

DEPARTMENT OF TRANSPORT (DOT)

RESPONSE ON PCOT ADDITIONAL COMMENTS ON THE ERT BILL, 2020

22 FEBRUARY 2022



transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA



DOT RESPONSE ON ADDITIONAL COMMENTS TO THE ECONOMIC REGULATION OF TRANSPORT BILL [B1-2020]

Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
Definitions	"Access"	AASA/IATA/BARSA Suggest changing the term from "Access" to "User".	The definition would read as follows: User: means the use of infrastructure, a facility, or a resource by a user to provide goods or services to their customers.	The difficulty with such issues, that is trying to tailor make definitions for different sectors of transport. This is an aviation sector specific definition. The intention as the definition stipulated in the Bill, focuses on infrastructure and facilities which are catalyst for "Access" of movement of goods and people. Do not see a need to change the definition.
	"Access agreement"	AASA/IATA/BARSA Amend definition of "Access agreement"	Similarly, suggest changing term from "Access agreement" to "user agreement"	The above advance response suffices on "access agreement" definition.
	"Access"	WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS The definition of "Access" should be extended to provide for other <u>types of access seekers</u> ; <u>not only</u> those who provide goods or services to customers.	Revise the definition in light of the comments.	The intention as the definition stipulated in the Bill, focuses on infrastructure and facilities which are catalyst for "Access" of movement of goods and people. Do not see a need to change the definition.
	Definitions – Number 6 of the A-List	WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS The term "infrastructure" should be clarified.	Furthermore, it is assumed that the intention was to state 'in line 61' and not "after line 61". Please consider and revise accordingly.	In agreement with the observation.

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	Clause 4-A-List	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS The inclusion of regulators should follow a process of consultation with such regulators (i.e. before they are included).</p> <p>Further, it is unclear what grounds the Minister may use to determine that a regulator should be included in the Regulator. This should be clarified. If the intention is that the grounds set out in paragraph (b) apply, then this should be stated.</p>		<p>The regulators formed part of the Steering Committee that was to developing this Bill as confirmed by the Ports Regulator of South However, another forum is set up to look at finalising the Business Case and Implementation Plan. All affected regulators have been invited to form part of this Task Team.</p> <p>Furthermore, before the declaration is made by the Minister to include a Regulator as empowered by Clause 4, the respective Regulators will be consulted.</p> <p>Clause 4(11)(b) provides for such grounds. In the main, the operational, financial, personnel and technical capabilities of the TER will be assessed for readiness and viability to house additional or more Regulators. Besides, the identified. Besides, these are by nature and form identified as Economic Regulators with related principles and attributes related thereof.</p>

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	<p>Clause 4: Amendments set out in paragraph 1: addition of subsection (11)</p> <p>4(11)(a)(v)</p>	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS</p> <p>It is unclear what other types of regulators are envisaged in clause 4(11)(a)(v). This should be clarified.</p>	<p>The word 'regulator' should be inserted after the words "any other". Further, the other types of regulators should be clarified.</p>	<p>Accept inserting the word "regulator" after the words "any other" Therefore, only economic regulators will be considered here.</p>
	<p>Clause 4: Amendments set out in paragraph 1: addition of subsection (11)</p> <p>4(11)(c)(i)</p>	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS</p> <p>There is an inconsistency between clause 4(11)(b) and (c) insofar as the report is concerned.</p> <p>In clause 4(11)(b), the drafting of the report is triggered once the Minister has determined that the regulator/s must form part of the Regulator.</p> <p>However, clause 4(11)(c)(i) states that the report must be published before the Minister may consider making a determination.</p>	<p>Correct the inconsistency.</p>	<p>Agree. Section 11(c) should change to section 11(b). The opposite is true.</p>

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	<p>Clause 47: Amendments set out in paragraph 2: omitting (3) and substituting (5)</p>	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS The amendment seems to be incorrect.</p> <p>The correct reference seems to be subsection (3) and not (5). Thus, the clause should remain the same.</p> <p>Subsection (3) deals with the qualifications that members must have. Subsection (5) deals with the fact that members are appointed on a full-time or part-time basis.</p>	<p>Delete the proposed amendment.</p>	<p>What is captured in the A-List is correct due to two clauses added on page 26 after line 25. Therefore, our cross referencing starts from number 5 and not number 3.</p>
	<p>Clause 47: Amendments set out in paragraph 8: 47(12)(b)(iii)</p>	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS The amendment seems to be incorrect. It is unclear how a member of the Council can contravene subsection (13).</p>	<p>Delete the proposed amendment.</p>	<p>Section 47(12)(b) of the Bill provides a clear response to this matter.</p>
	<p>Clause 54: Amendments set out in paragraph 1: 54(1)(a)</p>	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS The word “must” should be retained. It is common to have a provision that says that a Minister “may” make regulations on any matter which may or must be prescribed under an Act.</p>	<p>Delete the proposed amendment.</p>	<p>Keep the word “may” because not every matter may require regulations for the Minister’s determination.</p>

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	<p>Schedule 1: Consequential amendments: Amendments set out in paragraph 23: Amendment of section 13(2)(b) of the Airports Company Act, 1993 (Act 44 of 1933)</p>	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS N/A</p>	<p>The word "lines" in paragraph 23 of the description of the amendment should be changed to 'line'.</p>	<p>Agree. Amend as proposed.</p>
	<p>Principal Matters</p>	<p>PRASA Although the greater and founding purpose of the Bill is welcome, the Bill does not address how the key mandate of PRASA as a key expressed Government policy and objective</p> <p>The Bill does not address the issue of the investment required to level the playing fields. This is aligned with the policy considerations, which recognises that "the rail sector has suffered from severe underinvestment in infrastructure and inefficient operations, coupled with underutilisation of the network, with the consequential</p>		<p>This is not the scope of the Regulator. But that of PRASA.</p> <p>The Purpose of the Act on page 8 does emphasise and promote investment on infrastructure. See Section 3(1)(f).</p>

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		<p>obsolete rail infrastructure and rolling stock resulting in the significant loss of market share to road. Rail transport should be repositioned as the preferred land transport mode and backbone with which all other transport modes integrate.</p> <p>We are supporting of section 4 and Chapter 2 of the Bill which proposes that the application of the Bill should be determined by the Minister. But we caution that the opening up of passenger rail should be phased in to harness the development of strong rail public transport sector, without destroying the current operations.</p> <p>It is likely to be made applicable to PRASA, as PRASA may be determined as a single operator that controls more than 70% of the market [urban commuter rail] service [section 4(2)(a); or that preconditions for competition in [that] market does not exists i.e. access to the facility and PRASA being a dominant player?</p>		<p>The comment is noted.</p> <p>The comment is noted.</p>

