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**Competition and Regulation in the Provision of Local Transportation Services – Note by
South Africa**

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This document reproduces a written contribution from South Africa submitted for Item 3 of the 73rd OECD Working Party 2 meeting on 20 June 2022.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/competition-and-regulation-in-the-provision-of-local-transportation-services.htm>

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1. Introduction

1. The Competition Commission South Africa (“CCSA”) received an invitation from the Organisation of Economic Cooperation and Development (“OECD”) to contribute to the roundtable discussions on “*Competition and Regulation in the Provision of Local Transportation Services*” to be held on 20 June 2022. The focus of the roundtable discussions is on urban transport including the governance and institutional framework and the role of public and private operators in the supply of transport services. The discussions will also examine competition in the market and the impact of new technologies. Lastly, the discussion will consider competition for the market and how to ensure competitive bidding processes while achieving broader public policy goals including quality of service and economic efficiency.

2. This paper first provides an overview of the South African transport industry, including a brief discussion on the regulatory framework for public transport services. Secondly, the paper discusses the impact of new technologies (e-hailing services) in public transport. Thirdly, the paper considers competition for the market with reference to commuter bus services in urban areas. Lastly, we discuss the CCSA’s interventions in the public transport sector.

2. Overview of the South African Transport industry

3. The land-based public passenger transport market in South Africa consists of minibus taxis, metered taxis, e-hailing services, commuter buses, long distance buses (intercity buses) and commuter rail. The public transport sector is dominated by the minibus taxi industry accounting for approximately 70 per cent of total public transport usage. Buses and rail account for 20 per cent and 10 per cent respectively. Rail in South Africa is provided by government, minibus taxis are privately owned, and buses are privately owned but some are contracted by government to provide subsidised commuter services.

4. Taxis can be distinguished in respect of the types of services they provide, and vehicle capacity as promulgated by the National Land Transport Act, No. 5 of 2009 (NLTA).¹ Taxis broadly include (i) minibus taxis, (ii) metered taxis, (ii) e-hailing services² and (iv) other niche players in the market such as tuk-tuks, and four-plus-ones defined in the NLTA as follows:

- Minibus taxis ferry between 9 and 16 seated persons, including the driver and it is an unscheduled service operating on pre-determined route(s).

¹ All land public transport services are regulated by Government through the National Land Transport Act 5 of 2009. South Africa.

² E-hailing services, predominantly termed ridesharing or ride-hailing services in other countries include services that use technology platforms such as GPS to connect riders with passengers. Transport Amendment Bill (B7-2016) in South Africa seeks to make explicit the provisions for these types of services to be regarded as public transport.

- Traditional metered taxis are authorised to carry between 1-9 passengers and available for hire (though hailing, telephone or otherwise) and should be equipped with a sealed meter for the purpose of determining the fare payable.
- E-hailing or App-based services refer to a technological platform that provides private operators or drivers with a platform to source passengers using global positioning system (GPS) technology to connect the nearest active linked driver to a passenger who demands the service.
- Four-plus-one taxi-type services refers to unscheduled transport services provided by sedan motor vehicles and must carry not more than five passengers including the driver.
- Tuk-tuk refers to a three-wheeled motor vehicle designed conveying not more than three seated persons, including the driver.

5. With respect to buses, South Africa has both subsidised and non-subsidised commuter bus services. The former are scheduled commuter bus services contracted and subsidised by the government, while the latter does not receive any support from the government and are unscheduled. Bus services are provided largely by private operators and government contracts private operators to provide scheduled bus services.

6. Commuter rail is largely a national government competency and the responsibility of this service lies with Passenger Rail Agency of South Africa (PRASA), which is a public entity wholly owned by Government. PRASA has two main divisions, Metrorail for commuter rail within metros and Shosholoza Meyl for intercity services. Metrorail operates in four regions including Western Cape (Cape Town), Eastern Cape (East London and Port Elizabeth), Gauteng (Johannesburg, Pretoria and Ekurhuleni) and KwaZulu-Natal (Durban). Metrorail is the cheapest of all modes of transport and are mostly used by the low-income commuters.

