COSATU SUBMISSION ON THE SOUTH AFRICAN POSTBANK BILL [B14-2009] AND THE SOUTH AFRICAN POST OFFICE BILL [B2-2010]

COSATU

PRESENTED TO THE PORTFOLIO COMMITTEE ON COMMUNICATIONS ON 24 MARCH 2010

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1 INTRODUCTION

COSATU is appreciative of the opportunity afforded by the Portfolio Committee on Communications to submit comments on the South African Postbank Bill [B14 -2009] and the South African Post Office Bill [B 2-2010], hereafter respectively referred to as the Postbank Bill and the SAPO Bill. Having considered both Bills we believe it necessary to incorporate our comments into a single submission, noting the linkages between the two despite the distinct legislative processes. Further it is not coincidental that both Bills are being considered at the same time, with the emphasis being on the increased corporatisation and the facilitation of the eventual privatisation of the SAPO and Postbank. We have serious concerns about the implications that this would have for our members as employees, as well as for poorer communities and working class people who are dependent on their services.

It is the very same technological advances that have made many postal services less relevant for the wealthy who have increasingly shifted towards electronic forms of communication and access to information, that now emphasise existing disparities of access to universal and affordable postal services for the poor who are unable to access alternative mechanisms. We note in this context that the SAPO has begun to invest in providing computer-based communication products. Here even these services are probably more practically relevant to the working class, who are less likely to have access to these whether at home or through their work. For example, fax and email services would be invaluable for an unemployed person who may need this for the purpose of applying for work.

The Postbank occupies a particular niche in relation to banking services that are aimed at lower income groups, which have not been meaningfully serviced by commercial retail banks that remain largely driven by narrow profit-orientated imperatives. Access to commercial banks in fact continues to mirror sharp historical racial, socio-economic and geographic disparities.

Further the Postbank has managed to provide a range of services that have significant developmental and socio-economic benefits, such as free banking services for recipients of social grants. Migrant workers are also reliant on relevant mechanisms to ensure that their remittances are safely transmitted to their dependents at home, as access to commercial bank services are generally biased towards South African citizens or those with permanent residential status. SAPO and the Postbank are also playing a role in the registration and fee-collecting process for correspondence university students of UNISA, thereby promoting access to education.[1] The Postbank is of particular relevance to those engaged in micro or survivalist entrepreneurial activities. In general it can be said that the Postbank has the potential to play a supportive role for those that need to be drawn into the formal economy.

The marginalization of lower income groups by commercial banks may be illustrated by considering our experience with the implementation of the Mzansi bank account initiative, which through the four largest commercial banks and the Postbank aimed to provide more affordable services to lower income groups. A report commissioned by FinMark Trust found the following:

[1] See p 41 of the SAPO's Annual Report 2009.

- A total of 6 million Mzansi accounts were opened by 2009, of which as much as two-thirds of these were by those who had never before had a bank account. However, by August 2008 there were only 3,5 million active accounts.
- Forty-two percent of accounts opened at the private banks had become “inactive”; owing primarily to them being categorized as “dormant” accounts since there had been no transactions within a 12-month period. This should be contrasted with the Postbank, which does not impose such stringent rules and which is therefore more sensitive to lower income clients who are more likely to receive irregular incomes and consequently transact less.
- Postbank clients were also more likely to use branch tellers (for which there was no additional bank fees, unlike private banks) than ATMs, making them sensitive to clients who difficulties using electronic banking.
- Private banks reported losing money on Mzansi accounts, which probably provided the motivation for closing or rendering the accounts dormant on the basis of inactivity [2] and underlies their general lack of commitment to broadening the range of services available to lower income groups.

It is also worth noting that as of December 2008, the Postbank had a total of 6 million clients, comprising both Mzansi and non-Mzansi account holders. It is likely that the bulk of these clients are primarily from a lower income background. In contrast ABSA, FNB, Nedbank, and Standard Bank respectively had 10 million, 7.5 million, 4 million and 8.6 million clients.[3] Despite these high client numbers (and significant assets), the commercial banks have shown little initiative towards using this as a basis for cross-subsidization of poorer clients by their wealthier counterparts.