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	<p>“Economic regulation”</p>	<p>PRASA “economic regulation” means the regulation of <u>markets</u>, entities, facilities or services within the transport sector by determining— (a) the price control for access to facilities or for services; (b) access to facilities or services; and (c) service levels and service conditions;</p> <p>The word “markets” seems to conflate the role of the Competition Commission, whereas the Bill should focus on the conduct of the entities.</p>	<p>We suggest that the term “entity” should be defined to circumscribed the regulated entities</p> <p>The definition be reworded as follows: “economic regulation” means in respect of this Act, the regulation of <u>markets</u>, entities, facilities or services within the transport sector by determining— (a) the price control for access to facilities or for services; (b) access to facilities or services; and service</p>	<p>Do not support the proposal.</p> <p>The definition be reworded as follows: “economic regulation” means <u>in respect of this Act</u>, the regulation of <u>markets</u>, entities, facilities or services within the transport sector by determining— (a) the price control for access to facilities or for services; (b) access to facilities or services; and Service...” The word “markets” should not be deleted. Agree to add words “in respect of this Act”</p>
	<p>Insert new Definition</p>	<p>PRASA At section 43(13, page 25, line 46-48,</p> <p>It appears as follows: <i>“The <u>President</u> may assign to the Regulator any duty of the Republic to exchange information with a similar foreign agency in terms of an international agreement relating to the purposes of this Act”</i></p>	<p>There is reference to the President. The use is not defined. Insert new definition for the “President”</p>	<p>Insert definition for “President” as the President of “means the Republic of South Africa”</p>

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Definitions	Interpretation- page 6	DR DOUGLAS BLACKMUR Add items on the definition of “Economic Regulation”	It is respectfully suggested that the definition of “Economic Regulation” be extended by adding the following sub-clause: “(c) any other Transport matter(s) that may have important consequences for the economic development of South Africa and/or for the achievement of the equity objectives of the South African national government”.	The proposal is noted. But it is already addressed by Clause 3(1)(a) and 3(2)(b). No need to modify the definition for “Economic Regulation”.
Definitions		DR DOUGLAS BLACKMUR Add definition of the Ports Regulator of South Africa	It is respectfully suggested that a definition of “The Ports Regulator of South Africa” be included in the definitions.	The Ports Regulator of South Africa will be none existence after the establishment of the Transport Economic Regulator. Thus, the definition will serve no purpose.
		DR DOUGLAS BLACKMUR	Propose inclusion of the following: Add: “(4) the [Authority] Regulator may enter into an agreement with a licensed operator or a party to an agreement or a port user for the variation of any tariff contemplated in subsection (1).”	Item 1(6)(c)(7)(b) of Schedule 1 in page 37 deals with this matter. Thus, no need for inclusion.
Purpose of the Act	Section 3(1)(d) on page 8	FREIGHT LOGISTICS ASSOCIATION (FLA) Clause 3(1)(d): “establish appropriate institutional arrangements and procedures to support the consistent economic regulation of transport facilities and services;”	The terms of the Bill introduce another level of restriction on private sector commercial transport operations by empowering the civil service to apply restrictive regulations where there is no proven need for them In its current form the Bill implies an increase in unnecessary bureaucratic	The Bill aims to deal will abuse of the market power and monopoly. It is not intended to stifle the economy nor increase the level of compliance to legislation unnecessary. No suggestion is made. But the comment is noted.

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			interference with industry, grounds for increased litigation, and additional cost to government with no benefit to anyone.	
	Section 3(2)(a) & (b)	<p>FREIGHT LOGISTICS ASSOCIATION</p> <p>The purposes of this Act are to be pursued in a manner that promotes— (a) the development of small and medium enterprises; and (b) the achievement of equality through measures designed to advance persons or categories of persons historically disadvantaged by unfair discrimination in the operation of and access to transport facilities and services.</p>	<p>The title of the Bill is Economic Regulation, but it includes further social engineering</p> <p>This is patent interference and manipulation of competition, where there are absolutely no current obstacles to the market.</p>	<p>Transformation and advancement of broad-based Black Economic Empowerment are key pillars of our country. Thus, unavoidable.</p> <p>It is difficult to understand the view that there is competition in the transport sector when the rail and the ports sector has attributes of monopoly and monopolistic behaviour which market failures</p>
Application of Scope	Section 4	<p>FREIGHT LOGISTICS ASSOCIATION</p> <p>Section 4 on page 8</p>	<p>The Bill fails to define which sectors are to be regulated, why they should be regulated, and how the Regulators of each mode will function. As it stands it can apply economic regulation to anything from donkey carts, and taxis, to bulk railway operations without specifying how or why they need to be regulated.</p>	<p>The scope of application is very clear in Section 4 and clearly indicates that those areas regulated now will continue to be regulated. New areas with monopoly and market power will be considered for regulation. In future</p>

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		<p>FREIGHT LOGISTICS ASSOCIATION Section 4(2) on page 8: “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.”</p>	<p>The Bill gives sweeping powers and authority to the Transport Ministry which has a deplorable 30-year history of creating impractical, and ineffective commercial transport regulations. It fails to provide adequate description of any identified need for such actions.</p>	<p>No need to make changes to Section 4(2) on page 8. It is a futuristic clause in case monopolies exist.</p>
	<p>Clause 2(5)-A-List</p>	<p>PORTS REGULATOR OF SOUTH AFRICA Insertion of the word “processing” in section 2(5) to read; the access, protection, “processing” and dissemination of information, including personal and confidential information</p>		<p>Agree and accept the proposal.</p>
	<p>Clause 4: A-List</p>	<p>PORTS REGULATOR OF SOUTH AFRICA The Ports Regulator notes the proposed amendments as they relate to incorporation of other regulators into the Regulator. However, when the amendment is read together with schedule 2 on transitional arrangements, it is clear that the Ports Regulator of South Africa cease to exist and becomes the Regulator.</p>	<p>However, there are no transitional arrangements that addresses the fundamental change in the nature of the Regulator and decision making on price regulation</p>	<p>In terms of the fundamental changes to the nature of the Regulator, the new law will be applicable wrt structure inclusive of the CEO and the Executive Officers. The will occur wrt to operational and technical decision making which includes tariffs determination. Currently the Bill caters for continuation of the decision making of tariffs. However, by a different collective. The different collective is now the Executive Panel.</p>

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				In view of the above, the comments are not making any recommendations to Clause 4 in the A-List.
Establishment of the TER	Clause 29	<p>PORTS REGULATOR OF SOUTH AFRICA Section 29 (2)(b) establishes the Transport Economic Regulator as a Constitutional Body and not a Schedule 3A which is consistent with the proposed amendments by the committee with regards to procedure for nominations of Board members.</p> <p>Section 29 also makes provision for two levels of “regulator decisions” – governance decisions made by the Board and Regulatory decisions made by the Executive Regulatory Panel. The committee is invited to consider inserting a new section 38 on Accountability.</p>		<p>Section 29(2)(b) reads as follows: “is independent and subject only to the constitution and the law;” This is not true that the Regulator will be established as a Constitutional Body. In any case, in the business case, the TER will be established as schedule 3A.</p> <p>The roles and responsibilities of the Board is only on governance. That of the CEO is administering the Regulator. Whereas, the Executive Panel has decision-making powers on economic regulation matters.</p>
	Section 10	<p>PORTS REGULATOR OF SOUTH AFRICA To make provision for cessation, transfer or assignment of access rights to be reported to the Regulator.</p>		This matter is addressed in section 7(2) on 10.