7. In Gauteng province, there is another commuter rail operator called Gautrain. Gautrain is an 80 km long mass rapid transit railway system that links a key economic hub, Johannesburg, Pretoria and OR Tambo International Airport in the Gauteng province. It provides two types of commuter rail services, namely: (1) General Passenger Services (“GPS”) and (2) Airport Passenger Service (“APS”). Gautrain is a private-public partnership which in contrast to Metrorail, is mostly utilised by the middle-income commuters who use this service as a substitute to private car use.

3. Regulators in the public passenger transport sector

8. In South Africa, public transport is regulated by the National Department of Transport (“DOT”) in terms of the NLTA.³ The NLTA establishes several entities across the three spheres of government, namely national, provincial and municipal level. These entities play various functions from licencing (provincial level) to transport planning authority (local government). The DOT’s core functions are to assign certain functions to across government entities, to monitor and oversee public transport and develop policies for the effective functioning of the public transport in the country.

³ The National Land Transport Act regulates all the other modes of transport in South Africa. This regulation is multi-faceted and regulates land transport in terms of licensing, route allocation, contracting services

9. In addition to the three spheres of government, there are other regulatory bodies that assist in giving effect to some of the legislative provisions and regulations. Table 1 summarises the various regulatory bodies, and their mandate in the public transport sector.

Table 1. Overview of the regulators in the public passenger transport sector

Regulator	Regulation mandate	Enabling legislation	Comments
Department of Transport (DOT)	Oversee and monitor public transport in South Africa.	National Land Transport Act, 2009 (Act No. 5 of 2009).	The DOT is mandated to regulate interprovincial public transport and tourism services and monitor and evaluate the implementation of the public transport strategy and the National Land Transport Act.
Provincial government	Planning, coordination and facilitation of land transport functions in the province, co-ordination between municipalities with a view to ensuring the effective and efficient execution of land transport in the province	National Land Transport Act, 2009 (Act No. 5 of 2009).	The provincial government is tasked with formulating provincial transport policy and strategy within the national policy and strategy framework; and planning, coordinating and facilitating of land transport functions in the province. Section 23(1) of the NLTA requires MECs of transport, within their jurisdiction, to establish Provincial Regulatory Entities which must then carry out the powers assigned to them in terms of Section 24 of the NLTA.
Local government	Promulgating municipal by-laws, managing the movement of persons and goods on land within its area, developing land transport policy and strategy within its area based on national and provincial guidelines.	National Land Transport Act, 2009 (Act No. 5 of 2009). Municipal Systems Act, 2000 (Act No. 32 of 2000).	Municipalities are mandated to promulgate municipal by-laws, manage the issuing of permits and operating licences. The specific powers are in terms of Section 11 of the NLTA
Railway Safety Regulator (RSR)	Issuing of safety permits, conducting inspections and audits, investigating railway accidents, developing regulations and safety standards, issuing notices & imposing penalties of non-compliance.	National Railway Safety Act, 2002 (Act No. 16 of 2002). National Railway Safety Regulator Amendment Act, 2008 (Act No. 69 of 2008).	The mandate of the RSR is to oversee safety in the railway transport industry and promote the use of rail as a mode of transportation through improved safety performance in the railway transport industry.
National Regulator for Compulsory Specifications	The NRCS' mandate includes promoting public health and safety, environmental protection and ensuring fair trade. NRCS' stakeholders include the South African government industry and citizens.	National Compulsory Regulator for compulsory Specifications Act, 2008 (Act No. 5 of 2008).	NRCS is appointed by the national department of transport as the inspectorate of manufacturers, importers and builders in terms of the National road Traffic Act, NRCS administers compulsory specifications for the fitness of vehicles offered for sale for use on public roads, as well as off-road and specialised vehicles.

10. As summarised above, the regulatory entities that are legislated by the NLTA are mainly the three spheres of government, which include: The DOT and National Public Transport Regulator (NPTR) within the national sphere; the provincial sphere (PRE); and the municipal sphere (MRE).

