

**UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT**

# **Competition issues in the Transport Sector in Lesotho**

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## **Abbreviations**

4+1	Saloon taxis (4 passengers and 1 driver)
AGOA	African Growth and Opportunity Act
AU	African Union
ITP	Integrated Transport Project
JBCC	South Africa – Lesotho Joint Bilateral Commission Cooperation Agreement
LFBSC	Lesotho Freight Bus Service Corporation
LRA	Lesotho Revenue Authority
LRMS	Lesotho Roads Management System
MoPWT	Ministry of Public Works and Transport
MTICM	Ministry of Trade, Industry, Cooperatives and Marketing
RSA	Republic of South Africa
PRSP	Poverty Reduction Strategy Paper
SACU	Southern African Customs Union
SADC	Southern African Development Community
UN-OHRLLS	The Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and the Small Island Developing States
UNCTAD	United Nations Conference on Trade and Development

## **Executive Summary**

The study has been conducted within the AFRICOMP programme which aims at strengthening regional institutions as well as creating synergies between national competition authorities. The objective was to evaluate the situation, the structure and the functioning of the road transport sector (passenger transport and freight transport services) from a competition stand point. It involved analysis of the regulatory environment pertaining to the licensing of vehicles as well as interviews with stakeholders in the subsector.

Road transport is the main mode of transport in Lesotho given its topography. Its development has been influenced mostly by road network extensions across the country and the economic activities. Public transport began with the government owned LFBSC in the then gravelled roads and developed over the years to the current situation where it co-exists with private operators. Currently the long distance routes are serviced by buses and mini-buses, while the town centres are serviced by mini-buses and saloon cabs (4+1s). Freight transport began with private businesses ferrying their own cargo, and grew with the rise of the exports to the present case where it is fully established as a market on its own.

Public transport is one of the highly congested segments of the road transport sub-sector but with low contestability levels. Barriers to entry are also high, and present themselves in the form of limited number of operating permits controlled by the Road Transport Board (for saloon cabs and mini-buses) and high start-up costs (for buses). The board also controls fares. Freight transport is highly competitive, with prices determined by the market forces. Predatory pricing is possible however, and demand market entrants with deep purses even with free entry and exit.

Vertical integration is common in the road transport sector, with major retail stores owning their fleet of delivery vehicles and public transport operators owning their petrol stations and vehicle maintenance stores. The study could not establish the presence of the vertical practices or agreements however. What is common instead, especially with public transport, are horizontal practices and agreements within and between owners associations in the form of market allocations.

The integrated transport project is the single most significant program implemented by government to develop the road transport subsector. However, the competition issues are not clearly addressed in the project. It would be ideal to have competition provisions addressed in the road transport policy that is currently being drafted as well as in other policy documents going forward. The Road Transport Board should also be more representative of the subsector, and engage more with the industry players on major issues. It would also be ideal to reduce entry barriers in the subsector and let the board concentrate more on the rules of engagement in the industry. The cross-border initiatives advocated by SACU need to be fast-tracked for the benefit of the whole road transport sector as well. The regulatory fees should also be harmonised to the regional levels for the benefit of the subsector. To adequately address competition issues, allocation of sufficient resources for data collection and management is also a necessary step.

## **I. Introduction**

The study has been carried out within the context of the AFRICOMP programme which aims at strengthening regional institutions as well as creating synergies between national competition authorities of the region. This is in consideration of the importance of regional integration in Africa.

Road transport is the main mode of transportation of passengers and goods in Lesotho given its topography and the underdeveloped nature of its rail network. The only railway is that which connects the capital city, Maseru, to the railway network of South Africa. The air transport on the other hand is dominated by the South African Airways which operates daily scheduled flights between the Moshoeshe I International Airport in Maseru and OR Tambo International Airport in Johannesburg. There is a relatively new operator running local flights too. The Mountain Airways Company ferries passengers and goods between Maseru and the mountainous areas such as Mokhotlong, Thaba-Tseka and Qutha's nek.

The road transport sector has been developing since the 1970's and has currently extended even into the remotest areas of the country. Its development has been greatly influenced by the extension of road networks across the whole country through government initiatives and the Lesotho Highlands Water Project. To date road construction continues to dominate government programmes and claims significant budget allocations each year.

The study involved the analysis of the regulatory environment in the sector, the structure and functioning of the sector as well as the competition aspects of the whole sector. It involved desk research and interviews with key stakeholders i.e. operators, queue marshals<sup>1</sup>, officials of owners' associations, and government officials in the Ministry of Public Works and Transport.

## **II. Objectives of the Study**

The objective of this study is to evaluate the situation, the structure and the functioning of the road transport sector in Lesotho from a competition point of view. The study is aimed at identifying the conditions of competition in the road transport sector, and specifically on passenger transport and freight transport maintenance services.

The idea is to provide an overview of the structure of the road transport sector and market as well as to identify and analyse the various regulatory authorities pertinent to the sector. The study will also establish the level of collaboration between these various regulatory authorities and the harmonisation of pieces of legislation. It will further provide the Government of Lesotho with appropriate policy options with regards to the structure and practices in the road transport sector in order to promote competition. Comparison to other SACU member states would be carried out to provide a better picture of competition in Lesotho.

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<sup>1</sup> These are people employed to keep order in the taxi ranks, and ensure that the rules are complied with.

### III: Economic and Social Context, and Structure of the Sector

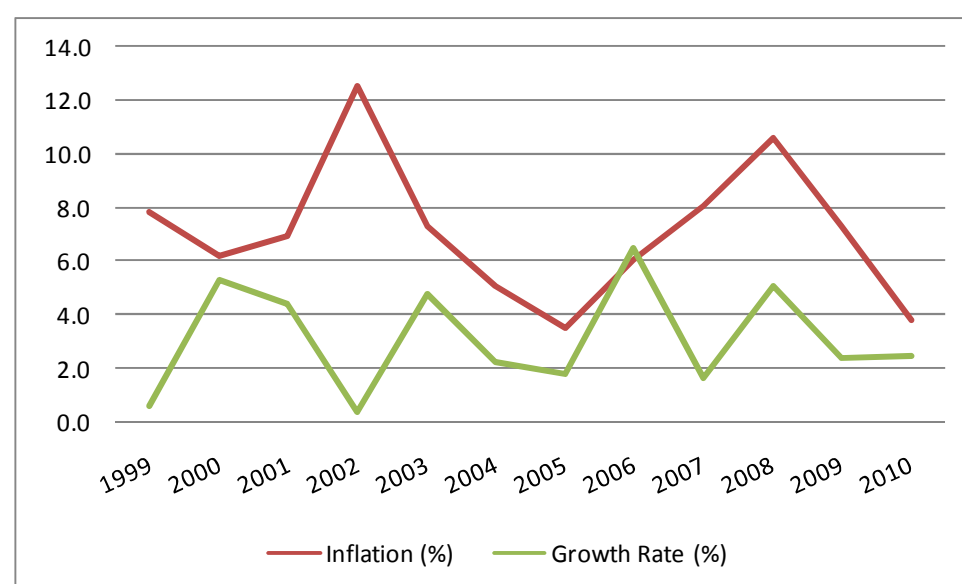
#### Macroeconomic and Social Context

Lesotho is a country in the Southern African region, completely surrounded by its neighbour, South Africa. It has a population of about 1.8 million people that comprise about 350,000 households. About two-thirds of the total land area of 30,350 square kilometres comprises rugged, mountainous landscapes. Economic activity is mainly in the low lands, in the district towns most of which lie close to the border with South Africa. The capital, Maseru, is the centre of all economic and political activity. Over the years, the government has embarked on massive road construction projects meant to link all the districts with Maseru. The map of Lesotho showing the road networks is attached in the appendix.