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Application of Act	clause 4(1)	<p>SOUTH AFRICAN ASSOCIATION OF SHIP OPERATORS AGENTS (SAASOA)</p> <p>“It is not clear to us what section 4(1) is meant to achieve. Is this meant to achieve automatic application to, for example, the National Ports Authority? In that case, the legislation does not authorise the Minister to regulate at all but refers to the Ports Regulator, which is answerable to the Minister to regulate. In our view, it would be preferable that the sub-section name the market, entity or facilities concerned rather than leave it to subsequent litigation to determine what it means.</p>	<p>We note that the Proposed Amendments still do not articulate the market, entity or facilities concerned, and in particular do not identify Transnet National Ports Authority, Transnet Port Terminals and Transnet Freight Rail.</p> <p>In our view, all of those entities ought to be expressly identified as entities to which the Bill applies, for the reason that the service levels and pricing of the unregulated divisions of Transnet (SOC) Limited are shockingly poor and unrestrained, respectively.</p>	<p>Section 4(1) is to ensure that current regulated entities continue to be regulated on the implementation effective date of this Bill</p> <p>Section 4(2) applies when new markets/entities or facilities are of monopoly nature. Then, the Minister will make an appropriate determination.</p> <p>In view of the above, there nothing to be concern about.</p>
		<p>SOUTH AFRICAN ASSOCIATION OF SHIP OPERATORS AGENTS</p> <p>It is also our view that the Bill should apply to the South African Maritime Safety Authority.</p>		<p>SAMSA is a safety regulator and thus no need to be Regulated</p>

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		<p>SOUTH AFRICAN ASSOCIATION OF SHIP OPERATORS AGENTS</p>	<p>As previously indicated, we wholly support the application of the Bill to other divisions of Transnet (SOC) Limited. It has become abundantly apparent to us that as the Regulator established under the National Ports Act, No 12 of 2005 restrains the charges of the National Ports Authority, it's other divisions that are not similarly restrained simply increase their charges in order to make up the shortfall. Furthermore, service levels of unregulated divisions of that entity continue to fall and they have a disastrous impact on the South African transport sector. Regulation of Transnet Port Terminals and Transnet Freight Rail is, therefore, imperative and urgent."</p>	<p>Comment noted.</p>

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Application of Act	clause 4(2)	<p>SOUTH AFRICAN ASSOCIATION OF SHIP OPERATORS AGENTS</p> <p>“We do not support the ability of the Minister in consultation with the Regulator in terms of section 4(2) onwards to declare private entities to be subject to the Act on any basis at all. The distinction between the state entities listed above, including SAMSA, and private entities is that the former’s monopoly positions are state sanctioned, whereas there is no state sanctioned monopoly operated by a private entity and competition issues are more than adequately met in the private sector by the principles set out in the Competition Act, No 89 of 1998. To the extent that provision is made for the Regulator to co-operate with other authorities, including the Competition Commission, that will be more than sufficient to deal with anti-competitive issues in the private sector. Applying the Bill to private entities may well hamper free market activities that serve to provide competitive prices and services.”</p>		We do not agree with SAASOA as the Clause is very important

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	S5 Page 9	PRASA In section 1, page 6, lines 53-54, the term “facility” is defined to include the word infrastructure. Yet in section 5 and other parts of the Bill the word “infrastructure is utilised distinct from the term “facility”.	It is desirable that the use of defined terms and the terminology is utilised consistently	Definition for facility is provided. Thus, the two words can be used interchangeable
Types of access requests and access fees	S6(1)(c) Page 10, line 5-8	PRASA The section deals with: <i>“requests to make investments in order to increase the capacity of infrastructure that has been determined in terms of section 4, where the owner of the said infrastructure has declined to make the requested investment to the requested specifications”</i> It is unclear how this subsection is a regulated activity. Even if it is intended to be, it seems that the request can only apply where it is a matter of public policy [for e.g. if the firm concerned abuse its market power/position] and / or government assistance is availed to it and it fails to properly utilise the same. It thus appears that it can only apply where there is government assistance or backing.	Probably this will be desirable if it is done for effecting public policy i.e. as an incident of dealing with abuse of market power or denial of access to an essential facility. However appropriate funding and capital may be required. We suggested the additional wording: <i>“requests to make investments in order to increase the capacity of infrastructure that has been determined in terms of section 4, where the owner of the said infrastructure has declined to make the requested investment to the requested specifications <u>provided that:</u></i> • <u>It is in the in the interest of public policy;</u>	Agree. For example, the President declared through the SONA that there will be third party access to Transnet’s infrastructure There is no need to include these conditions as they may be embedded in the regulations and/or contractual agreements.

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			<ul style="list-style-type: none"> • <u>Access will be requested in respect of the current existing infrastructure of the owner</u> • <u>The current infrastructure of the owner is not rail worthy or it is in a poor state of repair that does not reasonably meet rail industry specifications; and</u> <p><u>The access seeker has demonstrable and sustainable funding;</u></p>	
Contents of access agreements and notification to Regulator	Section 7	AFRICAN RAIL INDUSTRIAL ASSOCIATION (ARIA) Contents of access agreements and notification to Regulator	A blatant disregard of terms of access conditions may not require dispute resolution but an immediate dissolution of the agreement. Suggestion: include i. prohibitions and other conditions that would render the agreement invalid	The comment and the proposal is not realistic because infrastructure is expensive and operators/access seekers are depended on Transnet’s infrastructure. Therefore, Section 8 on page 10 of the Bill is thus appropriate in this instance.
Contents of access agreements and notification to Regulator	8(1)	AFRICAN RAIL INDUSTRIAL ASSOCIATION Section 8 is about the requests for and consideration of access approval by the Regulator	We do not feel the balance of power has shifted sufficiently with this Bill, the infrastructure owner (i.e. TFR) can still frustrate access to the network via section 8. TFR should become a train operator like other operators and in an appropriate period of time, a new entity created to control the maintenance of the network.	The comment is noted specifically on the issue that specifically relates to that the “TFR should become a train operator like other operators.” However, this matter is outside the scope of the Bill. We hope the Rail Policy will address this matter. Not only that because in the SONA, the President announced that Transnet will allow accessibility to its infrastructure. I quote: “Transnet will start the process of providing third-party access to its freight