4. Competition in the market and the impact of new technologies

11. This section sets out the contextual background of metered taxi and e-hailing services, evolution, business models and discussion of the main role players in the industry. For purposes of this submission, drivers utilising e-hailing apps are referred to as e-hailing operators; companies such as Uber and Bolt are called e-hailing companies; and metered taxi drivers are referred to as metered taxi operators. The term e-hailing operators includes drivers working for vehicle owners, drivers leasing vehicles, or owners driving own vehicles.

12. The precise inception of the metered taxi industry in South Africa is unclear, since metered taxi services were not regulated in the past. However, the history of the metered taxi industry can be traced back to the 1950s. Metered taxis were historically family businesses that have been passed from generation to generation. Given its informal nature, the metered taxi industry was initially self-regulated. The available information suggests that metered taxi companies were predominantly owned by white South Africans until the 1990s, and black South Africans were not granted metered taxi operating licences before 1994. The 1996 White Paper introduced a formal regulatory framework for the metered taxi industry.

13. The entry of e-hailing services into South Africa occurred in 2013 starting with Uber and followed by Taxify (now Bolt) in 2016. A third operator, InDriver, entered the market in 2019.

14. Metered taxi operators provide an on-demand service to the public. Unlike in other countries, South Africa's metered taxis do not roam the streets searching for passengers but are allocated demarcated areas, wherein customers either approach them or call in for services. There are two groups of metered taxi operators in South Africa: (i) private metered taxi companies, and (ii) individual or sole proprietor metered taxi operators. Private metered taxi companies provide an array of services, including a 24-hour service throughout the year – with payments done through cash, and debit and credit card machines on board. Passengers may book for services via websites, telephone and e-mail.

15. Metered taxis are frequently used by middle-to-high-income earners and tourists. Most metered taxis operate in urban areas in South Africa. Low-income earners use metered taxis mostly in emergency situations. Metered taxis have limited use of technology (slow pace of technology adoption), and this is leading to their demise, as evidenced by the entry of e-hailing services.

16. E-hailing in public transport refers to the use of technological platforms to connect e-hailing operators with passengers more efficiently. These platforms use global positioning system (GPS) technology to connect the nearest active linked e-hailing operator to a passenger who needs the service. E-hailing companies such as Uber and Bolt connect e-hailing operators and passengers seamlessly, in a two-sided market.

17. Unlike metered taxis, e-hailing companies such as Uber and Bolt do not own the vehicles used by e-hailing operators, but rather provide a platform for the passengers and e-hailing operators to connect. The vehicles are owned (sometimes leased) by independent contractors and for ease of reference, we refer to them as e-hailing operators. The term e-hailing operators includes drivers working for vehicle owners, drivers leasing vehicles or owners driving their vehicles.

18. The entry of e-hailing services disrupted the business model and provided competition to metered taxis in metropolitan cities giving consumers a wider choice at competitive pricing. In sharp contrast to metered taxis, the e-hailing application enables the hailing of a vehicle electronically. Operators on an e-hailing platform can roam and hail

everywhere, and prices are determined in accordance with demand and supply. Metered taxis operate in pre-determined areas.

19. The NLTA defines a “metered taxi” as a public transport service operated by means of a motor vehicle which is available for hire using different mechanisms such as hailing while roaming, by telephone or otherwise. Metered taxis may be available for hire from a taxi rank and should be equipped with a sealed meter to determine the fare payable and the meter should be calibrated for such fare or complies with any other requirements applicable to such meters.

20. The growing popularity of e-hailing services caught regulatory authorities off-guard, as e-hailing services do not fall under the conventional regulatory framework. E-hailing services were not initially defined in the NLTA and on 25 February 2015, the DOT issued a Practice Note to provide guidance to all provincial regulatory entities (“PREs”) on how to deal with operating licences for e-hailing services. The Practice Note directed all PREs to treat e-hailing services as a sub-category of metered taxi services.

