

**TRANSNET'S PRESENTATION TO THE PORTFOLIO COMMITTEE
ON ENERGY AND THE SELECT COMMITTEE ON ECONOMIC
DEVELOPMENT
16 NOVEMBER 2010**



Unit of measure

- BACKGROUND
- ACCESS TO FACILITIES – PIPELINES
- ACCESS TO FACILITIES - PORTS
- FACILITIES ON BERTH 6
- DEEMED LICENCE UNDER THE PORTS ACT
- COMMON USER PRINCIPLES
- BERTH 6 AGREEMENT
- WAY FORWARD



Unit of measure

- Transnet Limited (“Transnet”) through its divisions Transnet National Ports Authority (“TNPA”), Transnet Pipelines (“TPL”) and Transnet Freight Rail (“TFR”) is involved in the handling (imports/exports), storage and transportation of petroleum products throughout South Africa. Extensive transportation of fuel is however, also done by road transport not controlled by Transnet.
- Transnet’s involvement in the transportation of fuel is mainly in the C-zone area of South Africa which sells more than 70% of all fuel used in the country.
- The logistics and supply of fuel is complex and involves many role players:
- SA Oil Industry (as producers/suppliers or importers of the fuel);
- TNPA as owner and manager of eight commercial ports in South Africa;
- TPL and TFR as transporters of petroleum products into the inland market;
- Transporters including road haulage and coastal shipping;
- Depot storage facilities; and
- Customers in the form of oil companies.



Unit of measure

- The Charter for South African Petroleum and Liquid Fuels Industry requires owners of facilities such as Single Buoy Moorings (“SBMs”), pipelines, depots and storage tanks “provide third parties with non-discriminatory access to uncommitted capacity”. Transnet recognises this as critical to the economic development and prosperity of our country. Furthermore, as a responsible corporate citizen and an organ of state, Transnet is committed to all statutory requirements.
- One of the objects of the of the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) (“PPA”), as set out in section 2(d) is to “promote equitable access to petroleum pipelines, loading facilities and storage facilities”.
- Section 2(g) of the PPA requires regulated entities to “promote companies in the petroleum pipeline industry that are owned or controlled by historically disadvantaged South Africans, by means of licence conditions to enable them to become competitive”.
- Section 4(g) of the PPA determines that the powers and duties of the National Energy Regulator of South Africa (NERSA), to include the duty to “monitor and take appropriate action, if necessary, to ensure that access to petroleum pipelines, loading facilities and storage facilities is provided in a non-discriminatory, fair and transparent manner”.
- Transnet Pipelines believes that it complies with the PPA and operates under the “the common carrier” principle, giving effect to Section 20(g) of the PPA, which states that “shipper’s of petroleum must have access to petroleum pipelines and pipelines capacity must be shared among all users and prospective users thereof in proportion to their needs and within the commercially reasonable and operational constraints of the pipeline,”.



Unit of measure

- Liquid handling at the Port of Durban takes place at Island View berths;
- Berth access is allocated on a first come first served (common user) basis by TNPA in collaboration with Industry:

Island View Berths	Users	Status
IV 1	Island View Storage, Vopak, IOP	Chemicals
IV 2	Island View Storage, Vopak, IOP	Currently chemicals, but for reconstruction
IV3 (Bulk)	Durban Bulk Shipping	Bulk grain products
IV 4	Island View Storage, Vopak, SAPREF	Chemicals
IV 5	IVS, Vopak, Sapref, Engen, Total, Chevron	(Petroleum) Closed for reconstruction
IV 6	IVS, Vopak, Sapref, Engen, Total, Chevron	Petroleum products
IV 7	Engen, Sapref	
IV 8	Engen, Sapref	
IV 9	Natcos (Sasol and Total)	
IV10	Sapref, Total	Bunkering

* Footnote



IV1

IV2

IV3

IV4

IV5

IV6

IV7

IV8

IV9

Bunker Berth (IV10)