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				rail network from April 2022 by making slots available on the container corridor between Durban and City Deep in Gauteng.” We need to allow these two processes to unfold.
Requests for and consideration of access approval by the Regulator	Section 8	TRAXTION Section 8 is about the requests for and consideration of access approval by the Regulator	We do not feel the balance of power has shifted sufficiently with this Bill, the infrastructure owner (i.e. TFR) can still frustrate access to the network via section 8. TFR should become a train operator like other operators and in an appropriate period of time, a new entity created to control the maintenance of the network.	The comment is noted specifically on the issue that specifically relates to that the “TFR should become a train operator like other operators.” However, this matter is outside the scope of the Bill. We hope the Rail Policy will address this matter. Not only that because in the SONA, the President announced that Transnet will allow accessibility to its infrastructure. I quote: “Transnet will start the process of providing third-party access to its freight rail network from April 2022 by making slots available on the container corridor between Durban and City Deep in Gauteng.” We need to allow these two processes to unfold.
Cession, transfer or assignments of access rights	Section 10 on page 11	AFRICAN RAIL INDUSTRIAL ASSOCIATION Section 10: An entity that has been granted access approval in terms of Section 9(1) or (2), may cede or transfer any or all of its access rights to a third party, on condition that all its obligations remain fulfilled.	The entity must first notify the infrastructure owner and the Regulator of its intention to cede or transfer access rights. It should also be added that third parties shall not cede or transfer or cede rights to any operator	Agree with the comments. The new Section 10 should as follows: An entity that has been granted access approval in terms of Section 9(1) or (2), may cede or transfer any or all of its access rights to a third party, on condition that- (a) the entity must first notify the infrastructure owner and the Regulator

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				<p>of its intention to cede or transfer access rights;</p> <p>(b) ensure all its obligations remain fulfilled; and</p> <p>(c) third parties shall not cede or transfer or cede rights to any operator.</p>
Appointment of Executive Officers	Section 36(3) and 36(5)	<p>AFRICAN RAIL INDUSTRIAL ASSOCIATION</p> <p>(3) The Chief Executive Officer holds office for a term of four years</p> <p>(5) Each Executive Officer—(a) holds office for a term of five years, subject to subsection (6)</p>	Why not four years like the Chief Executive Officer?	Do not need to make any changes as this covers a staggering appointment to avoid a risk of all Executives leaving at the same time
Cession, transfer or assignment of access rights	S10 Page 11, line 20	<p>PRASA</p> <p>An entity that has been granted access approval in terms of section 9(1) or (2), may cede or transfer any or all of its access rights to a third party, on condition that all its obligations remain fulfilled</p>	<p>The cessionary should be able to meet the requirements for access. Therefore, we suggest that the following wording [underlined and in bold] should be inserted:</p> <p>An entity that has been granted access approval in terms of section 9(1) or (2), may cede or transfer any or all of its access rights to a third party, on condition that all its obligations remain fulfilled, <u>provided and on condition that the third party cessionary demonstrates that it is able and will remain liable for and meet the obligations of the infrastructure owner</u></p>	<p>The new Section 10 should as follows: An entity that has been granted access approval in terms of Section 9(1) or (2), may cede or transfer any or all of its access rights to a third party, on condition that-</p> <p>(a) the entity must first notify the infrastructure owner and the Regulator of its intention to cede or transfer access rights;</p> <p>(b) ensure all its obligations remain fulfilled; and</p> <p>(c) third parties shall not cede or transfer or cede rights to any operator.</p>

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
Price Regulation	Section 11(3), 11(4) & 11(8)	<p>REGULATING COMMITTEE Section 11(3) <i>“Each regulated entity must submit a proposal to the Regulator, requesting approval of a price control for facilities and services offered by that regulated entity”</i> Section 11(4) <i>“When considering a proposal submitted in terms of this section, the Regulator must-“</i> Section 11(8) <i>“The Regulator must consider each price control proposal on its merits in terms of subsection (4), and may...”</i></p>	<p>The word “proposal” to be replaced by “<u>Board approved Business Plan</u>”</p>	<p>Keep the word “proposal” in all listed clauses as this follows from or strongly related to the main clause Section 11(1) & (2) on page 11.</p> <p>In addition, you do not want to only prescribed <u>only</u> the “Board approved Business Plan” to the regulated entities. Regulated Entities can use other documents to motivate for the proposal such as annual reports, research or study conducted, models applied, business case, etc. The emphasis of the types of information required is captured by section 14(1), 14(2), 14(3) & 14(4) on bottom page of page 13: The heading reads “Regulatory accounting and disclosure requirements”</p>
Price Regulation	Section 11(7), page 12	<p>REGULATING COMMITTEE <i>“If the level of an existing subsidy changes materially, or a subsidy is introduced for a new service, the Regulator, on request by any interested party, may undertake research on the impact of the subsidy on intermodal competition, and provide an opinion to the party providing the subsidy and the requesting party”.</i></p>	<p>We request more clarity on this matter and specify the mode of Transportation being referred to.</p>	<p>The comment comes from the aviation sector wherein the ACSA and ATNS are not subsidised. Clause 11(7) is more applicable to regulated entities which are subsidised such as PRASA. It may be applicable to entities that may be subsidised by Government, for example, Taxis. Clause 11(7) must be read together with clause 11(5) on page 12.</p>

DOT RESPONSE ON ADDITIONAL COMMENTS TO THE ECONOMIC REGULATION OF TRANSPORT BILL [B1-2020]

Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
Chapter 3	Clause 11(9a)	<p>AASA/IATA/BARSA Clause 11(9a): <i>“When determining a price control, the Regulator may impose conditions that-</i> <i>(a) provide for an annual adjustment to reflect changes in the relevant price index;”</i></p>	<p>This clause appears to be incomplete; the RC applies an CPI-X approach (X being an efficiency factor), but the current clause seems to only allow for an inflation adjustment. Suggest the following amendment: a) provide for an annual adjustment to reflect changes in the relevant price index, <u>as well as efficiency factor adjustments.</u> There is no mention of the 5-year permission remaining as is subject to discretionary annual adjustment.</p> <p>There is also no mention of the duration of the price control nor the possibility of having an Approach Document (as currently envisaged in the Airports Act). Do we read the Economic Regulation of Transport Bill in conjunction with the provisions of the Airports Act?</p>	<p>Clause 11(9a) towards the end has “...relevant price index.” This is a way to provide for any tools for inflation/price adjustments. For example, the Producer Price Index, etc.</p>
Chapter 3,	Clause 11(9b)	<p>AASA/IATA.BARSA Chapter 3, clause 11(9b): set service standards in respect of any activity that is subject to the price control; or</p>	<p>The Regulator should be empowered to adjust prices if those standards are not met. Suggest the following addition: Chapter 3, clause 11 (9b): set service standards, <u>and a price rebate mechanism if they are not met</u> in respect of any activity that is subject to the price control; or</p>	<p>The suggestion is welcomed.</p>