21. The NLTA Amendment Bill (“Amendment Bill”) was introduced to formally recognise e-hailing services. On 10 March 2020, the Amendment Bill was passed by the National Assembly and empowers the Minister of Transport to make regulations for standards or requirements for e-hailing applications or similar technology. As a result, e-hailing is treated as a sub-category of the metered taxi for purposes of operating licences. The Amendment Bill provides for a distinct category of e-hailing services and defines e-hailing as:

“1(c) ‘electronic hailing service’ or ‘e-hailing service’ means a public transport service operated by means of a motor vehicle, which—

(a) is available for hire by hailing while roaming;

(b) may stand for hire at a rank, and

(c) is equipped with an electronic e-hailing technology-enabled application, as contemplated in section 66A.

5. Competition for the market: subsidized commuter bus services

22. Competitive bidding for contracts is predominantly used in various markets to ensure that an efficient firm is identified and selected to offer services to customers. Competitive bidding principles were embedded in the policy documents guiding public transport. The contracts have been used by government in the commuter bus sector to procure commuter bus services. The government has long recognised the need for competition in the commuter bus services. The 1996 White Paper on National Transport Policy formally proposed bus tender system as a method to procure commuter bus services through a competitive bidding process. The National Land Transport Transition Act of 2000 (“the Transition Act”) empowered provincial government departments to enter subsidised service contracts with bus operators if services to be rendered are put out to public tendering. Prior to 1996, there was no tendering process for bus contracts based on the current configuration of the system, although there might have been attempts to pilot the tendering system.

23. In the bus sector, there are various kinds of contracts which are governed by the NLTA; namely (i) interim, (ii) negotiated and (iii) tendered contracts. The contracts are provided by the contracting authorities (i.e., national and provincial transport departments) to private bus operators for them to provide commuter bus services. These are subsidised

contracts and the provincial government award these subsidies to private bus operators and monitor operators' compliance with the terms of contracts.

24. Prior to democracy in 1994, bus subsidies were initially introduced as a temporary measure (in 1944) to avert bus boycotts that ensued between 1939 and 1945. Some of these boycotts were triggered by increase of bus fares in Johannesburg and Pretoria. This, together with other effects arising from the implementation of the Group Areas Act, forced the state to agree to subsidise transport costs incurred by black Africans. No tendered contracts were put in place, but large bus companies were allocated subsidised contracts for an unspecified duration.

25. In 1997, prior to the Transition Act coming into effect in 2000, government entered into *Interim Contracts* with bus operators that were already providing subsidised bus services (from the apartheid regime). These contracts were to serve as a bridging mechanism until a new tendering system was put in place. Government's plan was to have all subsidised bus services on tendered contracts by end of 2000. Interim contracts were therefore put in place pending the introduction of the bidding system. Interim contracts were meant to be effective for a period of one to three years, however, majority of these contracts have now been in existence for more than 21 years.

26. Although competitive bidding was recognised as the best way to promote competition, the provisions of the Transition Act also gave legal recognition to *negotiated contracts*. Negotiated contracts were entered as a compromise given the labour issues that arose from the implementation of the tendering process. Bus operators who were beneficiaries of the contracts, raised concerns about the possibility of job losses in instances where they lost the contract. The envisaged new operator was not liable to take over all the employees. These concerns led to negotiated contracts as opposed to tendered contracts.

27. *Tendered contracts* were subsequently introduced on some routes, but these contracts are in the minority. Most incumbent bus operators managed to get these new tendered contracts. Table 2 below shows the split between tendered, interim and negotiated contracts.

Table 2. Status of bus subsidy contracts

Type of contract	Estimated Number of buses	Number of contracts	% of the subsidy budget	Contract characteristics	Duration
Interim contracts	3 849	39	68%	Foreseen as a transition arrangement in 1997. Interim Contracts are now over 21 years old	3 years originally. Contract extensions are between 1 and 3 months.
Tendered contracts	1 834	66	28%	Based on a standard contract document. Mostly "stand alone" services in rural/ urban areas	5 years originally. Contract extensions are between 1 and 3 months.
Negotiated contracts	1 300	10	4%	Mostly applicable to state-owned and operated bus companies	5 years originally. Contract extensions are between 1 and 3 months

28. Table 2 shows that 4 per cent of the current contracts are negotiated contracts and the 68 per cent are interim contracts.

29. There has not been meaningful entry in the subsidised bus sector for many years and this has contributed to the lack of innovation in the sector. New efficient entrants may bring innovation and improve quality of services in the market for the benefit of consumers, while increased entry barriers restrict this development.

