

ENHANCING REGULATORY CAPACITY IN THE TRANSPORT SECTOR: STATUS AND DEVELOPMENTS.

SMAK Kaombwe,
Director, InfraAfrica (Pty) Ltd., Botswana

Abstract

The ongoing economic reforms and the accompanying momentum of liberalisation and privatisation of the state owned enterprises in the transport sector, globally and in SADC in particular, has created many challenges. One of the most important challenge is to redefine the role of Governments and establish new effective and facilitative structures for enabling the creation of the necessary regulatory environment needed to secure the anticipated sector efficiency and best practices. As a result of these reforms, many more competing and complementary players have emerged and are still emerging, in terms of participation in investment and provision of services in the transport sector. In this situation, just as is in many ball games where many teams and players are involved, adequate, good and impartial “referees” – regulators - are needed in order to avoid possible chaos or a major breakdown in the sector development and/or services. This paper reviews the progress so far made and impending developments in establishing and capacity building of requisite regulatory services in the new competitive environment in the SADC transport sector.

1. INTRODUCTION

In the traditional, now becoming history, transport sector development and service provision, the Government had a central and intensely controlling role. It was a policy maker, a regulator - usually of bureaucratic detail, an investor or financier and operator or service provider – mostly through state owned enterprises (SOEs). However, since the starting of economic reforms in all SADC countries, ushering in unprecedented liberalisation and privatisation of SOEs, there have been major and fundamental policy, legislative and institutional changes in all sectors of economies. The central aim for these changes is to attain higher and faster economic growth rates and, hence, more effectively combating and finally eradicating poverty. In the case of the transport sector, the major changes are:

- The Governments’ withdrawal from the “business” of running business to the traditional role of “governing”: This entails redefining and streamlining their role to that of creators of a conducive environment for private sector led economic operations, including investment and service provision in the transport sector. This role comprises sector monitoring, policy making, strategic planning, regulation formulation and enforcement. However, in the transport sector many regulatory functions, especially those related to enforcement, are being assigned to autonomous or semi-autonomous government agencies.
- Concerted effort to attract the private sector, foreign and local, to invest into the respective national and regional economies to create jobs and accelerate growth. This is mainly pursued through various investment promotion initiatives and privatisation of state owned enterprises.
- Liberalisation and enhancing competition for efficient allocation and optimisation of the use of natural and other resources available or provided for development.

In most cases implementation of these policies has been slower than desired by the Governments and stakeholders concerned, as well as the targeted beneficiaries, the customers or consumers. The initial impact of reforms has been generally positive, especially in cases where competitive services have resulted in lower transport charges and better quality of service. However, one of the important areas which has seen slower than expected in development and effectiveness is the establishment of requisite regulatory structures and capacity. The status and progress in this regard is discussed below.

2. APPROACH, STATUS AND DEVELOPMENTS

There are two major types of regulation, economic regulation and safety and environmental protection regulation. Economic regulation deals with market operations, or directing the entrance or exit as well as behaviour of players in the market, with a view to deriving the best quality of service and at optimum supply and price, ultimately for the benefit of users/consumers. The safety and environmental protection regulation entrenches rules that ensure that sector services are provided at the safest level, with minimum loss or damage to life and property, and that minimise any type of pollution or other environmental degradation, damage or disturbance. Although practical implementation of these regulations is undertaken at national level, some of them are strongly guided by regional and international conventions, protocols or agreements.

2.1 Economic Regulation

The best and most effective known economic regulator is the presence of competition. In markets where there is perfect competition, all operators are kept on their toes and are forced to provide good, or competitive, quality of services and prices. There is, therefore, need for minimal regulation in such cases. But it is not always that perfect competition will be achieved. There are some cases or occasions of imperfect market in which there is unfair competitive behaviour by some players, especially dominant ones, or natural and locational monopolies that tend to exploit their monopoly power by imposing unfair prices and service standards. In view of these principles, the approach has been to deepen liberalisation, to enhance competition in the transport market, and to establish regulatory structures to deal with market failure situations and curb the exploitation of monopoly power. The latter is critical especially in cases where privatisation results in the creation of private sector monopolies substituting the predecessor public monopolies.