Rural-urban migration has brought a lot of people from the remote rural areas into the foot hills and low lands where manufacturing jobs, mining and public service provide livelihoods. Horticulture remains the main activity in the foot hills and animal husbandry in the highlands. HIV and AIDS remains to be the biggest threat to the livelihoods of the population. The disease leaves behind child-headed families, orphans and destitute grandparents.

Lesotho's development has been driven mostly by its natural resources. Abundant water resource necessitated the development of the Highlands Water Project in which Lesotho receives royalties on a monthly basis from the South African Government, which gets its water from Lesotho highlands. The road network that extends to the highlands is the feedback effects that originate from the project. Diamond and sandstone mining have also picked up successfully and bring in considerable streams of cash into the country.

**Figure 1: Annual Inflation and GDP Growth Rates**



*Source: Central Bank of Lesotho*

The country is stable from a macroeconomic perspective. The public finances are prudently managed and the monetary aggregates are stable and predictable. The local currency, Loti is



pegged to the South African Rand through Lesotho's membership of the Common Monetary Area. Figure 1 shows the trend of the annual inflation and GDP growth rates for the past ten years. The annual growth rate for 2011 is projected to be at 2.5%.

The business climate can be best assessed from the IFC's annual Doing Business rankings. The rankings are developed from the measurement of a set of regulations affecting the stages of a business's life. Specifically they look at starting a business, dealing with construction permits, employing workers, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and closing a business. Lesotho ranking has been declining from 114 in 2007 to 130 in 2010 out of 183 countries. The country has however been engaged on various pro-business reforms. The new Land Act meant to smooth land administration issues was passed in parliament in 2010. The Ministry of Trade, Cooperatives and Marketing on the other hand has put in place a one-stop shop business facilitation centre meant to ease business registrations. The new companies' bill is being reviewed and the manual registration of companies is being transformed into electronic format.

### ***Road Transport Sector***

The developments in the road transport sector in Lesotho have been influenced to a greater extent by the improvements in the road network extensions. From the periods around independence in 1966 to the late seventies, there wasn't a single tarred or paved road in Lesotho. At the time, the population was low and other forms of transport such as donkeys, horses and animal carts were commonly used, otherwise people simply walked. Passenger transport was provided by the government owned National Bus Corporation while freight transport was provided by the Lesotho Freight Services Corporation. These services were concentrated around predominantly gravelled roads in the low lands and foot hills. Generally many roads in the country were not tar marked or gravelled, making it very difficult to use.

In the eighties, new gravelled roads were extended and old ones improved. The socio-economic life among the Basotho also changed, with rural-urban migration influenced mostly by accessibility to roads and commercial activities, as well as employment opportunities in the mines of South Africa. The middle eighties saw an erection of a paved highway that was to link the south with the north in the low lands. This marked the beginning of the passenger transport under the hands of private bus operators.

With the extension of the road networks then, the government owned vehicles kept on following the tail ends of the roads i.e. the gravelled roads connecting to the main tarred or improved roads, and left the rest of the network to private operators. Over the decade, roads improved and transport services became widespread across the country. In the low lands, passengers' transport needs became more defined and distinguishable. This led to the introduction of minibuses that were relatively comfortable, filled-up quicker and were faster on paved roads, though slightly expensive. While good to the sector as a whole, this brought unwelcome competition to the bus operators who felt that their customers were taken away.

The interaction between taxi and bus operators was always marred with confrontation and physical fights, all in contest for dominance on the routes. Market and government interventions were common in the restoration of order along the routes. In the nineties, developments in the car manufacturing in South Africa brought in another dimension. Companies such as IVECO and Mercedes Benz introduced small buses that were not only more comfortable but also faster, some kind of a hybrid of a small bus and a minibus. These brought in even more fierce competition in the passenger transport segment and intensified confrontation between operators and owners' associations. More passengers were opting for these hybrids to the detriment of large buses and minibuses. To date, the long distance routes are being serviced by large buses, small buses and minibuses. The large buses are slowly falling out of favour in the low lands since they are relatively slow and take time to fill-up. This has seen them slowly being diverted to the foot hills and the mountainous areas of the country.

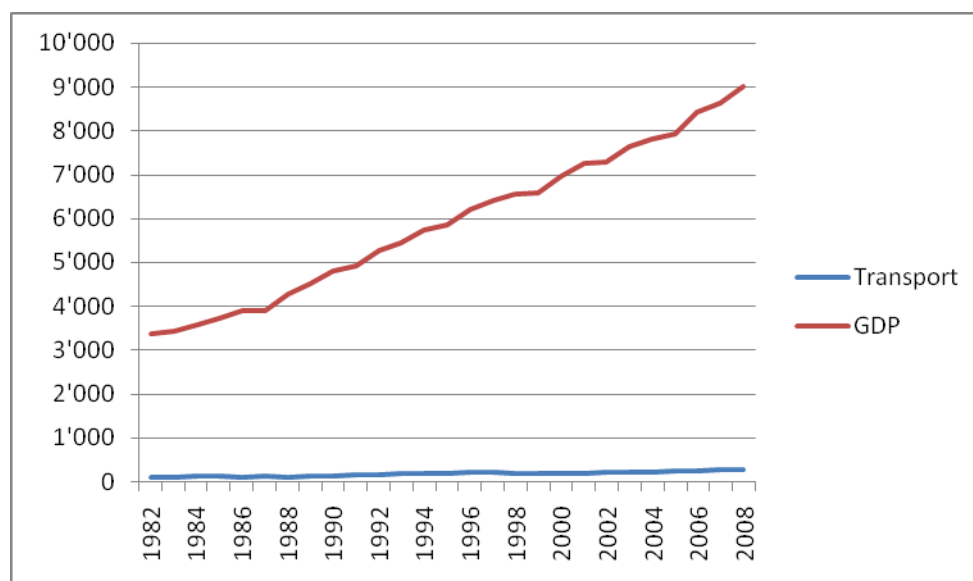
In and around towns, the minibuses were dominant due to their size and manoeuvrability. The speed of life in towns demanded quicker service though, and this came in the form of saloon cabs, normally referred as 4+1s. The saloon cabs are licensed to operate within a radius of 10km of a town centre, though there have exceptions in some areas.

The freight transport has only been commercialised recently. The trucks were traditionally acquired by business people for the transportation of their own cargo, most of which were in the construction industry. The emergence of the export sector (manufacturing and mining) and the Lesotho Highlands Water Project opened eyes to most entrepreneurs. This saw the emergence of a number of freight companies which currently have to fight for a very small market given the structure of trade flows in the country and the region.

### **Contribution of the Road Transport Sector in the Economy of Lesotho**

The road transport in Lesotho accounts for a significant contribution to the GDP of the economy of Lesotho. It contributes an average of 3% to the national product. The sector has been growing steadily over the years, with an average growth rate of 4.1% from 1982 to 1998. The growth of the sector has not kept pace with the rest of the economy though, signifying either underreporting or structural problems in the whole transport sector. The structural problems may be more prevalent in the freight services; especially in as far as enforcement and harmonisation of regulations and fees to the regional levels are concerned. The graph below provides an overview of the performance of the sector against the GDP.