6. CCSA interventions in local transport services

6.1. E-hailing services and metered taxis

30. The CCSA launched an Inquiry into land-based public transport sector in June 2017, partly because of some complaints in the public transport sector especially from metered taxis. The main issue raised by metered taxis was unfair competition because of e-hailing operators having unconstrained operational areas and charging low fares which disadvantaged the metered taxi industry.

31. During the Inquiry, the CCSA gathered information that confirms the uneven competitive environment between e-hailing services and metered taxis, mainly owing to the unbalanced regulatory environment between the two. The CCSA received submissions during public hearings about the impact of the uneven playing field being the major factor leading to the demise of the metered taxi industry.

32. Given that the opportunity to comment on the Amendment Bill had closed prior to the commencement of the Inquiry, the CCSA had little insights into the public transport sector. In addition, further evidence was gathered during the Inquiry process which necessitated the CCSA to make some recommendations to deal with the uneven playing field as discussed below.

33. The Amendment Bill provides for a dual regulatory framework for e-hailing and metered taxis, thus reinforcing the current uneven competitive environment complained of by metered taxi operators. The Amendment Bill requires metered taxis to operate within specific areas and continue to be subject to fare regulation. On the other hand, e-hailing services are not constrained both in respect of their areas of operation or fare determination. The CCSA therefore advocated through the Inquiry, that the relevant provisions of the Amendment Bill maintaining the uneven competitive field, are removed.

34. In terms Section 66(1)(a-c) of the NLTA, metered taxi operators are required to, apply for an area-based operating license specifying an area of operation (defined radius) and must operate from allocated taxi ranks, terminal, pick-up and drop-off points. The section furthermore provides that e-hailing services constitute a sub-category of metered taxi services pending the finalisation of the Amendment Bill, that radius is not explicitly defined. Thus, the metered taxi operators' concern that their inability to compete against e-hailing operators who are not restricted in terms of the geographic areas of operation, remains under the NLTA.

35. During the National Council of Provinces (NCOP) deliberations on the Amendment Bill, the DOT had sought to create a uniform regulatory regime for both e-hailing and metered taxis services. This intervention proposed to apply area restrictions on e-hailing services. However, that intervention was rejected on the basis that it would reduce competition and inhibited more efficient urban transport models such as e-hailing services, which lowered prices and increased employment. Notwithstanding, an amendment to the Amendment Bill was proposed, which permits regulatory entities to specify designated passenger pick up points, for e-hailing services.

36. Sections 66(1)(b) and (c) of the NLTA creates the pre-booked exception for metered taxis to the pick-up area requirement as follows:

- if the operating licence or permit specifies such an area, the vehicle may leave that area if, on the return journey, it is to carry the same passengers that it carries on the outward journey or if the vehicle is to return empty; and
- the vehicle may pick up passengers outside of that area if the fare is pre-booked and the passengers will return to such area ("the pre-booked exception").

37. This pre-booked exception is not replicated in Section 66A(1)(b) of the Amendment Bill which is a provision for e-hailing services. As such the Amendment Bill maintains a differential regulatory regime between two services which the CCSA views as competitors.

38. The Inquiry report was published in April 2021⁴ and recommended (amongst others) the removal of the pre-booked exception (deletion of section 66(1)(b-c) of the NLTA) as applicable to metered taxis because such exception is not applicable to e-hailing services if one considers the proposed regulatory regime for e-hailing services in Section 66A(1)(b) of the Amendment Bill. This deletion will result in the retention of section 66(1)(a) of the NLTA (applicable to metered taxis) whose wording is similar to section 66A(1)(b) of the Amendment Bill (applicable to e-hailing services). The implication of the foregoing is the creation of a more even playing field between e-hailing and metered taxis.

39. The DOT's concern regarding the proposal to remove area restrictions is that having metered taxis and e-hailing services operating in the same areas would lead to violence, especially at popular passenger pick up spots such as train stations, airports etc. The CCSA's view was that legislation should not create further competitive disparities but bring about an even playing field. Accordingly, the CCSA's proposals sought to promote competition between metered taxis and e-hailing operators.

