

Transport policy is on the right track

The signing into law of the Economic Regulation of Transport Act on June 12 was a major and positive milestone for the transport sector, as well as a clear signal that the management of the economy is beginning to change in fundamental ways.

The bill itself was developed during the height of the state capture years, with the drafting team (which includes some of the authors of this article) repeatedly being told the legislation would never be implemented. The national transport department and Operation Vulindlela team in the presidency and the Treasury must therefore be commended for continuing to push this crucial set of reforms.

The transport sector is a diverse network of air, rail, road and sea transport modes and is fundamental to SA's economic activity. The transport sector itself is a large contributor to economic activity and employment. But more importantly, all economic sectors depend on the system to access inputs, deliver goods to market and enable the movement of people.

The efficiency of transport services therefore affects the ability of the economy as a whole to grow domestically and compete internationally. In the ports and rail sectors SA has relied largely on Transnet to facilitate freight movement. However, the operational and efficiency crisis experienced by Transnet in recent years has had devastating knock-on effects for trade and economic growth.

The act achieves two critical objectives. It amalgamates existing economic regulation of ports, airports and roads into a single institution, the Transport Economic Regulator (TER), and it introduces economic regulation of rail. These regulatory innovations are accompanied by ongoing structural reforms to introduce more competition at the operator level in the transport markets.

For example, whereas Transnet Freight Rail (TFR) previously had almost exclusive use of the rail infrastructure, it will now have to compete with private sector train operating companies for access. The introduction of competition should improve the scale, quality and efficiency of freight services, thereby alleviating a constraint on economic growth.

However, new entrants into the rail market may struggle to compete with TFR. One of the regulator's main tasks is to maintain a competitive playing field by monitoring the price and other conditions of access offered by the interim Infrastructure Manager, which was established in 2022 within Transnet to separate out and manage the country's freight rail network.

There has been progress towards facilitating rail network access, with the Infrastructure Manager publishing a draft network statement in May that sets out the conditions of access. Until now, these interim regulatory structures under the aegis of the departments of transport and public enterprises have helped refine this network statement, but going forward it will be regulated by the TER.

The act also introduces important changes into the ports market. The TER will have more ability than the Ports Regulator has had to date to monitor port terminal agreements. It will also have the right to approve licences granted by the Transnet ports authority to other parts of the Transnet Group, for as long as it remains part of Transnet. This will in effect remove the risks associated with allowing Transnet to grant rights to itself in ports with little oversight.

The TER will take on the economic regulation of SA's airports and aviation services. Regulatory structures in aviation have to date been part time, and the new, independent, full-time regulatory structure is likely to improve the quality and predictability of regulatory oversight.

The process of establishing the TER will soon begin in earnest, and the manner in which it is undertaken will influence whether it meets its full potential. The legislation has been designed to safeguard the creation of a properly resourced, technically skilled and highly independent regulatory body.

A crucial part of this framework will be the way regulatory staff are appointed. The act stipulates a clear process, wherein the transport minister appoints a panel of experts on governance and public policy, who in turn compile a shortlist of candidates for the TER's board based on nominations submitted by members of the public. The board will then appoint the CEO and executive officers of the TER.

The importance of appointing suitable candidates to these posts cannot be overstated. This appointment process must therefore receive due scrutiny by the press and oversight from civil society.

Source: Sarah Truen, Matthew Stern and Matthew Townshend -

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