**Figure 2: Transport Output versus GDP**



*Source: Bureau of Statistics*

Figure 2 shows the trend between the GDP and transport growth rate from 1982 and 2008. It should be noted however that a significant percentage attributable to the transport sector is hidden under construction and maintenance of buildings as well as transport infrastructure, particularly roads.

### **Ownership Structure**

The passenger transport, both in the saloon cab, mini-bus and buses segments, is dominated mostly by the local entrepreneurs. There is a significant level of competition between these segments, though horizontal practices are common within each segment. The majority of these entrepreneurs operate as sole proprietors. One of the conditions for a vehicle to be offered a public transport license is that it should be registered in Lesotho. This condition in itself works favourably for the locals with an interest in passenger transport business due to the provisions required in the registering of the vehicle by a foreigner in Lesotho alone, as in many other countries. When fully operational, the SACU cross-border transport initiatives will also open the border towns to the mostly South African passenger transport operators, fully licensed under the scheme in South Africa.

Ownership in the freight transport business is mixed. There are three locally registered freight transport companies with head offices in the RSA, major ones being Unitrans Lesotho and J&G Transport. The rest of the locally registered companies are fully owned by the Basotho. It is worth mentioning here that the SACU cross-border initiatives are working comparatively well in the freight transport segment. That says, freight transport business, in line with the

structure of the Lesotho imports, is dominated by the South African registered freight companies in as far as the delivery of the imported goods into the country.

The only state owned operation in the road transport sector is the Lesotho Freight and Bus Services Corporation. The corporation was established in 1987 (by Act No 16 of 1987) as an organisation taking over from the previous National Bus Corporation and the Lesotho Freight Services Corporation. One of the main mandates of the corporation was to provide public transport to the underserved areas of the country. At the time, the paved roads were limited to the low lands and major town centres. The roads connecting these major town centres were mostly gravelled. Buses, big and small, were the main modes of transport across the whole country. Most private operators opted for the routes along paved roads, with those servicing the in-country routes making scheduled one day or two day trips. To this day, the LFBSC is still operating scheduled trips along the underserved routes from Maseru to Mokhotlong, Qacha's nek, Katse, Linakaneng, Sehong-hong, Ketane, Ribaneng, and Thaba-Bosiu. However, where the private bus operators feel that they can meet the transport needs along any of the LFBSC serviced routes, the LFBSC is allowed to leave such routes upon satisfaction that such services would be satisfactorily rendered by the private operators.

The corporation can be viewed more as a provider of public service rather than a profit making organisation. It operates daily scheduled trips irrespective of passenger traffic volumes, at the regulated prices. It is not surprising therefore that the government should keep funding it year after year in order to sustain its operations.

Around the political tensions of 2007, a political decision was made to expand the fleet of the corporation to enhance its capacity so that it could continue operating on the usual long out-of-town routes and also the main commuter routes around Maseru. While this sparked controversy, the initiative was justified on the grounds of transportation needs. To this day, the corporation operates morning (before 0700hrs) and evening (from 1630hrs) trips meant to serve mostly factory workers, following an agreement with the Maseru based Maseru Region Taxi Operators Association.

### **Regional and International Perspectives**

A number of programmes are under way from the UN at the international level to the SACU at a regional level. These aim to strengthen transport infrastructures across the whole of Africa, create a supportive trade and investment environment and foster regional economic integration. It has been decided that Africa should prioritise eliminating all missing infrastructure links and develop a continent-wide infrastructure master plan to inform future development, while addressing the specific challenges of landlocked countries, as articulated in the Almaty Declaration on Landlocked Countries. Five priorities in the Almaty Programme of action are:

- Policy Improvements - reducing customs bureaucracy and fees, designed to cut costs and travel days for landlocked countries' exports.

- Improved rail, road, air and pipeline infra-structure - projects will reflect local transport modes; in Africa, road is the predominant mode of transport; in South Asia, rail is more common.
- International trade measures - to give preferential treatment to landlocked countries' goods, making them more competitive.
- Technical and financial international assistance - donor countries will lend know-how and funds to landlocked and transit countries for infrastructure and policy improvements.
- Monitoring and follow-up on agreements -measurable criteria, such as travel days and costs, will be used, and an annual review before the General Assembly is possible.

Lesotho is also a legitimate member of the Southern African Development Communities (SADC) and Southern African Customs Union (SACU). It is a full signatory to the SADC protocol on transport, communication and meteorology and the SACU Memorandum of Understanding on road transportation in the common customs area pursuant to the Customs Union Agreement. The SADC and SACU provisions encourage amongst other things good neighbourliness between member states to remove any obstacles that could hinder the realisation of the noble intentions enshrined in both agreements.

Article 5.1 of the SADC protocol stipulates that, “Member States shall facilitate the unimpeded flow of goods and passengers between and across their respective territories by promoting the development of a strong and competitive commercial road transport industry which provides effective transport services to consumers.” Article 5.2 further stipulates that, “In order to obtain road transport objectives, Member States agree to develop a harmonised road transport policy providing for equal treatment, non-discrimination, reciprocity and fair competition, harmonised operating conditions and promoting the establishment of an integrated transport system...” The protocol has a direct bearing on the cross-border carriage of goods and passengers between any two or more member states, and sets out guidelines as to the roll-out of the liberalisation process. The key principles in the roll-out are non-discrimination, reciprocity and extra-territorial jurisdiction between the members concerned.

Article 24 of the SACU agreement on the other hand stipulates that:

A Member State shall afford freedom of transit without discrimination to goods consigned to and from the areas of other Member States, provided that a Member State may impose such conditions upon such transit as it deems necessary to protect its legitimate interests in respect of goods of a kind of which the importation into its area is prohibited on grounds of public morals, public health or security, or as a precaution against animal or plant diseases, parasites and insects, or in pursuance of the provisions of a multilateral international agreement to which it is a party; and provided further that a Member State shall not be precluded from refusing transit, or from taking any measures deemed necessary by it in connection with such transit, for the purpose of protecting its security interests.

Specific to the transport sector is Article 27 of the SACU agreement which stipulates that:

1. Member States undertake that the transit through their areas of goods imported from outside the Common Customs Area to or exported to a State outside the Common Customs Area from the areas of other Member States shall not be subject to transport rate discrimination by public authorities.
2. Each Member State shall ensure that the tariffs applicable within its area to the conveyance of goods by public owned transport to and from other areas of the Common Customs Area shall be no less favourable than the tariffs applicable to the carriage of similar goods within its area.
3. Each Member State undertakes to extend to the motor transport operators registered in the areas of the other Member States treatment no less favourable than that accorded to motor transport operators registered within its own area for the conveyance of goods or passengers for reward or in the course of any trade or business.

Closer to home, the development of transport networks is also highlighted under the South Africa- Lesotho Joint Bilateral Commission Cooperation Agreement (JBCC).

## **IV: Legal and Institutional Framework**

### **Institutional framework**

The Ministry of Public Works and Transport is responsible for the legal and regulatory issues pertaining to transport in general. Within the ministry, there is the Department of Planning which works very closely with the planning section in the Ministry of Finance and Development Planning. The department is responsible for the overall strategic planning of the ministry, and has a say in the planning activities of other departments responsible for road transport, air transport, rail transport, road network construction and road safety. Road transport administration is the responsibility of the Traffic Department. The department is responsible for the issuance of driving licences, vehicle registrations, road transport permits and such activities as provided for by the Road Transport Act.

