed by the regulated entity for the use of, or access to, any transport service, or facility offered by that regulated entity;* *(b) a limit on the total amount of revenue it may raise from the facilities and services offered by it;* *(c) a limit on the return it may derive from the assets utilized by it to provide its facilities and services; or* *(d) any other appropriate pricing method, including any combination of the methods contemplated in paragraphs (a) to (c).*"	s11(2) "*The price control for a regulated entity may comprise—* *(a) a schedule of tariffs, charges, fees, tolls or other amounts that may be imposed by the regulated entity for the use of, or access to, any transport service or facility offered by that regulated entity;* *(b) a limit on the total amount of revenue it may raise from the facilities and services offered by it;* *(c) a limit on the return it may derive from the assets utilised by it to provide its facilities and services; or* *(d) any other appropriate pricing method, including any combination of the methods contemplated in paragraphs (a) to (c).*"
		s9(14)(a)	s11(13)(a)

		"*In respect of any facilities or services that are offered by a regulated entity and subject to a price control contemplated in subsection (2)(a), the regulated entity **must** not charge any person more than the maximum established––* *(a) in accordance with the price control as determined and published by the Regulator, or as subsequently reduced in terms of Section 19; or…*"	"*In respect of any facilities or services that are offered by a regulated entity and subject to a price control contemplated in subsection (2)(a), the regulated entity **may** not charge any person more than the maximum established—* *(a) in accordance with the price control as determined and published by the Regulator, or as subsequently reduced in terms of section 21; or…*"
3.	**Access to Information**	s11 "*(1) Each regulated entity must submit to the Regulator, in the prescribed manner and form––* *(a) statistical information related to the transport facilities or services that it provides, or has licenced others to provide;* *(b) forecasts of demand for the transport facilities or services that it provides, or has licenced others to provide;* *(c) development plans for the facilities it operates, or has licenced others to operate, or the services that it provides or has licenced others to provide; and* *(d) any material change in the control of persons it has licenced to operate facilities or provide services.* *(2) The Regulator may request any other information that is reasonably required by the Regulator to perform its functions in terms of this Act, including confidential information, subject to Section 58.* *(3) The Regulator must maintain the confidentiality of information provided to the Regulator in terms of this section, or any provision of this Act.*"	s13 "*(1) Each regulated entity must submit to the Regulator, in the prescribed manner and form—* *(a) statistical information related to the transport facilities or services that it provides, or has licenced others to provide;* *(b) forecasts of demand for the transport facilities or services that it provides, or has licenced others to provide;* *(c) development plans for the facilities it operates, or has licenced others to operate, or the services that it provides or has licenced others to provide; and* *(d) any material change in the control of persons it has licenced to operate facilities or provide services.* *(2) The Regulator may request any other information that is reasonably required by the Regulator to perform its functions in terms of this Act, including confidential information, subject to section 60.* *(3) The Regulator must maintain the confidentiality of information provided to the Regulator in terms of this section or any provision of this Act.*"