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
Chapter 3	Clause 11(9c)	AASA/IATA.BARSA Delete clauses 11(9c), 11(10) and 11(11).	In order to avoid any discrimination among airlines, the price modifications related to changes in service standards should be offered to all parties (not to one under a separate agreement). This could be done within the price determination and not outside of it. Recommendation: Delete Clauses 11(9c), 11(10) and 11(11)	Do not agree with the proposals. These clauses are important elements of the price control and price deviation.
Price Regulation	Section 11(10), page 12	REGULATING COMMITTEE <i>“Before the price deviation is implemented, the relevant regulated entity must submit, to the Regulator, - see statements 11(10) (a), (b) and (c)”</i>	Include sub-section <i>(d) Entities to submit Board approved business case and financial analysis to substantiate affordability by the users.</i>	The understanding is the same when the recommendation is read together with Clause 11(10) (a), (b) and (c) statements. The only difference with the Bill is not to limit the information that can be provided to substantiate price deviation only to approved business case and financial analysis. Therefore, this clause should not be included.
Price Regulation	Section 11(11), page 12	REGULATING COMMITTEE Section 11(11): <i>“Within 15 business days of receipt of the price deviation request contemplated in sub-section 11(10), the Regulator may, within 60 business days review the impact of the proposed price deviation and determine whether or not to approve it.”</i>	<i>“Within 15 business days of receipt of the price deviation request contemplated in sub-section 11(10), the Regulator must hold constructive engagements with the affected entities, within 90 business days to review the impact of the proposed price deviation and determine whether or not to approve it.”</i>	The contestation is on the 60 business days. But the commentary fails to appreciate that price deviation is different to price control. Also, this clause relates to the work that will be done by the Regulator. Upon taking a decision, the Regulator will engage the affected parties. This clause is linked to clause 11(10) on page 12. Additionally, consultation

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
				process for price control is catered for by Clause 11(4) on page 11. We propose that the word “control” be inserted after “price” and before “deviation” on Clause 11(10) of page 12. Thus, clause 11(10) should now read “Before the <u>price control deviation</u> is implemented, ...”
Price Regulation	Section 11(13), top of page 13	REGULATING COMMITTEE Section 11(13): “In respect of any facilities or services that are offered by a regulated entity and subject to a price control contemplated in subsection 11(2)(a),...”	Add Sub section (c)—“A <u>transparent consultation process that values users inputs, works towards consensus and results in informed decision making</u> ”.	The consultation process is provided for under Clause 11(4) on page 11. Not sure how the addition of this to clause 11(13) will add value.
Chapter 3	Clause 12(2)	AASA/IATA/BARSA Clause 12(2): “The Regulators may conduct an extraordinary review in terms of subsection (1)	There needs to be a possibility for an airline association to request for an extraordinary review. Suggest the following amendment in Clause 12 (2) iii: <u>"another person or association of persons..."</u>	No need for this inclusion “ <u>or association of persons</u> ” because clause 12(2)(b) or 12(2)(iii).
Regulatory accounting and disclosure requirements	Section 14 on page 13	REGULATING COMMITTEE Section 14 on page 13: <u>Regulatory accounting and disclosure requirements</u>	Add the entire Section 12 of the Airports Company Act No. 44 of 1998 as amended Economic regulation of company (1) <u>The company shall not levy any airport charge at any company airport unless it is in possession of a valid written permission thereto.....</u> Add the entire Section 11 of the Air Traffic and Navigation	The Bill is not about the aviation only. It is about the entire sector. The sector specific issues will be dealt with in the, for example, tariff book, codes of good practice, etc. This avoids continuous amendments to the primary legislation for operational matters.

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
			Services Act No. 45 of 1993 (1) <u>The company shall not levy an air traffic service charge unless it is in possession of a valid written permission thereto.....</u>	
	Schedule 1: Consequential Amendments	REGULATING COMMITTEE <u>Amendment of Airports Company Act</u> <i>“(6) The Airports Company Act, 1993 (Act No. 44 of 1993) is hereby amended by the deletion of sections 5(2)(e) and (f), 11, 12(2) to (12), and 14(2) to (4)”.</i>	Subsection (f) should be deleted only. The entire Section 12 must be reinstated because it deals with economic regulation of both the entities (ACSA and ATNS)	This section is for consequential amendments so that we do not superimpose information from primary legislation to the ERT Bill. The Bill is not about the aviation sector.
Complaints against regulated	Clause 15 (1)	AASA/IATA/BARSA Clause 15 (1): "Any person may file a complaint with the Regulator, in the prescribed manner and form, alleging that a regulated entity— (a) has unreasonably or improperly refused to issue a licence or amended licence to the complainant;..."	Similar to Clause 12 (2): There needs to be a possibility for an airline association to file a complaint. Suggest the following amendment: "Any person <u>or association of Persons</u> "	The words “any person” on clause 15(1) covers everyone. No need to name or list anyone.
Direct Referrals to Council	Section 16	PRASA The provisions conflate the role of the Council i.e. as Tribunal to hear appeal or reviews from the Regulator. Therefore, to require that the Council should hear direct referral as appeals, weakens the structure of dispute resolution for the following reasons:	We suggest that section 16 should be deleted and consequentially section 48(1)(a) at page 27, line 21	The proposal is not supported because the clauses are straightforward. That is, hearing of direct referrals as appeals does not weaken the structure of the dispute resolution process.

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		<p>1. The Regulator has investigatory capacity and prerogatives under section 15, which assist in ventilating the complaints;</p> <p>2. Will impact on the closure / finality of the complaint, as the tribunal should be the final legislated remedial process. Section 16(6) suggest that a complaint can be referred back to the entity against which the complaint has been lodged</p>		
Directed Price Control Reduction	Section 21	<p>FREIGHT LOGISTICS ASSOCIATION (Ch 3: 21) <i>“Regulator may direct a reduction in the current applicable price control for any facilities or services provided by a regulated entity.”</i></p>	<p>The Bill totally ignores the fact that the freight transport sector is the key element of industrial supply chains and that all and any decisions affecting the sector have immediate economic impacts of the logistics of the industries concerned. Regulation is by definition a form of restriction.</p> <p>If the restrictions cause reduction or withdrawal of services, the economic impacts will aggravate industrial decline and add to the current unemployment crisis.</p>	<p>A directed price control reduction is a form of penalty which can be levied on a firm which has contravened the Bill. It will only be levied after due process has been observed, for a finite period. In principle it is equivalent to a fine, but with the advantage that the money is distributed to customers, and thus restitution is made during the price reduction period.</p> <p>It will apply to the regulated entity that contravened the Act. We were mindful of how Transnet and other institution within transport are legally, divisionally and with subsidiaries are structured.</p>