Against this background any moves to corporatise and privatise SAPO and the Postbank should be strongly resisted as it will in all likelihood alter their developmental mandate and replace it with narrow profit-orientated objectives. COSATU believes that

[2] Bankable Frontier Associates LLC The *Mzansi* Bank Account Initiative in South Africa, 20 March 2009, p 3-4.

[3] South African Reserve Bank data, as quoted in the FinMark Trust report ibid.

any debate as to the future of the Postbank must have as its objective the transformation of the Postbank into a fully developed "people's bank", which in turn should lay the basis for driving broader transformation of the financial sector as a whole.

1.1 On Process

We note with concern that the memorandums of both Bills claim that the Communication Workers Union (CWU, an affiliate of COSATU) was consulted. However, to the contrary there was no consultation with CWU, which was only "briefed" on the contents of the Bills by the SAPO. Further, taking into account that there are significant implications for employment conditions, the engagement with organised Labour should have gone further than mere consultation since there are constitutional and legislative obligations to enter in collective bargaining. Instead, as we note below, the Bills problematically propose to legislate on matters that should determined through collective bargaining.

2 SPECIFIC CONCERNS WITH THE POSTBANK BILL

2.1 Object of the Act

Section 2 identifies the object of the Postbank Bill, with emphasis on promoting savings, and developing it into a bank of first choice for communities that have little or no access to commercial banking facilities. While we support these objectives, we believe that they do not go far enough. Accordingly we would like to propose the inclusion of the following:

- To promote universal and affordable access to banking services.
- To address historical disparities in access and distribution of services, especially in rural areas.

- To promote increased financial literacy and access to financial information for those marginalised from the formal economy.
- To expand the range of banking services accessible to poor people and communities.
- To provide specifically tailored services for those drawn from vulnerable groups such as older persons, people with disabilities and migrant workers.

2.2 INCORPORATION

Section 3 provides for the incorporation of the Postbank as a public company with a share capital in accordance with the requirements of the Companies Act. As a general principle we are opposed to this corporatisation of the Postbank, which will lead to it compromising its developmental mandate and also have an impact on job security as result of its transition.

More specifically subsection 3(2) provides that

> "the Post Office shall, upon incorporation of the Company, be the **sole member and shareholder** of the Company" (Emphasis added).

This provision is merely a reflection of the current status quo of the ownership of the Postbank, and should not necessarily be construed as an intention to maintain that in the future. It is relevant that section 9(1)(b) provides for the "power" of the Postbank to "sell, …mortgage, dispose of, …or in any way deal with all of its assets", which suggests an intention to enable at least partial privatisation. This is further confirmed by provisions under subsection 3(5) of the SAPO Bill allowing for the privatisation of up to 50 per cent by its sole shareholder any SAPO subsidiary.

As indicated earlier we cannot support the privatisation of either the SAPO or the Postbank, which we are firmly maintaining must remain wholly state-owned[4], in line with meeting its overall developmental mandate.

We are further calling for the insertion of an express prohibition on any future alienation of the Postbank in the absence of the enactment of a legislative amendment enabling it to do so and with the requisite provision for public and stakeholder consultation.

2.3 TRANSFER OF PERSONNEL AND COLLECTIVE BARGAINING

Section 7 provides that on the transfer date, "personnel of the former Postbank is to be transferred to the Company" subject to Schedule 1. Schedule 1 then provides under item 2 for each employee to make an "election" as to whether they wish to be transferred to the new company or remain as a SAPO employee who is seconded to the Postbank. It is clear from Schedule 1 that two different sets of employment conditions are capable of being applied to each category of employee.

Directly employed Postbank staff will be subject to employment conditions that may be "not less favourable" than those applicable before the transfer. However, this provision implies that the new Postbank, which is technically an entirely new entity, would have the power to determine new employment conditions. The position of the seconded SAPO staff is equally unclear since under subsection 22(2) of the SAPO Bill it is also evident that new employment conditions are to be developed in accordance with a proposed human resource policy.

A further concern relates to the employment implications of section 4(2) of the Postbank Bill, which requires the Postbank to be registered under the Banks Act. This would appear to dislocate Postbank employees from the postal services sector, and relocate

[4] Here it is acknowledged that state ownership of the Postbank is indirect as a subsidiary company of the wholly state-owned Post Office.

them within the banking sector although they would be physically located within the SAPO infrastructure. This is likely to fragment overall collective bargaining process.