### **Legal and Regulatory framework**

Regulation in the subsector is through the Road Transport Act of 1981 as amended in 2001, together with the Road Transport Regulations of 2004. Under the act, there is a Road Transport Board constituted of the Traffic Commissioner, a technical advisor, representatives of the commuters, motor dealers and of passenger and freight transport operators. The board's mandate is to administer the regulatory provisions relating to the daily administration of the act. The mandate includes investigations into matters relating to operations of public motor vehicles, and hearing as well as determining applications for different classes of permits and their amendments. The competition provisions are not addressed in these pieces of legislation though. Instead the regulatory environment inhibits competition with the high level of entry barriers that come in the form of a limited number of permits. This is very

significant in the passenger transport segment where entrepreneurs are unable to enter into the market because of the limited access to the permits.

Another significant part of the Board's functions entrenched in the law is in the price setting of commuter fares in the passenger transport tier of the market. This in itself inhibits competition in the sector. While this may be justified from the public welfare stand point, the same result can be achieved if the price setting is left to the market and collusive behaviour is outlawed.

## **V: Main Support Policies and Support Programs**

### **Road transport policy**

The policies of the Government of Lesotho in general are drawn within the framework of the two main policy pronouncements, these being the 2020 National Vision of Lesotho and the Kingdom of Lesotho Poverty Reduction Strategy (PRSP). The same holds true for the transport sector policy. The overall transport sector policy of the government is that the, "the government will provide an enabling environment for efficient, cost effective and safe transport, within Lesotho, regionally and internationally, to facilitate the sustainable development of the economy, social services and of the population in general." The specific road transport policy is still being developed under the auspices of the integrated transport project.

### **Main support programs of the sector**

The Integrated Transport Project (ITP) is the single most important program implemented by the Government of Lesotho under assistance from the World Bank and the European Union. The project started in 2007 and is scheduled to be complete by June 2012. The objective of the project is to enhance prospects for economic growth and poverty reduction through provision of an efficient and integrated transport system that is safe and affordable to improve access to services and market opportunities for all across the country (World Bank, 2011). The project is composed of three major components: policy and institutional reforms in the transport sector, infrastructure investment, and project management and monitoring and evaluation.

Policy and institutional reforms in the transport sector are focused on:

- Advisory services for planning change and implementation support at central and local level
- Capacity building for the Roads Directorate & Local Authorities
- Infrastructure requirements for the Roads Directorate & Local Authorities
- Preparation of staff for private sector development
- Driver training project
- Vehicle inspection project

- Study into the basic access and mobility
- Local construction industry development
- Labour based contractor training program
- Integrated mode of transport project
- Alternative surfacing standards study
- Enhancement of Lesotho Roads Management System (LRMS)
- Implementation of computerisation of vehicle registers, license and data
- Technical assistance to the Roads Branch and the Department of Rural Roads
- Integrated transport study and policies development
- Maseru urban planning and transport study

The infrastructure investments are focused on the following:

- Senqu and Senqunyane bridges
- Mantsonyane – Lesobeng road
- Oxbow – Mokhotlong road
- Likotopong – Mpeke road

Project management and monitoring and evaluation component focuses on the following:

- HIV/AIDS interventions associated with civil works
- Overall ITP project management
- Monitoring and evaluation
- Recruitment and retention studies
- Training on social assessment and baseline survey, quality assurance, report writing

To date, significant progress has been made in all the three components of ITP. A roads directorate as an entity for the road network management has been established, and is now fully functional. Progress on large civil works contracts supported under the project is on target e.g. the construction of two bridges on Senqu and Senqunyane rivers as well as the works on their approaches are completed. The project management has been effectively facilitating and coordinating the project implementation. While the project will bring welcome results to the transport sector, the competition issues affecting the sector should be integrated into the project and addressed accordingly. The specific road transport policy should make provisions for addressing the competition aspects of the sub-sector as a whole.

### **Cost/Benefit analysis of the policy and programs implemented**

The ITP is a multimillion Maloti project that is meant to bring total change in the transport sector as a whole. Its components are necessary for institutional development and smooth functioning of the transport sector. The policy initiatives are implementable and practical, and will bring the sector to a level congruent to that existing in the SACU region. Though the project is still running, effective competition does not come out clearly as an issue to be dealt with on all the segments in the sector. While the regulatory environment would match the



regional level, it would be beneficial to drive policy towards competition in an effort to foster the regional initiatives already underway.

## **VI. Analysis per Sub-Sector**

### **Methodological Aspects**

The sub-sector analysis involved the analysis of the regulatory environment pertaining to the licensing of vehicles, both in the passenger transport and freight transport segment. The activity involved analysis of the relevant laws and regulations, as well as the Road Transport Board resolutions. The analysis also involved administering open ended interviews with the operators, queue marshals, the officials of owners associations and the government officials. The interviews were structured in a way of obtaining individual views on issues including;

- Price setting
- Route allocations
- Quotas per route
- Market conduct
- Prevalent anti-competitive practices or agreements
- Cross-border market conduct

### **Relevant Market**

#### **Passenger Transport**

Passenger transport is one of the highly congested segments of the road transport subsector. The Road Transport Board plays a major role in the determination of the passenger routes across the country. The determination could be the board's initiative or it could be proposed by the operators with an interest in the routes in question. The determination is informed by the traffic flow, road infrastructure and population density among other factors as analysed by the technical teams within the Traffic Department. Upon establishment of the routes, a quota is set for the number of licenses that could be allocated to the routes per class of vehicles. The board may also revise the quota on certain existing routes upon the necessary determinations over time, out of its own prerogative or as proposed by the interested operators. Potential operators then launch their route allocation applications upon satisfying such standard procedures as safety and road fitness tests. While this system may be viewed as a regulatory measure from the government perspective in the absence of competition law, it is the single most significant barrier to entry in this segment that inhibits competition.

#### **Saloon Cabs (4+1)**

The vehicles in this category are saloon cars with a capacity of four passengers and a driver, hence the acronym 4+1. Entry into the market by the saloon cabs is highly dependent on the

availability of licenses per route. Upon entry, the saloon cab operator then follows the market practise of queuing in the traffic ranks, and touting along the route allocated. There are instances however where a group of operators may “play dirty” in an effort to drive away competition. These may be in the form of market (pickup zones) allocations or forceful exclusion from cab ranks. The new entrant may or may not join one of the owners associations on the route.

### **Mini-Bus**

The mini-bus segment faces the same environment as the cabs segment. The vehicles in this category are minibuses with a capacity ranging from ten to eighteen passengers. The availability of licences per route is the main factor inhibiting entry into the market. On allocation, the mini-bus operator then follows the market practise of queuing in the designated traffic ranks and touting along the allocated route. The practices of market allocation and forceful exclusion from taxi ranks are very dominant in this class of passenger transport due to their long distance routes, and may play a significant role in deterring potential players. Affiliation to the existing owners associations usually eases the restrictions. This however results in associations getting into anti-competitive practices such as market allocations. The introduction of competition law in Lesotho can go a long way in addressing these issues and ensuring a level playing field for everyone. This will enable the owners associations to concentrate on improving service delivery to the clients and to inform their employees of the need to comply with the competition law provisions.