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
Determination of Price Controls	Chapter 3, Section 11(1)	<p>FREIGHT LOGISTICS ASSOCIATION</p> <p>Section 11(1): “Every regulated entity is subject to price regulation in accordance with a <u>price control determined by the Regulator.</u>”</p> <p>Section 11(2): “The price control for a regulated entity may comprise— (a) a <u>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;</u>”</p>	<p>The Economic Regulation in this Bill must not attempt to regulate rates, tariffs, and fares for commercial transport services (passenger or goods).</p> <p>The sole focus of this Bill must be the regulation of charges between suppliers of infrastructure (government agencies) and the users of the infrastructure. The continual mention in the Bill of regulation of services, must be more carefully defined or eliminated</p>	<p>There is agreement with the comments except that the focus should not only be on public sector institutions. A case in point are arguments about the Richards Bay Coal Terminal. No need to make any changes.</p>
Specific Functions of the Bill	Not related to any specific section of the Bill	<p>FREIGHT LOGISTICS ASSOCIATION</p> <p>In rewriting the Bill there must be specific clarification and limitation of each element to be regulated in each mode.</p>	<p>Ports Regulator – The activities of the Ports Regulator are very properly focused on the charges by the monopoly supplier of infrastructure and services, Transnet. The National Ports Act (12 of 2005) recommended the separation of Port Authority and Terminal operations and commercialisation of all services.</p> <p>Railways Economic Regulator– The creation of a Rail Economic Regulator is a pre-emptive move to prepare for creation of a state Railway Infrastructure Agency (RIA) independent from train operators (both SOC and private sector). The sole mandate of the Railway Economic Regulator must be the control of charges proposed by the RIA</p>	<p>Noted the comment. But this is the Status Quo.</p> <p>Chapter 2 of the Bill aims to address this vacuum. But the proposal for the Rail Infrastructure Agency (RIA) is not part of the scope of the Bill</p>

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
			<p>in terms of track access, slot, or train-path fees. Chapter 2 of the Bill should be rewritten by someone with an understanding of the requisite commercial and operational relationships to establish equitable competitive railway operations.</p> <p>Road Freight and Passenger Regulator – The only areas which could be controlled by a regulator of commercial road transport would relate to toll fees, and levies for the Road Accident Fund both of which are approved by the Minister of Transport. Any attempt at regulating charges for freight and passenger services will interfere with market competition and efficiency.</p> <p>Air Transport Regulation – If there is to be regulation of the air transport sector it will relate to the charges by airport operators to airlines and to air freight logistics operators. It is not possible to regulate airfares or air cargo rates.</p> <p>Pipeline Transport – For completeness there should be Economic Regulation of pipeline charges under the same framework as other modes, but that would imply the transfer of this function from NERSA.</p>	<p>Noted the comment.</p> <p>Noted the comment. But this is the Status Quo.</p> <p>Noted the comment. But this is the Status Quo. It is a matter outside the scope of this project</p>
Right to appeal to	Clause 22(2): (2)	AASA/IATA/BARSA	As previously mentioned, there is a need for associations to be able to appeal to the	The words “ any person ” are sufficient as in their above comments.

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
Council or apply for review		Clause 22 (2): (2) The persons who may appeal or apply to the Council for review is any person adversely affected by a certificate, notice, decision, determination or ruling issued or made by the Regulator.	Council. While section 21 "sort of" picks this up, this process is related to a complaint, rather than being part of the design of an economic regulatory framework. ".... for review is any person, <u>or association of</u> adversely affected by a certificate, notice, decision..."	
Decision at the end of the hearing	Clause 28(1):	AASA/IATA/BARSA Clause 28(1): 28. (1) Within 20 business days of the conclusion of a hearing, the panel that heard the matter must publish a decision, together with written reasons for the decision on the site	20 business days is realistically too short a time to deal with an appeal regarding a charge's decision by a regulator. Suggest modifying this to 3 months, at least for appeals related to 22 (1) (a) (i.e. determination of price control by Regulator)	Just a misunderstanding on the interpretation. The 20 business days is for only publishing the decision and for the whole hearing/appeal. That is, this is for the decision at the end of the hearing.
	Clause 28 (3)	AASA/IATA/BARSA Clause 28 (3): (3) When considering an appeal or review of a price control determined by the Regulator, the Council must- fa) assess the— (i) process followed by the Regulator in approving the price control; and (ii) general reasonableness of the price control; and (b) either affirm the price control as determined by the Regulator or refer the price control back to the Regulator for re-consideration	Replace the term "general reasonableness" with "appropriateness"	The words " general reasonableness " are sufficient for the Bill.

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
Regulator's Executive Structures	S34(5) Page 21, lines 50-51	PRASA For certainty, the additional Executive Committees should not have the same authority as those constituted under the Act. In addition the Board cannot have powers to create executive committees whose authority is not established under the enabling legislation. Therefore only the Minister by prescription of <u>law i.e.</u> Gazetting should provide for these powers.	We suggest that the clause be amended as follows: The <u>Minister Board</u> , on the recommendation of the Chief Executive Officer <u>Board</u> , may establish other Executive committees to address particular matters <u>and provide for their authority and power</u>	Do not agree with the suggestions because the Minister will be interfering with the work of the Regulator.
Chief Executive Officer	35(1)(b) Page 21, lines 57-58	PRASA Under section 34(4), this is the function of the Executive Regulatory Panel. The section seems to detract from that provision.	We suggest that section 35(1)(b) to (d) inclusive be deleted, as the function is covered under 34(4). Alternatively, the advisory function contemplated under section 35(1)(b) to (d) be that of the Executive Regulatory Panel and not the CEO.	It is important to isolate the exact additional functions of the CEO which are not for the Executive Officers. Noting that Executive Officers of not part of the Board. No changes are needed.
Appointment of Executive Officers	S36 Page 22, lines 20-36	PRASA The Regulator fulfils a critical function that requires suitably skilled and experienced person to be appointed. It is desirable that the appointment is transparent and hence the minimum	Therefore, section 36 should be augmented with minimum qualifications and experiences for the Chief Executive Officer and the Executive Officers	Section 36(1) is very clear and no need for modification.

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		qualification and experience should be indicated		
Functions of a Regulator	Clause 38	AASA/IATA/BARSA Read Clause 38 in totality	<p>Elements that were included in the Airports Company Act and not included in this law. In this regard, suggest the following additions to Clause 38:</p> <ul style="list-style-type: none"> • Promote the reasonable interests and needs of users • Restrain the regulated companies from abusing their monopoly position • <p>Also, for (e) make the following addition: (a) promote appropriate, <u>adequate and efficient</u> investment in transport facilities and services;</p> <p>(h) after a consultative process with the Regulated Company and users</p>	<p>In general, the objective of economic regulation is to protect the public interest which includes users. Thus, the Bill aims to deal with abuse of power and monopoly.</p> <p>Adopt as proposed: “(e) promote appropriate, <u>adequate and efficient</u> investment in transport facilities and services;”</p> <p>No need to insert it (h) as part of Clause 38 because it is covered by Clause 39(1)(b) On page 23.</p>
Functions of the Regulator	S38 Page 23, line 1-5	PRASA Section 38(c) provides that the Regulator must: “ <i>promote efficiency in transport facilities and services by facilitating competition, <u>where possible</u>, and implementing regulations</i> ”	In line with the principle that the Regulator should regulate within the prescripts of law, the factors that determines the feasibility of the underlined section, <i>where possible</i> ”, connotes an exercise of a discretion. We therefore suggest that the factors that	We note that comments. But the proposed additions are not necessary as section 54 talks to the Minister making regulations in a prescribed manner and form.