40. The CCSA further attempted engagements with the DOT and Department of Trade, Industry and Competition (DTIC) to consider:

- ensuring that consultation between the various transport regulators, including the DOT should occur with respect of the uneven regulatory environment and its impact on competition before the Amendment Bill passes into law; and
- re-directing the Amendment Bill for further consideration in respect of the competition matters raised above, to enable the creation of an even playing field, which is likely to improve competition between the two types of transport services.

6.2. Subsidized commuter bus services

41. The Inquiry found that the prevailing bus subsidy policy, precluded competition between commuter bus operators and serves as a barrier to entry, especially for small bus operators. The extension of the prevailing subsidy contracts in perpetuity has had the unintended consequence of creating *de facto* monopolies on subsidised commuter bus routes, contrary to what was envisaged in the 1996 White Paper. This situation is exacerbated by the fact that competition in the provision of subsidised commuter bus services only occurs at the contracting phase, and not on the routes (competition for the market). Given that instances of tenders for subsidy contracts were limited, the subsidised commuter bus services exhibit characteristics of a publicly funded monopoly.

⁴ <https://www.compcom.co.za/public-passenger-transport-market-inquiry-2/>

42. The competition distortions identified are attributable to several factors, chief among them, the lack of adequate funding for the administration of a more efficient commuter bus system. In this regard, lack of adequate funding has made it difficult for the DOT and provincial governments to introduce competitive bidding process for subsidised commuter bus services, as initially (contemplated). Lack of adequate funding has also had negative effects on the entry of new players, especially small bus operators.

43. To achieve efficiencies while promoting competition in the provision of subsidised commuter bus services, the Inquiry made the following recommendations:

- the subsidy policy should make provision for and encourage the conclusion of negotiated contracts with small bus operators as the preferred model to support and effectively empower small bus operators.
- negotiated contracts awarded for purposes of empowering small bus operators should apply to both existing and new routes and should account for a minimum of 30 per cent of all contracts, and progressively increased over time.
- where commuter bus service contracts are put out to tender (for existing or new routes) government (provincial transport departments or the DOT) should consider breaking these up into smaller contracts to create opportunities for new entrants and smaller bus operators. Small and local bus operators should be given preference.
- Where new routes have been identified, subsidy bus contracts should be put out to tender, subject to provision being made for the empowerment of small bus operators as indicated above.
- For subsidy bus contracts that relate to existing routes and are currently renewed on a short-term basis, a competitive bidding process should be followed within a period of five years, subject to provision being made for the empowerment of small bus operators.
- As an interim measure and to improve the quality of services provided by bus operators at less cost (pending the introduction of a tender system envisaged above), government should identify key corridors from all existing contracts and increase rates payable to bus operators servicing such routes – on condition that they improve the quality of services provided (for example by investing in a new fleet of buses).

7. Conclusion

44. The entry of e-hailing services as caused a disruption in the provision of local transport services in South Africa. The competition brought about by the entry of e-hailing services has had a significant impact on the traditional services offered by metered taxis. Consequently, regulatory authorities were required to make amendments to accommodate e-hailing services in the regulatory framework.

45. While the Amendment Bill categorised e-hailing services as a sub-category of metered taxis, there are differences in the way metered taxis and e-hailing services are regulated and how they operate. This dual regulatory framework creates an uneven competitive environment in that metered taxis operate within defined areas while e-hailing services are not subjected to area restrictions. In addition, the NLTA provides that metered taxi fares are regulated, whilst those for e-hailing services are not. Consequently, the Inquiry recommends that government stakeholders and legislators reconsider the Amendment Bill to remedy the competition concerns identified.

46. In relation to the commuter bus services, greater benefits could have been derived had the competitive tendering process been used to appoint the bus operators for the provision of the service. The current system has created *de facto* monopolies due to the use of perpetual contact system that impeded competition. This has led to inefficiencies in the provision of the commuter bus services. The CCSA has made several recommendations to government to gradually introduce competition into the market. These include the breakup of tendered contracts into smaller contracts to create opportunities for new entrants and small bus operators.