The following economic regulatory instruments are available, including progress attained in their development and use in SADC, especially in the transport bsector:

Liberilisation and Competition

Domestic **road transport** is the most liberalised sub-sector in the SADC transport industry. However, cross-border operations still face some restrictions. Generally permits have to be issued and operations guided by reciprocal bilateral arrangements between two countries concerned. Cabotage, that is the carrying of commercial domestic traffic (goods and passengers) by foreign registered vehicles is also still generally prohibited, unless occasionally allowed under specific bilateral arrangements. These restrictions are seen important due to the skewed capacity available in the countries, in which case domestic operators and countries with weaker or smaller vehicle fleet capacity consider it imperative to protect their weak operators against the more “muscular” or dominant competitors from outside. This skewed nature of the regional market present conditions for an imperfect regional market. However, this is a delicate regulatory balancing act because the users/consumers are denied the possible advantage of full competition, at least in the short-term. However, the bilateral arrangements are standardised or harmonised based on the SADC Models

established by the SATCC. The movement is to take the SADC scheme towards having a regional multilateral agreement, which will presumably further improve the competitive environment, albeit still on an equitable basis, within the mainland SADC member States.

The **railways**, which may be considered to bear some basic characteristics of natural monopolies within their network systems, are generally no longer protected by the old traffic directing regulations. They now face significant stiff competition from road transport. Some rail networks or routes face competition from competing rail routes. Some of the examples are the Botswana rail route with the route through Beit-bridge and Bulawayo, the Limpopo rail line to Maputo versus the rail corridors to Beira and Richards Bay or Durban, and the TAZARA line versus the rail systems of Nacala, Beira and Lobito, when it reopens.

However, the major problem in this regard is the prevalence absence of effective enforcement of appropriate regulation to ensure fair competition, to replace the abolished railways favouring regulations. These are specifically needed to ensure that there is equitable pricing and user pay policies and practices as well as controlling of overloading. There should also be no rail traffic routing guarantees or regulations that are contrary to the principles based on customers' freedom of choice of routing and service.

In **civil aviation**, liberalisation of air services in the domestic markets has gathered momentum in many SADC countries. However, regional and international air transport is regulated by the "Bilateral Air Service Agreements (BASAs)", between two countries. These normally specify the designated carriers, frequency and types/size of equipment to be used between designated destinations. In recent years, there have been attempts to deepen liberalisation, through the relaxation of the specifications in the BASAs to allow for some limited competition in service provision, for example frequencies. Furthermore, under the African Yamoussoukro declaration and decision, member States are required to liberalise air transport almost immediately. There has been also a major "open skies" initiative by the USA with several African countries, including SADC member States.

As regards regulatory bodies to manage this situation, the former civil aviation departments of Government are being transformed to autonomous or semi-autonomous civil aviation authorities, ostensibly with more capacity and effectiveness to ensure enforcement and fair competition, in the new emerging more liberal environment.

As regards **maritime transport**, the ports, which, with the exception of competition with other ports especially for international import /export traffic, have significant attribute of locational monopolies. However, they are now being transformed into landlord ports authorities, with the asset improvement, management and operations leased to the private sector. It is assumed that there will be beneficial competition among the operators of various terminals and other services within the specific ports, as well as between the ports competing for traffic from the same hinterland.

Regulatory Structures Development

In almost all cases, economic regulation was strong and carried out by Government departments, which were many times providers of the same services, or self-regulating state-owned monopolies. The supply, quality of service and pricing was determined by Government, through these bodies, and with insignificant or no consideration of the market forces or developments. We are basically in a transition period, and the appropriate structures are either being considered, being established or are still "mere toddlers" needing capacity improvement to change the mind-set and deal adequately with the current environment of facilitating market operations rather than control. Except for a few

cases, such as Tanzania where a Surface Transport Regulator has been established (for rail and road transport), many are mode specific.

However, the expectation is that the aim will generally continue to be strengthening competition and, therefore, minimising economic regulation to intervene only in cases of market failure or propensity to exploit monopoly power in few cases where it may still exist. Accordingly economic regulatory structures may still need further streamlining. For example, instead of having many economic regulators for each sub-sector, there may be merit of having a cross-sectoral anti-competition (e.g. anti-trust or consumer protection) structure, normally dealing with all sectors of the economy. This may then be supported by one or a few transport sector economic regulation structure to deal with sector specific issues, either within the overall cross-sectoral structure or under the auspices of the ministry responsible for transport matters. This assumes that there will be a separation of economic regulation functions from the normally more intense safety and environmental regulation functions.

2.2 Safety and Environmental Regulation

The status of safety and environmental regulation and effectiveness in its enforcement varies between transport sub-sectors and countries. In most cases, international conventions and procedures provide the basis for domestic and regulation. However, the main problem has been the inadequate capacity to adopt them in domestic legislation and enforcement. With the new era of increased competition, there may be even a higher rate of skimping on safety and environmental standards if enforcement is seen to be weak.