Unit of measure

- Port infrastructure and services provided at South Africa's commercial ports consists of amongst others, common-user berths, the provision of marine services (pilots, tug assistance and berthing services) to all vessels calling at SA ports and availability of land on which liquid handling and storage facilities are constructed.
- All vessels have equal access to marine services and liquid bulk berths at the ports are allocated to vessels on a first-come first served basis (allocated by TNPA in consultation with the Industry).
- Common-user berths are available for use by terminal facility operators who have pipeline connections between the berth and the terminal – access to berths is constrained if a potential interested party does not have access to land and a liquid handling/storage facility.
- Island View is saturated for space, except for Lot 100 (Castrol lease expired).
- The environmental sensitivity of liquid terminals also leads to more stringent approvals to be able to construct and operate a facility.
- When land becomes available for new liquid handling terminal facilities, TNPA follows an open tender process to allocate land to new terminal operators.
- All tender processes provide for compliance with BBBEE targets as per the Port Regulations (Sections 2/3).
- Section 80(1)(a) of the National Ports Act, 2005 (Act No. 12 of 2005) ("the Ports Act") provides that the Minister of Transport may, by notice in the Gazette, make regulations in respect of "a framework for the economic participation and empowerment of historically disadvantaged groups in port operations".
- The Ports Regulator has concluded an economic review of participation in port operations by public entities, private entities and public private partnerships, as required by the Ports Act. Transnet is commenting on the outcome and recommendations of this study.

*Footnote



Unit of measure

- During the hearings by the Portfolio Committee on Energy and the Select Committee on Economic Development on the 15 September 2010, NERSA and the Black Petroleum Institute (“BPI”) referred to the Berth 6 Loading Facility Agreement (“the Agreement”) concluded between Transnet Limited and SAPREF acting for and on behalf of the Oil Majors.
- NERSA interpreted the Agreement as providing an example of the need to synergise policy between NERSA and Transnet while BPI interpreted the Agreement as effectively denying HDIs access to participation in the oil industry.
- Regulation 2 under the Ports Act states that the Authority has to incorporate black economic empowerment into decision-making in:
 - determining qualification criteria for entering into any agreement in terms of section 56 of the Act;
 - determining qualification criteria for the issuing of any licence in terms of section 57 of the Act;
 - granting any other concession or authorisation in terms of the Act;
 - developing and implementing a preferential procurement policy;
 - determining qualification criteria for the sale or lease of any property owned by the Authority within a port; and
 - developing criteria for entering into partnerships with the private sector.



Unit of measure

- Regulation 3(1) sets specific targets to be applied by the Authority in the second, third and fourth years following the commencement of the Regulations and prescribes that at least twenty-five percent per year of all:
 - agreements entered into in terms of section 56 of the Act by the Authority,
 - licences issued in terms of section 57 of the Act by the Authority,
 - other concessions or authorisations granted in terms of the Act by the Authority,
 - sales or leases of any property owned by the Authority within a port, and;
 - any partnerships with the private sector and the Authority,

shall be entered into, issued or granted to persons or entities that have attained the Broad Based Black Economic Empowerment status at least at a Level Four Contributor, measured in terms of the Codes of Good Practice issued in terms of section 9 of the BBEE Act or an equivalent rating in terms of the Sector Code, if any.

- The Authority has developed "Guidelines for agreements, licences and permits" (the Guidelines) in terms of the Ports Act to ensure fair, equitable and transparent procedures for the awarding of agreements, licences and permits. The Guidelines set out the approach to be adopted for appropriate controls over port facilities, services and other activities in ports.



Unit of measure

- A terminal in Island View may be seen as a facility engaged in the handling of petroleum or chemical products and includes all infrastructure and equipment within the terminal boundary, pipes running through the precinct to the berths (administered under a way leave) and ending in a manifold at the back of the berth.
- The vessel discharge points are connected to the manifold largely through short lengths of mobile hoses to enable product to be pumped into tanks within the terminals. A fixed loading arm merely automates this process of connecting a hose to a vessel discharge point and adds a pumping component.
- The discharge hose/loading arm operation is not a separate facility which can be isolated from the discharge/loading process but is rather one element of the loading/discharge process and cannot be considered as a separate facility. The loading arm or the operation of mobile hoses does not constitute a separate business in as much, for example, a ship to shore container gantry crane or a tippler and conveyer belt system does not constitute a separate business.
- The use of the word “facility” in the Agreement appears to have been misinterpreted to mean a separate entity or business.