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
			<p>determines the exercise of the discretion “should be defined, in the Regulations and what factors that the Regulator should take into account in arriving to a conclusion.</p> <p>Therefore the sub section should be revised as follows: Section 38 <i>(b) “promote efficiency in transport facilities and services by facilitating competition, where possible, and implementing regulations, <u>in accordance with the factors prescribed in the Regulations issued by the Minister</u></i></p>	
Research and public information	Clause 42(2)	<p>AASA/IATA/BARSA Clause 42(2) The Regulator may request any person requesting the Regulator to conduct any research in terms of this Act, to fund the cost of the research, and may decline to conduct such research, if the required funding is not provided</p>	<p>Suggested clause <u>"any request for research made to the Regulator must be considered on the merits of its reasonableness and benefits to the industry, after which funding arrangements will be made by the Regulator and other interested parties as may be necessary"</u></p>	Suggestion is supported Clause 42(1)
Price Controls	Item 2(a) of Schedule 2	<p>AASA/IATA/BARSA Price Controls: Item 2(a) of Schedule 2 provides that, if a sector is already subject to</p>	<p><u>Each regulated entity must submit a proposal to the Regulator, and user.</u></p>	Clause 11(4)(a) does indicate that the regulated entities must submit a proposal to the Regulator and interested parties

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		price regulation, such price regulation will remain in force until the Regulator publishes a new price control.		and the public will be consulted. Thus, no need to insert this sentence.
Qualification requirements for Council members	S47 Page 26, lines 35-38	PRASA The Council fulfils a critical function that requires suitably skilled and experienced person to be appointed. It is desirable that the appointment is transparent and hence the minimum qualification and experience should be indicated	Therefore, section 47 should be augmented with minimum qualifications and experiences for the Council Members	Section 47(3) is very clear and no need for modifications.
Finances	Section 50	TRAXTION Section 50 deals with funding of the Regulators and Council	We are concerned that the costs of running the two new entities could run away and create an inefficient bureaucracy funded by operators. The Regulator and Council should be fully funded and controlled by Parliament.	Funding from the fiscus is unavoidable in the short-term, but in the medium term, the institution should be self-funding Principles of how fees charged to regulated entities will be set: <ul style="list-style-type: none"> • Concurrence of the Minister of Finance required • The overall amount of money collected is in line with the needs of the STER/Council and the actual cost of regulation • Checks and balances to ensure the regulator is as efficient as possible in completing the regulatory task, and regulation is only undertaken

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
				<p style="text-align: center;">where it improves economic outcomes – value for money</p> <p>Independent financing critical for regulatory independence</p>
Funding of the Regulator and Council	S50(1)(a) Page 28, line 9-10	<p>PRASA</p> <p>To ensure the independence of the Regulator and the Council, they should be funded by the fiscus and generate income from their activity for e.g. filing fees.</p> <p>The mechanism and cost of the Regulator must be transparent and be prescribed by the Minister</p>	<p>Therefore, we suggest that section 50 be amended as follows:</p> <p><i>50. (1) The Regulator and the Council are each financed from—</i></p> <p><i>(a) the annual fees to be paid by regulated entities; as determined by the Minister</i></p> <p><i>in terms of section 51;</i></p> <p><i>(b) money appropriated by Parliament;</i></p> <p><i>(c) any other fees payable in terms of this Act;</i></p> <p><i>(d) income derived from its investment and deposit of surplus money in terms of subsection (2)(b); and</i></p> <p><i>(e) other money accruing from any other source that does not create a conflict of interest, as determined by Minister and prescribed by Regulation.</i></p>	<p>The suggestions are not supported. That is, excluding the words “as determined by the Minister”, we are allowing self-regulation to take place. At the most, regulated entities will not pay fees to fund the Regulator and Council.</p>
Establishment of Transport Economic Council (TEC)	Section 46	<p>AFRICAN RAIL INDUSTRIAL ASSOCIATION</p> <p>Section 46(1): <i>“The Transport Economic Council is hereby established as an organ of state within the public administration,</i></p>	<p>Please insert the purpose of the council to provide context to its functions in Section 48</p>	<p>Sections 46 and 48 explains the purpose and role of the Council</p>

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		<i>but as an institution outside the public service.”</i>		
	Section 47-A-List	AFRICAN RAIL INDUSTRIAL ASSOCIATION (a) compile a short list of at least nine candidates;	Setting a minimum for the shortlist is restrictive. What if the nomination is for replacement of one member who has resigned or been removed?	Clause 47(3)(a) and (d) of the A-List addresses this matter. This is covered by the clause 47(3)(d) of the A-List
	Section 47(8)	AFRICAN RAIL INDUSTRIAL ASSOCIATION Section 47(8) “When the first appointments are made to the Council, or at any time there is a complete simultaneous turnover in the membership of the Council, the terms of Council members must be varied, so that some of the members are appointed to serve for three years and the remainder for four years.	It’s not clear how 3- year term or 4- year term members determined?	Section 47(8) is very clear its first appointments and/or anytime there is a complete simultaneous turnover in the membership of the Council. Thus, the terms of the Council members must be varied.
Conflicting interests	Section 49(2)	AFRICAN RAIL INDUSTRIAL ASSOCIATION Section 49(2) “Without limiting the generality of subsection (1), an employee, investigator or inspector retained by the Regulator, before participating in any investigation, inquiry or decision by the Regulator,	“Significant relationship” must be defined under definitions. In general terms it refers to a spectrum of close emotional connections.	The definition of “significant relationship” is address by Section 49(3) on page 28.

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		must disclose to the Regulator any significant relationship with a person who is materially affected, or likely to be materially affected, by that investigation, inquiry or decision.”		
Finances	Section 50	AFRICAN RAIL INDUSTRIAL ASSOCIATION	We are concerned that the costs of running the two new entities could run away and create an inefficient bureaucracy funded by operators. The Regulator and Council should be fully funded and controlled by Parliament.	<p>Funding from the fiscus is unavoidable in the short-term, but in the medium term, the institution should be self-funding</p> <p>Principles of how fees charged to regulated entities will be set:</p> <ul style="list-style-type: none"> • Concurrence of the Minister of Finance required • The overall amount of money collected is in line with the needs of the STER/Council and the actual cost of regulation • Checks and balances to ensure the regulator is as efficient as possible in completing the regulatory task, and regulation is only undertaken where it improves economic outcomes – value for money <p>Independent financing critical for regulatory independence</p>
Search and seizure	58(3) Page 32, line 5	PRASA The inspector must always be accompanied by a police officer	We suggest that section58(3) be amended as follows:	

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
			An inspector authorised to conduct an entry and search in terms of section 53 may must be accompanied and assisted by a police officer	No changes should be made from “ may ” to “ must ” due to capacity constraints of authorities. This will happen on a case-by-case situation.
Offences relating to Regulator and Council	64(a)	AFRICAN RAIL INDUSTRIAL ASSOCIATION Section 64: “A person commits an offence who– (a) does anything calculated to improperly influence the Regulator concerning any matter connected with an investigation;”	Delete the word “ calculated ”. It may be problematic since a person may still do something “uncalculated” to improperly influence a Regulator. The transgression is to act out the intention, calculatedness is immaterial.	The Department is amenable to the suggestion.
Schedule 1 Consequential amendments	Item 29(b) of the A-List	AFRICAN RAIL INDUSTRIAL ASSOCIATION Line 10 on page 39 of the Bill	This point is not important	The comment is not clear.
	Schedule 1 Consequential amendments	WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS Although it appears that the National Land Transport Act, 2009 (Act 5 of 2009) (the NLTA), will only be impacted upon during the third phase of the implementation of the Bill, the following provisions of the NLTA (besides those already mentioned in Schedule 1) will also be impacted upon.	It is recommended that section 28 of the NLTA be amended by the insertion of the words “ <u>and any price controls determined by the Regulator,</u> ” after the words “Subject to the Municipal Fiscal Powers and Functions Act, 2007 (Act 12 of 2007),”.	Support that section 28 of the NLTA be amended as proposed

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Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		<p>There appears to be another necessary consequential amendment to the NLTA, namely to section 28 thereof ('Public Transport User Charges'). It is recommended that this provision be amended to make it subject to the direction of the Regulator.</p>		
	Schedule 1: Consequential amendments	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS Section 38 of the NLTA is also impacted upon by the Bill as it will also be subject to the determination of the Regulator.</p>	Municipal Freight Transport Policy and Strategy should be mindful of the Regulator's determinations	The comment is noted and supported.
	Schedule 1: Consequential amendments	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS Section 41(1)(c) of the NLTA (Negotiated contracts) will also be impacted upon. Contracting authorities are empowered to enter into negotiated contracts, one of the purposes of which is "facilitating the restructuring of a parastatal or municipal transport operator to discourage monopolies".</p> <p>This is also a function of the Regulator (please refer to clause 38(a)-(f) of the Bill) and the Regulator should be called upon to</p>		The comment is noted and supported.

DOT RESPONSE ON ADDITIONAL COMMENTS TO THE ECONOMIC REGULATION OF TRANSPORT BILL [B1-2020]

Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		investigate the potential monopoly before the negotiated contract is concluded.		
	Schedule 1: Consequential amendments	<p>WESTERN CAPE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS</p> <p>The Bill will also impact broadly on the provisions of Chapter 6 of the NLTA (Regulation of Road Based Public Transport), especially the rationalisation of existing permits and scheduled bus services. The Regulator would have to do its own investigations and make its determinations on anti-competitive practices (or if it is competitive, efficient and viable).</p>		The comment is noted and supported.
Schedule 1: Consequential Amendments	Schedule 1 on page 37	<p>TRANSNET</p> <p>1.1. The amendments propose that “an agreement on the operation of the terminal or facility and the provision of the relevant services in terms of a performance standard specified in the agreement, should be lodged with the Regulator within 20 business days from the date of last signature to the agreement.” This proposal comes with insufficient time to complete internal administrative processes relating to the</p>	<p>1.1 Transnet proposes 30 business days instead 20 business days</p> <p>1.2 and 1.3 are agreements from Transnet</p>	<p>Agree</p> <p>Noted comments 1.2 and 1.3.</p>

DOT RESPONSE ON ADDITIONAL COMMENTS TO THE ECONOMIC REGULATION OF TRANSPORT BILL [B1-2020]

Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		<p>finalisation of agreements; therefore Transnet recommends that such agreements should be lodged with the Regulator within 30 days from the date of last signature to the agreement- Found in Item 1(6) (a & b) of Schedule 1.</p> <p>1.2. Transnet is in agreement with clause 2(a), which provides for the Authority to monitor and annually review performance with regard to the operation of the terminal or facility and the provision of the relevant services in terms of a performance standard specified in the agreement. This is on the understanding that clarity will be provided on the time required to lodge with the Regulator, also taking into consideration the recommendation of 30 days proposed by Transnet. – Found in Item 1(6)(a) of Schedule 1.</p> <p>1.3. Transnet agrees with the necessary amendments to Section 57 (licence regarding port services and facilities) to ensure a fair, equitable, transparent, competitive and cost-effective operation of the</p>		

DOT RESPONSE ON ADDITIONAL COMMENTS TO THE ECONOMIC REGULATION OF TRANSPORT BILL [B1-2020]

Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
		market in which the licensee will operate as well as compliance with the regulations – Found in Item 1(5) of Schedule 1.		
Schedule 1: Consequential Amendments	Schedule 1 on page 37	TRANSNET The list of amendments includes a change on Section 72 of the National Ports Act, 2005 (Act No. 12 of 2005), from the “Authority’s tariff book” to include the wording “Authority’s price control”.	<p>This proposal does not provide clarity as to whether the Authority is still required to submit the tariff book to the Regulator or not. Currently the tariff book is submitted to the Regulator for approval and sign-off (approval by stamping) in a separate process.</p> <p>Transnet requires clarity as to whether “price control” includes the list of services and charges to customers, which will be approved by the Regulator simultaneously when the price controls are established.</p>	<p>This matter is addressed in Schedule 2 (Transitional Provisions). Specifically, it is Items 2(1), 2(2) and 2(3) of Schedule 2 wherein migration will happen on current arrangements or practices. For example, Item 2(3)(b) on licences.</p> <p>Yes, it includes the list of services and charges to customers, which will be determined by the Regulator simultaneously when the price controls are established as contemplated in Section 11.</p>
Schedule 1: Consequential Amendments	Schedule 1 on page 37	TRANSNET A proposal to amend clause Section 72 of the National Ports Act by substituting subsection (4) which enables the Authority to enter into agreements with licensed operators and port users based on variation of tariffs as contemplated in subsection (1), ...	A proposal to amend clause Section 72 of the National Ports Act by substituting subsection (4) which enables the Authority to enter into agreements with licensed operators and port users based on variation of tariffs as contemplated in subsection (1), will have undesirable consequences. This is on the understanding that “price controls” are prescriptive, and limit tariff variation. It	Clear clauses on these matters are stipulated in Section 7 on page 10. This section talks about contents of access agreements and notification to the Regulator. In principle, the Regulator will get involved when there is a disagreement between access owner and access seeker.

DOT RESPONSE ON ADDITIONAL COMMENTS TO THE ECONOMIC REGULATION OF TRANSPORT BILL [B1-2020]

Issue	Section of Bill	Comment	Recommendations	DOT Response/Action
			<p>is Transnet's view that the Authority's prerogative to enter into varied agreements/contracts of a commercial nature with its customers should continue. The Authority will continue to file submissions of agreements concluded with customers to the Regulator within the recommended period of 30 days.</p>	

NB: Notes highlighted in blue are comments made on the A-List [B1A-2020].