### **Buses**

The small and large buses go through the same process of applications for route allocations. With the continual expansion of road networks across the country however, the saloon cabs and mini-buses keep on infiltrating into the newly accessible routes, with buses becoming less popular but also bus permits becoming readily available due to the relatively limited number of bus operators. In those remote and sometimes low traffic areas, the new entrant may face stiff competition from the government owned Lesotho Freight Bus Service Corporation (LFBSC) with relatively new fleet. Finances may also play a significant role in deterring potential entrants into this segment due to the high start-up and running costs of buses.

### **Freight Transport**

This is the segment that is highly congested as well. A major entry deterrent in this market is finance. The start-up and running costs of freight transport is high and needs significant financial muscle. Wet/liquid cargo poses even more challenges, with customers (mostly petroleum companies) demanding a certain number of years of experience, safety standards and insurance arrangements in addition to the already high cost of containers. The market determined prices in the dry cargo segment also imply that new players may be squeezed out of the market by the dominant players through predatory pricing.

## **Road transport services**

### **Economic importance**

Road transport is by far the best mode of transport in terms of flexibility, infrastructure requirements, operations and maintenance. It is however efficient on short distances only, with rail transport the best option on long distance land transport. The topography, geographical location, population densities and economic activity dictate the structure of transport in a country. Lesotho relies heavily on road transport. Its road network is as essential as the arterial system to the human body. Road transport is the backbone behind any movement of goods or people in the country given the country's small railway and passenger focused air transport. The road transport in a big way facilitates advancement in the economy and simultaneously facilitates communication.

- It provides the daily transportation needs of the working class, students and shoppers
- It facilitates movement of goods within the country and outside
- It facilitates communication between & among towns and villages
- It contributes heavily to both domestic and international tourism

### **Current situation and short term perspectives**

The passenger road transport is composed of three classes of vehicles; buses (large and small), minibuses and saloon cabs (4+1). The buses service the longer routes with minibuses, while the minibuses and saloon cabs service the town centres and surrounding villages. The passenger transport market is highly concentrated even though the prices are regulated by the Road Transport Board. Horizontal agreements are common between associations sharing routes, and so is playing dirty, in the form of touting and price manipulation. Bus operators complain that minibuses take their customers, and in turn, the minibuses accuse the bus operators of charging low prices.

The freight transport market is highly competitive, with prices determined by the market forces. Predatory pricing is possible though and demands market entrants with significant resources. There is a significant level of concentration in the market, with few main players dominating the market. Entry into the market is free but constrained by the huge startup costs of freight transport operations.

### **Determination of the relevant programs**

Programs targeted at the road transport sector are government determined. There has been a shift in the general operations of the government recently. Intensive stakeholder engagement and consultations form part of program determination and policy development. This provides an environment where players buy into the government efforts to promote the sector either from a regulatory or administrative perspective. It also provides market related solutions that may not be apparent to the government officials. Competition issues may also surface in

these consultations, and guide the government in devising appropriate instruments to promote effective competition.

### **Main Actors**

The passenger transport segment is dominated by private individuals, mostly locals while freight transport is dominated by South African freight companies. The approximate view of the main actors in each of the segments is described below.

### **Passenger Transport**

The Road Transport Board made a resolution in its meeting of the 28<sup>th</sup> April 2008 to limit the number of public transport operators (saloon cabs and mini-buses) to five, per operator per route. This was influenced in part by the observation that certain few known individuals were controlling a significant number of operating licenses on various routes. Lack of credible data has however hindered the implementation of this decision. The suspicion is that there are still operators with more than five vehicles per route. Another hindrance has been innovation on the side of operators, whereby vehicles are registered under the names of close family members and friends, but still under common control.

In the saloon cab (4+1) segment across the country, there are a few players with a significant number of licensed vehicles on the road, though the number could not be established. Enforcement and data capture on renewal of permits can go a long way in establishing the status on the ground.

The major players in the mini-bus segment in terms of control are slightly above five individuals with control of around twenty vehicles each. The vehicles are spread around routes that emanate from major towns such as Maseru, Maputsoe and Mafeteng.

The small buses segment is also dominated by around five individuals, with vehicles licensed on routes connecting to major towns such as Maseru, Maputsoe and Mafeteng.

Expansion of the road network has worked favourably for the mini-buses to the detriment of the large buses operations, with a resultant few operators still left in the industry. The large buses segment is dominated, in order of size, by LFBSC (33 buses), G. Kou Transport, Lekhooa Coach Tours (10 buses), Albert Mapeshoane, Mdlokovana, and Sebatana. This is the segment that still follows the queuing system, and in most cases operators agree on the loading times at the bus ranks on both ends of the routes. With the exception of twelve buses by the LFBSC, the operators service long distance routes between major town centres, mostly in the rural areas.

### **Freight Transport**

The freight transport has two sides to it; the cross-border operations bringing goods into the country, and the domestic operations transporting within the borders and into the rest of the SADC area. The cross-border operations are dominated by the South African trucking firms

with contracts arranged between the head offices of truck companies and the head offices of domestic subsidiaries or branches of RSA firms.

The major players in the domestic operations in the wet cargo area are Unitrans Lesotho (42 trucks) and J&G Transport (8 trucks). These are subsidiaries of RSA firms and transport mostly petroleum products. Executive Transport has also been subcontracted by Unitrans Lesotho with its eleven trucks.

The dry cargo area is dominated by Executive Transport, Evergreen Transport, Hippo Transport, Reliable Transport, Storm Transport, SP Trucking (14 trucks), and Nkomo Transport (8 trucks). With the exception of Reliable Transport, all the companies are locally owned.

### **Vertical integration**

Vertical integration refers to the consolidation of upstream and/or downstream components of the value chain into a common ownership structure. When a firm acquires its input supplier it is called backward integration, but when it acquires firms in its output distribution chain then it becomes forward integration. The common ownership structure can involve separate firms under common shareholding or control, or a complete merger of firms. Costs, market differentiation, and other business issues in the industry are impacted by the extent of vertical integration. For instance, vertical integration can be a solution to what is usually referred to as the hold-up problem, a situation in which it would be efficient for two firms to cooperate, but the firms do not because of differences in bargaining power.

A lot of vertical integration is present in most industries with a bearing on the road transport sector. Significant among the big companies is the backward integration. The big RSA furniture and supermarket chains like OK Furnitures, Shoprite and Pick'n Pay rely mostly on their own transport logistics for the delivery of their stock from warehouses in the RSA to the shop floors. The milling companies in the country such as Lesotho Flour Mills and the only brewing company, Maluti Mountain Brewery, also operate their own fleet of delivery trucks that operate within and between towns. A significant amount of business is still provided to the freight transport segment though.

Common in the passenger transport (minibuses and buses) and freight transport is the situation where there are internally run gasoline filling stations, tyre fitment centres, vehicles parts shops, and maintenance garages. For the big companies, these are usually departments that only serve the company's or the owner's fleet. For some of the smaller players, they may be independent businesses on their own, serving both the public and the owner's fleet.

### **Pricing and Margins**

#### **Passenger Transport**

The Road Transport Board determines the prices in the passenger transport segment based on a notional cost of vehicle operating cost per passenger. That implies that large vehicles i.e. buses with high capacity have lower prices than smaller vehicles thereby making the saloon cabs the most expensive per kilometre. The determination of the price begins with the basic price per kilometre that depends on the type of commuter vehicle i.e. saloon cab (4+1), minibus or bus. To this basic price is added a 15% increment where the route is gravelled, and a 25% increment where the route is mountainous. Revision of these basic prices is influenced by many factors, the significant of which is inflation. The increase in the prices of petrol, motor vehicle parts, tyres and new vehicles play a major part in the determination of the basic price increment. The Board may however exempt any transport operator from compliance with the stipulated scale of fares where exceptional risk or hazard on a particular route can be shown by the operator concerned<sup>2</sup>.

The board however does not regulate the prices of passenger luggage. This is one area where the operators still have room to set their own prices. It is expected therefore that there would be a wide disparity in the prices of luggage within the same classes of vehicles, and also between the different classes of vehicles. The prices would also vary from region to region. Personal judgement, rather than objective measurement of weight and/or volume, and traffic flow play a major role in the determination of these prices. This is pro-competition and the government may assist by setting the rules of operation, in conjunction with the owners associations.

### **Freight Transport**

The rates in this segment are market determined. With the congested nature of the market, big companies e.g. Lesotho Brewing Company and Lesotho Flour Mills, usually dictate rates to the players. However, the freight companies still have room to set prices on the greater part of the market locally. Such would be the case with relatively smaller companies that are either importing goods into the country or distributing within the country on ad hoc basis. On long haul routes to the main ports, the price setting mechanism is subject to negotiations, taking into account the cost per kilometer of transportation. The main users here would be the textile manufacturers for the importation of raw materials and the export of finished garments to the western markets.

### **Analysis of the Market Concentration**

Market concentration analysis determines the degree of competition through analysis of market shares per player in the market. The most common measure is the Herfindahl index. This requires knowledge of market sizes per operator, the data of which is not easily available in the context of Lesotho, especially pertaining to road transport. It would suffice therefore to say that there are a few operators with a sizable control of the market in the passenger transport segment. The same can be said of the freight transport segment.

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<sup>2</sup> 2004 Road Transport Regulation, Section 11 (4)

### **Identification of the Entry Barriers**

A major barrier to entry across the whole road transport sub-sector is the availability of licences per route. The situation varies across different classes of vehicles. In the minibuses and saloon cab markets, entry barriers are high. It is relatively easier in the buses segment due to limited number of operators per route. The huge start-up costs are instead a hindrance with the buses segment

Freight transport is constrained by the huge capital requirements that are necessary to start a well functioning freight services organisation.

### **Contestability level of different markets of the sector**

A contestable market is one where there is freedom of entry and exit, and sunk costs are low. In analysing contestability, the levels of sunk costs, advertising and brand loyalty, profits, vertical integration and technology are key.

In the passenger transport segment, especially with the minibuses and saloon cabs segments, the main hindrance is the availability of licenses per route. The vehicles are available at relatively cheap prices, more so in this era where people are allowed to purchase imported second hand vehicles from Japan and other overseas countries. The rules of the taxi ranks are clear and market dynamics are clear cut. To the extent that the availability of licenses is restricted in these segments therefore, the contestability level is quite low.

In the buses (both small and large) segment, the licences per route are relatively available. The major drawbacks are the acquisition costs of the bus and low profits resulting from stiff competition in the overall passenger transport segment. The buses have not yet been available at cheaper prices from the re-sellers in Asia, and therefore should be acquired regionally at considerable prices. To that extent therefore, the contestability level is quite low.

Competition is stiff in the freight transport and prices are market determined. The considerable costs of acquiring a truck and trailer are a major deterrent in this market. Contestability is currently very low. This may however turn around if government supports the market through regionally benchmarked license fees and border control processes.

## **VII: Identification of Possible Anti-Competitive Practices**

### **Horizontal practices/ agreements<sup>3</sup>**

An agreement or cooperative practice is of a horizontal nature if entered into by economic competitors operating at the same level in the market. These, in most cases, tend to be anti-

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<sup>3</sup> Excerpts from <http://www.europa.eu>

competitive where they cause negative market effects with respect to output, prices, variety or quality of output or research and development. The opposite may be the case at times, where these may lead to significant economic benefits where they are a means of sharing risk, making cost savings, pooling knowledge and launching innovations faster among other factors.

The nature of the horizontal agreement or practice, and its potential effects should be analysed however. The agreement's ability to cause negative market effects would depend on the economic context, taking into account the nature of the agreement or practice and the players' combined market power together with other structural factors. The structural factors may be the stability of market shares over time, entry barriers, the likelihood of market entry, the countervailing power of buyers/suppliers or the nature of the products or services (e.g. homogeneity, maturity).

In the passenger transport sector, and especially in the minibus segment, operators are organised in the form of associations. There exist agreements between some of these associations which centre around market restrictions or allocations on common or shared routes. The associations or groups of associations party to the agreement would usually be originating from the opposite sides of the routes in question. The agreements may have been necessitated by the congestion in the segment given that the commuter fares are regulated. The common clause is to allow an association or a group of associations' members from the other end of the route to pick-up passengers outside a certain arbitrary radius (usually around 10km) from the taxi rank. In such a case, the same clause would apply on both ends of the route.

Stiff competition within and between classes of vehicles has also brought in competitive pricing even in this environment of regulated commuter fares. There is a general practice among minibuses to charge the relatively lower bus fares, thereby poaching those customers that are traditionally bus commuters, lured by the speedy service of minibuses that fill-up quickly due to their small capacity. This is a phenomenon corroborated by the findings of the basic access study<sup>4</sup> conducted by the ministry.

### **Vertical practices/agreements<sup>5</sup>**

An agreement or practice is of a vertical nature if entered into between two or more companies each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services. Vertical agreements can take numerous forms, ranging from a requirement that dealers accept returns of a manufacturer's product, to resale price maintenance agreements setting the minimum or maximum price that dealers can charge for the manufacturer's product. Other forms include exclusive customer allocations, tying contracts, whereby a purchaser agrees to purchase a second product as a condition of

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<sup>4</sup> Lesotho Study into Basic Access and Mobility Standards and Needs

<sup>5</sup> Excerpts from <http://www.europa.eu>



obtaining a "tying" product, and exclusive dealing agreements, whereby a dealer agrees not to purchase products from suppliers that are rivals of the manufacturer.

The negative effects on the market that may result from vertical restraints are:

- foreclosure of other suppliers or other buyers by raising barriers to entry;
- reduction of inter-brand competition between the companies operating on a market;
- reduction of inter-brand competition between distributors;
- limitations on the freedom of consumers to purchase goods or services

Vertical agreements also have positive effects, in particular by promoting non-price competition and improved quality of services. In fact certain jurisdiction e.g. EU allow vertical agreements for a certain restricted time in such cases where:

- one distributor may "free-ride" on the promotion efforts of another distributor;
- a manufacturer wants to enter a new geographic market. This may involve certain "first-time investments" by the distributor to establish the brand in the market;
- certain retailers in some sectors have a reputation for stocking only "quality" products;
- client-specific investments have to be made by either the supplier or the buyer, such as in special equipment or training;
- know-how, once provided, cannot be taken back, and the provider of the know-how may not want it to be used for or by his competitors;
- in order to exploit economies of scale and thereby see a lower retail price for his product, the manufacturer may want to concentrate the resale of his product on a limited number of distributors;
- the usual providers of capital (banks, equity markets) provide capital sub-optimally when they have imperfect information on the quality of the borrower or there is an inadequate basis to secure the loan;
- a manufacturer increases sales by imposing a certain measure of uniformity and quality standardisation on his distributors e.g. in franchising. This may enable creation of a brand image and thereby attract consumers.

It is difficult to ascertain whether there exist any vertical agreements or practices in the sector. That is the case in the saloon cab segment, minibus segment, bus segment, and also in the freight transport. With the low level of forward and backward linkages in the transport sector, vertical restraints are difficult to identify.

### **Impact of the anti-competitive practices**

It is worth reiterating here that practices or agreements are anti-competitive in as far as they affect competition in the market to an extent that negative market effects as to prices, output, innovation or the variety or quality of products and services can be expected. If the quality of the passenger transport as a service is defined in terms of safety, comfort, elated bliss,

timeliness and customer care among other factors, then the horizontal agreements or practices discussed above restrict the variety of choice by passengers and as such, are anti-competitive.

The passenger transport segment is composed of operators running a fleet of vehicles of varying age and mechanical fitness. Accordingly, service delivery issues arise such as customer or commuter care, presentation of the driver and conductor, cleanliness of the vehicle etc. Certainly the quality of a ride would differ among these vehicles even within a single class of vehicles. It is these differences that influence commuter choice of vehicles at the bus stop or taxi rank. The same differences always spark confrontational issues that are a common phenomenon in this industry, as commuters make their choices at the bus stops. The existences of horizontal agreements prevent other associations' members from picking commuters within a preset radius of the taxi ranks, and therefore reduce the choice and most probably quality of service to the commuters. This constitutes an anti-competitive conduct.

### **Impact of the possible anti-competitive practices on investment and for Small, Micro and Medium Enterprises (SMMEs) sector.**

Competition itself is meant to ensure smooth functioning of the markets, guaranteeing a level playing field for every player or potential player. It works to ensure efficient use of scarce resources, innovation, variety of choice, lower prices, higher quality and productivity in the whole economy. Anti-competitive practices are therefore expected to yield opposite results.

Specific to the passenger transport segment are practices such as “playing dirty”, predatory pricing even within the regulated fares environment and market allocations. The combination of these factors work towards reducing profits for the players. With reduced profits, the return on investment is low and the segment becomes less attractive in comparison to the other investment areas in the economy. This may be significant in the minibuss and bus segments where capital requirements are substantial. The existing players may also find it difficult to maintain their fleet to acceptable levels for the comfort of their passengers, with the possible impact of associations further tightening their agreements to the detriment of commuters and sector wide competitiveness.

In the freight transport, predatory pricing is a usual phenomenon. This works against new entrants and deter investment in the segment. The considerable investment required also makes it even difficult for the SMMEs to venture into the business. The lending institutions are also wary of lending in this sector given the risks and anti-competitive practices, further threatening the SMMEs participation into the segment.

## **Identification and impact of internal and foreign trade policies that could limit free Competition**

Lesotho does not currently have an elaborate national trade policy<sup>6</sup>. Its trade policy initiatives are guided by the SACU trade policy developed at a regional level. Its overall trade vision is to achieve a pre-eminent position in the sub-region, and in Africa, as an investment destination of choice, and be competitive in the multilateral trading system while maintaining the highest consumer protection standards. Lesotho hopes to achieve this through development of policies conducive to promotion of entrepreneurial skills and transfer of appropriate technology, and through smart partnership of the public and private sectors.

The SACU trade policy has been drawn within the confines of the main SACU Agreement of 2002 and therefore pro-competition. Article 40 of the agreement deals with competition policy and the requirement for Member States to all have competition policies as a pre-requisite for a SACU wide cooperation mechanism. Article 41 further stipulates that the Council would develop policies and instruments that would address unfair trade practices between Member States. UNCTAD has been working with SACU to operationalize article 40 & 41 of the SACU Agreement. Article 40 is almost done while article 41 requires further discussions from member states due to sovereignty issues while considering unfair cross boarder trade practices.

## **VIII. Conclusion and Recommendations**

### **(i) Conclusions**

#### **Conditions prevailing in the market**

The passenger road transport in Lesotho is composed of three classes of vehicles; buses (large and small), minibuses and saloon cabs (4+1). The buses service the longer routes with minibuses, while the minibuses and saloon cabs service the town centres and surrounding villages. The passenger transport market is highly concentrated even though the prices are regulated by the Road Transport Board. Horizontal agreements are common between associations sharing routes, and so is playing dirty, in the form of touting and price manipulation. Entry into the market is determined mostly by the availability of licenses per route

The freight transport market is highly competitive, with prices determined by the workings of the market. Predatory pricing is possible though and demands market entrants with significant resources. Entry into the market is free but constrained by the huge start-up costs of freight transport operations.

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<sup>6</sup> See <http://www.sadctrade.org/files/TPR%20Lesotho.pdf> on Lesotho Trade Performance Review 2005,

### **Role of the state and public policies in the sector**

The government plays a major role in the functioning of the road transport sector, and has greatly supported the sector through extension of road networks and institutional reforms. Enforcement of regulations and statutes relating to the sector has not been very effective in dealing with market offenders. Fowl players activities are more likely to work against the government efforts in supporting the sector. Overloaded and an un-roadworthy vehicles are more likely to destroy public roads and to increase road maintenance costs.

The role of government through LFBSC as a player in the industry should be well defined and at best legislated. The corporation should be allowed to have minimal operations where the private sector is in full operation.

### **Transparency in the sector**

The role of the Road Transport Board is well documented and known, but there is an urgent need to educate the public and industry players on the procedures of the processes of the work of the board. These relate to the changes in the number of licenses per route, and also with respect to the changes in the issuance of certain licences e.g. F Permit.

### **Efficiency of the sector**

Road transport is comparatively the best form of transport in Lesotho given its topography and economic setup. Efficiency is feasible but currently many internal factors within the industry are inhibiting the smooth running of the transport sector in Lesotho. These factors range from vehicle fill (weight, numbers, height of pallets), empty running, time utilisation (loading, pre-load, unloading, maintenance, idling on the road), fuel consumption to deviations from schedule.

The growing number of vehicles on the already congested roads cause expensive delays costing the sector millions of Maloti in unrecoverable standing costs and a massive waste of fuel. The situation is worsened by the damage to roads due to overloading, and exacerbated by lack of timely and proper maintenance and repair of roads from the government side. In the passenger transport segment, stiff competition for passengers results in over speeding with resultant fuel wastage, high maintenance costs and accident related costs.

The congestion and delays at ports and most significantly at border posts are other factors borne by the road transport operators, especially freight transport. This adds to the cost of transportation and necessitates level playing field between the members of SADC in as far as border controls are concerned. Lack of loading and unloading infrastructure results in long loading times, contributing to the inefficiencies in the road transport sector.

Capacity is also another factor contributing to the inefficiencies in the sector. It is not uncommon to find that drivers, schedulers, controllers and even fleet managers are not

trained in the basics of mass distribution, load placement and safe loading practices. The under-loaded, over-loaded or load less trucks are a common sight on the national roads. Significant improvements can be made in the cost per ton/km-hr and cost per ton delivered with minor improvements in payload, average speed, and load factor.

### **Practices that limit competition in the sector**

Horizontal agreements in passenger transport that include market allocations are the major hindrances to competition. These limit the consumer choice and deny them of an otherwise better service. Price regulation through the Road Transport Board is also anticompetitive and limits the workings of the market to establish a fair price. Freight transport is reasonably competitive but may suffer from instances of predatory pricing and operators playing dirty.

### **Challenges of the Study**

This study has been heavily constrained by the availability of data. Consultations with the Ministry of Public Works and Transport, and the Bureau of Statistics revealed that there is no firm level or operator level data for either passenger transport or freight transport. While the files used in the issuance of permits are available, the data has not been captured in a user friendly manner. The newly established statistics office within the ministry is still working on the modalities of compiling the data in a user friendly manner. Effort should be made towards supporting this office in setting up a well functioning database of operator level statistics. These statistics are especially useful in the abuse of dominance cases or any other proceedings that may seek to establish the anti – competitive behaviour.

Sector wide enforcement and harmonisation of these statistics with returns submitted to the Lesotho Revenue Authority (LRA) and the Registrar of Companies may also prove useful in the accurate determination of the economic contribution of this sector to the whole economy. Government policies and programmes targeted at this sector may then be initiated from a fully informed perspective.

### **(ii) Recommendations**

The Road Transport Board plays a pivotal role in the road transport sector in Lesotho and its membership should be fully representative of all the stakeholders in the sector. Currently passenger transport is more represented than other segments within the sector. The emergence of freight transport should be recognised and given due attention. The industry should also be encouraged to operationalise the Lesotho Transporters Association to a level where it would engage with stakeholders such as government on industry and policy issues.

While there are guiding principles as to the workings of the board, documentation of these and dissemination to the industry associations will go a long way in promoting awareness. The decisions of the board on matters of the sector would be better understood by the stakeholders.

Cross-border initiatives are contentious issues in the road transport sector in Lesotho. While SACU has enacted provisions and guidelines on these, Lesotho still has a long way to go with South Africa in implementing the bilateral agreements pertaining to these. The government needs to take a firm stand on this issue, especially on passenger transport, and work towards its full implementation on both sides of the border. These will not only level the playing field for passenger transport operators but will also work towards improving efficiency and customer service on the common cross border routes. Policing and overall enforcement are key in the implementation of the bilateral agreements, given the historical backlashes characteristic of this segment both in Lesotho and South Africa.

While cross-border initiatives are working comparatively better in the freight transport segment, the operators face different cost structures in Lesotho and South Africa. While technical standards are known and complied with across the SACU region, it is the operating costs that are unbalanced. Operators from other member states face relatively lower “cabotage” rates in Lesotho, rendering the local operators uncompetitive regionally, especially given the flow of trade in the region.

Capacity development and political will are necessary if the newly established statistics office within the Traffic Department is to function properly. Guidelines should also be established by the board that would deal with issues such as licences granted per operator. The issue of ownership and control should be clearly defined to ensure that the market operations are not under the control of vehicle owners. The Government should enforce the regulations and allow the market forces to determine prices and consumer preferences.

In stipulating anticompetitive conduct, mergers and acquisitions provisions in the proposed competition law should be of assistance to differentiating control versus ownerships. That way interpretation of concentrations would be more meaningful from a competition perspective and would address issues arising from the transport sector when they arise.

Within the current ITP, it would be ideal to have the road transport policy which is both developmental oriented and pro-competition. This is necessary given developments in both SADC and SACU.

Finally, it is recommended that the draft competition law for Lesotho be enacted to ensure that all the possible anti-competitive practices suspected to be prevalent in the transport sector in Lesotho can adequately be addressed.

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## Annex A: Road Network in Lesotho





## **Annex B: Terms of Reference**

### **Africa Competition Program**

#### **A Sectoral Study on the Road Transport in Lesotho**

##### **Context**

Considering the importance of regional integration in Africa, AFRICOMP is carrying activities aimed at strengthening regional institutions as well as to create synergies between national competition authorities of the same region. The approach and methodology adopted will be the same for the studies carried under the AFRICOMP programme.

##### **Objectives of the study on road transport**

In the framework of the AFRICOMP program, UNCTAD, in conjunction with the Ministry of Trade and Industry, Cooperatives and Marketing in Lesotho, is conducting national sectoral study in the road transport sector. The objective of this study is to evaluate the situation, the structure and the functioning of the above mentioned sector from a competition point of view. The study is aimed at identifying the conditions of competition in the road transport sector. For the purposes of this study, “road transport” should cover: passenger transport and freight transport maintenance services.

The road transport sector in Lesotho has been developing since the 1970’s. Lesotho’s road network is constantly being expanded especially as part of the construction needs of the “Lesotho Highlands Water Project”. The sector is important because of the less developed railways network.

Additionally, most Lesotho based companies use their own trucks for internal transport and this leads to overuse of road infrastructure. Furthermore, Lesotho road transport is linked with other sectors and is one of the key sectors of the economy.

Finally the study will also be used to inform policy formulation in Lesotho.

The consultant is expected to produce a report based on the following issues:








1. Structure of the road transport sector and market
2. To identify the various regulatory authorities and to analyse them
3. To establish the level of collaboration between these various regulatory authorities and the harmonisation of pieces of legislation
4. To provide the Government of Lesotho with appropriate policy options with regards to the structure and practices in the road transport sector in order to promote competition
5. To give to the Trade and Industry, Cooperatives and Marketing of Lesotho a picture of how competitive Lesotho is, by providing a comparison with the situation in other SACU member’s states

6. To identify possible anti-competitive business practices
7. To provide policy recommendations on how to improve competition within the sector

### **Monitoring / Progress Control**

Under the supervision of the project officer of the AFRICOMP programme, the consultant will prepare a comprehensive report on the road transport sector as per the outline below.

The work shall be organised as per the following work plan:

<b>Activity</b>		<b>Month 1</b>	<b>Month 2</b>	<b>Month 3</b>
Consultant send to UNCTAD the table of contents and the methodology	Start Date + 1 Week			
Validation of the table of contents and the methodology with UNCTAD and the Ministry of Trade and Industry, Cooperatives and Marketing of Lesotho	Start Date + 3 Week			
First Draft	Start Date + 1 Month			
Comments by UNCTAD and the Ministry of Trade and Industry, Cooperatives and Marketing of Lesotho	Start Date + 1 Month and 2 Week			
Second Draft	Start Date + 2 Months			
Comments by UNCTAD and the Ministry of Trade and Industry, Cooperatives and Marketing of Lesotho	Start Date + 2 Months and 2 Weeks			
Finalisation and submission of the report based on the comments	Start Date + 3 months			

### **Expect Output**

The consultant shall provide a copy of the first draft to UNCTAD and to Ministry of Trade and Industry, Cooperatives and Marketing of Lesotho one month after the signature of the contract. UNCTAD and the Ministry of Trade and Industry, Cooperatives and Marketing of Lesotho will prepare comments on the first draft within two weeks after receipt of the first draft. The final report should not exceed 60 pages and must be written in English. The final report shall be submitted in electronic format using Microsoft Word to UNCTAD and to the Ministry of Trade and Industry, Cooperatives and Marketing of Lesotho.

### **Required Profile / Qualifications**

Education Level: PHD or at least Master Degree, in economics or law

Work experience: At least 5 years of work experience including experience in research

Languages: Very strong commands in English

Other important skills: Very good knowledge of economics, competition issues, market structures and clear understanding of the Lesotho market and economic environment.