Unit of measure

- Berth 6 at Island View has historically been used more extensively by the oil majors. In order to improve flow rates, SAPREF, representing the oil majors, erected fixed loading arms on this berth.
- A portion of Berth 6 collapsed in 1999 and the Authority initiated minor repairs followed by the commencement of reconstruction in mid 2005. It was required of SAPREF to remove its loading arms for construction to proceed. The berth reconstruction was completed in mid 2007.
- SAPREF holds a deemed licence to operate a fixed loading arms on Berth 6. In terms of section 65 of the Ports Act, entities operating on the 26th of November 2006, when the Ports Act came into effect, enjoy a deemed licence status.
- The Agreement referred to is a construction investment agreement to allow the parties to:
 - underwrite the investment; and
 - incorporate new requirements to operate the facilities.
- SAPREF commissioned the new loading arms in May 2010 in line with its deemed licence provisions.



Unit of measure

- The 9 petroleum/chemical berths at Island View do not form part of any terminal footprint nor are these dedicated to a specific terminal. These are termed “common user berths”. These berths operate on a “first come - first served” basis or according to a berthing plan agreed daily by Island View clients and Port Control.
- The mix between petroleum and chemical volumes varies across berths based on various operational and configuration factors. The common use of these 9 berths is open to all petroleum and chemical clients. There is no restriction on the use of a berth by any vessel, including Berth 6, based upon operational factors.
- Vessels must load from, or discharge product to, a tank. All petroleum tanks are currently owned and operated by the Oil Majors and tank capacity is confined to this reality.
- The Agreement spells out that Berth 6 remains a common user berth. This implies that at its discretion, the Authority may decide to grant rights to other parties to establish and operate additional loading arms on Berth 6.
- Petroleum product handling at Island View is determined by tank capacity and ownership. Tank farms (storage tanks) for petroleum exist in terminals which are 100% owned by oil majors with several tanks directly integrated with the SAPREF and Engen Refineries.
- Access to HDIs is based on Section 56 Agreements as per the Ports Act. In this regard, Lot 100 (Castrol site) has become vacant and is being rehabilitated pending an open tender process. Further, the lease for Lots 63 – 70 (Chevron site) expires in January, 2012 with further a opportunity for S56 Agreements and HDI participation.



Unit of measure

- During 2005 a process of parallel engagements was initiated between the then Department of Mineral and Energy and Transnet on Transnet's role towards the Energy Security Master Plan as well as specific initiatives to ensure security of fuel supply for the FIFA 2010 World Cup of Soccer.
- A key risk identified through this engagement was the readiness of Berth 6 against the lack of certainty regarding loading arms on Berth 6.
- Transnet considered the following alternatives to mitigate this risk:
 - **An independent 3rd party to commission and operate the loading arms.**
 - This option was highly risky from an operational perspective, given that a loading/discharging apparatus did not by any standard qualify as a separate business as indicated previously. If this was stretched to suggest a separate business, the separation of the terminal from the handling apparatus would pose a risk for security of supply and product quality.
 - **Transnet to fund and operate the loading arms.**
 - This alternative was not feasible given the construction lead time for loading arms of 18 months combined with the short lead time to the FIFA World Cup of Soccer. This alternative was further based upon the assumption that Transnet Pipelines would operate the loading arms. Transnet Pipelines subsequently advised that this was not within its area of competence – security of supply.
 - **The oil industry to commission and operate the loading arms for a short period of approximately five years whilst the concept was being explored further.**
 - Based upon the notion of a deemed licence, competence in the activity and that ownership and operation of handling apparatus is not taken to be a separate business, the existing oil majors were approached in accordance with this alternative. Stemming from the deemed licence status above, it was not necessary to put this out to open tender.