We believe that the inclusion of the above provisions in BOTH Bill is problematic as it lays the basis for the alteration of employment conditions through legislation as opposed to collective bargaining, which is protected through section 23(5) of the South African Constitution and regulated through the LRA.

Accordingly we are strongly calling for the removal in particular of Schedule 1 from the Postbank Bill and relevant provisions under section 22 of the SAPO Bill, in order to allow for any new determination of employment conditions to be effected through a process of collective bargaining.

2.4 ARTICLES AND MEMORANDUM OF ASSOCIATION

Subsection 3(4) of the Postbank Bill makes provision for the Minister to sign the memorandum and articles of association necessary for the formation of the Postbank as a company. The memorandum and articles of association are essentially the "constitution" of the Company and will have a significant bearing on the mission, role and operations of the Postbank, which we again maintain must be developmental in nature.

Notwithstanding the fact that we remain strongly opposed to the corporatisation of the Postbank, we are of the view that there is a need for the memorandum and articles of association to be determined through a process that involves consultation with the public and relevant stakeholders. Accordingly, should the Committee proceed with corporatizing the Postbank, then we would propose an amendment to subsection 3(4) to provide an opportunity for public comment through the gazetting of the draft memorandum and articles of association by the Department for public comment, and its tabling at the NEDLAC for the consideration by the Public Finance and Management Chamber.

2.5 COMPOSITION OF BOARD

Section 12 of the Postbank Bill provides for the appointment of members of the Postbank Company Board, which read with subsection 14(3) emphasises technical expertise and that the Board be representative of the demographics of the country.

Once again, while retaining our general and upfront opposition to the corporatisation of the Postbank, we would argue that there is a need to ensure representative of labour and civil society in line with the general developmental mandate of the Postbank.

3 SPECIFIC CONCERNS WITH THE POST OFFICE BILL

3.1 CONTINUED EXISTENCE OF POST OFFICE

The SAPO is currently wholly state-owned. In accordance with subsections 3(1) and (2) this status is to be <u>initially</u> maintained in the transitional period, along with its various assets and liabilities in existence prior to this process. Despite this, subsections 3(5)(b)(i) and (iii) states that the Post Office will require the Communication Minister's approval, with the concurrence of the Minister of Finance, before:

- "more than 10 per cent of the market value" of its assets may be encumbered or alienated,
- More than 49 per cent of its voting shares in any of its subsidiaries is alienated.

The implication is that the Post Office is authorised to take the above actions <u>without</u> Ministerial approval provided it does not exceed the thresholds stipulated above. These provisions effectively authorise extensive powers to embark on a process of at least partial privatisation, and in the case of the Postbank this could be fairly substantial since as a subsidiary up to 49 per cent could be privatised with no executive or further legislative intervention.

Further subsections 3(5)(b)(iv) and (c) provide that the merger of SAPO with another company or the issuing of its own shares must be subject to the approval of the Communications Minister with the concurrence of the Finance Minister. While this may appear to be more stringent than other provisions of this subsection, we remain concerned since it effectively reduces the role of legislature in making such a far-reaching decision that could result in the privatisation of the SAPO.

As stated earlier we are unequivocally opposed to the privatisation (even in part) of either the Postbank or SAPO, and are therefore calling for a complete rewrite of this section recognising the need to retain both as wholly-state-owned entities[5]. Should government wish to alienate or privatise any part of the Postbank or SAPO it should through a parliamentary legislative process that allows for the engagement of civil society and other stakeholders.

4 Conclusion

A viable banking and postal service is an essential vehicle of communication and vital to social and economic development. The key task of postal policy is not about restructuring the ownership of the Post Office, but to transform the company to provide services in an efficient and economic way as well as build its capacity. Since internal inefficiencies within Post Office account for its low performance, the priority should be to eradicate such inefficiencies. In order to guarantee the basic communication service to all South Africans and extend postal services to historically under-served communities, state ownership of the Post Office should be maintained.

[5] This is with the acknowledgment that in the case of the Postbank state ownership would be indirect as reflected in its relationship as a subsidiary of the Post Office.

To this extent COSATU supports strengthening of the state owned enterprises so that they are able to meet the developmental objectives of the state and our society at large in addressing the inequality in delivering services to the previously disadvantaged.