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Wheels in motion – the public passenger transport market inquiry

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INTRODUCTION

The Competition Commission ("**Commission**") has launched yet another market inquiry. In this instance, the focus is on the public passenger transport market.

The Commission is empowered by section 43B of the Competition Act, 89 of 1998 ("**the Act**") to conduct a market inquiry if it has reason to believe that any feature of a market prevents or restricts competition within that particular market. Therefore, the market inquiry into public passenger transport is aimed at determining whether there is effective competition within the public passenger transport sector.

SCOPE OF INQUIRY

The Commission published the Terms of Reference ("**ToR**") for the public passenger transport market inquiry in the Government Gazette on 10 May 2017.

The market inquiry will focus on land based public passenger transport, which includes minibus taxis, localised taxis, metered taxis, app-based taxi services, Metrorail, Gautrain and buses. The inquiry is set to commence on 7 June 2017.

According to the ToR, the Commission received and assessed various complaints alleging anti competitive conduct in the land based public passenger transport industry over a number of years. These complaints relate to the following:

- excessive transport costs;
- inconsistencies in the allocation of Government subsidies;
- inconsistencies in price regulation;
- uneven price setting mechanisms;
- opening the transport industry to competition; and
- route allocation, licensing and entry regulations.

CONCERNS IDENTIFIED

The Commission noted from the complaints received that the majority of consumers deem public transport costs to be excessive. The Commission therefore will have to assess whether the alleged excessive costs have a detrimental effect on consumer welfare. The Commission's market inquiry takes place against a background where the majority of the South African population uses land based public passenger transport, are low-income households and the mini-bus taxi segment of the overall public passenger transport market accounts for the bigger portion of this market.

Furthermore, Government provides subsidies to some modes of land based public passenger transport. The inconsistency in the provision of Government subsidies should be considered in the market where all these transport types compete with each other.

In recent years, public passenger transport has seen a complete overhaul of the competitive landscape, with the introduction of the Gautrain and the introduction of the 'app based taxi' business model services (e.g. Uber, Taxify and Snappcab). This has shifted the dynamics of public transportation competition in South Africa and has brought the South African public transport market in line with global economies.

It has been widely reported that 'market disruptive' entrants have been met with hostility by metered taxi operators. South Africa has recently experienced protests by metered taxi operators decrying the entry of Uber in the market and the competitive advantage it has in the industry. Furthermore, in South Africa, eight regional taxi companies and 150 individual members of the South African Meter Taxi Association filed a complaint with the Commission in November 2015, alleging that Uber is engaging in anti-competitive behaviour.

The entry of app-based taxi services has indeed increased consumer choice, but has also by-passed regulatory scrutiny that traditional metered taxis are subjected to.

CONCLUSION

The market inquiry occurs at a time when the country faces a need to enhance public transportation, one that will enable passengers to get from one point to another in a cost-effective manner without placing too much strain on an already ailing economy and financially stressed passengers. The Commission's market inquiry must be welcomed as the process will empower the Commission with the necessary understanding of the industry. Such understanding should enable efficient and robust competition law application that can serve to enhance competitiveness in the public transport sector and derive benefits to consumers. In addition, it should limit unnecessary focus on matters that clearly benefit competitiveness and enhance innovation going forward.

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