*Footnote



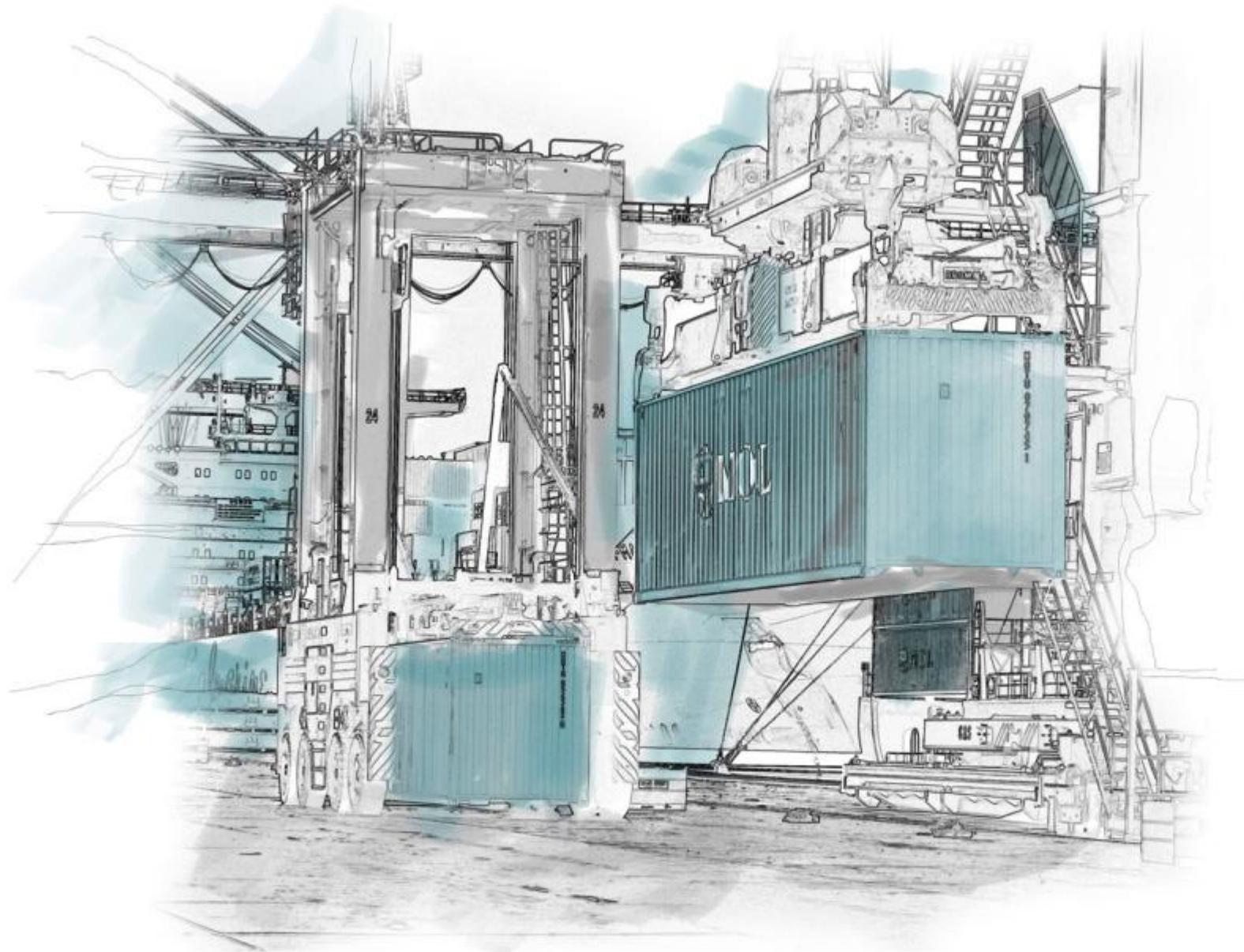
Unit of measure

- The oil majors were willing and able to take up this option, but considered the required investment of R 80 million across the proposed short term of 5 years as not commercially viable to the oil majors from an amortization perspective.
- Against this background and weighing up all the relevant considerations, Transnet decided to pursue the third option and factored in a but to consider tenure of 20 years along with BBBEE requirements and an additional 5% HDI provision bearing in mind that the oil majors are also BBBEE compliant.



Unit of measure

- On 13 October 2010, Transnet met with NERSA to clarify some of the issues raised in NERSA's Decision to Grant a License to Operate the Loading Facility at Berth 6. Amongst others the following was agreed upon:
 - Transnet and NERSA will enter into an Memorandum of Understanding to align processes where there is overlapping mandates.
 - Transnet and NERSA will jointly ensure greater access by HDIs to facilities, including stringent monitoring of uncommitted capacity at Island View.
- Transnet supports policy objectives for sustainable presence, ownership or control by historically disadvantaged South Africans on all facets of the liquid fuels industry as stated in the Energy Policy White Paper.
- Transnet is committed to making a meaningful contribution, in accordance with applicable laws in the following areas of the Liquid Fuels Charter:
 - Skills development;
 - Employment Equity;
 - Procurement; and
 - Access to facilities.



THANK YOU