In **road transport**, the rate of accidents and loss of life and property due to road accidents is horrendous and taking away an acceptable or long-term affordable big proportion of the GDP in many SADC countries. Many road transport safety services are not adequately provided in many countries. They include those related to the condition of roads, fitness of vehicles, quality and alertness of drivers, awareness of other road users (e.g. pedestrians), carriage of dangerous goods, policing and enforcement and the general environment matters such as pollution and vehicle junk removal.

The structures responsible for enforcement of such regulation are generally weak and poorly coordinated by generally weak road safety councils. A lot more is needed to develop adequate capacity in all these pertinent areas.

In **railways**, there are also unacceptable levels of occurrences of accidents in many SADC countries. These have cost a lot of national resources, especially in the destruction of expensive equipment, which is bought and had to be replaced with public (including donor) funding, property and life. The causes of many accidents are attributed to human error, either locomotive drivers or train controllers or station staff concerned with receipt and dispatch of trains, and track conditions including signs and signals.

Traditionally, the railways have dealt with accidents on their own, except for those involving especially loss of life when the Minister concerned intervened. In the new emerging situation of concessioning of railways to the private sector, a small rail safety (inspectorate) agency or unit should be established, outside the new restructured railway company, to monitor and ensure that requisite safety and environmental standards are adhered to.

In **civil aviation**, there is comparative stronger enforcement of safety and environmental standards, driven by the demands of the international characteristics of the industry, under the intense guidance of the United Nation's International Civil Aviation Organisation (ICAO). There is a higher demand for improving further the situation in view of the ever-increasing air traffic and the technological advances. New improved international air navigation and safety systems have been planned and are currently being implemented.

As regards aviation safety regulatory structures, the civil aviation departments, which have been or are being transformed to autonomous authorities, will continue to provide safety and environmental control oversight to ensure adherence to standards for both personnel and equipment. Some specialised operational aspects, such as air traffic navigation, will increasingly be left to the private sector to invest in and operate.

In respect of **maritime transport**, the situation has not been good, especially in most of the SADC maritime states, as well as those with substantial inland waterways. Investments in appropriate navigational aids has also lagged behind or been lacking. Many accidents have occurred in coastal and inland waterways, involving large losses of life and property. There has also been an unchecked dumping of waste in some parts of the coastline by international ships as well as the calling into some of the SADC ports of sub-standard ships. Due to lack of financial resources and staff capacity, many countries have not been able to ratify and fully implement a significant number of important International Maritime Organisation (IMO) conventions concerning safety and the protection of the environment. However, through the SADC Protocol process and other IMO initiatives, there is now a concerted effort to move faster.

Traditionally, the ports authorities had delegated powers, from Government to provide safety oversight, including for their own operations. However, with the ongoing reforms new autonomous or semi-autonomous Maritime Safety Agencies/Authorities are being established. They obviously need nursing and capacity development to function effectively.

3. CONCLUSION

There are fundamental changes that are taking place in the transport sector in the SADC region, as is the case globally. These changes are transforming the historical structure of the transport industry by redefining the role of Government and its agencies, introducing new players and strengthening competition in the sector. As a result, the demands for regulation are changing and there is need for a new approach and vigour. This paper has discussed various matters concerning economic regulation and safety and environmental protection regulation. It has provided some incite of the situation and developments in SADC in these matters. In summary, there is much more to be done to create the expected facilitative and safety and environmentally sound conditions and structures needed for sector efficiency. However, the SADC countries are on the right track and the Governments need a bigger push and support and assistance of all the stakeholders in the region, as well as its Development Partners, to put these structures in place and empower them to work efficiently as soon as possible.

ENHANCING REGULATORY CAPACITY IN THE TRANSPORT SECTOR: STATUS AND DEVELOPMENTS.

SMAK Kaombwe,
Director, InfraAfrica (Pty) Ltd., Botswana

SHORT CV

SMAK Kaombwe is currently working as a consultant in the position of Director, in the recently newly formed regional infrastructure management consulting company, InfraAfrica (Pty) Ltd. based in Botswana. He holds a B.Sc from University of Dar es Salaam and M.Sc. from Loughborough University of Technology, Department of Transport Technology. He has over 26 years experience in transport and communications planning and policy, working up to the senior (director) level in the ministries responsible for Works, Communications and Transport. In 1991 he moved to the SATCC-TU, where he headed the technical section for nine years during which he also acted as Director for one year.