



**REGULATING COMMITTEE for Airports Company and Air Traffic
and Navigation Services Company**

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Portfolio Committee on Transport

Parliament of the Republic of South Africa

Cape Town

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Dear Ms Carelse

COMMENTS ON THE ECONOMIC REGULATION OF TRANSPORT BILL [B1 - 2020]

The Regulating Committee, hereinafter referred to as *the Committee*, would like to submit its written comments on the Economic Regulation of Transport Bill [B1 - 2020]. As an introduction, the Committee was established in terms of section 11 the Airports Company Act, 1993 to regulate the airport charges for the Airports Company South Africa (ACSA) as well as the air traffic service charges (together referred to as tariffs) for the Air Traffic and Navigation Services (ATNS). It consists of five (5) members including the Chairperson.

Notwithstanding the above, these comments are submitted with an intention to add value to the Bill. It is the Committee's understanding that this Bill presents the regulatory principles at a high level, which mostly will be implementable through the Regulations that will be developed from this Bill when it officially becomes the Act of Parliament. With that said, the following comments are hereby submitted:

Chapter 3: Economic Regulation of Transport Facilities and Services

Determination of price control:

1. Section 11(5) states that: "*If the proposal for the price control approval relates to a service that is subsidised, the Regulator must consult with a party that is providing a subsidy, in the prescribed manner*". Section 11(6) also requires the Regulator to consider any requests of the subsidising party. It is however not clear to the Committee

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whether these clauses include the aviation industry or not. Clarity should be provided in this regard since the aviation industry operates differently and therefore regulated differently as compared to other industries.

2. Section 11(9)(c) and section 11(10) speak about “*price deviation from the price control*”. The Bill however, is silent on the conditions or criteria in which the deviation will be permitted. The Committee recommends that the conditions should be detailed in the Regulations to be developed from this Bill when it legally becomes an Act of Parliament. In addition, price deviation should be defined in the Bill.
3. Furthermore, the Committee also recommends that “consultation with users or consumers be included and emphasised prior to the approval or disapproval of the price deviation” by the Regulator. This can be included in section 11(10) or section 11(11) of the Bill.
4. The Bill also fails to specify the period of validity of the tariffs to be issued by the Regulator, particularly of the aviation entities. The Committee submits that reviewal of tariffs on an annual basis will not do any good to the aviation industry. As already stated above, the aviation industry is a unique and sensitive industry and therefore, the manner in which tariffs are determined as well as their period of validity have potential to destroy or nurture and grow the industry. In the current legislations that govern economic regulation of ACSA and ATNS, the period of validity of the Permissions that are issued by the Committee in order for these entities to levy tariffs, is clearly stated. This is imperative and should be stated in this Bill.

Schedule 1: Consequential Amendments

Amendment of Airports Company Act No 44 of 1993:

1. Section 2(6) of Schedule 1 of the Bill “*amends the Airports Company Act by the deletion of sections 5(2)(e) and (f), 11, 12(2) to (12), and 14(2) to (4)*”. The Committee strongly recommends that the deletion of these sections should be deferred as these are core to the economic regulation of both ACSA and ATNS. It further recommends that until Regulations are developed, these clauses must be retained for a period of at least five years after this Bill has been promulgated and implemented. In other words, the Bill can be reviewed after at least five years from its inception subsequent to determining whether or not it works adequately for the aviation industry.

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Amendment of Air Traffic and Navigation Services Company Act No 45 of 1993:

2. Section 3(5) of Schedule 1 of the Bill “*amends the Airports Company Act by the deletion of sections 5(2)(e) and (f), 11, 11(2) to (12), and 13(2) to (4)*”. Just like the Airports Company Act, the Committee strongly recommends that the deletion of these sections be deferred as these are core to the economic regulation of both ACSA and ATNS. It recommends that until Regulations are developed, these clauses must be retained for a period of at least five years after this Bill has been promulgated and implemented. In other words, the Bill can be reviewed after at least five years from its inception subsequent to determining whether or not it works adequately for the aviation industry.

On behalf of the Committee, I hereby submit these comments for the Portfolio Committee on Transport’s kind consideration. The Committee will gladly avail itself to engage further with PCOT on the issues raised above, should that be deemed necessary.

Regards,



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MS KENOSI SELANE

CHAIRPERSON: REGULATING COMMITTEE FOR ACSA AND ATNS

DATE: