



**REPUBLIC OF NAMIBIA**

**MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION**

**DEPARTMENT OF TRANSPORT**

**WHITE PAPER  
ON  
TRANSPORT POLICY**

**Submitted to Parliament  
by  
the Minister of Works, Transport  
and Communication**

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## EXECUTIVE SUMMARY

### INTRODUCTION

The purpose of this White Paper is to propose policies for the transport sector which are in line with and in support of the basic objectives of the Government, i.e. to revive and sustain economic growth, create employment opportunities, alleviate poverty, reduce inequalities in incomes and promote an efficient use of scarce resources.

The overall goal of Government in the transport sector is to ensure that Namibia has safe, effective and efficient transport services in balance with the transport needs and capacity of the country. The aim of the new policies is to improve efficiency in the provision of transport services by removing barriers to healthy competition. The different transport modes, namely road transport, rail transport, shipping and civil aviation are covered.

The White Paper is the final formulation of proposed new transport policies and follows closely the proposals contained in the Draft White Paper on Transport Policy (DWP) approved in principle by Cabinet in April 1992 and subsequently released for public comment. The DWP was also referred to the Namibian Transport Advisory Board (NTAB) which represents most of the various parties involved in transport. The recommendations of the NTAB have been taken into account in formulating the recommendations as contained in this White Paper. The NTAB's views are reviewed in Annex 3. The views of other interested parties who submitted comment are summarized in Annex 4.

The focus of the White Paper is on the operators in the transport sector, and in particular then on the road transport industry (trucks, buses and taxis). A broad approach is necessary to ensure that the entire transport sector is set off on a new course of development, in terms of the basic objectives of the Government and in line with the policies proposed in this White Paper. Issues related to infrastructure (roads, ports, airports) and to the organizational structure of Government in the transport sector are not covered, or only touched upon. This does not mean that the White Paper regards these issues as not important. To this end the Ministry of Works, Transport and Communication has already formulated policies with respect to roads infrastructure provision, including for road user charging. The Ministry has also initiated actions to review the operational and organizational arrangements with respect to roads, airports and air navigation services, as well as the role to be played by, and the regulatory policies applicable to, parastatal operators in the transport sector, including TransNamib Ltd.

The main instrument recommended to be used to improve the performance in the transport sector is competition. A competition-oriented policy represents a clear break with the colonial past, when policies where

often protectionist and therefore, in effect, benefitted the few. Increased competition will not only serve to open up opportunities for all Namibians; it will ensure that better use is being made of resources and contribute to economic growth and overall welfare. There is overwhelming evidence from all over the world that competition in transport, generally, is an effective means to create conditions beneficial to all.

The new transport policies were considered and approved by Cabinet on 4 October 1994.

## **ROAD TRANSPORT**

### **Regulation of Road Transport**

One of the main present shortcomings in the transport sector relates to the control of road transportation. The present law in this area is the Road Transportation Act, 1977, which originally was a South African law. Its basic philosophy is essentially anti-competitive, as it provides for statutory protection of established operators. The Act therefore tends to foster the creation of monopolies or oligopolies in different market segments.

However, while the road transport market is characterised in that important segments, particularly in road haulage, are not being subjected to competition on account of the Road Transportation Act, the overall road transport market actually presents a more mixed picture. The reason is that the realities of the market place have forced the authorities - already before Independence, and increasingly so after - to relax the rules.

There are three main aspects of the Road Transportation Act, which must be viewed as unacceptable. Firstly, it tends to protect those operators who got themselves established during the period of colonial rule, when policies served to only foster whites as entrepreneurs. Secondly, the lack of competition in some market segments is likely to give rise to inefficiency. And thirdly, since the rules and regulations are impossible to comply with, they tend to make everyone a criminal. In addition, the law is virtually hopeless to enforce. As a consequence, it tends to pit operators against the law enforcement agencies, ultimately thereby creating disenchantment and demoralisation, and in the end hostility towards the Government.

### **Regulation of Road Safety**

The above situation is seriously aggravated by the present approach used to safeguard road safety and to prevent overloading, i.e. the approach to quality control in road traffic. The main instrument for exercising quality control is the Road Traffic Ordinance, 1967, and the Road Traffic Regulations issued in terms of the Ordinance. Basically all contraventions against this law are viewed as a criminal offence, and have to be adjudicated in a criminal court. Such an approach is not only objectionable on moral grounds, as it tends to taint ordinary citizens having committed a minor offence for life. It is also extremely cumbersome to operate and results in a heavy demand on the legal system of the country. Furthermore, the types of penalties that can be invoked are ineffectual. To give one example: A serious overloading of a heavy truck can cause damage on roads amounting to tens of thousands of Dollars; the maximum fine which a court can impose today is N\$ 200.

### **The new Approach to Road Transport Regulation**

The White Paper recommends a thorough reform of the system for regulating road transport, including the replacement of the Road Transportation Act and the Road Traffic Ordinance with a single consolidated Act. The proposed reforms imply that the present permit system and the activities of the Road Transportation Board of Namibia will be terminated.

The new approach is based on a fundamentally different philosophy than the one embodied in the present legislation. It emphasises the potential role of every Namibian as a participant both in the provision of road transport and in the campaign for ensuring that these services are of high quality, including that rules and regulations which serve to improve road safety and to control overloading are respected.

The main contents of the reforms to be reflected in the new Act are the following:

\*Road transportation should be deregulated and made a free market. One exception should be made. It should be possible for municipalities and the local authorities to regulate bus and taxi traffic, if they so desire;

\*Quality control in road transport, including in respect of road safety and overloading, should be reformed to enable the road transport industry to regulate itself to a much larger degree than is at present possible.

It is proposed that this can be accomplished by setting up an association for operators of transport services and professional drivers and which can largely be run by the operators and professional drivers themselves. The main purpose of setting up such an association is to enable the transport industry itself to play a role in setting appropriate criteria for licensing professional drivers. Control that these criteria are being complied with should be placed within the industry. The power to recommend

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that a licence be revoked or suspended when an operator fails to meet established standards should thus be given to the proposed association. The association should also be able to train drivers and operators. All road hauliers, bus operators, taxi operators, transport brokers and freight forwarders are proposed to be members of the association. They should not be allowed to engage in anti-competitive practices. The role of the Government should be limited to approving the criteria for obtaining, cancelling and suspending membership;

\*A distinction should be made between minor and major offenses against rules and regulations in road traffic. Major offenses should be subject to criminal procedure as at present. Minor offenses should be subject to administrative adjudication, including the immediate imposition of fines, set to ensure that it does not pay to commit an offence;

\*Provision should be made for a system whereby appeals may be made against sanctions imposed in terms of the process of administrative adjudication proposed above. The provision for appeals should be finalised in consultation with the Office of the Attorney-General when the new Act is drafted; and

\*It should be made possible to operate private roadworthiness testing and driver training centres.

The implementation of the proposed association for operators and drivers may require further study and consultation with interested parties such as taxi and road haulage operators. To this end, and to not delay the other proposals regarding new road transport policies, the proposed new Act should be drafted so that it will facilitate the future implementation of the association. The Ministry of Works, Transport and Communication to initiate such further study as soon as possible.

The proposed new Act will also have implications for drivers of private vehicles in so far as they commit a minor offence. Further proposals in respect of private vehicles, and drivers of private vehicles in order to improve road safety is beyond the scope of the White Paper. However, if the recommendations for a new Road Traffic and Transport Act, along the lines proposed here, are accepted, it is recommended that once the work on the new Act has commenced, a separate study be initiated to focus on modifications required to also improve road safety aspects of private vehicle operations. As part of this study, the appropriate affiliation of the traffic police should also be reviewed.



### **International Road Transport**

International road transport, i.e. road transport between Namibia and other countries, is also controlled by the Road Transportation Act. The Act is only applicable to the part of an international journey undertaken within Namibian territory and applies to both Namibian-registered truck operators as well as foreign registered truck operators. This gives rise to the same problems as already outlined for domestic operations, although they in several respects are even more serious. In addition, the present system for control of international road transport is very taxing from an administrative point of view, as two or more permits are required. The reason is that permits must be obtained from both countries involved, and also from those countries which may have to be transited. Partly owing to obstacles in obtaining the necessary permits, only major companies today partake in the traffic to and from South Africa and other neighbouring countries on a regular basis.

Since several years efforts have been made to simplify international road transport in Southern Africa. Members of the Preferential Trade Area for Eastern and Southern African States (PTA) proposed a "Transit Regime" which has as objective to facilitate international road transport between PTA member states. The PTA has been succeeded by COMESA, but the "Transit Regime" is still in force. The four original members of the Southern African Customs Union (SACU), i.e. Botswana, Lesotho, South Africa and Swaziland, in 1990 signed a Memorandum of Understanding on Road Transportation in the Common Customs Area (MOU) which provides for a uniform approach within the SACU region. The MOU is a multilateral agreement. Although invited to become a member by the other parties, Namibia has only recently (February 1995) initiated the necessary steps to become a signatory to the MOU. The delay in responding to the invitation was largely due to concerns about the MOU's quota system emanating from established road transport operators in Namibia.

In terms of the MOU only a permit, issued by the competent authority or authorities in the country of registration of an operator of trucks and buses, is required to undertake transport to other member countries and back or through another member country to a third country. Permits issued by one country are accepted as valid in another country which is party to the MOU, i.e. the principle of "extra-territorial jurisdiction" is applied. Control is exercised to the extent that a permit is for a journey (although multiple journey permits are also allowed) issued as part of an agreed annual quota (expressed as a number of return journeys) between any two member countries. Permits are only issued to operators properly registered in their own country and national road safety standards within any country must be complied with by foreign operators. The quotas are not rigid and are annually reviewed on the basis of the previous year's actual traffic and the division of the traffic between two countries' operators. Quotas apply to road haulage and scheduled bus services. There is no quota for other types of bus services although a permit is required. Foreign operators are not authorised to undertake cabotage operations, i.e. transport originating in and with a destination within a host country.

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The White Paper fully endorses the approach embodied in the above multilateral agreements to regulate international road traffic. The new Namibian policy with regard to international road transport is thus one of minimum Government intervention and to allow competition with foreign road hauliers. An assumption is that measures are in place to ensure conditions of non-discrimination between operators of different countries. The Namibian transport sector is well positioned to take part in international road transport. According to traffic and freight surveys undertaken in 1994 Namibian operators have a 50% share of the cross-border freight traffic between Namibia and South Africa. The new approach for regulating cross-border traffic will, in addition, facilitate the participation of smaller operators.

To allow for the control of road traffic to and from countries with which Namibia does not have a bilateral or multilateral agreement, it is recommended that the proposed new Act vests the power to issue permits to Namibian and foreign carriers in the Minister of Works, Transport and Communication. Permits should be granted in accordance with the policies proposed in the White Paper, i.e. provided that Namibian operators are allowed free access to the other country concerned and that no discriminatory practices are followed by the other country, no unnecessary restrictions should be placed on the granting of permits to operators of such other countries. Foreign operators should not be permitted, however, to undertake cabotage operations, i.e. transport originating in and with a destination within Namibia. The proposed new Act should, furthermore, enable the Minister to include appropriate conditions in permits issued to foreign operators, or impose reciprocal charges, when the above conditions relating to non-discrimination are not being complied with. Foreign operators should have to comply with Namibian road traffic safety requirements.

### **Road Taxation**

As part of the transport policy review process a policy study on road taxation was launched in October 1990. The objectives of the policy study were, firstly, to investigate a possible system of road user charging which would be aimed at recovering the cost of providing and maintaining road infrastructure from road users in relation to their "consumption" of roads, and, secondly, to analyse the cost structure of providing and maintaining the road system.

The study resulted in a report which was submitted to Cabinet in March 1993. The report noted that Namibia does not currently operate a formal system of road user charging, i.e. one where revenues are linked to expenditure on roads, but that existing taxes such as levies on petrol and diesel fuel and annual vehicle licence fees are specific to road users, and in that sense can be regarded as road taxes.

The study proposed that taxes imposed on road users should be divided into two classes of taxes. One would be referred to as "road user charges", while the other would be regarded as "other taxes". The taxes regarded

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as "road user charges" should furthermore be set to insure that the basic objectives of the Government are attained.

The study concluded that implementation of a system of road user charges for Namibia would be in line with and promote the economic objectives of Government provided that the charges are set so as to: (i) promote economic efficiency and the efficient utilisation of resources, (ii) not have the effect that a certain part of the community is taxed to provide a facility which they largely do not use or that one group of road users subsidises another group of road users, (iii) not unfairly impact on road/rail competition, (iv) provide for charges on foreign-based operators and take cognisance of road user charging systems in neighbouring countries, and (v) be broadly acceptable to affected parties. A further principle which derives from the above is that charges should thus be set to; (vi) fully recover from road users the costs associated with the economically justifiable *future* road provision and maintenance programme. ("Future" implies only that past or historic expenditure is ignored for purposes of cost recovery.)

The study recommended that the technical, institutional, legal and administrative issues of a system of road user charging be further investigated by an Interministerial Committee of Technical Experts, comprising representatives of the Ministry of Finance, the Ministry of Mines and Energy, the Ministry of Regional and Local Government and Housing, the Ministry of Trade and Industry and the Ministry of Works, Transport and Communication. All of the recommendations were accepted in principle by Cabinet in March 1993.

The work of the Interministerial Committee subsequently confirmed the previous study's recommendation concerning the desirability of introducing a system of road user charges. The Committee advocated that roads should be provided and maintained with the objective to minimise the total costs of road transport - consisting mostly of the sum of infrastructure costs and vehicle operating costs - to society.

The White Paper sees this as *the* fundamental and overall long term policy objective with regard to the roads function. Its achievement is further seen as being inextricably linked to continued availability of funding at the required optimal level as well as institutional capacity to expend such funds efficiently. From this perspective road user charging systems which recover less than the actual expenditure on roads from road users, will continue to remain dependent on discretionary annual budget support. Such a dependence will not ensure the required availability of funds and thus also not the achievement of the fundamental objective stated above. For this reason the White Paper supports the principle of full cost recovery.

Other recommendations of the Interministerial Committee were: that the system of subsidies to local authorities for urban street maintenance be reformed to in future form part of the road user charging system; that weight-distance charges for heavy vehicles be approved in principle but be implemented after further technical testing

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and institutional adjustments to administer such charges; that a National Roads Board be established to be responsible for managing the road user charging system, preferably through a Road Fund, and that if sales taxes are to be levied on fuel then such taxes should be transparent and take account of the implications for inflation, distributional effects and intermodal competition between road and rail.

The system as proposed makes provision that the costs of roads projects which are constructed for social reasons, e.g. job creation, should not be fully carried by road users but be financed from general revenue sources for that part of the costs which do not benefit road users directly.

The levels at which charging instruments should be set will be finalised once the date of implementation is known and based on the approved roads budget. The indications are, however, that only moderate increases in costs for most road users can be expected. No decision as to when the system should be implemented has been taken.

An issue to be resolved is how to consider and integrate road transit charging systems being developed by other countries in the Southern African region. Transit charges are road user charges applicable to foreign road users undertaking international road transport in or through a host country. In the proposed Namibian system of road user charges foreign road users would merely be assessed the same total of charges as domestic road users, possibly through somewhat different charging instruments. Countries with no domestic road user charging systems can not follow this approach, however. Namibia has, in its dealings with other countries, promoted an approach that transit road user charging should preferably and as far as possible be based on a common harmonised set of objectives and operating principles but should take account of the specific conditions within a country and should further allow individual countries to pursue specific objectives with regard to the level and manner of cost recovery, provided that these are not in conflict with the common objectives and do not have negative implications for regional transport and trade. This may result in transit charges being set at country-specific levels, rather than at averaged uniform regional levels. Namibia thus subscribes to the principles that: (i) there should be recovery of road costs from foreign vehicles, (ii) that transit charges for the recovery of such costs should be non-discriminatory, and (iii) that transit charging systems should facilitate regional transport and trade.

### ROAD-RAIL COMPETITION

In July 1991, Cabinet decided to remove the so-called reserved goods scheme, which prevented additional road transport permits to be issued for the carriage of 14 additional commodities. These commodities constitute the railway's main market. The purpose of the scheme was to protect the railway. The decision, has exposed the railways to increased competition.

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Two of the recommendations made above will further serve to put the railway under increasing competitive pressure. The first is the proposal to deregulate domestic road transport. The second is the recommendation that Namibia become a party to the MOU. The MOU does not provide for any protective measures for the railway. The new road user charges which will have to be introduced in the future will, on the other hand, make the railway more competitive, although the effects are likely to be limited. The reason is that road taxes only comprise a small portion of the total cost of operating trucks.

The present financial position of the railway is precarious. The railways, after losses in the preceding years, only succeeded in 1993/94 to again make a small surplus (see Table 2.1). In addition, the capital costs of the railway are exceptionally low for historical reasons. Taking this into consideration, significant portions of the railway operations are probably unviable at the present time.

There are no signs of improvements for the railway at present, and no clear indications that the market situation will significantly improve in the future. In particular, the new Trans-Kalahari Highway, expected to be opened in the late-1990's, will serve to undermine the market for the railway by cutting road distances between the Pretoria-Witwatersrand-Vereniging area in South Africa and central and northern Namibia by between 400 to 500 km.

TransNamib Limited, who are responsible for the running of the railways, have pointed out that an upswing in mining activities will improve the demand for rail transport. The transport of bulk commodities favours the railway. According to TransNamib there are signs that mining activities are on the increase.

The White Paper, however, believes that the railway is likely to run into financial problems at some time in the future. That problems have not surfaced yet is due to the fact that the railway and all the equipment was taken over from the South African Transport Services free of charge when TransNamib was set up. However, once TransNamib will have to commence reinvesting in new locomotives and other equipment, the financial position will start to change.

Should, then, the Government take measures to protect the railway and to strengthen its financial position? For example, should the Government force more shippers to make use of the railway? The White Paper recommends against any such action as it would be in conflict with the basic objectives of the Government to promote economic growth and to diminish the income gap. The financial problems of the railway do not reflect that too little use is being made of the railway. The falling demand for rail services is a result of a changing transport market, making the railway uncompetitive in several market segments. The problem of the railway is, in other words, not primarily to be found on the roads. They are basically intrinsic to the railway.

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The running of the railway is the responsibility of the Board of Directors of TransNamib. The White Paper does not propose any changes in that regard. The White Paper recommends, on the other hand, that the National Transport Corporation Act, the founding act of TransNamib, be amended and/or that regulations in terms of the Act be promulgated to require that more information be made available to the owner, i.e. the state. The recommended changes are, firstly, that TransNamib's accounting practices be modified so that separate financial results be prepared for each major business activity, including for the travel bureau, the tour operations, the property section and the shipping operations. This will require that head office costs also be allocated to the different operational or business accounts. Secondly, it is recommended that TransNamib every 3 years should submit a medium to long term development and financial plan to the Government.

There are two major reasons for these proposals. The owner should be fully informed about the present and expected future financial performance of all the different parts of TransNamib's activities. And the Government must be apprised as early as possible of any financial difficulties which the company may run into in the future. In terms of the National Transport Corporation Act, TransNamib can thus demand compensation from the state for loss-making activities. As this may have serious financial and political implications for the Government, it must have the opportunity to plan well in advance.

In addition, more transparent financial statements will serve to reinforce a competitive market situation. In some markets TransNamib competes directly with private operators, e.g. in road haulage and tour operations. An open accounting as recommended here should satisfy the competitors that TransNamib is not competing on unfair terms by cross-subsidising from other activities.

### **CIVIL AVIATION**

Civil aviation is a thoroughly regulated trade. The legal instrument for control is the Air Services Act. It stipulates that air services can only be provided in terms of concessions granted by the Transportation Commission of Namibia or bilateral air services agreements with other countries.

So far Namibia has pursued traditional air transport policies. This means essentially that competition has not been allowed to play a role in the provision of air services, neither to and from the country, nor within. To a large extent the present policies were put in place before Independence.

However, the Government has already acknowledged that there is a need for a reorientation. On 12 November 1991 Cabinet accepted an interim policy with regard to international air services which provided for a phased transition to a more liberal approach to be adopted in future. The phasing-in period was at the time envisaged

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to expire in April 1994. This was the date on which Air Namibia's lease contract for the aircraft operated on the routes to Europe would expire.

The background to Cabinet's earlier decision was the fast changing air transport policies of the world. A process towards deregulation is gaining momentum. The present driving force from an African perspective is the European Union. In a few years, the European Commission will be able to fully impose the competition rules of the European Union on routes to and from Europe, including to and from Africa. A process to alter bilateral agreements and other agreements will then also be initiated to liberalise current regulations considerably. Indeed, this process has already begun through actions taken by individual member states of the European Union.

The first signs of response are also to be seen in the region. South Africa deregulated its domestic market with full effect from 1 July 1991. South Africa has also implemented a new air transport policy as discussed in Chapter 7. The effects of the policy changes are already to be seen in the market place. Air fares, which on the routes between Europe and Southern Africa used to be rather high, are falling on average.

Namibia has in reality little choice but to adapt to the changes now taking place around the world. This implies, firstly, that Namibia must apply the new rules that are in the process of being laid down for intercontinental flights, as already acknowledged by Cabinet. For Namibia a liberalisation of intercontinental traffic can be expected to largely be beneficial as the end result will be lower air fares and more tourists from overseas.

Secondly, Namibia will have to undertake a review of the policies to be applied on routes within the Southern African region. That work will have to be coordinated within SADC, where a process has been initiated to implement a coordinated approach to regulation of air services within the region and also between SADC member countries and third party countries. The most recent developments are discussed in Chapter 7. Most prominent has been the drafting of a Ministerial Accord on the Establishment of the Southern Africa Regional Air Transport Authority (SARATA). It will yet be some time before the envisaged coordinated approach takes shape, and until that time Namibia should wait with a reform of its policies in the international regional scheduled air services market.

In addition, it should be mentioned that the airline industry in Southern Africa will have to go through a process of restructuring over the next few years. Most of the SADC airlines are in dire financial straits, and even Air Namibia, which appears to be the best performer at present, looks forward to an uncertain future. The reason is that all SADC airlines are far too small for the future, even if they only were to operate within the Southern African region. A process of change has already been initiated, involving closer collaboration between some

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airlines, primarily then in the form of joint use of aircraft. The process will have to be carried much further, ultimately resulting in a considerable consolidation of the industry.

The White Paper believes that this inevitable process can only be carried through by in the longer term allowing Air Namibia to determine its own future. The Government will therefore at some time have to consider a partial or full privatization of the airline.

The recommendations of the White Paper in respect of civil aviation are in summary as follows:

\*The Air Services Act should be amended to reflect the competition policy advocated by the White Paper. The basic criterion for granting a concession for air services should be the demand for the proposed new services, including their implications for efficiency in the use of resources;

\*Namibia should introduce a policy with the aim of promoting competition on intercontinental routes, including not applying constraints on capacity, introducing liberal fare approval regimes, and allowing for more than two airlines to serve routes between Namibia and another country; and

\*The formulation of new air transport policies for the Southern African region should be done in collaboration with other SADC Member States, with the ultimate aim of ensuring that a new policy is put in place that benefits all countries. In the shorter term Namibia should wait with a thorough reform of its regulatory system in the air transport sector until a coordinated approach can be initiated.

### SHIPPING

The current policies in shipping allow for competition. International shipping is also a competitive industry today, and indications are that competition will become even stronger on the trades to and from Southern Africa in the future. The major reason is the high supply of shipping services, but also that, *inter alia*, the European Union is actively supporting a policy of competition in international shipping. There are no apparent shortcomings in the present arrangements. The White Paper believes that they are beneficial to Namibia.

TransNamib, through two subsidiaries, is in the process of entering international shipping, both on the trade to South Africa and the trade to Europe. TransNamib's approach is based on collaboration with other established operators, and primarily involves the leasing of capacity on ships owned by other lines. This approach to developing know-how in shipping is commendable. The White Paper recommends that the Government encourages any Namibian interests to participate in shipping, but without providing support in the form of subsidies or applying restrictive measures against shipping lines of other nations.



**INTERMEDIARIES AND INTERMODAL OPERATIONS**

Intermediaries such as shipping agents, freight forwarding companies and travel bureaus are agents acting on behalf of sellers or buyers of transport services. The essential feature of an intermodal operator is that he accepts legal responsibility for the transport of, for instance, containers from door-to-door between Europe and Namibia. Intermodal operators are active in Namibia today, and the new shipping lines being set up by TransNamib will also be able to operate in this manner. The importance of intermodalism will continue to grow in Namibia and the world in the future; it will provide the key to low-cost access to world markets for Namibia.

The assessment of the White Paper is that the functions of the intermediaries and the intermodal operators are performed in a satisfactory manner. No recommendations are made for any changes, in addition to those which have already been made above and with a bearing on the operators in these two fields.



## CHAPTER I. : INTRODUCTION

### 1. Background

A. At its meeting held on 9 July 1991, Cabinet resolved that the Ministry of Works, Transport and Communication should prepare a transport policy in respect of, inter alia, the road transport industry. Cabinet also indicated that the new policy should allow for a considerable relaxation of the regulatory system applied to the road transport sector, including deregulation of road transport.

B. At a subsequent meeting, on 30 July 1991, Cabinet further decided to implement some interim measures to relax the regulation of road transport (see further Chapter 5). At the same time Cabinet was informed by the Ministry of Works, Transport and Communication that work on a White Paper on Transport Policy had been initiated. The purpose of the White Paper would primarily be to review road transport policies, and the implications of a deregulation of road transport. The White Paper would cover road/rail competition and also address international road traffic control, including bilateral/multilateral agreements.

### 3. Scope of the White Paper

A. While the emphasis of this White Paper is on road transport and the implications of changed policies in this sub-sector, including their impact on the railways, the scope of the White Paper is wider in that it covers major policy issues facing all modes of transport. The reasons for this comprehensive approach is that (i) the Government of Namibia has not yet formulated policies with respect to the other modes of transport; and (ii) there is a need to ensure that a coherent approach and a unified policy is applied on all transport modes.

B. The White Paper, hence, covers all modes of transport (road, rail, air, sea, as well as so-called intermediaries, i.e. freight forwarders, shipping agents and travel bureaus). The focus is on the operators in these various sub-sectors, i.e. road hauliers, bus and taxi operators, the railways, airlines and shipping lines, and the regulatory policies which should apply and guide these operators.

C. Regulatory policies, in general, cover such things as (i) the economic regulation of operators, i.e. entry, capacity and price controls; (ii) ownership, i.e. whether operators should be privately owned or not; (iii) safety aspects; (iv) pollution control; and (v) consumer protection. The White Paper primarily covers issues related to the first type of regulatory policies, i.e. the economic regulation of transport operators. The ownership aspect will be touched upon, as well as safety regulations in the field of road transport. Safety aspects in aviation and sea transport are largely governed by international conventions, which Namibia are in the process of ratifying

(see further Annex 1). Safety aspects of rail transport are not covered; neither are regulatory policies in respect of pollution and consumer protection issues.

D. The White Paper does not cover the planning and operation of infrastructure for transport, e.g. ports, roads, airports and aerodromes, and railway track, and the organizational structure of Government in the transport sector, including the relationship between the Government and the parastatal companies in the transport sector such as TransNamib Limited and the Namibian Ports Authority (created on 1 March 1994). Some of the policies in respect of the road network are contained in the White Paper on National and Sectoral Policies. It places an emphasis on (i) maintenance and rehabilitation of the existing infrastructure; (ii) the development of road infrastructure in the northern areas; (iii) improved road links with neighbouring states; and (iv) the deployment of appropriate technology in the construction and maintenance of roads. The current development programme of the Ministry of Works, Transport and Communication is addressing these issues.

## **5. Institutional Issues**

A. There is, however, a need for the Government to initiate a review of some of those other issues which are now not covered in this White Paper or in the White Paper on National and Sectoral Policies, to ensure that the entire transport sector is set off on a new course of development, in accordance with the basic objectives of the Government. Of particular importance is to review the organizational aspects related to the operations of airports, air navigation services and roads. In addition, there is a need to formulate regulatory policies to be applied on existing and possible future parastatal companies in the transport sector.

## **7. Recommendation**

**R1.1 The Ministry of Works, Transport and Communication should initiate a study to review operational and organizational arrangements with respects to roads, airports and air navigation services, and formulate regulatory polices to be applied to parastatal companies in the transport sector.**

## CHAPTER 1 : THE TRANSPORT SCENE

### 2.1 Role of Transport in the Namibian Economy

2.2.1 The transport sector in Namibia, including communications, makes up about 6,5% of the economy, measured in terms of the gross domestic product (GDP). In a world perspective this is a normal share, although it is somewhat higher than in most of the neighbouring countries, with the exception of South Africa.

2.2.2 The current share of the GDP reflects two conditions, which tend to cancel out. The first is that Namibia is a developing country. For such countries transport, in general, plays a smaller role than in developed countries, as the demand for transport tends to grow much faster than the rest of the economy; transport is highly income elastic. The other is the long distances from the major sources of goods and services consumed in Namibia or to the places where Namibian goods are sold. Each transport or journey is, hence, expensive in relation to what is normal in many countries, making it a priority for the Government to try to make transport costs as low as possible.

### 2.3 The Overall Structure of the Sector

2.4.1 The transport sector can be divided into three main components: (i) The operators; (ii) the infrastructure; and (iii) the "pure" government functions. The operators provide bus, taxi, road haulage, railway, air transport and shipping services. The operators also include those who act as agents on behalf of buyers and sellers of transport services, such as travel bureaus and freight forwarders. Namibian transport operators, who will be described briefly below and in further details in subsequent chapters, are integrated into the regional and international transport networks, and operate according to modern principles.

2.4.2 The infrastructure comprises roads, railways, ports, and airports and aerodromes. It is also possible to consider air navigation and sea navigation facilities to be part of the infrastructure.

2.4.3 The transport operators have access to an infrastructure of a relatively high standard. Namibia has more kilometres of roads per capita or per vehicle than any other country in Africa, and probably also in comparison with most other countries of the world. At around 1990, there were 0,029 km of road per capita in Namibia or 0,32 km of road per vehicle in the country, to be compared with 0,007 km per capita and 0,07 km per vehicle in South Africa (including the then so-called homelands). These figures relate to all kinds of roads. But also in terms of paved roads is Namibia well provided for; there are 0,003 km of paved road per capita and

0,035 km per vehicle. In South Africa (including the then so-called homelands), the corresponding values are about 0,002 km per capita and 0,016 km per vehicle.

2.4.4 Namibia also has a well-developed airport and port infrastructure. The length of the railway system is much greater than that of the systems of the neighbouring countries when related to population. The other side of the coin is that the utilization of the railway system - as well as of other infrastructure - is very low. For example, the utilization of the Namibian railway as measured by tonne-km per km of route network, is very low. It is about 8 times higher in South Africa and Zimbabwe and between 2 to 3 times higher in Botswana and Zambia than in Namibia. The low utilization leads to higher transport costs per unit, everything else assumed to be the same, again underscoring the importance of making proper use of the resources in the sector.

2.4.5 Another characteristic of the infrastructure is its uneven distribution in the country, a heritage of the colonial period. Caprivi, Okavango and Omusati, Oshana, Oshikoto and Ohangwena (the former Owambo) together house well over half of the population of the country; their share of the total road network is less than 10%, although about 16% of the paved road network is to be found in these areas of the country.

2.4.6 The railway is owned, maintained and used by TransNamib Ltd (TNL). TNL also still operates the port of Lüderitz and navigational facilities along the coast of Namibia. The port of Walvis Bay was operated by Portnet, a business division of the South African transport parastatal, Transnet Ltd, until the end of February 1994, when South African control of Walvis Bay came to an end. Since 1 March 1994 the port of Walvis Bay has been operated by NAMPORT, the newly created Namibian Ports Authority. NAMPORT is also responsible for land-based navigational aids along the Namibian coast and will take over the port of Lüderitz in future.

2.4.7 The Department of Transport in the Ministry of Works, Transport and Communication (MOWTC) is responsible for the planning, construction and maintenance of roads, airports and state-owned aerodromes in the country. The MOWTC also operates airports and state-owned aerodromes, and is responsible for the provision of air navigation services. Some aerodromes are owned by local governments or privately.

2.4.8 The "pure" government functions include such things as policy formulation, overall monitoring of sector developments, economic regulatory activities, and other regulatory activities related to safety, the environment, consumer protection, etc. Most of these functions are today performed by the MOWTC, but some of them are a responsibility of statutory bodies, for example the Road Transportation Board of Namibia and the Transportation Commission of Namibia (see Chapter 3).

## **2.5 The Operators**

2.6.1 TransNamib Rail, which is a business unit of TransNamib Ltd, operates the Namibian railway system, and provides transport services for goods, livestock and passengers. Almost all of the services are supplied with trains run according to a schedule. All passenger services emanate from or end in Windhoek. There is a door-to-door parcel service using mini-containers which is fully integrated with the corresponding service offered by the South African railway system operated by Spoornet.

2.6.2 The Namibian railway is interconnected with the South African rail system only. Goods wagons are interchanged between the two systems, and a passenger service - using mixed South African and Namibian coaches - is run between De Aar in South Africa and Windhoek. The railway network in Walvis Bay was taken over from Spoornet, by TransNamib after the re-integration of Walvis Bay.

2.6.3 There are an estimated 200 road haulage operators in the country with road carrier permits to operate for hire or reward. Other operators have private permits, i.e. operate for their own account, or carry what is called exempted goods, i.e. goods for which a permit is not required; (the permit system will be discussed in Chapter 5). The total number of trucks (with a gross vehicle mass in excess of 3,5 tonnes) used by these operators is about 1 700, and the load capacity is about 31 000 tonnes. TransNamib Carriers, with a fleet of 112 power units and 356 trailers is the largest operator in the country. There are four other large operators, each one with about 50-100 trucks registered in the country, while the remainder of the operators control smaller or much smaller fleets. The number of companies with only one truck is rather limited. With the exception of TransNamib Carriers, which is a business division of TNL, all trucking companies are private.

2.6.4 The number of bus operators offering scheduled services amounts to about 15; these operators control about 100 buses. Other bus operators (minibuses excluded), offering services for tours, etc. amount to about 10, with a fleet of about 50 vehicles. TransNamib Carriers, TransNamib Tours and the bus services of Windhoek municipality are the only publicly owned operations.

2.6.5 Most bus operators are involved in inter-urban and long-distance scheduled services - including to and from South Africa - or services for tourists and groups. There are four operators supplying urban bus services, two in Windhoek and one each in Keetmanshoop and Swakopmund. However, taxi operators also supply what essentially is a public transport service throughout the country in that they can operate with vehicles taking a maximum of 9 passengers. There are all in all about 1 600 taxis in Windhoek and a further 350 in the rest of the country. A substantial part of the taxis are owner-driven.

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2.6.6 Air Namibia is the only Namibian carrier currently offering domestic and international scheduled services. Air Namibia, which is a business unit of TransNamib Ltd, also offers charter services. There are a few other companies - privately owned - which also offer charter services with small aircraft. As concerns scheduled international services, Air Namibia operates three intercontinental frequencies a week to Frankfurt and London. Air France, which serves the route Windhoek - Paris, terminated this service in March 1995. The regional network of Air Namibia connects Windhoek with Luanda (this route is also served by TAAG Angola Airlines), Livingston, Harare (also served by Air Zimbabwe), Victoria Falls, Maun (also served by Air Botswana), Johannesburg (also served by South African Airways (SAA)) and Cape Town (also served by SAA). Air Botswana operates the route between Gaborone and Windhoek. In terms of the new air services policies of South Africa other South African airlines are now also serving routes between South Africa and Namibia. SA Express serves the route Cape Town - Windhoek with a once a week frequency, to be increased to three times a week. Comair, another South African Airline, started operations on the route Johannesburg - Windhoek in competition with SAA and Air Namibia in April 1995.

2.6.7 Liner services in the shipping sector are provided by Swakop Line and Namibia Shipping Lines. The former is jointly owned by Unicorn Line and TransNamib Limited on a 50:50 basis. Namibia Shipping Lines is fully owned by TransNamib Limited. The liner services formerly provided to Walvis Bay by Southern Africa Europe Container Services (SAECS), a consortium of shipping lines which served all ports between Beira and Walvis Bay, on the one hand, and a number of ports in Western Europe and in the Mediterranean, on the other hand, have been discontinued. The SAECS' operations included three services: Northern Europe, Mediterranean, and Multi-Purpose. The first two were container services, while the last handled both container and break-bulk cargo. It is only the last service which called at Walvis Bay; the frequency was every 30 days in both directions. The liner operations of Swakop Line and Namibia Shipping Lines now connect Walvis Bay with Cape Town and other ports in Southern Africa where cargo to or from Namibia is transhipped. Lüderitz is served by a coastal service - operated by the joint venture Swakop Line and Unicorn Lines of South Africa.

2.6.8 TransNamib has thus become active in shipping through its collaboration with SAECS by participating in its liner services on a slot charter basis (the rental of a given space on ships owned by other shipping lines). To this end, TransNamib has established a fully-owned subsidiary named TransNamib Shipping (Pty) Ltd. This company in turn fully owns Namibia Shipping Lines (Pty) Ltd, which is the member of SAECS.

2.6.9 Liner services between South Africa and Namibia which used to be operated by Unicorn Lines of South Africa were taken over by Swakop Line (Pty) Ltd some years ago. Swakop Line (Pty) Ltd is a Namibian registered shipping line, owned on a 50/50 basis by TransNamib Shipping and Unicorn Lines. Swakop charters a container vessel with the same name, which provides a weekly service between Walvis Bay and Cape Town.

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## CHAPTER 2 : THE TRANSPORT SCENE

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2.6.10 Bulk shipping is prominent in Namibia's seaborne trade, primarily via Walvis Bay, and to a much lesser extent via Lüderitz. These services are operated on demand. More regular services between South Africa and Namibia transport salt, coal and petroleum products.

2.6.11 There are about 5 freight forwarders in Namibia, all of them privately owned. They in principle act on behalf of the shippers to purchase transport, and also provide customs clearing services. Shipping agents act on behalf of the shipping lines. On the passenger side, mention should be made of the travel agents; there are about 5 different companies, including TransNamib Travel, which is part of TransNamib Ltd.

2.6.12 Intermodal transport operators, finally, are characterized by that they assume full legal responsibility for the transport of containers - normally in international traffic - using several modes, including ships, trains and trucks. There are several operators in Namibia which can be characterized as intermodal, including Swakop Line and Namibia Shipping Lines.

## **2.7**

### **2.4 Demand for Transport Services**

#### **Goods**

2.8.1 Rail transport has traditionally been the main mode of transport of goods, but transported quantities have been falling during the last 15 years as witnessed by Table 2.1. The fall is due to (i) a loss of market shares to other modes (road and ship); (ii) a fall in the transport of in particular bulk commodities, e.g. coal, from South Africa; and (iii) the poor economic performance of the Namibian economy during the past decade, in particular during recent years. As can be seen from the Table, transport work (expressed in nett tonne km) has decreased more significantly than actual tonnes carried, reflecting that the most significant drop has been in rail transports to and from South Africa.

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**Table 2.1 Rail Transport of Goods**

Year	Nett tonne km (000 000)	Index	Net tonne (000)	Index
1979/80	3, 545	100	3, 975	100
1984/85	2, 150	61	2, 243	56
1987/88	1, 908	54	2, 089	53
1988/89	1, 962	55	2, 146	54
1989/90	1, 635	46	1, 839	46
1990/91	1, 198	33	1, 677	42
1991/92	1, 226	35	1, 697	43
1992/93	1,109	31	1,681	42
1993/94	1,075	30	1,684	42
1994/95*	1,071	30	1,726	43

\*Forecast

Source: TransNamib Ltd.

2.8.2 Data on cargo handled at the port of Walvis Bay is shown in table 2.2 below. Total cargo amounts to about 1,1 million (metric) tonnes per annum. Liquid fuel products amounted to 401 813 tonnes per annum in 1992/93 and 437 881 tonnes in 1993/94. The numbers of containers moved at present through Walvis Bay amount to about 8 000 per year. The quantities of goods transported through Walvis Bay have more or less doubled during the past 10 years.

**Table 2.2 Total Cargo handled at Port of Walvis Bay : Nett tonnage (excluding Petroleum)**

Year	Cargo landed	Cargo shipped	Transhipped	Total cargo	Index
1983/84	303 142	260 548	39 680	603 370	100
1984/85	248 593	259 557	43 628	551 778	91
1985/86	227 632	542 022	69 058	838 712	139
1986/87	238 587	664 483	56 322	959 392	159
1987/88	374 618	875 690	48 780	1 299 088	215
1988/89	261 489	691 231	46 204	998 924	166
1989/90	355 818	740 860	28 657	1 125 335	187
1990/91	247 181	769 387	40 878	1 057 446	175
1991/92	291 688	655 176	35 983	982 847	163
1992/93	431 636	643 154	64 471	1 139 261	189
1993/94	476 517	613 159	89 560	1 179 236	195

Source: Namibian Ports Authority

2.8.3 Traffic through the port of Lüderitz is relatively small. See table 2.3 below.

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**Table 2.3** Traffic through the Port of Lüderitz

Year	Tonnage landed	Tonnage shipped	Tonnage transhipped	Total
1991/92	20 987	9 949	7 648	38 584
1992/93	22 276	7 727	15 188	44 741
1993/94	28 758	10 538	12 217	51 513
1994/95*	37 246	22 440	8 596	68 282

\* Forecast

**Source:** TransNamib Ltd.

2.8.4 There is not much data available on the transport of goods by road. An estimate from 1984 gives a total of 1,5 million tonnes, corresponding to 750 million tonne-km performed within the country. It is likely that this traffic has increased since then. Air freight, finally, is insignificant in volume terms, a few thousand tonnes a year, but probably increasing quite quickly.

### Passengers

2.8.5 Passenger traffic by rail has also decreased significantly in recent years - see table 2.4. Total number of passengers went down from a reported 388 000 in 1987/88 to 160 000 in 1990/91 and is forecast to be 104 000 by 1994/95, which reflects a small increase above that of 1993/94. There are no data on bus and taxi traffic.

**Table 2.4** TransNamib Rail : Passengers

Year	Passenger numbers
1990/91	160 522
1991/92	159 337
1992/93	125 321
1993/94	91 867
1994/95*	104 243

\* Forecast

**Source:** TransNamib Ltd.

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2.8.6 Air traffic statistics are shown in Table 2.5 below. Air Namibia's domestic traffic amounts to about 29 000 passengers per year, its international traffic to 67 000 and its regional traffic to 112 000 passengers per year. The total number of passengers in the regional traffic, including passengers, carried by other airlines, amounts to about 210 000 per year at present. There are about 108 000 passengers per year making use of the direct services between Windhoek and Europe. Air Namibia currently has a share of 62% of this traffic.

**Table 2.5 Air Traffic**

<b>A. Air Namibia Scheduled Flights</b>					
<b>Passengers</b>	<b>94/95*</b>	<b>93/94</b>	<b>92/93</b>	<b>91/92</b>	<b>90/91</b>
Total	207498	183848	168492	148305	150995
- International	66763	64531	49805	38046	30381
- Regional	112033	90223	89142	87431	102841
- Domestic	28702	29094	29545	22828	17773
<b>Freight (Kg)</b>					
Total	4617550	4105541	2547708	1946334	2076678
- International	2512396	2307330	1502765	799641	897455
- Regional	1727581	1473955	767287	859838	968099
- Domestic	377573	324229	277656	286855	2111424
<b>B. Competitors Scheduled Flights+</b>					
<b>Passengers</b>					
Total	139668	113452	106500	90921	71558
- International	41712	26703	11406	6265	160
- Regional	97956	86749	95094	84656	71398
<b>Freight (Kg)</b>					
Total	3529056	3165118	1471255	892739	743895
- International	2987040	2567177	872772	308971	125
- Regional	542016	597941	598483	583768	743770

\* Forecast

+ Air France commenced operations late in 1990/91, which explains the low figures for international passengers and freight for the year.

Source: TransNamib Ltd.

## **2.9 Important Trends in the Transport Sector**

2.10.1 It is believed that some of the trends in the demand and supply for transport services that have been discernible during the past decade, and in particular since Independence, will continue in the future. Their strength will very much be influenced by the developments in South Africa once the situation there has stabilised, and in particular the economic and trade policies that the new government of that country eventually implements. If the new South African government implements trade policies which aim at a closer integration with the region, as has been stated, and succeeds in dismantling the previous protectionist system towards the rest of the world, changes will be much more marked than otherwise. The effects of these policies will still take some time to materialise.

2.10.2 Firstly, it seems unlikely that the railway will be able to regain its former position. Rather, the role of the rail link with South Africa will probably continue to diminish, while the links through Walvis Bay will become relatively more important. There are several reasons for this including that (i) rail prices for bulk commodities will increase (they used to be kept artificially low in the South African railway system)<sup>1</sup>; (ii) there will be alternative sources for several bulk commodities; (iii) Namibia is likely to become increasingly self-sufficient in food supplies; and (iv) that there will be a new road through Botswana by the late 1990's which will cut road transport distances between the central industrial heartland of South Africa, Gauteng (formerly referred to as the PWV Region) and central and northern Namibia by 400 to 500 km.

2.10.3 Secondly, road transport will become increasingly more important. In addition to the above-mentioned new road link, the reasons include the trend towards deregulation of road transport and facilitation of international road transport which is ongoing throughout Southern Africa (see further Chapter 5), the growing importance of trade with other neighbouring countries than South Africa, and then in particular with Angola, and better roads connecting Namibia with the region.

2.10.4 Thirdly, shipping is likely to grow in importance as a result of the dismantling of sanctions against South Africa, and more importantly, on account of a gradually liberalised South African trade regime.

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<sup>1</sup> TransNamib's comment is that this is an often used criticism of pricing policies of railways which are based on generalized comparisons of rail transport costs for bulk commodities, which can be low (because of high utilization of carrying capacity, zero handling, etc.) and the cost of transporting consumer goods by rail. TransNamib further points out that there are signs that prospects for increased bulk traffic, i.e. that portion of the market where rail transport has an edge over road transport, are improving due to increased mining activities.

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Increasing regional integration will furthermore lead to more connections with neighbouring countries, and will hence enable Namibia to source some imports from elsewhere.

2.10.5 The previous paragraphs have focused on the trends to be observed in the region. There is also a need to be aware of the changes taking place in the supply of transport services in a worldwide perspective. These changes point to traffic and transport increasingly being handled by transport systems which are based on integrated networks and systems connecting large parts of the world. There are four main reasons: (i) the increasing value of products being handled; (ii) the deregulation of transport in the industrial world; (iii) the economies of scale which can be reaped through integrated network-based operations; and (iv) the superior quality of service offered by the integrated systems. These trends can already clearly be seen elsewhere in the world, in particular then in the aviation and shipping sectors.

2.10.6 For Southern Africa, it will still be some time before these developments show up in full strength. Their significance is that they will make the traditional policies of developing countries towards the international transport system less relevant. These policies have focused on ensuring an equal share of the traffic for the national carrier(s). In a trading and transport system which will become dominated by transnational corporations, the principle of an equal share of the traffic will gradually become obsolete. The focus of policy of a developing country will have to be shifted towards fostering the development of competitive operators, to be linked in with the transnational transport companies, and ensuring that the domestic operators can compete on equal terms.

## CHAPTER 1 : PRE - INDEPENDENCE POLICIES

2.1 Up to 1977, Namibia was treated as an integral part of South Africa, and indeed as its "Fifth Province". Policies, legislation and organisational and operational arrangements in respect of road, rail, air and sea transport were the same in South Africa and Namibia. The only distinctly Namibian legislation in the transport sector were ordinances pertaining to roads, road traffic and aerodromes; (Advertising on Roads and Ribbon Development Ordinance, 1960 (Ordinance 30 of 1960), Roads Ordinance, 1972 (Ordinance 17 of 1972), Road Traffic Ordinance, 1967 (Ordinance 30 of 1967) and Aerodrome Ordinance, 1963 (Ordinance 12 of 1963). However, also in South Africa, there were at that time similar separate ordinances in each one of the provinces.

2.2 The first of September, 1977 marked a watershed in Namibia's administrative and legislative history, as well as the beginning of the transition to independence. That date saw the creation of the office of the Administrator General (AG), and also the transfer of powers from Pretoria to that office. The AG was empowered to administer all legislation, to make laws and to amend South African acts in so far as they pertained to Namibia. Part of these powers were later vested in other institutions set up during the period leading up to Independence. These institutions, including the AG's office, which formed part of the South African colonial administration from 1977 until Independence, is in the sequel referred to as the Windhoek administration.

2.3 The administration of the legislation in the transport sector was subsequently transferred to the AG's office through the Executive Powers (Transport) Transfer Proclamation, 1978 (AG Proclamation 14 of 1978), albeit only partially. All matters relating to road transportation (the Road Transportation Act, 1977 (Act 74 of 1977)) were transferred with the exception that the South African National Transport Commission retained its powers, including the granting of authorizations for air and road transport operations. Also certain matters relating to road safety remained under the control of South African authorities. In aviation, only the parts of the legislation relating to the regulation and operation of airports and aerodromes were transferred. In the sphere of shipping, ports and railways all legislation continued to be administered and controlled by South Africa and its institutions.

2.4 In 1980, a separate Namibian Government service was set up as part of the Windhoek administration, and in July 1980 the Department of Transport (DOT) became the 12th department of that service. DOT was given responsibility for administering the functions provided for in the transport legislation which had been transferred, as well as the laws which were already being administered by Namibia. DOT

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became a part of the Ministry of Works, Transport and Communication on 21 March, 1990, the day of Independence.

2.5 The first step towards the formulation of new transport policies in Namibia was the appointment of the Welgemoed Commission of Inquiry into Transport Affairs, which reported in 1981. The purpose of the Commission was primarily to pave the way for the formal separation of the Namibian transport sector from the South African one. The report thus recommended that separate transport legislation for all sectors should be enacted for Namibia, including for aviation and maritime affairs. As a consequence, it was also recommended that Namibia should gradually build up the technical competence to administer this legislation. The report furthermore recommended that the activities of what was then the South African Railways and Harbour Administration, and later the South African Transport Services (SATS), should be terminated in Namibia, and that its assets should be transferred to the Windhoek administration, including the railway system, the port of Lüderitz, SATS' road transport services and some lighthouses along the Namibian coast. Another of Welgemoed's recommendations was that a national carrier be established to initially provide domestic air services, and later to become involved in international aviation.

2.6 The Welgemoed report had limited impact on transport legislation. It resulted in some modifications to the Road Transportation Act. The results in terms of the arrangements in the transport sector were more substantial. Already in 1981, the Windhoek administration purchased from Safmarine 51% of the shares in Namibia Airlines (Pty) Ltd, the holding company of what was then called Namib Air, in an apparent attempt to establish a national carrier. And on 1 April, 1985, the assets of SATS located or used in Namibia were transferred to the Windhoek administration; SATS were retained to operate the services on a management contract basis for a three year period.

2.7 The next step in the formulation of a transport policy before Independence was the Report of the Advisory Committee on Transport Services (ACTS; also referred to as the Coetzee Report), which was published in February 1986. It was heavily influenced by new ideas about transport policy then taking shape in South Africa. Its principal recommendations may be summarised as follows:

- deregulation of surface transport, to be implemented over a five-year period, and with protective measures for the railways in the interim;
- cost recovery from users wherever possible;
- commercial considerations as the prime determinant of the level of service, prices, etc.;



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- payment of direct subsidies by the state where it deems non-commercial services or activities desirable for strategic, social or other reasons;
- in line with this, closure of three uneconomical branch railway lines and of all rail passenger services;
- creation of an autonomous legal framework in Namibia, including in the spheres of civil aviation and maritime affairs;
- establishment of a multimodal transport corporation to own and operate on a commercial basis (i) the railway, harbours, light houses and other assets and facilities which formerly belonged to SATS in Namibia; and (ii) Namib Air; and
- establishment of a transport tribunal and of a transport advisory council.

2.8 Few of these recommendations were actually implemented before Independence. The most important reform was the creation of the National Transport Corporation, subsequently renamed TransNamib Ltd (TNL), which came into being on 1 July, 1988. On that date, TNL took formal responsibility for the former assets of SATS, which continued to be managed by SATS until the end of June, 1988. On 1 July 1988, TransNamib also took over all the shares of Namibia Airlines (Pty) Ltd; the remaining 49% of the shares had then already been bought by the Windhoek administration from Safmarine in 1987.

2.9 In road transportation, deregulation was never carried through before Independence. The proposal for reserving certain commodities for the railway was, however, implemented, and became effective in November 1989; (see further Chapters 5 and 6). As the road transportation legislation was not reformed along the lines proposed by the ACTS, it became necessary in 1989 to amend the existing legislation to ensure that it would provide for autonomy from South African institutions in time for Independence; this was accomplished through the Road Transportation Amendment Proclamation, 1989 (Proclamation AG 61 of 1989), which, *inter alia*, established the Transportation Commission of Namibia in lieu of the South African one. During 1989, the DOT also assumed responsibility for remaining matters related to road safety.

2.10 The work on establishing a complete legal framework for civil aviation and maritime affairs matters was initiated before Independence but not completed. Nor were the recommendations in respect of (i) cost recovery for road users; (ii) the creation of a transport tribunal; (iii) the establishment of a transport advisory council (only an acting transport advisory board was activated to advise about new road traffic legislation);

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## CHAPTER 3 : PRE-INDEPENDENCE POLICIES

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(iv) the termination of rail passenger services; and (v) the closure of the three railway branch lines effected before Independence. After Independence work on some of the issues was continued. The Namibian Transport Advisory Board (NTAB) was instituted and a road taxation study largely completed. These are referred to elsewhere in the White Paper. (See Annex 2 for a review of legislative activities before and after Independence in the transport sector.)

## CHAPTER 1 : POLICY FRAMEWORK

### 2.1 The Basic Objectives

2.2.1 According to the White Paper on National and Sectoral Policies (March 1991, pp. 9-10), the broad national policy objectives include, inter alia:

(i) sustained socio-economic development aimed at (a) the eradication of poverty and the concomitant provision of better living standards for the people of Namibia; (b) narrowing the income gap; and (c) facilitating agricultural and industrial development and other productive activities that will increase national income and reduce unemployment; and

(ii) optimum utilization of scarce resources.

2.2.2 These objectives are reiterated in the transitional National Development Plan, 1991/92 - 1993/94, where it, inter alia, is stated that one key element of the Government's development strategy is that "sustained economic growth will be achieved by encouraging the private sector to increase their investment and improve their operations" (Chapter 3). It is furthermore stated that the Government will create "the necessary environment that would enable the (private) sector to maximise its contribution to growth and employment" (Chapter 5).

2.2.3 The basis for the policy formulations in this White Paper is to be found in the above-mentioned basic policy objectives and strategies. The promotion of optimum - or efficient - utilization of resources is seen as the primary strategy in order to increase economic growth, which in turn is viewed as the primary strategy in order to achieve the policy objectives of reducing unemployment, reducing the income gap and providing better living conditions for the people of Namibia (cf. World Bank Economic Memorandum on Namibia).

### 2.3 The Role of Competition

2.4.1 This White Paper is, furthermore, based on the premise that efficiency in the use of scarce resources in the transport sector, in general, albeit not always, can best be attained by promoting competition between suppliers of transport services. Economic theory and empirical evidence lend support to the contention that competition in the transport sector generally is feasible, and leads to an optimum use of resources both in a short and long term perspective. As a consequence, competition also tends to result in prices covering costs and to generate profits which are not excessive.

2.4.2 Competition in transport implies, *inter alia*, that there should not be any restrictions on entry into a market, that prices should be set freely and that operators must be allowed to pull out of a market, including to go bankrupt. One implication hereof is that the private sector, in general, must be allowed to participate fully in the supply of transport services.

2.4.3 However, it has to be recognized and emphasised that there are limits to the role that competition can play in the transport sector. Furthermore, the policy of promoting competition should not be read as tantamount to the Government not being involved.

2.4.4 There are several reasons for the Government to be active in the transport sector as a regulator of competition, and at times also as a provider of services and facilities. These reasons include (i) problems sometimes associated with small - or thin - markets, i.e. that demand is low; (ii) the impact of road traffic on the environment and safety; (iii) the fact that transport often involves border crossings, which implies that Namibia must consider or abide by international regulatory practices and systems; (iv) the need to ensure that competition is on equal terms and, therefore, is viewed as acceptable by all parties concerned; and (v) the need to ensure that competition does not thwart but supports the overall objective to promote socio-economic development and a narrowing of the income gap.

## **2.5 Thin Markets**

2.6.1 When markets are small, as they often are in a sparsely populated country such as Namibia, there is sometimes only room for one or at most a few operators. This can lead to problems from an efficiency point of view.

2.6.2 One problem occurs when entry into a market, which is served by one mode of transport, is difficult. Where markets in this way are dominated by one or a few suppliers, they are said to be monopolistic or oligopolistic. In such instances the limited number of suppliers may sometimes exert market power, i.e. they may be able to charge too high prices. This could be particularly serious if there are no alternative modes of transport to choose from.

2.6.3 Several market segments in the transport sector could be described as monopolistic today. It is to be emphasised, however, that the main reason for this is that the regulatory policies which have been pursued during the period of colonial rule, in e.g. road transport, have worked to foster the establishment of monopolies or oligopolies in various market segments. Structural monopolies, i.e. monopolies which derive

from the condition that a particular supplier has cost advantages and entry into the market is difficult, do not, on the other hand, appear to be a problem in Namibia at present. The railway, for instance, could be described as a monopoly, but it is (potentially) subjected to effective competition from road transport. And for those goods for which the railway is the only alternative, for instance ores and minerals, strong competitive conditions in the world market for metals and minerals act as a serious constraint on the railway to set prices much above cost of operations.

2.6.4 A different type of problem related to thin markets sometimes occurs in the context of scheduled operations, e.g. when public transport is operated in terms of a schedule in an urban area. When such markets are thin, they tend to become unstable if free competition were to be allowed. Indeed, it is possible that no supplier would like to enter the market at all if it were completely open to competition. The uncertainty would simply be too high. In these cases it may therefore be necessary to institute some kind of regulatory system to both control entry into the market and ensure that not too high prices will be charged by the monopoly operator; see further Chapter 5.

## **2.7 International Transport and Traffic**

2.8.1 The economic regulation of international transport operations has to be coordinated with other countries. Cross-border operations are often regulated in terms of multilateral or bilateral agreements. An exception until recently has been road transport in Southern Africa, where each country has applied its own regulatory regime. This is also the case for Namibia at present; Namibia controls unilaterally the entry of all foreign commercial vehicles being operated for hire, reward or own-account. However, the unilateral system is now being replaced by multilateral systems in Southern Africa, and Namibia will have to consider whether or not to join these multilateral regulatory regimes; see further Chapter 5.

2.8.2 International air transport is the sector which most thoroughly has been regulated in terms of norms which are applied throughout the world. The nature of the present system is that it does not leave a small country like Namibia with much choice as to which economic regulatory policy to pursue. The air transport regulatory system is, however, in the process of changing, on account of liberalisation and deregulation of some of the world's main markets, a process which is now also having repercussion on Southern Africa. Namibia's role is basically to adapt to this process; see further Chapter 7.

2.8.3 In shipping, countries are much more at liberty to choose how to regulate, e.g. entry and capacity. The reason is that, unlike in aviation, the traditional norm has been that there should be free entry. Until recently there were therefore no attempts to implement an economic regulatory regime, and the international

conventions which have come into existence during the past 20 years are much less comprehensive than what is found in aviation; see further Chapter 8. In international rail transport, regulatory matters are traditionally left with the railways themselves.

## **2.9 Competition on Equal Terms**

2.10.1 For competition to function well, it must ideally be viewed as fair by those operators who participate or wish to participate. As fairness is subjective, Government can never hope to be able to achieve a situation in which everyone considers everything to be fair. But what the Government can do is (i) to subject all operators to the same type of regulatory controls; (ii) to tax all operators in accordance with the same principles; and (iii) to strive to ensure that all prices of inputs used by different operators in the production of their services are determined on similar principles, and ideally reflect the cost of these inputs.

2.10.2 One of the most contentious issues when it comes to "fairness" concerns the pricing for the use of roads to ensure that competition between road and rail is on "equal" terms. This issue is covered in Chapters 5 and 6. It should be emphasised that the importance of paying attention to the issues behind the concerns expressed about fairness is not only to establish an acceptable system of rules; at least as important is to ensure that the issues are resolved in order to promote the efficient use of resources. In fact, the only approach which the Government can make use of in order to e.g. establish a system of road user charges, is the basic strategy that an efficient use should be made of scarce resources.

## **2.11 Environmental Effects and Safety**

2.12.1 To contain and limit environmental effects caused by transport operators, and to ensure an adequate level of safety, various regulatory means can be used. In the fields of shipping and civil aviation these concerns are largely catered for through international conventions. These stipulate minimum requirements and identify actions that need to be taken, and thereby also broadly identify a regulatory system which each signatory country must establish in order to comply with the requirements. Namibia has, since Independence, acceded to or ratified some of the relevant conventions. The policy is either to do so eventually or at least to abide by the spirit of the conventions concerned. (Annex 1 covers major conventions in the transport sector, and Namibia's current position in respect of them.) These aspects will therefore not be covered further in the White Paper.

2.12.2 In road traffic, on the other hand, environmental and safety matters are, in principle, subject to national regulatory controls. There are, however, limits to what a small country like Namibia can do on its

own to contain negative environmental effects caused by road traffic. The reason is that the most cost-effective means are related to the design of vehicles and engines, factors which Namibia can exert very little control over at present. Road safety aspects, on the other hand, is an area over which the Government can exercise direct influence and/or control, and where substantial cost-effective improvements can be made; this is discussed further in Chapter 5. There are no environmental and safety aspects related to railway traffic which need to be reviewed in this White Paper.

### **2.13 Social Aspects**

2.14.1 Colonial rule and Namibia's geography have resulted in a situation where poor Namibians have much lower accessibility to work places, social services and many other locations of importance to the daily life. Poor Namibians normally live in the north of the country or in housing developments which by design were established at quite a distance from the centres of urban areas as part of the South African policy of apartheid. Everything else being the same, most poor Namibians also have a very significant disadvantage from a transport point of view.

2.14.2 However, experience has shown that the transport sector generally is not an effective means for redressing the problems which poor people and poor regions face. For example, subsidies from the government to transport operators have the disadvantage of often also benefitting people who are not the ones being most in need. Another reason is that the arrangements which have to be put in place in order to transfer money from the government to the operators tend to stifle efficiency in operations, have adverse effects on resource utilization and competition, and/or to create expensive bureaucratic structures. In sum, while subsidies to operators could be an effective tool to attain social objectives in a short term perspective, they are much less so in the longer term. They therefore often come into conflict with the objective to promote economic growth.

2.14.3 This does not mean that there are no actions that the Government can take within the transport sector in order to help disadvantaged Namibians. The most obvious is to promote efficiency throughout the sector to ensure that prices for transport are as low as possible; see further Chapter 5. There are also other actions such as the provision of infrastructure (roads, etc.), but these means fall outside the scope of the White Paper. However, generally the most effective means for reducing the accessibility handicap can be found outside the transport sector. These means include the fostering of economic development in or near areas where poor Namibians live in order to reduce their need for transport.





## CHAPTER 2 : ROAD TRANSPORTATION AND ROAD TRAFFIC

### 3.1 Introduction

3.2.1 This chapter covers the economic regulation of road transport operators, as well as a number of issues related to the use of roads. The chapter starts with a review of the present economic regulatory policies applicable to road transport, including their contents, background and how they are applied in practice (Section 5.2). A summary is also provided of the views of those who are involved directly and indirectly in road transport (Section 5.3).

3.2.2 The discussion of policy developments with respect to the economic regulation of road transportation will be done for four different segments: Domestic road haulage for hire, reward or own-account (Section 5.4); domestic long-distance bus operations (5.5); urban transport, including taxi, combi-taxi and bus operations (5.6); and cross-border bus and road haulage operations (5.7).

3.2.3 There are three other major issues, related to the use of roads, which are covered in this chapter. The first relates to the payment for use of roads by different types of vehicles, i.e. the matter of road taxes and road user charges (Section 5.8); a proper design of a system of road user charges and related taxes (the distinction between the two is discussed later) are important not only from the point of view of efficiency in the use of roads, but also in order to facilitate the maintenance and expansion of the road network. The other two issues are how quality regulation (*inter alia*, road safety) in road transport can be improved, in particular then in respect of vehicles used for commercial purposes, and how the degree of overloading can be reduced (Section 5.9).

### 3.3 Current Regulation of Road Transportation

#### Background

3.4.1 A feature of transport in Southern Africa is the dominant role played by the railways. To a large extent this is due to the economic structure of the countries in the region, which are characterized by a relatively high demand for transport, including import and export of bulk commodities. Such commodities lend themselves to transport by rail. The dominant position of the railways has also been reinforced by policies which explicitly or implicitly have shielded the railways from competition by trucks and buses. This

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has been achieved through statutory instruments which have made it difficult for prospective road hauliers and bus operators to enter into the market or for existing ones to expand their services and/or capacity.

3.4.2 The original law in Namibia was the South African Motor Carrier Transportation Act (Act 39 of 1930), which was made applicable to Namibia in 1933. This Act was replaced in 1977 by the Road Transportation Act (Act 74 of 1977), which became effective in both Namibia and South Africa in 1978, and is still effective in both countries. Amendments to this legislation were, after 1978, done independently in South Africa and Namibia when the administration of the Act was transferred to the Administrator-General by Proclamation No AG.14 of 15 March 1978. The 1977 Act can in retrospect be seen as the first step in a process towards more liberal economic policies, which was initiated towards the end of the 1970's in South Africa.

3.4.3 In effect, the Road Transportation Act represented a modest break with past policies. Demand for more far-reaching reforms eventually led to further changes in the South African road transport policies. In 1988, the South African parliament thus passed the Transport Deregulation Act, 1988, in order to gradually eliminate control of entry, capacity and prices in respect of road transportation, and to replace these instruments with an improved quality control system (i.e. a system to safeguard road safety and control overloading). This process has not yet been fully completed with the road transport quality control system (RTQS), especially, having run into delays. In the meantime, however, the rules for the application of the Road Transportation Act in South Africa have been relaxed considerably. The road transport market in South Africa can therefore be viewed as more or less deregulated today.

3.4.4 The evolution of the South African road transport policies is by no means unique. Most countries implemented control systems in the 1930's, often in response to the events flowing from the Great Depression. The post-Second World War period then saw the demise of these controls. The process was initiated in Australia in the 1950's, continued to the UK in the 1960's, and reached North America during the late 1970's.

3.4.5 The pace of reform is less pronounced in other countries in Southern Africa. However, the authorities in many of these countries have become much more liberal in granting authorizations in recent years, in particular as concerns road haulage. And as a whole, the role of road transport is becoming more and more important in the region, particularly in the international market; see further Section 0

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### The Regulation of Road Transportation in Namibia

3.4.6 As mentioned, the Road Transportation Act, 1977, embodies the policies in respect of road transportation in Namibia today. The Act, in effect, originally viewed Namibia as an integral part of South Africa. Namibian operators were treated entirely in the same way as South African ones, and the institutional structure was the same. The Act provided for the establishment of Local Road Transportation Boards (LRTB) to issue public and private permits for transport for hire and reward and own account, respectively, in both South Africa and Namibia. Ten LRTBs were established in South Africa and one in Namibia - hereinafter referred to as the Board. Permits - also valid for Namibia - could in addition be issued by the South African National Transport Commission, which furthermore served as an appeal body.

3.4.7 Already in 1978, the administration of the act in Namibia was transferred from Pretoria to Windhoek. This implied two things. Firstly, the powers to legislate in the field were vested in the administration established in Windhoek by South Africa at that time. Secondly, permits issued by the Board in Windhoek only applied within Namibia, while those issued by Local Road Transportation Boards in South Africa did not authorise road transportation within Namibia. Applications granted by the National Transport Commission of South Africa could include road transportation within both Namibia and South Africa.

3.4.8 The Act defines road transportation as the transport of people or goods on a public road by means of (i) a motor vehicle for reward; (ii) a motor vehicle in the course of occupation or trade or business, i.e. for own-account operations; and (iii) a hired vehicle.

3.4.9 To obtain a public permit, it is - generally speaking - up to the applicant to show that the current services are not satisfactory and sufficient and that it therefore would be in the "public interest" to grant the application. The applicant for a private permit must convince the Board that it would be "unreasonable" to make use of any available railway service. While the railway and all holders of public permits may oppose applications for public permits, only the railway may oppose an application for a private permit. It should furthermore be mentioned that the Board may issue a temporary permit with a validity of up to 14 days to handle the demand for transport of a temporary nature and for which there are no other "reasonable" facilities available.

3.4.10 A permit applies to one vehicle and a given period of time. It indicates the routes to which it applies or the geographical areas for which it is valid. For goods vehicles a permit also stipulates the type of commodities which may be conveyed. In recent years, it has become increasingly common to grant public

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permits for goods vehicles which are valid for all of Namibia, for a whole range of goods and also for an indefinite period of time.

3.4.11 The Act provides for a number of exemptions, i.e. cases for which permits are not required. These include (i) farmers carrying their own products and inputs with their own vehicles; (ii) local authorities; (iii) certain smaller vehicles; and (iv) certain goods including cattle, live stock, gravel, stone, sand, fresh milk, fruit juices, furniture and perishable goods (vegetables and fruits).

3.4.12 The Act hence provides for the regulation of entry into the road transport market and also of the supply of capacity. Tariffs of scheduled bus services and taxi operations are fixed by the Board, while road haulage tariffs are not laid down. However, customers may complain to the Board, which can then also set tariffs in respect of the transport of goods if market conditions are found to be monopolistic or unreasonable.

### **Developments before Independence**

3.4.13 As mentioned in Chapter 3, the arrangements in the transport sector in Namibia were reviewed in 1985-86 by the Advisory Committee on Transport Services (ACTS). The ACTS also recommended that road transportation be deregulated, and that entry into the market only be subjected to improved quality control. The legislative changes envisaged by the ACTS were essentially the same as those which were subsequently implemented in South Africa and which have been described above. However, the ACTS also recommended that the Namibian railways be given a period of grace before being subjected to full competition from road transport. It thus recommended that certain goods be reserved for the carriage by the railway for a five year period.

3.4.14 While deregulation of road transport was never carried through before Independence, the proposal for reserving certain commodities for the railways was implemented. It was effected through the Second Road Transportation Amendment Act, 1988, which prohibited the Board from considering applications for public and private permits for the conveyance of certain goods on certain routes, but does not give the power to revoke valid permits. The reserved goods were subsequently specified in Government Notice No. AG. 101, 3 November 1989. It listed fourteen commodities, mainly bulk commodities and container traffic, and also the places between which applications for permits could not be considered (essentially all routes along the existing rail network for distances above 100 km).

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3.4.15 At the same time, the list of exempted goods was altered so as to conform with the list of goods reserved for the railway; see Government Notice No. AG. 100, 3 November 1989. In addition the exempted goods could only be carried within Namibia, and, for example, not across the border to and from South Africa as before; see further Section 5.3.

3.4.16 As the legislation was not reformed along the lines proposed by the ACTS, it became necessary in 1989 to amend the existing Act instead to ensure that it would provide for autonomy from South African institutions in time for independence. This was effected through the Road Transportation Amendment Proclamation, 1989, which came into operation on 29 November 1989. This Proclamation (i) transferred the powers of the South African National Transport Commission in respect of road transportation in Namibia to the Road Transportation Commission of South West Africa (later renamed Transportation Commission of Namibia); and (ii) replaced the previous LRTB in Windhoek by the Road Transportation Board of South West Africa (later changed to the Road Transportation Board of Namibia).

### **Post-Independence Reforms**

3.4.17 In mid-1991, Cabinet took a decision in principle to deregulate road transport; see Chapter 1. While awaiting proposals for how these new policies would be implemented, it was at the same time also decided to implement some interim measures to liberalise the road haulage market. These included that (i) Proclamation AG 101 of November 1989 (see para. 5.2.14), be recalled; (ii) the list of exempted goods be extended; and (iii) that permits not be required for all own-account operations to and from railway stations, and otherwise with vehicles of up to 15 tonnes gross vehicle mass. The first change was effected through Government Notice 90 dated 31 October 1992, the second and third changes were initially intended to be effected through amendment of the Road Transportation Act, but, as it was later decided to bring about policy changes through completely new legislation rather than to make piecemeal amendments to the existing Act, they were never implemented.

### **3.5 Views on and Issues in the Regulation of Road Haulage**

3.6.1 In this section, a summary is given of the views of those who participate directly and indirectly in road transport. An attempt is made to present data and give information to shed light on these views. The views concern (i) the enforcement of the Road Transportation Act; (ii) its ability to respond to needs; (iii) its implication for public administration (bureaucracy); (iv) its compatibility with efficiency; and (v) its fairness. The emphasis is placed on road transport of goods.

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3.6.2 **Enforcement.** For some of those who are involved in road transport, the main concern is with the way the present system is applied and enforced. Several explanations are given as to why the rules are poorly enforced. One is that courts are said to not prosecute many violations against the provisions of the Act. Another claim is that the traffic police is severely undermanned in relation to its duties, and does not have adequate powers and facilities at its disposal to undertake effective enforcement, even in respect of major infringements. The lack of action on part of the courts and the shortage of resources are said to undermine the morale of the law enforcement agencies, and to dilute the respect for the legal system, as well as for the Government. The second reason will not be discussed here; problems related to the present legal approach to infringements in general are instead covered in Section 5.9.

3.6.3 As concerns the first reason, it seems clear that there has been a deterioration in the enforcement of the Road Transportation Act since Independence. This phenomenon is, however, by no means exclusive to the post-Independence period. Indeed, the source is to be found in decisions made already before Independence.

3.6.4 The changes in the road transport policies, which were implemented before Independence (see paras. 5.2.14 and 5.2.15), in effect made entry and capacity expansion more tightly controlled than before. There are several reasons. Firstly, after the promulgation of AG 101, permit applications could not be considered in respect of the goods reserved for the railway. This affected a large part of the long-distance transport market in view of the fact that the list of reserved goods included the bulk of the transport needs of the country and that the railway serves almost all main centres. Secondly, some goods which previously did not require any authorization at all were not exempted any longer. Indeed, as noted above, neither public nor private permit applications could be considered if the goods proposed to be carried belonged to the categories of reserved goods.

3.6.5 Thirdly, both foreign and Namibian hauliers were required to obtain a public permit from the Board to convey "exempted" goods across the border of Namibia. Government Notice No. AG. 100 (para. 5.2.15) listing exempted goods, thus restricted such operations to only be undertaken within the country. Previously, the interpretation was that exempted goods could be carried up to and across the border. As South Africa also allowed these transports to and from its territory without a permit, they were in fact totally unregulated.

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3.6.6 The impact of these changes was aggravated by the fact that the new Board after Independence could not be constituted until late 1990. For a period of about one year, no applications for private and public permits were therefore considered.

3.6.7 The decision made by Cabinet in July 1991 therefore represented a first step to offset these problems (Chapter 1). In the meantime, they have also been offset to some extent through a more liberal granting of temporary permits. In addition, and more importantly in the present context, is that summonses issued by the traffic police against operators carrying exempted goods across the borders have been thrown out of court, on instruction from the Prosecutor-General. It is apparently this which is the main reason for the poor enforcement of the provisions of the Road Transportation Act. The Prosecutor-General apparently viewed the new restrictions on the exempted goods operations as unfair and unreasonable as it had not been possible for road hauliers to obtain public permits to continue their - previously - legal operations.

3.6.8 **Needs.** Another view of the present system, aired by those who partake in road transport, is that it is so poorly tailored to the actual needs of the market. More or less everyone is therefore at some point in time tempted into bending or breaking the rules.

3.6.9 The previous account of the effects of the changed regulations concerning cross-border operations with exempted goods seems to bear this out. The available data also suggest that there are strong incentives to try to break or bend the rules, and that many operations are undertaken without the necessary permit. A study carried out in 1988 revealed that 20% of the examined vehicles infringed on the requirements laid down by their permits. At a roadblock in Grunau during the period 20 April to 6 May 1990, it was found that 47% of goods vehicles conveyed goods contrary to the provisions of the Act, a majority of whom did not have any permit at all. An explanation for the exceptionally high incidence in this case was that many of the operators were continuing their exempted goods operations to and from South Africa, which had been prohibited through Government Notice AG. 100; see para. 0.

3.6.10 **Bureaucracy.** A third claim made by essentially all operators is that the present system is bureaucratic, difficult to understand and interpret, and hence not service oriented. Again, this is said to have debilitating effects on morale, as well as on the respect for the law and the Government.

3.6.11 The bureaucracy involved in the permit system is best illustrated by the size of many permits. They can easily run into 5 to 10 pages identifying numerous different conditions or restrictions which have to be complied with. Mostly these identify which routes have to be used, types of goods to be carried and for

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whom services may be undertaken. It requires a very well trained traffic officer to read and interpret the contents and meaning of these permits. It is therefore not surprising that the interpretation of such permits in many instances have given rise to considerable problems. The legal history of South Africa is filled with cases emanating from problems of interpreting road transport permits, one of the most famous being the meaning of the Afrikaans word "bedryfsgereedskap".

3.6.12 Another side of the bureaucracy is the time it requires to process an application for a permit. During the period 1986 to 1989 and during the first half of 1991, an applicant was on average forced to wait for 150 days from submission until approval, i.e. 5 months; some applicants had to wait up to one year. The cost to the applicant is aggravated by the cost for employing lawyers, as is often the case. The cost of the bureaucracy is further magnified by that it is customary for existing permit holders to oppose an application for a public permit. Also that process involves lawyers.

3.6.13 **Efficiency.** A fourth view - voiced by some operators, shippers, and other parties, although by no means by all - is that the regulatory system does not promote the provision of cost-efficient and demand responsive services. It is also alleged that the present regulatory system allows some operators to exploit monopolistic market conditions. As a consequence, prices paid for transport services are said to be higher than they need be. It is also stated that the services are not as good as they could be.

3.6.14 Unfortunately it is not possible to measure the inefficiency caused by the present system in the form of high operating costs and/or too high prices. In its first economic memorandum on Namibia, the World Bank presents some data relating to TransNamib Carriers, which are claimed to show that prices and profits are too high (p. 145). Suffice it to be mentioned here that wherever it has been possible in the world to undertake in-depth studies of the consequences of a deregulation, it has been shown that both costs and prices are reduced. There is nothing to suggest that the Namibian market would in any fundamental way differ from these other markets.

3.6.15 **Fairness.** A final point of view aired by some is that the current system is in general not "fair". Essentially, the argument seems to be that the regulatory system divides the market into segments in terms of geographical areas and commodities. Some operators have authorities to participate in many of these segments, while others can only participate in a few of them. A further claim is that this prevents operators from exploiting their equipment optimally.



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3.6.16 It seems clear that a limited number of firms today are in the favourable situation of having very general public permits. Such permits allow the operator to carry many different types - sometimes all types - of goods, either all over or in large parts of Namibia, or between South Africa and Namibia. These firms include Trencor/Stuarts of South Africa, Jowells of Namibia (which is owned by Trencor), F.P. du Toit of Namibia, Anderson Transport of South Africa, Anderson Transport of Namibia (same owner as for the previous company), Road Runners of Namibia, and Wesbank Transport of Walvis Bay. TransNamib Carriers also belong to this category, but their permits do not apply to routes along the railway.

3.6.17 A further 20 companies, approximately, have private and public permits to operate between South Africa and - normally - specific places in Namibia for a very limited number of goods. These operators will carry such things as cars, or bottles or building materials. The majority are South African firms. TransNamib is the only company with a permit to go to Angola, and F.P. du Toit and Road Runners are the only ones with permits to go to and from Zambia.

3.6.18 Oshana, Oshikoto and Ohangwena (the former Owambo) are served by Road Runners and TransNamib, as well as 4 smaller operators with private permits. Caprivi and Okavango are served by Road Runners, F.P. du Toit and TransNamib. The northern parts are also served by own-account operators such as Namib Mills. There are three foreign firms which may enter Caprivi by way of Ngoma. There is, however, not one single local operator with a private and public permit in either Caprivi or Okavango. For the rest, there is the odd operator here and there with one or a few, and occasionally several, trucks generally serving local distribution needs from a railway station.

3.6.19 As concerns public and private permits, the situation is thus broadly that there are a few big firms with many permits of a general nature, several big ones which operate in very specific market segments, and a limited number of small ones, with very few trucks and with limited authorizations. However, it is important to be aware of that this does not give a complete picture of the total road haulage market. In view of the fact that a considerable number of goods are exempted and thus can be carried without a permit, there are some additional 15 to 20 Namibian operators who, for example, undertake transport of cattle and household removals.

3.6.20 In addition, it appears that the distribution in the traffic between South Africa and Namibia is not as imbalanced as the number of permits allowing for cross-border traffic issued for trucks registered in South Africa in comparison with such permits issued for Namibian registered trucks (about 700 and 230, respectively in 1991). A study in 1988 revealed that the ton-kilometres produced within Namibia by vehicles

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registered in Namibia and in South Africa were almost the same. The number of trips made by Namibian-registered trucks across the border was actually higher than for South African registered ones, but the latter trucks covered a longer distance within the country. A more recent survey of heavy vehicles during four periods of two weeks from November 1993 to September 1994 produced similar statistics. A total of 17 797 vehicles were surveyed. Namibian registered vehicles accounted for 52,2%, South African vehicles for 47,1%, and vehicles from other countries for 0,7%. A further statistic was that 56% of all vehicles were overloaded, the average percentage overload on a tridem axle (21 000 kg) was 14%, with a maximum of 56% (32 800 kg).

### 3.7 Road Haulage

3.8.1 As stated in Chapter 1, Cabinet has already taken a decision in principle to deregulate road transport, primarily then having road haulage in mind. The views of Cabinet are that deregulation would (i) reduce the inequities as concerns the participation in the road transport industry which are a legacy of the colonial rule in Namibia; and (ii) be conducive to economic efficiency. The White Paper supports these views.

3.8.2 Deregulation of road haulage would address several of those issues which were identified in the previous section. Firstly, a control system would be removed which is virtually impossible to enforce, and which in addition tends to make just about everyone a law-breaker. Deregulation would, in other words, eliminate a system which few persons and organizations think genuinely represent a basic need, and which therefore tends to pit the general public against the law enforcement agencies. Secondly, deregulation would reduce the cost of the Government for running the system and trying to enforce it. Thirdly, the requirements of most shippers for a flexible supply of transport services would be met.

3.8.3 Fourthly, the efficiency of the transport market would be enhanced. All evidence available about trucking operations in a deregulated market thus suggests that such a market is efficient, i.e. that operating costs are minimised and prices are set close to costs of operation. Even as concerns so-called thin markets, e.g. in rural areas or between urban and rural areas, there is little evidence of trucking companies being able to set prices significantly above cost. Although companies in sparsely populated areas often operate without head-on competition, the potential for outsiders to step in or more goods to be transported on the shippers' own vehicles is apparently a real threat.

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3.8.4 One condition that contributes to create competitive conditions in road haulage is that the market actually is made up of a number of market segments. Operators often concentrate on one of these segments, where they specialise. There is no inherent permanency about this, however, and if a niche operator identifies opportunities in other market segments he may move in. The cost of doing so is not very high, provided specialised equipment is not involved. The fact that an operator appears to be alone in his niche in a deregulated market is therefore not a sign of a real monopoly situation, but more likely reflects that the incumbent is efficient and does not charge prices much in excess of cost.

3.8.5 The arguments advanced against deregulation are primarily the following four: (i) A free market is unstable; (ii) the market is too small to allow for competition; (iii) a free market would lead to a concentration of the industry; and (iv) deregulation would hurt the railway, which would be a wasteful use of scarce resources as it has considerable spare capacity. The last argument will be reviewed in the next chapter.

3.8.6 The instability argument is a classical argument. It is based on the assumption that small truck operators do not know their costs. As a consequence they tend to expand too much so that there will be an oversupply in services. This in turn leads to bankruptcy, eventually to a contraction in the overall supply, and then the process starts all over again. There is no evidence available from any part of the world to support the claim that road haulage markets are unstable. Indeed, business failures are not more common in road transport than in other lines of business. The fact that trucking companies sometimes do go bust can instead be explained by the business cycle, flawed regulatory or other economic policies pursued by the government or lack of skills on the part of the operators.

3.8.7 Nor is the argument that the market is too small to allow for competition a valid argument. On the contrary; smallness makes it even more imperative to put pressure on the incumbents in order to ensure that they produce at the lowest possible cost. As explained above, the threat of competition can be expected to play a disciplinary role in road transport, even when there is not room for several operators. For this to work, entry into a market must be unimpeded.

3.8.8 As concerns the third argument, it is to be recognized that several of those countries which have deregulated their road transport markets have witnessed a concentration of the industry. It is, however, important to understand the nature of this development. The trucking market can in broad terms be divided into two segments, viz. truck load and less-than-truck load operations. The latter type of operation is very common in developed countries, where much of the goods comprise parcels which have to be consolidated to make up a full truck load. These operations normally take place in network-based systems, with vehicles

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run according to schedules and terminals used for consolidation, disconsolidation and transshipment. There are many similarities with railway operations, which means that there is not room for many such operators even in large and developed economies.

3.8.9 A characteristic of less-than-truck load operators is, on the other hand, that they generally do not own trucks; they sub-contract with owner-operators, in particular for line-haul operations. Even in the less-than-truck load market there is hence a role for the small operator. More importantly, however, is that in the other market segment, i.e. full truck loads, which is the type of operation most commonly observed in developing countries, including in Namibia, these tendencies towards concentration are much less pronounced.

3.8.10 In conclusion, the findings of the White Paper are that the road haulage market is of such a nature that conventional economic regulatory controls are not required. The market is through the means of competition the best regulator. It is thus recommended that domestic road haulage be deregulated, and that decisions with respect to entry, exit and price setting be made by the operators themselves.

3.8.11 Road haulage operators should, on the other hand, be licensed - they and their vehicles should be furnished with an operator's licence - and registered according to the procedures discussed further in Section 5.9. There is also a need to implement a new system to ensure that road safety is improved and that the degree of overloading is drastically curtailed as discussed further in Section 5.9. Road haulage operators are also expected to abide by other relevant laws pertaining to such matters as taxation, transport of dangerous goods, and employment of staff. No proposals are made by the White Paper for changes to be made to these laws. In addition, mention should be made of the importance of ensuring that road haulage makes proper use of the road network. To this end recommendations are made in Section 5.8 for reforms of the present road taxation system.

### **3.9 Long-distance Bus Transport**

3.10.1 Long-distance bus operations primarily occur between main urban and mining centres and northern Namibia. Both large buses and mini-buses are being used. All traffic at present requires a public permit in terms of the Road Transportation Act, 1977.

3.10.2 The view of the White Paper is that the long-distance bus transport sector can be treated in much the same way as road haulage. Continued control of entry into this market will have adverse effects on the

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development of the sector. The present system prevents a development in the supply of bus transport services which is responsive to the needs of the travellers. It also stifles the use of proper types of vehicles in the production of the services. The present apparently significant level of "pirate" operations in the sector is thus a clear signal of regulatory failure.

3.10.3 It is unlikely that a free market will lead to a concentration of the industry, i.e. that deregulation will lead to one or a few operators taking over the market. The reason is similar to that applying to road haulage. Most bus operations in Namibia are performed during week-ends or in connection with holidays, and most of the passengers travel from the starting to the end point of the service. This means that scale economies are not likely to be important.

3.10.4 For the same reason, market segments with low demand, i.e. where there is only room for one operator, are not likely to pose a problem. When services are of the nature to be found in Namibia, and minibuses can be expected to often be the most suitable type of vehicle, it is quite easy for newcomers to enter the market. It will therefore be difficult for a sole supplier of services to exploit market power by charging excessive prices.

3.10.5 The structure and nature of the market can thus be expected to be such that competition will lead to efficiency. It is hence recommended that long-distance bus operations be deregulated, subject to the requirement that all operators be licensed and registered, according to the principles discussed in Section 5.9. As concerns road safety, road taxation and other laws, the same caveats apply as in respect of road haulage; see para. 5.4.11.

### **3.11 Transport in Urban Areas**

3.12.1 Transport in urban areas comprises taxi operations and bus services. All vehicles with a capacity up to 9 seats for passengers (it has already in principle been decided to increase this to 11), are in the wording of the Road Transportation Act referred to as a taxi; everything else is a bus. Bus services operated in terms of schedules, are only to be found in Windhoek, Keetmanshoop and Swakopmund. Other types of services are essentially operated on demand.

3.12.2 All taxis and buses require a public permit. Taxis are classified as being first (equipped with a meter) or second class (no meter). First class taxis essentially provide an ordinary - single-ride - taxi service, while second class taxis in effect provide what is a public transport service. Second class taxis

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normally ply certain routes but do not operate according to a schedule, and rather wait until the vehicle is filled up before departure. Many of these taxis are minibuses, also referred to as combi-taxis. All fares of taxi and bus operations are fixed. Bus fares and fares of first class taxis vary with distance, whilst second class taxis are supposed to operate according to one standard fare. It is currently N\$ 2,00 for trips between Katutura and the centre of Windhoek.

3.12.3 It is probable that transport in Windhoek and other urban areas in Namibia has greatly been facilitated by the increasing role that taxi and combi-taxi services have come to play during the past years. Such services have proved to be cost-effective and flexible in many parts of the world, and much more responsive to the needs of people than ordinary bus services. The ability of such services to meet the needs of people is also witnessed by the many "pirate" operators in the taxi service. However, since Independence, the Road Transportation Board has adopted a more liberal approach in its interpretation of the rules for entry into the market by issuing many more permits.

3.12.4 There are several issues facing urban transport, in addition to the bureaucracy associated with the present regulatory system. The first is that the municipal bus service in Windhoek is losing money; in 1992/93 only about 62%, and in 1993/94 about 56%, of the costs were being recovered. These losses are accepted by the bus service as incurred for welfare reasons and made good from other sources. Although background information is incomplete, these losses appear mainly to be caused by inefficient operations. The second is that the scheduled bus services in Windhoek provide poor accessibility to many parts of the town. The services are today only available between 06.00 and 09.00 in the morning and between 12.00 and 18.00 in the afternoon. A person who wants to go from Katutura to some place which is not in the centre of town and outside these hours or during week-ends and holidays, has to rely on taxis. This is normally very costly (see below), making it difficult in particular for poor people to work in certain areas and/or on certain terms.

3.12.5 A further problem is the fixed tariff for second class taxis. It results in services being oversupplied in certain areas and undersupplied in others, for example at the far end of Katutura. It also means that passengers often have to pay illegal fares which can be extremely high.

3.12.6 The taxi industry is unfortunately also characterized by tensions. Partly this is a result of the general economic situation in the country, which makes competition between various operators tough. Partly it is a result of that there are some legal as well as illegal operators who offer poor quality services, thereby tainting

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the image of the whole industry. And partly, it seems to be a consequence of poor relations between the police and many taxi operators.

3.12.7 The White Paper recommends that the present regulatory system for taxis and buses in urban areas be scrapped. It is basically an inappropriate approach, and only serves to make life difficult for many people. At present, even a person who resides in Katima Mulilo and wants to supply services in and around that town has to apply to the Board, and has to show why it is in the public interest for the Board to issue a permit. That is an impossible task.

3.12.8 On the other hand, the White Paper also recommends that it be made possible for municipalities and local authorities to institute their own economic regulatory system through bye-laws, if they so desire. The background to this recommendation is related to one of the problems identified above, viz. the poor accessibility to certain areas in larger towns.

3.12.9 The White Paper believes that it would be possible to improve the services to areas with poor accessibility, without even having to subsidise them. The approach to be used is basically to replace the present conventional bus services with a form of combi-taxi service. As mentioned before, such services have throughout the world proved to be very cost-effective. However, a problem that will then have to be faced is that the markets are thin, i.e. that there are few passengers. In addition, the quality of the service is of great importance. When people go from home to work or vice versa they do not want to wait too long, so the waiting time is very important. The implications of the importance of waiting time in combination with a thin market is that the market is extremely risky if there are no controls of entry into it. To establish an improved service to inaccessible urban areas based on combi-taxi operations it may therefore be necessary to regulate entry into these specific market segments.

3.12.10 There are several ways to operate services to inaccessible urban areas with combi-taxis, including licensing of route associations, using tenders or setting up an owner-driver scheme. The White Paper is of the opinion that it should be the responsibility of the municipality concerned to find the appropriate solution, in co-operation with the local taxi industry. This is the basis for the recommendation that the powers to regulate be vested at the local level.

3.12.11 A third recommendation is that the quality of taxi and combi-taxi operations be improved through a new approach. This will require all such operators to obtain an operator's licence and all their drivers to have a professional driver's licence. The new approach recommended to be used for this purpose is to

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make it mandatory for all operators to become members of an operators' and professional drivers' association, a self-regulatory body to ensure quality control, as discussed further in Section 5.9. It is believed that the establishment of such an association will go a long way to improve the quality of services, the image of the industry and the relations between the operators and the traffic police.

### 3.13 Cross-border Operations

#### Introduction

3.14.1 Cross-border operations are also regulated in terms of the Road Transportation Act. The procedures are the same as for domestic traffic, but both Namibian and foreign operators have to obtain a permit from the Road Transportation Board. In addition, Namibian operators have to obtain a permit from the authority of the other country as well, and also from the authorities of those countries which may have to be transited. International road transport for Namibian operators and foreign operators in Namibia is, in other words, unilaterally regulated.

3.14.2 Traditionally, all of Namibia's neighbours have regulated cross-border operations more tightly than domestic operations, and through controls imposed unilaterally. In several countries it has in addition only been possible to obtain short-term permits for foreign operators. As this process is complicated and expensive, several countries and regional organizations have for many years tried to replace the unilateral system with more general ones, through bilateral or multilateral agreements. As a result, substantial changes are now in the process of being implemented for international road transport in all of the neighbouring countries.

3.14.3 Bilateral and multilateral approaches to regulation do not only offer advantages in terms of a simplified process for granting authorizations. They also make it possible to establish harmonised standards in terms of vehicle dimensions, permissible axle loads and gross vehicle mass, and to address other issues relating to differences in road traffic legislation between different countries. Such actions serve to facilitate international road transportation, and to further competition on equal terms. Bilateral and multilateral approaches also make it possible to deal with the costs imposed by foreign vehicles on the road network of other countries, through the implementation of road transit charges, i.e. by charging vehicles for the use of roads.



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3.14.4 The Preferential Trade Area for Eastern and Southern African States (PTA - now succeeded by COMESA), was the first organization to promote a different approach to the regulation of international road transportation. The COMESA Treaty thus prescribes that a multilateral regulatory road transport regime should be introduced in the common market area. The COMESA "Transit Regime", which in addition to licensing also covers road transit charges, third-party insurance, bonding and documentation, is in operation. SATCC has also been active in promoting the replacement of the unilateral approach by bilateral and/or multilateral agreements. This has led to at least two countries having concluded a bilateral agreement (Malawi and Zimbabwe in 1989), while several others are in the process of negotiating such agreements.

### **The Memorandum of Understanding in the Common Customs Area (the MOU)**

3.14.5 The first example of a - separate - multilateral Agreement on road transportation in Southern Africa is the Memorandum of Understanding on Road Transportation in the Common Customs Area (the MOU). The basis for the MOU is to be found in the Southern African Customs Union Agreement, 1969, where Article 15 states that all SACU road transport operators within the common customs area should be treated equally.

3.14.6 The MOU was signed in September 1990 and came into effect on 1 July, 1991. The signatories include the four original members of the Southern African Customs Union (SACU), i.e. Botswana, Lesotho, South Africa and Swaziland; Namibia has not yet signed the MOU (see, however, section 5.7.12 below). The operation of the MOU is assigned to the Transport Liaison Committee of the SACU Commission and the "National Competent Authorities".

3.14.7 The MOU in many respects follows principles laid down in a model proposed by SATCC for bilateral/multilateral agreements on road transport. The MOU applies to all freight and passenger cross-border transport services between and across the territories of the parties undertaken for hire or reward or in the course of an industry or trade. Smaller goods and unladen vehicles are exempted. A feature of the MOU is that it provides for a quota system, according to which the projected traffic between two countries (expressed in vehicle journeys) is divided between the operators of the two countries. The competent authorities of each country can issue permits, each valid for a return journey between the territories of the two parties, to its own operators up to the limit of its quota. The quotas are reviewed annually. Any party experiencing a shortage of permits during the course of a year can apply to the other party for an extension of its quota, which shall, if possible, be granted without erosion of the quota of the granting party. Although one of the objectives of the MOU is stated to be to achieve a 50/50 division of the

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traffic between the operators from different countries, this objective is not envisaged to be achieved by regulatory control of the quotas. The MOU applies to goods and scheduled bus operations, while non-scheduled bus operations only require a permit but are not subject to any quota system.

3.14.8 The MOU is compatible with a deregulated market, but also allows each country to implement its own regulations in respect of entry into the international market. It does, on the other hand, not provide for any direct measure of protection for the railways (although it does not rule out that subsidies could be paid to the railways).

3.14.9 Another stated objective of the MOU is to achieve and maintain an equitable, non-discriminatory infrastructure cost recovery system which shall not inhibit the operation of the MOU. It was originally envisaged that this would be in operation by 1992. During 1994 the Transport Liaison Committee appointed a firm of consultants to perform a study on the design and implementation of a harmonised system of road user charges for international road traffic between SACU member states. The terms of reference required that cognisance be taken of developments with regard to infrastructure cost recovery systems in the PTA and SADC. It is not yet clear when these charges will come into operation. Transit charges are discussed in more detail in section 5.8.

3.14.10 The information available indicates that the implementation of the MOU is, on the whole, progressing well. The contracting states practised a 3 month phasing in period when both new permits and permits issued under the old system were valid.

3.14.11 The basic policies embodied in the MOU accord with the principles of the White Paper. The objective of ultimately achieving an equal division of traffic among the operators of the contracting parties broadly reflects the current situation between Namibia and South Africa and maintaining this status quo should be acceptable for Namibia also in the future. This will, however, depend on Namibian operators being competitive rather than on regulatory intervention. The MOU system can be expected to make it easier for Namibian operators to participate in the traffic that transits Namibia, e.g. the traffic that can be expected to develop between South Africa and Angola once the Trans-Kalahari highway has been completed by the late 1990's. As discussed further in Chapter 6, the principle that international railway traffic should not be afforded protection is also in line with the recommendations of the White Paper.

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3.14.12 In conclusion, the recommendation of the White Paper is that Namibia should become party to the MOU. Namibia in early 1995 initiated the necessary formalities to become a party to the MOU when it formally advised the other parties to the MOU of its intention in this regard.

### **Road Transport to and from COMESA (formerly PTA) Member States**

3.14.13 The MOU on Road Transportation in the Common Customs Area covers two of Namibia's immediate neighbours, viz. South Africa and Botswana, while the remaining three immediate neighbours, i.e. Angola, Zambia and Zimbabwe, are all members of COMESA (formerly PTA). If Namibia were to implement the COMESA Treaty the situation would thus exist that most of Namibia's cross-border road transport can in theory be dealt with through a multilateral approach. This further implies that road transit charges can, in principle, be dealt with in a rational way (see Section 5.8). In practice the situation is currently somewhat less clear, as only a few member states have actually implemented the transit charges as approved by the COMESA Council of Ministers.

3.14.14 The eventual full implementation of the Transit Regime should lead to the replacement of some of the charges now being paid by Namibian operators, with charges which would be applied equally to carriers from all member states. Some countries at present impose special charges for foreign operators, which constitute an impediment to the development of road transport on equal terms.

3.14.15 To allow for the event that Namibia may wish to formalise its road transport arrangements with a country which is not a fellow member of a regional organization, the White Paper recommends that two other measures should be taken. The first is that the proposed new road transport legislation (see Section 5.9.16) should allow road transit charges to be implemented on vehicles registered in countries which unilaterally impose tolls and other similar charges on Namibian carriers. It is suggested that the policy of fixing the level of the transit charges should be in principle to neutralize the charges imposed by the other country, but this will only be necessary if the proposals with regard to road taxation, including for transit road user charges as discussed in Section 5.8 below, have not yet materialised.

3.14.16 The other recommendation is that road transportation be included in bilateral or multilateral road transport agreements or in trade agreements with neighbouring countries. As a minimum such agreements should contain clauses on freedom of transit and reciprocity and general non-discrimination in the treatment of each country's road transport operators, including in respect of road charges such as road transit charges, road service permits/licences, foreign commercial vehicle licences, transit goods licences, road tolls, etc.

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However, where relevant and possible, Namibia should also examine if it is possible to incorporate the principles of the MOU or COMESA Transit Regime, or relevant portions thereof, into such agreements. New legislation should thus also include provisions for such agreements to be concluded.

3.14.17 To allow for the control of road traffic to and from countries with which Namibia does not have a bilateral or multilateral agreement, it is recommended that the proposed new Act vests the power to issue cross border road transport permits to Namibian and foreign carriers in the Minister of Works, Transport and Communication. Permits should be granted in accordance with the policies proposed in the White Paper, i.e. provided that Namibian operators are allowed free access to the other country concerned and that no discriminatory practices are followed by the other country, no unnecessary restrictions should be placed on the granting of permits to operators of such other countries. Foreign operators should not be permitted, however, to undertake cabotage operations, i.e. transport originating in and with a destination within Namibia. The proposed new Act should, furthermore, enable the Minister to include appropriate conditions in permits issued to foreign operators, or impose reciprocal charges, when the above conditions relating to non-discrimination are not being complied with. Foreign operators should have to comply with Namibian road traffic safety requirements relating to driver fitness and vehicle roadworthiness standards. Operators registered in other countries should have the means required to provide the service intended to be rendered in terms of a cross border road transport permit.

### **3.15 Road Taxes and Road User Charges**

3.16.1 As part of the transport policy review process a policy study on road taxation was launched in October 1990. The objectives of the policy study were, firstly, to investigate a possible system of road user charging which would be aimed at recovering the cost of providing and maintaining road infrastructure from road users in relation to their "consumption" of roads, and, secondly, to analyse the cost structure of providing and maintaining the road system.

3.16.2 The study resulted in a report which was submitted to Cabinet in March 1993. The report noted that Namibia does not currently operate a formal system of road user charging, i.e. one where revenues are linked to expenditure on roads. Existing taxes such as levies on petrol and diesel fuel and annual vehicle licence fees are specific to road users, and in that sense can be regarded as road taxes. In the context of road user charging part of these taxes could be viewed as imposed for the purpose of recovering the cost of providing and maintaining roads whilst the remaining part could be regarded as intended for purposes of general revenue. The study thus recommended that taxes should be divided into two classes of taxes. One

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would be referred to as "road user charges", while the other would be regarded as "other taxes". In terms of this terminology, the current annual vehicle licence fee and the part of the fuel levy associated with road use should be viewed as road user charges, whilst any additional levies (such as sales taxes) should be termed other taxes.

3.16.3 According to the report those taxes regarded as "road user charges", should furthermore be set to ensure that the basic objectives of the Government are attained. This means that the road user charges should be designed so as to ensure that optimum use is being made of both the road and rail networks (see further Chapter 6), and that there are no negative effects on the distribution of incomes.

3.16.4 A significant finding was that, at the aggregate level, expenditure and revenue levels (the 1990/91 figures were available and used at the time) were roughly in balance, indicating that Namibia was, at that time, in a favourable position to consider the introduction of a formal system of road user charging based on the type of taxes already in existence.

3.16.5 From the point of view of equity and economic efficiency, however, the existing taxes had definite shortcomings. Heavy vehicle owners were found to be paying less than their fair share of costs. The taxes are also not designed to provide the type of "price signals" which are necessary to promote rational economic decision-making by transport operators and consumers of transport services.

3.16.6 The report came to the conclusion that implementation of a system of road user charging for Namibia would be in line with and promote the economic objectives of Government provided that road user charges are set so as to: (i) promote economic efficiency and the efficient utilisation of resources, (ii) not have the effect that a certain part of the community is taxed to provide a facility which they largely do not use or that one group of road user subsidises another group of road user, (iii) not unfairly impact on road/rail competition, (iv) provide for charges on foreign-based traffic and take cognisance of road user charging systems in neighbouring countries, and (v) be broadly acceptable to affected parties. A further principle which derives from the above is that charges should thus be set to; (vi) fully recover from road users the costs associated with the economically justifiable *future* road provision and maintenance programme. ("Future" implies only that past or historic expenditure is ignored for purposes of cost recovery.)

3.16.7 Principle (i) requires a charging instrument which reflects marginal costs, or "traffic-related" costs. Fuel consumption is a reasonable proxy for road use and therefore levies on fuel consumption (used on-road) can be used to recover the marginal costs of roads from road users. In the case of very heavy

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vehicles an additional weight-distance charge is desirable to cover marginal damage costs not readily covered through a fuel levy.

3.16.8 Principle (ii) implies that, in addition to the marginal type charges necessary to implement principle (i) above, a charge to recover the balance of costs, or so-called fixed costs, must also be implemented. A suitable charging instrument in this case is the existing annual vehicle licence fees.

3.16.9 The report recommended that the technical, institutional, legal and administrative issues of a system of road user charging be further investigated by an Interministerial Committee of Technical Experts, comprising representatives of the Ministry of Finance, the Ministry of Mines and Energy, the Ministry of Regional and Local Government and Housing, the Ministry of Trade and Industry and the Ministry of Works, Transport and Communication. It was further recommended that the committee be assigned the task to investigate specific issues. These included reforms of the present system of subsidies to local authorities for urban street maintenance, the technical implications for administering a system of weight-distance charges for heavy vehicles, the need for and implications of earmarking road user charges to a dedicated Road Fund and whether sales taxes should be levied on fuel. Cabinet approved in principle the findings of the report concerning the desirability of implementing a system of road user charges and the principles according to which charges should be set as well as the further work to be undertaken by the Interministerial Committee.

3.16.10 The work of the Interministerial Committee subsequently confirmed the previous study's recommendation concerning the desirability of introducing a system of road user charging. It also resulted in an updated and improved estimate of the required optimal annualized future long term roads expenditure budget. The underlying principle is that roads should be provided and maintained with the objective to minimise the total costs of road transport - consisting mostly of the sum of infrastructure costs and vehicle operating costs - to society.

3.16.11 The White Paper sees this as *the* fundamental and overall long term policy objective with regard to the roads function. Its achievement is further seen as being inextricably linked to continued availability of funding at the required optimal level as well as institutional capacity to expend such funds efficiently. From this perspective road user charging systems, which recover less than the actual expenditure on roads from road users, will continue to remain dependent on discretionary annual budget support. Such a dependence will not ensure the required availability of funds and thus also not the achievement of the fundamental objective stated above. For this reason the White Paper supports the principle of full cost recovery. See section 0 below with regard to the social dimension of roads and road transport. A World Bank report

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entitled "World Development Report 1994: Infrastructure for Development", confirms the above view of the White Paper and suggests that infrastructure should in future be provided by applying commercial principles.

The main points made in the World Bank report are that: (i) financial autonomy should be aimed at (i.e. expenditure not dependent on budget) through tariffs set to recover costs, (ii) charges should be based on practical considerations rather than marginal costs, (iii) infrastructure users are prepared to pay for improved services but they want a say in expenditure, and (iv) expenditure should be efficient.

3.16.12 Other recommendations of the Interministerial Committee were that: (i) the system of subsidies to local authorities for urban street maintenance be reformed to in future form part of the road user charging system; (ii) weight-distance charges for heavy vehicles be approved in principle but be implemented after further technical testing and institutional adjustments to administer such charges; (iii) a National Roads Board be established to be responsible for managing the road user charging system, preferably through a Road Fund, and (iv) that if sales taxes are to be levied on fuel then such taxes should be transparent and take account of the implications for inflation, distributional effects and intermodal competition between road and rail.

3.16.13 The road user charging system as proposed makes provision that the full cost of a particular roads project should not be recovered from road users through road user charges if such a project is approved by Government for reasons other than those which relate to its economic viability benefitting road users (e.g. for non-traffic related purposes such as job creation or narrowing the income gap).

3.16.14 Some issues related to the proposed road user charging system must still be resolved. The levels at which road user charges should be set have not yet been finalised. The fact that the most recent figure (1993/94) for annual aggregate revenue from fuel levies and vehicle licence fees compares even more closely to the projected long term annual average roads expenditure requirement than was the case at the time of the earlier policy study would seem to indicate that only moderate increases in costs for most road users can be expected. This is as a consequence of several fuel tax (and thus fuel price) increases in the period after 1991. A date for implementation of the system has not been decided upon. It is envisaged that the new Act should have appropriate legal provisions to enable the levying of road user charges as from a date to be announced at a suitable time.

3.16.15 An issue to be resolved is how to consider and integrate road transit charging systems being developed by other countries in the Southern African region. Transit charges are road user charges applicable to foreign road users undertaking international road transport into, out of, or through a host

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country. In the proposed Namibian system of road user charges foreign road users would merely be assessed the same total of charges as domestic road users, possibly through somewhat different charging instruments. Countries with no domestic road user charging systems can not follow this approach, however. The Memorandum of Understanding on Road Transportation in the Common Customs Area, mentioned earlier, *inter alia* provides for the establishment of "an equitable non-discriminatory infrastructure cost recovery system" and Namibia would, once a member of the MOU, be required to implement any system agreed to in terms of the MOU. The former PTA (succeeded by COMESA) and SATCC have developed proposals for harmonised (uniform) road transit charges to be applied to international road transport in the COMESA and SADC. Some of the potential problems with a harmonised system of transit charges are that it may aim at only a partial cost recovery from foreign vehicles or that charges are based on some regional weighted average cost not representative of the cost in a particular country. There may also be problems of discrimination between domestic and foreign road users.

3.16.16 Namibia has, in its dealings with other countries, promoted an approach that transit road user charging should preferably and as far as possible be based on a common harmonised set of objectives and operating principles but which should also take account of the specific conditions within a country and which should furthermore allow individual countries to pursue specific objectives with regard to the level and manner of cost recovery, provided that these are not in conflict with the common objectives and do not have negative implications for regional transport and trade. This may result in transit charges being set at country-specific levels, rather than at averaged uniform regional levels. Namibia thus subscribes to the principles that: (i) there should be recovery of road costs from foreign vehicles, (ii) that transit charges for the recovery of such costs should be non-discriminatory, and (iii) that transit charging systems should facilitate regional transport and trade.

3.16.17 The new Act should contain provisions to enable the implementation of road user charges. The White Paper supports the Interministerial Committee's recommendation that the revenue from road user charges should be deposited in a Road Fund (see Section 5.8.12 above), but this is a matter still to be finalised in consultation with the Ministry of Finance. Specific legislation will be required to set up a Road Fund if such a fund is eventually decided upon.



### 3.17 Road Safety, Control of Overloading and Registration of Operators and Professional Drivers

#### Background

3.18.1 The legal instruments regarding road safety and control of overloading are the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967), as amended, and the Road Traffic Regulations promulgated under it. The Ordinance also covers such things as driver's licences, the registration, licensing and inspection of motor vehicles, motor dealer's licences, rules of the road, road traffic signs, accidents and accident reports. The Road Traffic Regulations, *inter alia*, contain the rules applying to vehicle equipment, dimensions of vehicles and loads on vehicles. The National Road Safety Act, 1972, has as its objective the promotion of road safety, *inter alia*, through research, the collection of information on road safety and the education of the general public with regard to road safety matters. The focus of the White Paper is on the quality regulation of road transport and the latter act is thus not further elaborated. The functions carried out in terms of the National Road Safety Act are, however, seen as important and complementary to the regulatory functions carried out in terms of road traffic legislation.

3.18.2 The Ordinance and the Regulations are being enforced by the traffic police, under Nampol. Five municipalities have their own traffic police, viz. Windhoek, Swakopmund, Keetmanshoop, Tsumeb and Walvis Bay. The Ordinance provides for the appointment of inspectors of licences, examiners of vehicles and examiners for driver's licences. As there are no such officers today, vehicle examination and testing for driver's licences are being carried out by the traffic police.

3.18.3 A characteristic of the present legal system is that it treats all offenses as a criminal act. The same applies to the Road Transportation Act. Unless the offender admits guilt and pays the prescribed fine, his case will be tried in a criminal court and in terms of the Criminal Procedure Act, 1977. To be convicted stringent requirements have to be met. It has to be shown that the accused is guilty beyond reasonable doubt. The Ordinance identifies three types of penalties: (i) Fines, (ii) imprisonment; and (iii) suspension and cancellation of driver's licenses. The maximum fines and other penalties that may be invoked are stated in the Ordinance. The present levels of maximum fines have not been altered since 1967; to do so requires an amendment to be passed by the National Assembly.

3.18.4 There are also elements of administrative adjudication in the present law. The President thus has the powers to suspend and cancel driver's licenses on certain conditions. Mention should also be made of the fact that traffic officers have the power to weigh any vehicle, in order to ascertain that it is not

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overloaded. A police officer, when in uniform, may in addition prohibit the operation of an overloaded vehicle until the load has been adjusted to within legal limits.

3.18.5 Under the present system, all vehicles which operate on the basis of a public permit, i.e. for hire or reward, must obtain a certificate of fitness every six months. The same applies to those operators who transport exempted goods (para. 5.2.11). There are no definitive procedures for how the tests should be carried out. Vehicles which operate in terms of private permits, i.e. for their own account, do not have to obtain a certificate of fitness. Such vehicles, like all other vehicles, only require a roadworthy certificate, which is to be issued at the time of a transfer of ownership of the vehicle.

3.18.6 To drive a vehicle which is operated in terms of a public permit, it is necessary to have a public driving permit. It is valid for a 12 month period. An application for a public driving permit has to be accompanied by a medical certificate, and the registering authority has to consider convictions recorded against the applicant. There is no requirement for a specific test in respect of the type of vehicle to be driven. A public driving permit is not required for own-account operations.

### Required Reforms

3.18.7 There is a common perception that the present system for safeguarding road safety and for control of overloading does not function well. There is some evidence available to substantiate this. During the 13 month period May 1990 to May 1991, all in all 8 933 accidents were reported to the police. That corresponds to 0.08 reported accidents per vehicle, a very high figure in a world perspective. Data on overloading provide similarly high figures. A study in 1988 already revealed that about 30% of the trucks exceeded maximum permissible axle loads and that 15% of the trucks were in toto overloaded. The heavy vehicle survey of 1993/94 referred to in Section 0 provides further evidence of this problem and that it has apparently become worse.

3.18.8 In addition, the present system for enforcing laws, rules and regulations is cumbersome to operate. The core of the problem is the fact that all violations are viewed as criminal acts. This has several disadvantages. Firstly, as mentioned, it makes all adjudication processes complicated and expensive. This in turn means that there is a tendency to try to avoid prosecution both because of the implications and the risk of failure. Secondly, the present system calls forth animosity between drivers and operators, on the one hand, and the traffic police on the other. Being caught for a traffic offence in addition means that you end up in a register. The offender not only pays a fine, but he is in principle also tainted for the rest of his or her life.

3.18.9 Thirdly, the system of sanctions and level of fines are normally ineffectual. On the one hand, the fines that may have to be paid are in many instances purely symbolic. A serious overloading of a heavy truck may cost the state several tens of thousands of damage done to roads, while enabling the operator to make profits of similar amounts. The fine that has to be paid at present is a maximum of N\$ 200. Moreover, there are no other means for taking more drastic actions against an operator who overloads, such as prohibiting him from operating or suspending his licence or permit.

3.18.10 Five changes are required in order to improve the present situation and to in particular address the possible implications of a deregulated road transport market. Firstly the legal approach should be changed by handling a substantial number of violations within the ambit of administrative law. Secondly, all vehicles involved in commercial operations for their own account, hire or reward (these vehicles are below called commercial vehicles), e.g. all taxis, all buses and all trucks in excess of a certain weight, should be subjected to similar requirements in respect of roadworthiness certification. Thirdly all drivers of commercial vehicles should demonstrate proof of competency by holding a professional driver's licence. Fourthly, all operators should be licensed and should hold an operator's licence to also be displayed on all vehicles. And fifthly, a more effective penalty system should be put in place, which should place more emphasis on flexible fines and swifter systems for imposing more drastic penalties, such as cancellation or suspension of an operator's licence or a professional driver's licence.

### **Association for Operators, Professional Drivers, Transport Brokers and Other Parties involved in the Provision of Transport Services**

3.18.11 While these are the elements of the required reforms, a new relationship between the state and the operators is also proposed to be established. Operators and drivers of commercial vehicles as well as other parties involved in the provision of transport-related services are thus proposed to become much more involved in all aspects of the safety and quality control of the industry.

3.18.12 To this end the White Paper recommends that the concept of a professional association be investigated. It may be necessary for different associations to be established, for instance if professional drivers can not promote their interests effectively within the same association as operators. Such an association will have as its members all (i) haulage companies, including companies having trucks being used for own-account operations; (ii) bus and minibus companies/operators, including buses used for own-account operations; (iii) taxis; (iv) transport brokers; (v) freight forwarding and clearing companies; and

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(vi) all professional drivers. The association will be recognized by law, as will be at least a requirement that all operators (as defined above) and professional drivers be members of the association. It will, however, be up to the members to write the constitution, run the association, and to define their mode of operation, subject to approval by the Government in certain aspects, as identified further below.

3.18.13 The proposed association is envisaged to inter alia be involved in the following:

- Examine applications for membership and recommend that an operator's licence or a professional driver's licence be issued by the competent authorities (see below). For this purpose, criteria will have to be established for recommending or rejecting an applicant to become a licensed operator. The criteria should focus on such matter as convictions for serious offenses, and will have to be approved by Government;
- (i) Establish competency criteria in respect of drivers for different types of commercial vehicles; (ii) set up and run training courses; and (iii) examine prospective professional drivers. Training programmes, competency requirements and examination procedures will have to be approved by Government. Recommendations for registration are to be accepted by the competent authorities. An organization or person whose application is turned down will have the right to appeal; see below;
- Operate a register of all operators and all professional drivers, to which the competent authorities will have access; and
- Be responsible for ensuring that members abide by laws, rules and legislations, and take required and appropriate actions against offenders. Such actions will include recommendations to the competent authorities that the licence of an operator or a professional driver be cancelled or suspended. A recommendation is to be accepted by the competent authority, but the accused will have the right to appeal. The criteria and procedures to be used by an association to recommend suspension and cancellation will have to be approved by the Government. The state will furnish any association with information about all offenses committed by member operators and drivers of relevance to the activities of the members, and these offenses will be registered by the association. The association will have to determine which type of offenses would be included in the register.

3.18.14 In addition, it is envisaged that the association could be involved in (i) the operation of testing centres for roadworthiness certification (see further below); (ii) the running of training programmes to meet a

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wide variety of needs of their members; (iii) developing programmes and taking initiatives to enable disadvantaged Namibians to become professional drivers and operators. It is anticipated that the association would group itself into chapters for the various trades. These chapters as well as the association as such would be recognized by Government as the official spokesmen for the industry and its trades.

3.18.15 To become a member it would in addition be necessary: (i) for a person to be a citizen of Namibia or hold permanent residency rights within Namibia, (ii) in the case of a company or close corporation, for such company or close corporation to be registered in terms of the laws relating to such registration, (iii) to be registered as taxpayer in Namibia, (iv) for vehicles to be registered and licensed in Namibia, and (v) for any additional prescribed requirements to be met. Operators of trucks below a certain size (3,5 tonnes) would not have to become members. Members would be prohibited from co-operating in the provision of services and to fix tariffs, rates and charges, i.e. anti-competitive behaviour would not be allowed.

### **New Legislation**

3.18.16 It is proposed that the present Road Traffic Ordinance and the Regulations promulgated under it be replaced with new legislation for dealing with road traffic matters. (This legislation would also consolidate any remaining required provisions contained in the Road Transportation Act, 1977, which is proposed to be scrapped when new road transport regulatory policies are implemented.) The new legislation should seek to modernise road traffic administration in general and, as far as possible be in harmony with similar legislation in other countries in the region. The legislation should make provision for the establishment of a professional association as contemplated in the previous section. It is recognised that special separate legislation may be required, but this falls outside the scope of the White Paper. The relevant legislation, whatever format it eventually assumes, in addition to spelling out the requirement for and the role of the operators, professional drivers and other parties, as outlined in the previous paragraphs, should:

-Make a distinction between minor and major offenses. The major offenses would include such things as reckless driving, inconsiderate driving, driving while under the influence of intoxicating liquor or a drug having a narcotic effect, neglect of duty in the event of accident, and driving or making use of commercial vehicles without the required operator's licence and/or professional driver's licence. The minor offenses would include parking, speeding, and overloading offenses, using not roadworthy vehicles and offenses against the rules of the roads, etc., as long as these offenses do not constitute a clear danger to the public. Major offenses would be tried in a criminal court, as today.

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Minor offenses would be handled essentially through a process of administrative adjudication. Minor offenses should result in the immediate imposition of a fine (method of collection to be evaluated), and fines should be revised annually and set at levels which would make the offence not worthwhile. The fines would be tailored to the degree of the seriousness of the offence so that higher fines would, for example, be paid for more severe overloading. It should be possible to appeal (see below);

- Provide for a system whereby appeals may be made against sanctions imposed in terms of the process of administrative adjudication proposed above. The provisions for appeals should be finalised in consultation with the Office of the Attorney-General when the new legislation with regard to traffic matters is drafted. A simplified procedural system would normally be used, i.e. without a prosecutor and representation. The system would allow appeals to be considered against (i) fines for minor offenses; (ii) decisions made by the association for operators and professional drivers to reject an application of membership or to cancel or suspend membership; and (iii) a number of other administrative decisions, e.g. a decision for revoking a licence to undertake testing of vehicles for roadworthiness. It should in the final analysis be possible for the High Court to review decisions made in terms of the decriminalized procedures;
- Replace the current system of roadworthiness testing in respect of public vehicles and replace it with a system applicable to all commercial vehicles. Commercial vehicles would be tested about once a year, on the basis of criteria to be approved by the Government. It would be possible to establish private testing centres, and these would also be able to test private vehicles. Testing centres would be monitored by inspectors appointed by the state;
- Replace the present system of a public driver's permit with the requirement that all drivers of commercial vehicles hold a professional driver's license. It should be made possible to operate private schools and testing centres, but criteria would be subject to state approval, and schools would be monitored by inspectors appointed by the state. The schools would be able to also train and test for driver's licences for private vehicles; and
- Require that the state identify the competent authority(ies) to issue, cancel and suspend operator's and professional driver's licences, including for provisions that would allow the proposed association for operators and professional drivers to make recommendations in this regard.

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3.18.17 The above proposals imply that the role of the traffic officers could change in respect of minor offenses. They would be able to (i) write out a fine; and (ii) report. Reports could be submitted to the relevant operators' and/or professional drivers' associations, when such association(s) is/are established.

### **Other Aspects**

3.18.18 The proposed new road traffic legislation will also have implications for drivers of private vehicles in so far as they commit a minor offence. The proposals made above would, in addition, mean that private vehicles and applicants for ordinary driver's licence could be trained and tested at private centres. Further proposals in respect of private vehicles, and drivers of private vehicles in order to improve road safety is beyond the scope of the White Paper. However, if the recommendations for new road traffic legislation, along the lines proposed here, are accepted, it is recommended that once the work on the new legislation has commenced, a separate study be initiated to focus on modifications required to improve road safety aspects of private operations. As part of this review, it is furthermore recommended that a more holistic approach be taken in respect of the organizational structure required for handling road safety matters, including defining roles for both the private and public sectors. This would also entail a review of the appropriate affiliation of the traffic police.

3.18.19 One of the main problems with respect to road safety concerns the capability with respect to traffic law enforcement and then specifically control of overloading (see Sections 5.9.7 and 5.3.20 above). The holistic approach to road safety matters recommended above should include seeking a solution to this problem, specifically to ensure that law enforcement capabilities with respect to road transportation be given serious attention at the highest executive and policy level.

### **3.19 Recommendations**

3.20.1 The recommendations in respect of the economic regulation of road transportation are as follows:

**R5.1 The present system of strict economic regulation of entry into the domestic road transport market should be abolished. The steps to be taken are:**

**(i) the drafting and implementation of a new Road Traffic and Transport Act and Road Traffic and Transport Regulations which provide for the implementation of:**

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- (a) the liberalised economic regulatory policies proposed in the WP;
  - (b) the qualitative regulatory controls as recommended hereafter, and
  - (c) the necessary administrative powers and new institutional organs to administer domestic and international transport in terms of the new policies and to succeed the former Road Transportation Board to the extent that certain of its functions will remain; and
- (ii) the scrapping of the present Road Transportation Act and Road Traffic Ordinance when the above legislation comes into force.

**R5.2** The qualifying criteria applicable for registration or licensing as a Namibian road transport operator should be as follows:

No person shall be registered as a Namibian road transport operator unless:

- (i) he or she is a citizen of Namibia; or
- (ii) he or she holds permanent residency rights within Namibia; or
- (iii) in the case of a company or close corporation, such company or close corporation is registered in terms of the laws relating to such registration; and
- (iv) he or she is registered as taxpayer in Namibia, if he or she is required to be so registered; and
- (v) such vehicle is registered and licensed in Namibia; and
- (vi) he or she complies with any additional prescribed requirements.

3.20.2 The recommendations in respect of cross-border road transport regulation are as follows:

**R5.3** New road traffic legislation should make provision for the regulation of cross-border transport in terms of multilateral agreements (such as the MoU and the PTA Transit Regime) or bilateral

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agreements to which Namibia may become a party and for the recognition of licences or permits granted by other parties to such agreements as well as for the regulation of transport to and from countries with which there are no multilateral or bilateral agreements. To allow for the control of road traffic to and from countries with which Namibia does not have a bilateral or multilateral agreement, the proposed new Act should vest the power to issue cross border road transport permits to Namibian and foreign carriers in the Minister of Works, Transport and Communication. Permits should be granted in accordance with the policies proposed in the White Paper, i.e. provided that Namibian operators are allowed free access to the other country concerned and that no discriminatory practices are followed by the other country, no unnecessary restrictions should be placed on the granting of permits to operators of such other countries. Foreign operators should not be permitted, however, to undertake cabotage operations, i.e. transport originating in and with a destination within Namibia. The proposed new Act should, furthermore, enable the Minister to include appropriate conditions in permits issued to foreign operators, or impose reciprocal charges, when the above conditions relating to non-discrimination are not being complied with. Foreign operators should have to comply with Namibian road traffic safety requirements relating to driver fitness and vehicle roadworthiness standards. Operators registered in other countries should have the means required to provide the service intended to be rendered in terms of a cross border road transport permit.

**R5.4** New road traffic legislation should make provision to impose road transit charges on commercial vehicles of other countries and that these charges should be based on principles of cost recovery from users, non-discrimination, economic efficiency and equity.

**R5.5** Namibia should sign the Memorandum of Understanding on Road Transportation in the Common Customs Area.

**R5.6** The Government should strive to regulate cross-border traffic with non-SACU countries through bilateral and multilateral transport or trade agreements. As a minimum, trade agreements with such countries should require that there be freedom of transit and that there be non-discrimination in the treatment of each country's carriers.

3.20.3 The recommendations in respect of quality regulation of road transportation are as follows:

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**R5.7**The concept of self-regulation by the transport industry of quality control be accepted and that the creation of an association for professional drivers and operators be approved in principle. The objectives of the association should be to promote public safety, quality and efficiency of operations in road transport in general and commercial road transport specifically. The powers and functions of the association would, *inter alia*, be to (i) establish competency criteria for recommending or rejecting an applicant to become an operator, but subject to Government approval thereof (ii) examine applications for membership and recommend that an operator's licence or a professional driver's licence be issued by the competent authorities, (iii) set up and run training courses; (iv) examine prospective professional drivers, (v) operate a register of all operators and professional drivers, to which the competent authorities will have access, and (vi) be responsible for ensuring that members abide by laws, rules and legislations, and take required and appropriate actions against offenders. The Ministry of Works, Transport and Communication to implement the establishment of the association following further investigation and consultation with all interested parties, including taxi operators.

**R5.8**New road traffic legislation should make provision for all vehicles used in commercial operations to be subjected to regular roadworthiness tests and that it should be made possible to operate private vehicle testing centres, subject to supervision by the state;

**R5.9**All drivers of commercial vehicles should hold a professional driver's license pertaining to the type of vehicle being used. The proposed association should train and examine all candidates for a professional driver's licence subject to criteria to be approved by the Government. The proposed operators' and professional drivers' association should be able to recommend that a professional driver's licence be revoked or suspended.

**R5.10**New road traffic legislation should make it possible to operate private centres for training and testing of all types of driver's licences, subject to supervision by the state.

**R5.11**New road traffic legislation should make a distinction between minor and major offenses. Minor offenses should be subject to administrative adjudication and the immediate imposition of fines. Major offenses should be subject to current criminal procedures. The implications for criminal law procedure of this recommendation should be investigated.

**R5.12** New road traffic legislation should provide for a system whereby appeals may be made against sanctions imposed in terms of the process of administrative adjudication proposed above. The provisions for appeals should be finalised in consultation with the Office of the Attorney-General when the new legislation with regard to traffic matters is drafted. A simplified procedural system would normally be used, i.e. without a prosecutor and representation. The system would allow appeals to be considered (i) against fines for minor offenses; (ii) decisions made by the proposed association for operators and professional drivers to reject an application for membership or to cancel or suspend membership; and (iii) against a number of other administrative decisions, e.g. a decision for revoking a licence to undertake testing of vehicles for roadworthiness. It should in the final analysis be possible for the High Court to review decisions made in terms of the decriminalized procedures;

3.20.4 The following additional recommendations are made:

**R5.13** New legislation should make it possible for local authorities to regulate - through bye-laws - entry into, capacity in and tariffs of taxis, combi-taxis and buses within the area of the municipality, etc.

**R5.14** A study should be carried out, with the Ministry taking the initiative, on how to also improve road safety related to the use of private vehicles, taking into account the above recommendations in respect of the legal approach and the process of adjudication. This study would also, in consultation with the Ministry of Home Affairs, review the appropriate affiliation of Government staff working on road safety matters.

**R5.15** Law enforcement capabilities with respect to road transportation should be given serious attention at the highest policy and executive level with measures to control overloading of heavy vehicles, especially, receiving special attention.



## CHAPTER 3 : ROAD-RAIL COMPETITION

### 4.1 Current Regulatory Policies

4.2.1 Railway operations in Namibia are regulated in terms of the National Transport Corporation Act, 1987 (Act 21 of 1987). It gives the board of directors of TransNamib Ltd (TNL) complete control over rail tariffs, the supply of services, the termination of services, safety aspects and most investment decisions. Consent by Cabinet is only required when constructing new railway lines. Cabinet may also request TNL to continue loss-making services, but TNL can then require Cabinet to compensate the Corporation for the losses incurred.

4.2.2 TNL came into being as a result of the recommendations of the Welgemoed Commission and the Advisory Committee on Transport Services; see Chapter 3. The latter Committee also suggested that the Namibian railways be given a period of grace before being subjected to full competition from road transport. It thus recommended that certain goods - the railway's main revenue-earners - should be reserved for the railway for a period of five years.

4.2.3 As reported in Chapter 5, the proposal for reserving certain commodities was implemented through the Second Road Transportation Amendment Act, 1988, and Government Notice 101, 1989. In mid-1991, Cabinet decided to repeal Government Notice 101.

4.2.4 There were two reasons for Cabinet's decision to remove the reserved goods scheme. Firstly, the scheme apparently had limited effects on the traffic carried by the railway. Although sufficient information is not available to draw firm conclusion the available data seems to suggest this. Since the implementation of the reserved goods scheme, the change in the pattern of goods carried by the railway is very similar for the reserved goods as for other categories of goods. Secondly, the scheme actually served to protect those road transport operators, who already had permits. It therefore acted in the interest of the established operators rather than in that of the railway or of other operators, which was seen as in conflict with Government policy to promote greater competition and to foster the establishment of new operators in road transport.

4.2.5 The performance of the railway is, of course, also very much influenced by the regulatory policies applying to road transport, including the level and structure of road taxes/road user charges. These policies have been reviewed and evaluated in the previous chapter, and some proposals have been made for new regulatory policies and a new approach to the pricing of roads which would reflect the cost of maintaining

roads and to provide additional road capacity. The interrelationship between road and rail will be covered further below in Section 6.4.

### **4.3 TransNamib Rail's Financial Performance**

4.4.1 The financial performance of TransNamib Rail for the period FY 1988/89 to FY 1993/94 is recorded in Table 6.1. It is to be noted that the accounting practices of TNL have changed during this period so that data cannot be compared directly across years. This primarily affects the calculation of the costs of running the head office, i.e. what is referred to as group administration expenditure. The method of determining these costs was changed in 1989/90. In 1990/91, TNL then ceased to allocate group administration expenditure to the different modal accounts. In Table 6.1 group administration expenditure is therefore identified as a separate item. The portion of group administration expenditure to be allocated to TransNamib Rail in 1990/91 and thereafter has been estimated by assuming that the railway's share would be determined in the same way as in 1989/90. When studying Table 6.1, it is also to be noted that the data for 1988/89 only refer to 9 months.

**Table 6.1: Financial Results; TransNamib Rail**

(N\$ million)

<b>Item</b>	<b>1988/89</b>	<b>1989/90</b>	<b>1990/91</b>	<b>1991/92</b>	<b>1992/93</b>	<b>1993/94</b>
Operating Income	119,6	176,5	141,2	148,2	150,8	155,6
Operating Expenditure (before GAE)	102,6	128,2	139,3	141,0	137,7	139,8
Operating Income (before GAE)	17,0	48,3	1,9	7,2	13,1	15,8
Group Administration Expenditure (GAE)	2,8	19,0	13,9	14,1	14,6	14,2
Nett Operating Income (Loss) (after GAE)	14,2	29,3	(12,0)	(6,9)	(1,5)	1,6
Depreciation	3,7	1,9	2,4	2,3	2,0	2,1

GAE = Group Administration Expenditure

**Source:** TransNamib's Annual Reports

4.4.2 Notwithstanding the uncertainty of the size of the group administration expenditure to be allocated to the railway, the Table suggests that TransNamib Rail made profits in the first two years, but that losses were incurred during the years thereafter, with the exception of 1993/94 when a small profit was recorded. It is to be noted that 1989/90 was an exceptional year. Although the amount of traffic carried, in fact, fell during this year in comparison with the previous, the financial performance was much better, even after taking into account that FY 1988/89 only comprised 9 months. The reason is that during the year leading up to Independence traffic was exceptional, with a much higher portion of the traffic carried being high-rated goods. This to a considerable extent reflects the South African exodus. As a consequence, when the composition of the traffic during 1990/91 became more normal and the amount of traffic continued to fall, the financial results worsened considerably. The rail transport of goods had by 1993/94 fallen to less than half the volumes carried in 1979/80 (see Table 2 .1 in Chapter 2). The latter table also shows that there has been a stabilization of volumes during the last five to six years.

4.4.3 When reading and interpreting Table 6.1, it must be borne in mind that the depreciation charges - which are part of operating expenditure - are exceptionally low. There are two reasons. Firstly, depreciation is not provided for groundwork and the rail road (in addition to land, which is normal). The infrastructure of the railway is, in other words, treated as if it had been written off. Secondly, depreciation charges for equipment, such as locomotives and wagons, are largely calculated based on historical costs. While this is in accordance with ordinary accounting practices, the resulting depreciation charges are very low owing to that the equipment generally is old, and the high inflation rate which has ruled for many years. To give an example, the cost of a new locomotive would be about N\$ 7 million, while the depreciation charges are calculated based on a cost of less than 10% thereof.

4.4.4 As mentioned in Chapter 2, the present rate of utilization of the railway infrastructure is exceptionally low, and much lower than for other railways in Southern Africa. At present, there is nothing to suggest that this situation will change, so that the treatment of the infrastructure as written off seems defensible and sound. The only costs for the infrastructure which need to be considered for the future are related to expenditure on reinvestments in rails, sleepers, etc. in order to keep the rail road open and sustain future rail operations. These costs are taken into account and reflected in the financial statements.

4.4.5 As concerns the equipment, on the other hand, there is a need to consider that it will have to be renewed eventually, and that the investment in the new equipment should also yield a return. Considering the replacement cost of locomotives and wagons required to sustain the present level of operations as well as the requirement for a return on capital, the annual capital costs for the equipment should at least amount

to a sum of the order of N\$ 20 million. The implication is that substantial parts of the present railway operations are to be viewed as unviable today.

4.4.6 To consider the low depreciation charges and the need to provide for the future, TNL has established a separate account called "Reserve for replacement of assets" with the purpose of replacing and developing the assets of the company. At the end of FY 1993/94, it stood at N\$ 95 million, most of it presumably earmarked for the equipment of the railway. Although this reserve represents a considerable sum of money, and will allow TNL a respite when locomotives and wagons eventually will have to be replaced, it also has to be recognized that the railway, at the current level and scale of operations, nevertheless cannot be sustained in a longer time perspective. That TransNamib Rail can carry on at present is only due to the condition that there are no cash-flow problems as TNL was able to start the railway operations in 1988 with no loans or other capital obligations.

#### **4.5 Future Financial Performance**

4.6.1 Against this background, there is a need to review the expected financial performance for TransNamib Rail in the future, including the implications of a deregulation of road transport, as recommended in the previous chapter. According to a TNL forecast of 1991, volumes of rail transport can be assumed to remain at about the 1990/91 level for the next 5 years<sup>2</sup>, even in the event of economic growth picking up, reflecting the trend that the import of bulk commodities from South Africa - such as cement, grain and coal - will continue to fall. This forecast was based on the assumption of no changes in transport policies. TNL's forecast, however, reflected the condition that the Trans-Kalahari road will have been completed by about 1997, thereby reducing road transport distances between northern South Africa and central and northern Namibia by more than 400 km.

4.6.2 The possible effect for the railways of deregulation of road transport was investigated by TransNamib Limited in 1991. At the time it was projected that rail traffic would decrease by 7% one year after deregulation and by 15% after three years. The corresponding decrease in operating income was estimated to be 9% and 20%, while it was assumed that operating expenditure would be reduced by 3,5% and 7,5%, respectively.

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<sup>2</sup> The actual transport of goods by rail for the period 1992 to 1994 is recorded in Table 2.1 in Chapter 2. There was a more than 10% decline in the net tonne kilometres during 1991/92 to 1993/94.



4.6.3 Presumably, TNL's forecasts do not reflect that the structure and level of road user charges recommended in the previous chapter are likely to have some impact on the traffic carried by the railway. Although the effect of road user charges is likely to be rather small (5% increase in the cost of operating trucks), TNL is of the opinion that it would have a marked impact on the competitive position of rail transport. This view of TNL is based, firstly, on the very tight profit margins on which road transporters are believed to operate on the Namibia-South Africa route and, secondly, on the view that a fairly large percentage of freight transported by road at present is not goods typically transported by road (the road normally being favoured for urgent, high value goods) but goods which would be attracted to the railway if road tariffs were to be increased following implementation of road user charges.

4.6.4 The view of the White Paper, in summary, is however that the future of the railway remains bleak, given the scenario painted in 6.3.2 above. Revenues can nevertheless be expected to be sufficient to allow operations to carry on at the present scale and on the present network if deregulation is not carried through; see the financial result for FY 1993/94, which is assumed to be representative also for the future years in the event of no change in road transport policies. Eventually, however, the structural problems of the railway will under any circumstances manifest themselves unless something is done.

4.6.5 That TNL has made some efforts can be seen from the financial results of recent years. Notwithstanding the fact that the railways had to operate in (virtually) a de facto deregulated environment (see section 5.3 of Chapter 5) since 1991/92, it managed to increase its operating income in each of the following three financial years. Even if Group Administration Expenditure (GAE) is apportioned on the basis of turnover, the nett operating loss was reduced each year to the point where a nett operating profit was realised in the year 1993/94. This was achieved in spite of the fact that traffic (nett tonne kilometres) decreased by more than 10% over the corresponding period and can, according to TNL, be attributed to corrective strategies and actions being implemented. These are claimed to include a sharp focus on the cost side and marketing activities aimed at improving yields and at compensating for traffic losses to road transporters on the Namibia-South Africa route (transshipping goods at Ariamsvlei).

4.6.6 The road ahead for the railways is going to be a challenging one with the single most important threat being imminent completion of the Trans Kalahari road. TNL, however, have stated that they are confident about the future and that according to their 5 Year Plan the current levels of profitability will be maintained, at least, up to the end of the century. This view of theirs is based on the implementation of a number of corrective adjustments of a strategic nature as well as on the crucial assumption that road user charges will be introduced by Government before 1996. The latter assumption is not necessarily justified (see Section 5.8.14 of Chapter 5).

#### 4.7 Alternative Regulatory Proposals

4.8.1 In the past various proposals have been advanced to improve the financial performance of the railway through protective measures. One such proposal is that a certain portion of the traffic to and from South Africa should be reserved for the railway. It has, for example, been suggested that in total 70% of the overland traffic - measured in tonnes - should be carried by the railway, and the rest by road. The argument used to support this proposal is that the railway is available and has considerable surplus capacity; failure to make use of it would therefore represent a wasteful use of resources.

4.8.2 It has not been possible to make a financial evaluation of this proposal. The White Paper does, however, not support any protective measures to support the railway as it would be in conflict with the basic objective of the Government. There are two closely interrelated reasons. The first is that the approach to setting road user charges recommended by the White Paper, if accepted, will ensure that (i) proper use will be made of the existing road capacity of the country; and (ii) that enough funds will be raised for financing any future expansion of the road network.

4.8.3 The second is that the railway - as described above - does not bear any costs for its infrastructure at present, as these have de facto already been written off. This means that most of the operating costs of the railway are fully or semi-variable, and only minor components can be viewed as completely invariable with respect to traffic (some maintenance expenditure to keep the line open, etc.). The railway is, in other words, not loaded with any sunk costs, and the fixed cost elements are not so high that they cannot be recovered through a careful pricing strategy, including the proper exploitation of the property along the railway line. Conditions are, in other words, such that TransNamib, in principle, can set prices which reflect short-run marginal costs and recover all costs. Provided that road taxes are adjusted as recommended in Chapter 5 for both international and domestic goods traffic, efficient use will be made not only of the road network but also of the rail network.

4.8.4 Hence, forcing shippers to use the railway will result in an inefficient use of resources. The White Paper recommends against any such action as it would be in conflict with the basic objectives of the Government to promote economic growth and to diminish the income gap. The financial problems of the railway do not reflect that too little use is being made of the railway. The reduced demand for rail services, in comparison with the demand which was experienced in the 1980's, is a result of changes in the transport market, which has changed the railway's competitive position in several market segments. The situation confronting the railway is, in other words, not primarily to be found on the roads. They are basically intrinsic

to the railway. The information available today does not suggest that these problems will be overcome by significant increases in traffic in the future, the most likely prospect being a possible improvement in the market for mining products mentioned above.

4.8.5 In line therewith, a further view of the White Paper is that it would be detrimental to Namibia to wait with deregulation of road transport. The railway already has breathing-space through its low capital costs and the reserve fund for asset replacement. Further support will only make the required process of adjusting the railway to the needs of the 20th century even more painful.

4.8.6 The running of the railway is the responsibility of the Board of Directors of TransNamib. The White Paper does not propose any changes in that regard. The White Paper recommends, on the other hand, that the National Transport Corporation Act be amended and/or that regulations in terms of the Act be promulgated to require that more information be made available to the owner, i.e. the state. The recommended changes are, firstly, that TransNamib's accounting practices be modified so that separate financial results be prepared for each major business activity. This will require that head office costs also be allocated to the different operational or business accounts; see further Chapter 9. Secondly, it is recommended that TransNamib every 3 years submit a medium to long term development and financial plan to the Government. The plan should be based on realistic forecasts of future traffic and should take into account the basic policies of the Government.

4.8.7 There are two major reasons for these proposals. The owner should be fully informed about the present and expected future financial performance of all the different parts of TransNamib's activities. And the Government must be apprised as early as possible of any financial difficulties which the company may run into in the future. As mentioned, in terms of the National Transport Corporation Act, TransNamib can demand compensation from the state for loss-making activities. As this may have serious financial and political implications for the Government, it must have the opportunity to plan well in advance.

#### **4.9 Recommendations**

4.10.1 The White Paper makes the following recommendations in respect of the railway operations and road/rail operations (these recommendations should be read together with the recommendation in Chapter 9):

**R6.1A policy of free competition between road and rail transport should be followed, in other words the railways should not be protected from competition from road transport.**

**R6.2The Board of Directors of TransNamib Ltd should every 3 years submit to Cabinet a medium to long-term financial and development plan for the operations of TransNamib Limited, including the operations of TransNamib Rail. It should be based on realistic forecasts of future traffic, and should take into account the basic policies of the Government.**





## CHAPTER 4 : CIVIL AVIATION

### 5.1 Introduction

5.2.1 It is sometimes said that the airline industry is the most thoroughly regulated industry in the world. That may be true, or may have been true at some point in time. More relevant to the formulation of a Namibian air transport policy for today and the future is, however, the fact that the regulatory policies in this sector are now changing rapidly in many parts of the world. For this reason, a considerable portion of this chapter will be devoted to a review of traditional air transport policies in a world perspective, as well as of the changes which are now occurring. Later the background to and contents of the present Namibian policies and regulatory practices will be presented.

5.2.2 The thrust of the reforms which are now taking place around the world is to dismantle the traditional economic regulatory framework and to, in principle, treat the airline industry as any other industry. This means, firstly, that a separate economic regulatory framework for the airline industry is not seen as necessary; rather the industry should be subjected to the same policies which control and guide economic activities in general. Secondly, the ownership issue, i.e. if airlines are to be owned by the government or not, or if foreign subjects should be allowed to own shares in an airline, and if so to what extent, will no longer be resolved by a specific policy but by generally applicable policies in respect of ownership of firms.

### 5.3 The Traditional Air Transport Policies

5.4.1 The cornerstones of traditional air transport policies in both Africa and the world are, firstly, that a distinction is made between scheduled services and charter flights. The latter - both domestic and international flights - are normally controlled through unilateral regulatory activities - i.e. through the use of licences. The same applies to domestic scheduled services, while both unilateral and bilateral mechanisms are used to control international scheduled services. The bilateral approach is by far the most common; most international scheduled air transport services are today controlled by some 2 000 bilateral air services agreements (BASA).

5.4.2 Secondly, all four main elements of economic regulatory control, i.e. entry, exit, capacity and prices, are covered by these instruments. Normally entry is very tightly controlled by a BASA or a licence, which may also contain specific rules for how to abandon a service (market exit). The typical situation has been, and in general still is, that only one carrier is licensed or designated by the government of a country to undertake scheduled services (the policy of single designation). In international traffic, this policy means that

routes between two countries are normally served by the so-called flag carrier of each country. Historically, therefore, there are only two airlines serving the routes between two countries - these markets are duopolistic. Within a country, the traditional policy has been to only designate one airline, or alternatively, only one airline has the right to serve a specific route. The domestic market structure is therefore, generally, monopolistic.

5.4.3 Prices and capacity, on the other hand, have in effect been lightly controlled. Generally speaking, it has been up to the airlines in international traffic to agree themselves on tariffs and capacity. The role of the government has, in principle, been to ensure the policy of reciprocity in respect of capacity, which means that there should be an even balance (50/50) in the number of seats to be supplied by the two airlines. The principal instrument used for this purpose is the commercial agreement between the two airlines. Airlines have, with some important exceptions, normally been encouraged, and even required to enter into such agreements.

5.4.4 The policy with respect to tariffs in international traffic has been that these should be determined through the International Air Transport Association (IATA) conference machinery, although such tariffs are nowadays to be viewed as recommendations. Under any circumstances, each country has also reserved itself the right to approve the tariffs (the policy of double approval, i.e. both countries have to agree for a tariff to become valid); this also applies to flight schedules. But the actual regulation of fares and capacity has, generally speaking, been more of a token activity on part of the authorities. The authorities have, on the other hand, often been more interventionist in domestic traffic.

5.4.5 Thirdly, there have typically been specific requirements in terms of ownership of airlines operating scheduled services. The standard requirement has been that the airline should be substantially owned by nationals of the country, and formulations to this effect can often be found in BASAs. In fact, most scheduled airlines were until recently government-owned, but this situation is now changing rapidly. In those countries where private ownership has been allowed, the government has typically stipulated that foreign subjects can only be a minority owner.

5.4.6 Fourthly, charter traffic with large aircraft has typically not been allowed, or very restrictive policies have been applied ensuring that charter traffic can only be undertaken on routes where it would not compete with scheduled services. Charter traffic is almost always unilaterally regulated in terms of licences, so that concurrent permission is required from the authorities of two countries to make international charter flights possible.



### **5.5 Current Namibian Air Transport Policies**

5.6.1 The regulatory system applying in Namibia has its roots in the traditional South African policies in this field, reflecting the fact that Namibia took over the South African legislation at Independence. The main instruments are the Air Services Act, 1949 (Act 51 of 1949), as amended by the Air Services Amendment Act, 1991 (Act 6 of 1991), and the Civil Air Services Regulations, 1964. The main features of these laws are: (i) Air services are to be authorised either in terms of a licence to be issued by the Transportation Commission of Namibia or through a BASA; (ii) Licenses may not be granted to a carrier leading to competition with a carrier already providing services; (The formulation in the Act is: "Whenever an air service provided by any carrier within any particular area or over any particular route is...satisfactory and sufficient...the...commission shall not grant a license to any other person for the provision of an air service...in competition with the first-mentioned air service".); (iii) Charter flights with a limited number of passengers or cargo do not require an authorization. Bilateral agreements are decided on by the respective governments, and on the basis of policies formulated by them, as and when required. The Air Services Act does not lay down any criteria.

5.6.2 While the above provisions were the only legally binding ones on the first Government of Namibia, actual air transport policy after Independence has been influenced by other measures introduced by the South Africans during the pre- Independence period as was described in Chapter 3. Most importantly, since having accepted in 1977 that Namibia would eventually become an independent country, South Africa has fostered the creation of a "national carrier". What is known as Air Namibia today, originally came into being in 1946 as South West Air Transport. In 1974 that airline became a wholly owned subsidiary of Safmarine. The name was changed to Namib Air in 1978.

5.6.3 As reported in Chapter 3, the Welgemoed Commission in 1981 recommended that a national airline be established to operate scheduled domestic routes, and eventually also international scheduled services. These recommendations were later supported by the Advisory Committee on Transport Services, which in its 1986 report also recommended that Namib Air be part of a multimodal corporation to operate the railways, harbours and scheduled air services (cf. para. 3.8). The Windhoek administration subsequently transferred the shares in the airline to TransNamib Ltd, when it came into being on 1 July 1988. Since that date Namib Air has been operated as a business unit of TNL. TNL changed the name of the airline to Air Namibia in October 1991.

5.6.4 During the 1980's, Air Namibia gradually attained the position of being the only licensee for domestic scheduled services. During the year leading up Independence, the airline was also granted licences by the

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South African authorities to fly routes between Windhoek to South Africa, Botswana and Zambia, and these licences, as well as the licences held by South African Airways, Air Botswana and Zambia Airways, were subsequently validated by the first Government of independent Namibia.

5.6.5 The granting of licences and the entering into BASAs after Independence were not based on an explicit policy, but were essentially shaped by the framework established before Independence. International scheduled air services have primarily been regulated in terms of BASAs. Such agreements have been entered into with Angola, Botswana, Belgium, Cameroon, France, Germany, Malaysia, Portugal, Russian Federation, South Africa, Swaziland, Switzerland, United Kingdom, Zambia and Zimbabwe. Agreements not yet in effect are those with Ethiopia, Gabon, Nigeria and Romania. Most of them embody traditional air transport policies, such as single designation, double approval of fares and reciprocity.

5.6.6 There has been no change as concerns domestic scheduled services. No charter flights for inclusive tour operations by foreign operators - with one singular exception - have been permitted.

5.6.7 During 1991, TransNamib approached the Government concerning the Windhoek to Frankfurt route. Before extending the lease contract for the aircraft operated on the route jointly with Lufthansa for the period April 1992 to April 1994, TNL wanted to obtain certain assurances in respect of the air transport policy to be pursued by the Government. In response to this request, Cabinet acknowledged on 12 November 1991 that:

- (a) "Namibia cannot escape from the worldwide trend towards deregulation of air transport services and...Namibia will eventually have to adopt a similar policy of deregulation with regard to international air transport services"; and
- (b) "In accordance with the approach followed by governments in other countries of the world and in the best interest of Namibia, a gradual introduction of such a policy is required and consequently deregulation will be phased in during the period up to 25 April 1994".

5.6.8 The Cabinet furthermore decided that no traffic rights be granted to foreign airlines for operating scheduled or charter air services during the phasing in period, except the following:

- (i) During the period up to 28 October 1992, no traffic rights for scheduled air services be granted to more than one African airline over and above those airlines currently operating such a service;

(ii) During the period up to 28 October 1992, no traffic rights for scheduled air services be granted to more than one American airline; and

(iii) During the remaining phasing in period, but not before 1 April 1993, no traffic rights for scheduled air services be granted to more than one European airline with the exclusion of further German and French airlines over and above UTA and Lufthansa.

5.6.9 Cabinet in addition decided that "concessions for charter operations only be considered on an ad-hoc basis for a special purpose flight in consultation with TransNamib and other concerned Ministries." The implication is that charter flights for inclusive tour purposes are not permitted, at least not before April 1994. Cabinet's decision on 12 November 1991 represented the ruling air transport policies as concerns international air transport until April 1994.

## **5.7 Developments in Air Transport Policies**

### **Deregulation and Liberalization**

5.8.1 It is generally recognized that the air transport system which developed within the framework of the traditional air transport policies, albeit functioning, has not been efficient. Prices have hence been higher than need be, and schedules and networks have not been designed to meet consumer needs first and foremost. Airlines have suffered from having operated in monopolistic environments, as well as from too often having been subjected to political ambitions, and therefore from not primarily having been a means to solve transport problems quickly and efficiently. Available evidence indicates that air transport performs better from an economic point of view if it is subjected to market - or competitive - forces. It is, however, generally also acknowledged that the air transport market is not perfect. There is, therefore, scope for some measure of intervention to ensure that competitive forces actually work to the benefit of everyone.

5.8.2 This is - in broad terms - the background to the reform process of air transport policies which was initiated about 17 years ago. The start was the deregulation of the domestic market in the US in 1978. At that time the US also began to export its policies by entering into new liberal BASAs with a number of countries. These BASAs generally allow for multiple designation, have no clauses to restrict capacity, often provide for rights to fly between two foreign countries - so-called 5th freedom rights - and contain more flexible tariff clauses, e.g. double disapproval, i.e. that both countries must refuse a tariff for it not to become valid. Commercial agreements between airlines have never been allowed by the US authorities as they violate US competition legislation.

### **The European Community**

5.8.3 In Europe, the process was initiated by the UK. In the mid-1980's, the UK signed a number of more liberal agreements with other European countries, generally (i) allowing for multiple designation; (ii) not making any stipulations in terms of capacity; (iii) opening up more 5th freedom rights; and (iv) relaxing the approval mechanism for new tariffs.

5.8.4 The relay-race baton was most recently picked up by the European Union (EU), as part of its efforts to establish a fully integrated market in terms of the Rome Treaty. Deregulation of air transport within the EU is taking place in three phases (referred to as packages). The first two have been concluded, while the third which commenced in January 1993 provided for deregulation of international air transport within Europe on that date. The third phase will be completed in April 1997, when there will be no restrictions on cabotage any longer in the EU. At this time national airlines will cease to exist within the EU; in lieu there will, in principle, be complete commercial freedom in terms of entry, capacity and prices.

5.8.5 The degree to which the European Commission has competence to undertake common EU negotiations for air service agreements with non-EU countries is currently a controversial question, and the implications of a recent Opinion issued by the EU Court of Justice implies that the EU does not have exclusive powers to negotiate air transport agreements with third countries. The Commission has proposed legislation to give it competence in this field in order to definitely settle this question. Meanwhile, these powers are retained by the individual member states, provided that they do not infringe existing EU rules, particularly those deriving from the third package. It therefore cannot be expected that the Commission will negotiate directly with countries in Southern Africa for quite some time to come, so that as concerns Africa the framework of bilateral agreements between individual countries will remain for several years.

5.8.6 It can, however, be expected that the European Commission will work to ensure that accepted policies are reflected in new bilateral agreements, and that it will also work to modify bilateral agreements which are already in existence and contain features which are seen as being in conflict with the competition rules. In particular, it can be assumed that the Commission will work to introduce more liberal policies, e.g. multiple designation, more liberal fare approval regimes and softened restrictions on capacity, to enable the introduction of more competition on routes.

5.8.7 It should also be mentioned that the competition rules of the EU are already applicable on routes to and from Europe, although they can at present only be enforced by a European court and not by the

Commission. The implications hereof are unclear, as there are no precedents. It seems likely, however, that some important features of commercial agreements between airlines could be viewed as anti-competitive, e.g. co-ordination of capacity and royalty payments in case only one of the airlines pick up the rights provided for under a BASA or a licence. This is probably also the reason why some countries in negotiations with Namibia are showing increasing reluctance to include a requirement to the effect that a commercial agreement must be entered into as part of a BASA.

### **South Africa**

5.8.8 Since a few years, work is ongoing to reform South African air transport policies. In 1988, the Chief Directorate: Civil Aviation in the Department of Transport initiated a review of the domestic air transport policy, within the framework of the economic policies of the then South African government. The findings and recommendations of this investigation are contained in the document: The Domestic Air Transport Policy, May 1990. All its recommendations have been accepted and implemented by the government.

5.8.9 The main recommendation of the document is that domestic aviation should be deregulated. The old licensing system in terms of the Air Services Act, 1949, was therefore proposed to be scrapped for domestic services and to be replaced by a new licensing system, without any economic regulatory controls, including of entry, capacity and prices. It was furthermore recommended that the South African competition legislation (Maintenance and Promotion of Competition Act, 1979) should actively be applied to prevent anti-competitive practices. A third recommendation was that South African Airways (SAA) should neither continue to enjoy any special privileges, nor be subjected to any obligations or political interference other than those which apply to all companies and (potential) competitors alike. In line with this recommendation, it was, inter alia, recommended that SAA should be prevented from being able to subsidise its domestic air services with profits made on international routes and vice versa.

5.8.10 Deregulation was implemented in two steps. As from 1 July 1990, certain provisions of the Air Services Act, 1949, restricting or prohibiting competition, including those which prevents the authorities from granting a licence to a person who wants to offer a service in competition with an existing one, were revoked for domestic services. Full deregulation was subsequently introduced on 1 July, 1991, when the Air Services Licensing Act, 1990, became effective. At the same time, the name of the old act was changed to the International Air Services Act, 1949, to reflect the fact that it only applies to international services.

5.8.11 Mention should be made of the requirement in the new Air Services Licensing Act that licences will only be granted to companies controlled by South Africans. At least 75% of the voting rights in the company

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must thus be in the hands of South African residents. Similar formulations do not appear in the Air Services Act, 1949, but it was previously the policy of the South African government that all scheduled operators should be fully South African owned.

5.8.12 In 1990 the Chief Directorate: Civil Aviation initiated a further study, now regarding the international air transport policy. This resulted in a new international air services policy being approved in March 1992, "The International Aviation Policy of South Africa". Subsequently The International Air Services Act, 1993, (Act 60 of 1993), was promulgated.

5.8.13 The new policy and legislation provide for a much more liberalised approach to international air services. Ownership requirements have been amended to provide only for "substantial ownership" by South African nationals (in practice a 51% share), and multiple designation, double disapproval with respect to fares and relaxed controls over capacity are now policies which are promoted when negotiating bilateral agreements.

5.8.14 The South African government at the time also indicated its willingness to consider and discuss the co-ordination of air transport policies vis-à-vis Europe with the governments of other countries in Southern Africa as part of the policy transformation process mentioned above. The ostensible purpose being to formulate a joint regional or Southern African strategy to meet the unified approach seen as taking shape in Europe under the auspices of the European Commission, and possibly elsewhere in the world in response thereto.

### **Developments in the Region**

5.8.15 Several other initiatives have been undertaken to bring African countries closer together in the field of civil aviation. The Yamoussoukro Declaration, which most African states are a signatory to, places emphasis on co-operation in air transport operations. Another initiative - of potentially considerable importance to Namibia - is the proposed Ministerial Accord on the Establishment of the Southern Africa Regional Air Transport Authority (SARATA). The Accord is an outflow of the Declaration of Commitment and Strategy aimed at economic development and integration of Southern Africa, signed by the heads of state and government in the SADC region in Windhoek, Namibia, on 17th August 1992 and the Treaty Establishing the Southern African Development Community (SADC) which came into force on October 1993. South Africa has subsequently become a member of SADC.

5.8.16 The Accord has not yet been implemented and its provisions must be regarded as still under negotiation. Its purpose is to establish a regulatory body to be known as the SARATA, the objectives of which are: (i) the establishment of a regional regulatory air transport regime providing for harmonization of norms, standards and recommended practices in areas pertaining to flight safety, air transport policy, fair competition, consumer protection and environmental issues; (ii) the development of an enabling environment for commercially viable and efficient air transport operations; (iii) the creation of a unified air space within the SADC region; and (iv) the creation of a negotiating machinery for Member States in their negotiations with third countries or groups of countries for Air Service Agreements. The proposed structure of the Authority comprises (i) the Committee of Ministers, consisting of the ministers responsible for aviation matters in the member states or other designated ministers; (ii) the Board of representatives comprising two representatives from each member state chosen from amongst principal officers heading or working with civil aviation institutions or airlines of member states, chaired by an elected chairperson; and (iii) Ad Hoc Committees (also known as Negotiating Teams) entrusted to negotiate air service agreements with third parties. The chairperson of a Negotiating Team shall be chosen from the member state whose air service agreement is being negotiated. The Southern Africa Transport and Communications Commission (SATCC) Technical Unit shall be the secretariat of the Authority. The Accord provides that the signatories shall call upon and urge their governments to enter into a Multilateral Air Transport Agreement as a matter of urgency and as soon as possible. The agreement is envisaged to govern such things as the granting of air traffic rights between member states, the designation of airlines, capacity control "for fair and equal treatment", ownership and right of establishment, agreement on tariffs, etc.

5.8.17 It is still too early to determine whether SARATA will come into existence in the near future. Its ostensible objectives and the functions it proposes to carry out could be seen as regulatory and as impinging on the rights of member states to a considerable extent. It is not only the regulation of air services within the SADC region which will be affected by the Accord in its present format, but also it apparently seeks to promote a unified approach to the policies which individual member states should follow in their negotiations with third countries. This may have implications for the policy proposed with regard to both intercontinental and regional air services by the White Paper. It is anticipated that considerable further negotiations will be required for the SARATA accord to become a reality and effective.

### **5.9 Considerations in the Formulation of an Air Transport Policy**

5.10.1 Through its decision on 12 November 1991, Cabinet acknowledged that it would be inappropriate for Namibia to continue to pursue traditional air transport policies in the future. Eventually, the air transport market should become more or less deregulated and the market structure should primarily be determined by

competitive and commercial forces. However, while the aforementioned decision does provide for an initial framework on how to proceed, there is a need to develop it further and to formulate a strategy to ensure that the basic objectives are being attained. In the formulation of this strategy, the following will have to be considered.

5.10.2 Firstly, increasing competition will put pressure on fares. Traditionally, the average actual fares on the routes to and from Southern Africa have been relatively high and capacity utilization has been good. Increasing competition will work to push down fares. This in conjunction with the fact that aviation is characterized by scale economies will eventually lead to a concentration in the market so that only a limited number of airlines will be able to serve intercontinental routes to and from Southern Africa. It is most probable that the smaller airlines in Southern Africa will not be able to operate intercontinental routes on their own. Their role will be either to act as feeder airlines and/or to collaborate closely with the large airlines.

5.10.3 Secondly, the present airlines of Southern Africa - with the exception of SAA - are not only too small when it comes to intercontinental routes; they are also too small when it comes to operate regional and domestic services. A rationalization of the airline industry in Southern Africa is thus inevitable. The first steps will involve various forms of alliances to share equipment and capacity in order to exploit economies of joint use; later on there will be a need to allow and encourage airlines to merge to form larger entities.

5.10.4 Thirdly, the economies of scale inherent in airline operations as well as the demand of travellers for integrated networks and maximum choice will work towards the creation of networks based on hub and spoke operations. The airline market in Southern Africa is very small, and there is therefore not much scope for the establishment of several hubs. Johannesburg Airport (previously Jan Smuts) is the only clear candidate, at present, and there is at most room for one or possibly two more hubs in the region in a longer term perspective. This does, however, not rule out that there will be direct overseas routes to some of the other major airports of the region.

5.10.5 Fourthly, the scale economies of airline operations are of such a nature that they may allow airlines to exploit market power to some extent. The evidence available from the US market shows that even though there are several major airlines competing and there are numerous hubs, airlines dominating a particular hub are able to set fares above what would apply under competitive conditions. In other words, a completely free market in Southern Africa could possibly enable those airlines which dominate Johannesburg Airport to exploit market power, in particular then on routes where there is not much scope for competition, i.e. on the regional routes.



5.10.6 Fifthly, because of the relatively high fare and cost structure of the airlines operating at present between Europe and Southern Africa, it is quite easy for charter operators based in Europe to enter the market, if they were allowed to. There is also quite a large potential for selling inclusive tours to Southern Africa in the European market, as well as a considerable interest to promote such traffic at the Southern African end, in view of the fact that available tourism facilities are not being utilized fully. So far regulatory policies of most Southern African countries have, however, prevented inclusive tour charters from being introduced. Recently, governments are beginning to reassess the appropriateness of the present policies, as it is becoming apparent that tourism represents an important source of income and also generates employment. South Africa has opened up charter traffic under the measures introduced in 1993.

### **5.11 Strategy**

5.12.1 In line with the basic objectives underlying this White Paper, the White Paper supports the development of a deregulated air transport market. However, as the market is international, and bilateral agreements at present control most traffic, a reorientation of policy will have to be coordinated with changes in other countries. This applies in particular to other countries in the Southern African region. The strategy that should be followed in the development of new air transport policies is proposed to be the following.

5.12.2 Firstly, the major aim of the Government must be to promote an air transport market with several suppliers of air transport and air terminal services. In particular this means that the Government should support the development of more than one hub for intercontinental services in the Southern African region.

5.12.3 Secondly, in order to attain the first part of the strategy, the Government should collaborate closely with those other nations in the region which have an interest in promoting several hubs. This means that Namibia must first and foremost work through the mechanisms established and/or being established through SADC/SATCC to develop and co-ordinate an air transport policy for Southern Africa. The core of this policy will be to identify the other airport(s) of the region which should serve as a hub, and to encourage the regional airlines to work together to this end. In order to ensure a timely response by SADC Member States, Namibia should be pro-actively involved in this work.

5.12.4 Thirdly, to ensure that a viable airline industry is created in Southern Africa, which allows for a measure of competition at the regional level, it will be important to allow and encourage the airlines to operate on a fully commercial basis and therefore also to shape their own futures within the framework of the overall air transport and competition policies pursued by the Government. In particular this means that the Government should review the need to make Air Namibia as independent as possible, including allowing for

a partial or full privatization of the airline. Privatization should, however, not be considered until the air transport policies of the region have taken more definite shape, to ensure that the policy environment is reasonably stable at a time of a possible sale.

5.12.5 Fourthly, within the policy agreed to with other nations in the region, Namibia should enter into bilateral agreements which are in agreement with the basic aim of promoting competition. In particular, the BASAs should, where possible and relevant, (i) provide for flexible fare approval regimes; (ii) not include any restrictions on capacity; (iii) allow for multiple designation; and (iv) not mandate that a commercial agreement be entered into.

5.12.6 Fifthly, there is a need to make the policy in respect of charter operators more flexible. The reason is that a strict adherence to the present policy on charters could prove to be in conflict with the basic objectives of the Government to promote economic growth and to narrow the income gap. A total ban on charter operations could thus damage the Namibian tourist industry in view of the fact that neighbouring countries may decide to liberalise their policies on charter operations.

5.12.7 Accordingly, the White Paper recommends that in respect of charter operations decisions on the granting of licences should be based the demand for the proposed new services and whether there are positive implications for efficiency in the use of resources. It is therefore also proposed that the present Air Services Act should be amended, or a new Air Services Act prepared, as determined in consultation with the Attorney-General, to reflect the competition policy advocated in the White Paper. The basic criterion for granting a concession for air services should be the demand for the proposed new services, including their implications for efficiency in the use of resources. Consonant amendments of the Air Services Act and/or the Civil Air Services Regulations to reflect the competition policies recommended by the White Paper should also be made.

5.12.8 There is not likely to be scope for competition on routes within the country, and there is no need to encourage it either as it could work against the aim of fostering a rationalization of the airline industry in Southern Africa. On the other hand, it is in the interest of Namibia to make access to the market more flexible and to allow new routes to be introduced if such proposals were to be made by other companies. The proposed amendment of the Air Services Act will also be able to cater for this requirement.

### **5.13 Recommendations**

5.14.1 The Recommendations of the White Paper are as follows:

**R7.1**The present Air Services Act should be amended, or a new Air Services Act prepared, as determined in consultation with the Attorney-General, to reflect the competition policy advocated in the White Paper. The basic criterion for granting a concession for air services should be the demand for the proposed new services, including their implications for efficiency in the use of resources;

**R7.2**As far as intercontinental air services are concerned Namibia should introduce a policy with the aim of promoting competition, including not applying constraints on capacity, introducing liberal fare approval regimes, and allowing for more than two airlines to serve routes between Namibia and another country. The implementation of this policy should take cognisance of the policies applied to intercontinental routes by other SADC member states, specifically developments presently taking place for a coordinated approach from within the region towards third party countries or institutions grouping such third party countries; and

**R7.4**With respect to Namibia's participation in international regional air services, the longer term objective should be the formulation of new air transport policies for the Southern African Region in collaboration with other SADC member States, with the ultimate aim of ensuring that a new policy is put in place that benefits all countries. In the shorter term Namibia should:

- (i )wait with a thorough reform of its regulatory system in the air transport sector until a coordinated process can be initiated;
- (ii )not (attempt to) change the rules as concerns international services within the Southern African Region;
- (iii )formulate revised policies which are part of the desired new arrangements to be applied throughout the Region or at least to a number of countries in the Region; and
- (iv )maintain current policies on bilateral agreements with other countries in Southern Africa for the time being.



## CHAPTER 5 : SHIPPING

### 6.1 Introduction

6.2.1 Namibian shipping involves bulk, break bulk and container traffic. Bulk traffic is usually handled by special vessels, which only call at Walvis Bay and Lüderitz (bulk liquids) when there is a specific need. Most of the break bulk and all containers are shipped by either cellular container or so-called combi ships which regularly serve Walvis Bay as part of scheduled operations. These liner operations comprise primarily those provided by Swakop Line and Namibia Shipping Lines, the former jointly owned by Unicorn Line and TransNamib Limited on a 50:50 basis. Namibia Shipping Lines is fully owned by TransNamib Limited. Both of these companies are non-ship-owning lines and operate either through slot charter arrangements with the Southern Africa Europe Container Services (SAECS - see section 2.3.7) or, in the case of Namibia Shipping Lines, through membership of SAECS. The above-mentioned liner operations connect Walvis Bay with Cape Town, Durban and other ports in Southern Africa. Liner operations between Walvis Bay and Europe and other ports in Southern Africa as well as other deep-sea trades are mainly accomplished through transshipment at ports in South Africa. Lüderitz is served by a coastal service - operated by the joint venture Swakop Line and Unicorn Lines of South Africa - connecting it with South African ports and Walvis Bay.

### 6.3 Present Regulatory Policies

6.4.1 The regulatory system in Namibia governing these operations is the same as in South Africa. The reason is that Namibia has inherited the South African laws in the field of maritime affairs (for a review of these laws, see Annex 2). Namibia does not at present regulate entry into shipping or capacity, prices and quality of shipping services in terms of legislation. The same rules apply to all ships from all nations visiting Namibian ports; indeed there are no restrictions on cabotage, i.e. foreign vessels and lines may operate between two Namibian ports without having to have a permit.

6.4.2 Mention should also be made of the fact that the Government of Namibia does not subsidise shipping. In other parts of the world it is very common for governments to support its shipping industry directly and/or indirectly through various measures.

6.4.3 While legislation does not provide Government with any power to regulate shipping, South Africa has indirectly practised an interventionist policy vis-à-vis shipping for many years in order (i) to promote South African participation in the liner traffic within the Europe South African Conference; and (ii) to influence tariff setting in line with its traditional protectionist trade policies. The instrument used for this purpose has

been the Ocean Freight Agreement (OFA), which also affected trade to and from Walvis Bay. The first OFA was signed by the South African government and the Europe South African Conference in 1912, while the most recent was signed in 1977 and remained in force until the end of 1991.

6.4.4 The origin and basis for the OFA was government traffic, in particular mail traffic, which used to be an important part of the total traffic between South Africa and Europe. However, in more recent times the OFA has primarily been concerned with the transport of perishable products, and the Perishable Products Export Control Board has therefore also been a signatory of recent OFAs. While the OFA once was an important regulatory tool, it lost significance during the 1980's in view of the small portion of the trade controlled by the South African government, and the fact that liner rates have been falling steeply (in real terms) during the last 15 years (see below) so that actual rates actually became lower than the tariffs provided for in the OFA. As consequence, the OFA was not renewed when it expired at the end of 1991.

6.4.5 The indications are that the shipping industry is being subjected to strong competitive pressures. Although SAECS and Swakop Line dominate the sector, and in particular the container services, there is little evidence that they can exert any significant market power. There are two reasons, viz. (i) the overtonnage that has characterized container services in the world during the last decade and which appears to continue to characterize the trade also during the present decade; and (ii) the presence of so-called outsiders, i.e. independent operators which are not part of the conferences and which compete with these. The fact that the nominal price of a tonne of container load in the southbound trade from Europe to South Africa decreased from US\$ 90 in 1979 to US\$ 87 in 1990 supports this impression, as does the fact that earnings in the liner traffic have been low for many years. As concerns outsiders, there are a number serving southern Africa at present. Namibian shippers and/or cargo owners generally view the current arrangements in the shipping sector as satisfactory although regular direct calls at Walvis Bay would be preferred by some.

6.4.6 The bulk trade is generally held to be even more competitive than the liner trade, as the market is basically global in its structure. There appears to be no problem in mobilising tonnage at reasonable prices. Also this market segment is characterised by over tonnage.

6.4.7 It is generally believed that shipping will continue to be a competitive business throughout the 1990's. There are no signs that a shortage of tonnage will develop in the coming years, or that the conferences will be able to dominate the market. It therefore seems unlikely that the Government of Namibia could improve shipping conditions for the country through changing the regulatory system. In lieu, it is suggested that the Government, through its maritime administration, should maintain a dialogue with the

international shipping community in order to (i) obtain information about the developments in shipping markets; and (ii) encourage shipping lines to serve the Namibian market in the best possible way.

6.4.8 Should the Government actively encourage a Namibian shipping industry? And if so, should it be encouraged to build up a fleet of ships carrying the Namibian flag? The White Paper recommends against any direct involvement by the Government to promote a Namibian shipping industry and merchant marine, or to make use of the various protectionist instruments available to these ends. Such policies include primarily various cargo reservation systems, i.e. measures to ensure that cargo destined for or generated in Namibia are carried by ships carrying the Namibian flag. They may also involve various forms of subsidies to Namibian shipping lines and differentiated port charges, etc.

6.4.9 The available evidence concerning the effects of cargo reservation systems indicate that they are generally counterproductive. When developing countries have made use of such instruments they have in general eventually led to increasing costs of shipping and/or resulted in a burden on the budget of the government concerned. In Namibia the likelihood of cargo reservation systems having adverse effects is increased by the fact that there is no shipping tradition in the country. The risks must also be considered as very high in view of the facts already referred to above, viz. the competitive nature of the business and that over tonnage is likely to continue to plague the industry in a world perspective for quite some period to come. Indeed, the over tonnage is to a large extent a result of the efforts of many countries to support the development of their shipping industry through tax schemes or direct subsidies, a luxury that Namibia hardly can afford.

6.4.10 A further reason is that there will be less scope for individual countries to pursue their own protectionist shipping policies in the future. Cargo reservation and discriminatory port charging and similar schemes used by many countries to penalize foreign ships go against the tide of current international policy, in particular the shipping policies of the European Union (EU). The two pieces of EU legislation of particular relevance are Regulation 4057/86 on "Control of Unfair Pricing Practices" and Regulation 4058/86 on "Free Access to Cargoes in Ocean Trades". The former allows the levying of redressive duties on non-EU ship operators who employ unfair pricing practices, while the latter allows the EU to take action against a non-EU state or its agents which restrict or even threaten to restrict free access to EU operators to that state's shipping trade routes. The European Commission is currently investigating possible infringements of this principle in instances where insufficient access to cargo is felt to exist; several countries, including some in Africa, are being looked at. In addition, the United States also has swung away from an earlier policy of making bilateral deals, mainly with Latin American countries, which included cargo reservation.

6.4.11 Any Namibian involvement in shipping should therefore be based on a step-by-step approach, as for example used by TransNamib (see Chapter 2). TransNamib is building up its involvement in the shipping sector by collaborating with other established lines to obtain know-how, and by investing to a very limited extent, essentially only in training, some equipment and containers. While this approach is commendable, there is, on the other hand, no reason in principle why TransNamib should be the only Namibian-based operator to be allowed to enter the shipping sector (although the small size of the market suggests that it is unlikely that a second line would be viable at present). The White Paper does not support the policy of there being only one national line to be promoted by the Government.

6.4.12 The case of TransNamib Shipping thus indicates that it is fairly easy to become established in international shipping, provided that this is done in the right way. This is also borne out by the fact that one of the freight forwarding agents active in Namibia operates its own shipping line through a slot charter arrangement and without owning any ships (although this shipping line is not registered in Namibia). The oversupply in the shipping sector actually suggests that many established shipping lines would be willing to collaborate with other newcomers in shipping. In addition, in view of (i) that international shipping is likely to remain a very competitive business in the future; (ii) the competition policies being pursued by the industrialized countries; and (iii) that the traditional arrangements in the shipping sector, such as conference operations, will come under increasing pressure on account of, *inter alia*, (i) and (ii), Namibia would best be served by promoting a policy allowing for maximum flexibility in the shipping sector. This means that Namibian interests should be encouraged as far as possible to participate in shipping activities, but without any direct support from the Government, neither in the form of subsidies nor through restrictive measures against foreign lines.

6.4.13 A further question relates to the so-called UNCTAD code, i.e. whether the Government should ratify the UN Code of Conduct for Liner Conferences. The origin of this Code is to be found in the desire of developing countries to afford some protection to their emerging fleets. The UN Liner Code emerged from a plenipotentiary conference in 1974, but it took until 1983 for it to attract sufficient support to come into force. A Review Conference was held in March 1991, which endorsed the Code.

6.4.14 The main provision of the Code is cargo sharing. In terms of the Code, country pairs generating conference cargo should share this equally, leaving cross-traders (operators from neither country) "a significant part, such as 20%, in the freight and volume of traffic". This has become known as the 40/40/20 formula. The criteria for the formula are not, however, hard and fast. The shares apply only to cargo carried by members of liner conferences, and there are no binding provisions on non-conference operators.



6.4.15 Other significant provisions of the Code concern consultations, tariffs and disputes. Conferences are placed under an obligation to consult with shippers and shipper organisations; government representatives have an observer role only. Tariffs should not be discriminatory, but commodity based tariffs, loyalty arrangements and various surcharges are all permitted. There is provision for a complicated conciliation procedure which embraces disputes over rate levels, etc., but which ultimately is not binding.

6.4.16 EU member states are allowed to ratify the Code in terms of the so-called Brussels Package of 1979. Under it, conferences are to offer developing countries a 40% share of conference cargo generated by their country trades, but the 60% is to remain determined by commercial criteria, with the non-third world lines merely making any re-adjustments necessary by reason of granting the 40% shares. South Africa has not signed the UNCTAD-code, but the South African government has referred to the cargo sharing formula, e.g. in connection with negotiations on the OFA.

6.4.17 The indications are that the UNCTAD-code is in the process of becoming less relevant to international shipping. There are several reasons related to the competitiveness of international shipping, the declining role of traditional conference arrangements, etc. Existing shipping lines are also prepared to invite newcomers to become members of their conferences or to participate through slot charter arrangements, as stated above. And although reference is then often made to the UNCTAD-code officially, the underlying reasons are presumably that it is in the interests of the conferences to widen participation under current competitive conditions. The White Paper does not foresee that a ratification of the UNCTAD-code would in any substantial way assist with the promotion of a Namibian shipping sector, and it is therefore not recommended that a ratification of it should be given high priority.

6.4.18 Finally there is the question of shipper bodies - such as a shippers' council - either in the context of the UNCTAD-code or more generally. Since exports are currently heavily weighted to a limited number of exporters in the mining and produce sectors, negotiations with the shipping lines can be satisfactorily accomplished individually or through producer bodies; the chambers of commerce should be able to provide an adequate mechanism for dialogue between general manufacturers and trading companies, on the one hand, and shipping lines, on the other. There is no need for the creation of a national shippers' council to be an early priority.

## **6.5 Recommendations**

6.6.1 The recommendations of the White Paper in respect of shipping are in summary:

**R8.1**The Government should not change the current regulatory system;

**R8.2**The Government should encourage any Namibian interests to participate in shipping, but without providing direct support in the form of subsidies or applying restrictive measures against lines of other nations;

**R8.3**The ratification of the UN Code of Conduct for Liner Conferences should not be a priority; and

**R8.4**The creation of a national shippers' council should not be a priority.

## CHAPTER 6 : INTERMEDIARIES AND INTERMODAL OPERATORS

### 7.1 Introduction

7.2.1 Intermediaries such as shipping agents, freight forwarding companies and travel bureaus are agents acting on behalf of sellers or buyers of transport services. They normally perform vital duties in order for the transport markets to function smoothly, either by ensuring that information is readily available about different - competitive - alternatives, or by enabling suppliers to reach customers without having to establish expensive fully-owned sales organizations.

7.2.2 The agency business is currently not subjected to any specific economic regulatory controls in Namibia. The agents essentially work in a competitive environment, and function in a satisfactory way. It is noted that all the main member lines of SAECS are represented by one and the same shipping agent. While liner operators generally are represented by agents abroad, it has become more and more common that each member line of a conference has its own agents. The lack of a diversified agency representation in Namibia can probably be ascribed to the small Namibian seaborne trade, and that it therefore does not pay the member lines of SAECS to all have their own agents.

7.2.3 Nor are intermodal operations regulated at present. The essential feature of an intermodal operator is that he accepts legal responsibility under the terms of a bill of lading for the transport of containers involving several links in a transport chain. The classical intermodal operator is the shipping line, and two emerging examples in Namibia are Swakop Line and Namibia Shipping Lines, both part of the TransNamib sphere. But there is no need for an intermodal operator to be an operator himself. In fact, it is becoming more common that agents, such as a freight forwarder, becomes involved as an intermodal operator, and this without having to own any transport means at all. As mentioned, there are examples of such intermodal operators in Namibia today. Their role is growing as a whole in the world today.

### 7.3 Issues

7.4.1 All the intermediaries in Namibia are basically only involved in agency business, although some of them also own trucks. A notable exception in this regard is TransNamib, who although primarily being an operator, is also active as a travel agent through TransNamib Travel. TNL is currently not involved in freight forwarding, but the National Transport Corporation Act does not rule out that the company become involved in this business.

7.4.2 TransNamib's involvement in the agency business gives rise to a (potential) issue, derived from the conditions (i) that the company is not an ordinary profit seeking undertaking on behalf of private interests; and (ii) that it is involved in many markets all of which may not be competitive. This issue is that TransNamib Travel may be able to compete on unequal terms with other travel bureaus. It should be stressed that it is not a contention of the White Paper that TransNamib is at present or has been involved in unfair practices by cross-subsidising from other activities; there is no evidence to suggest this. However, in order to satisfy the competitors that TransNamib is not competing on unfair terms, it is recommended that TransNamib accounts be made more transparent by requiring that it maintains separate audited accounts for all its different business activities, including for its travel agency, tour operations, property business and shipping operations. All group administration expenditure should be fully allocated to the separate accounts of the different businesses or activities in accordance with generally accepted standards and practices.

7.4.3 Another potential issue relates to intermodal transport operations. The importance of intermodalism will continue to grow in Namibia and the world in the future; it will provide the key to low-cost access to world markets for Namibia. However, for intermodalism to function in a satisfactory way, it is important that all intermodal operators have access to all modes of transport, and on fair terms. This applies to road transport as well as rail transport. Given that road transport is deregulated in terms of the recommendations of this White Paper, it can be expected that the market will on its own ensure that there is access and at non-discriminatory prices for all those who wish to avail themselves of road transport in the future, including intermodal operators.

7.4.4 The railway is potentially a different matter in view of the fact that it is a monopoly. Indications are, however, that road transport can compete with the railway for the transport of containers, also in terms of prices. The proposal for deregulation of road transport will further serve to enforce competition between road and rail, thereby ensuring that intermodal operations can be undertaken satisfactorily and subject to competitive conditions.

## **7.5 Recommendations**

7.6.1 The recommendation of the White Paper, as concerns intermediaries and intermodal operations, are:

**R9.1: TransNamib should maintain separate audited accounts for all its different business activities, including for its travel agency, tour operations, property business, and shipping operations.**

**All group administration expenditure should be fully allocated to the separate accounts of the different businesses in accordance with generally accepted standards and practices.**



## **ANNEX 1 : Major Conventions in the Transport Sector**

### **1. Aviation conventions**

Aviation conventions are in different phases of being ratified by Namibia.

#### **(a)The Convention of International Civil Aviation, 1944 ("The Chicago Convention").**

Lays down principles and arrangements for the development of international civil aviation. Emphasis is on safety aspects and the regulatory framework for the provision of international air transport services. The Convention includes Agreements, Protocols and Amendments according to the following.

#### **1. Agreements**

1.1 International Air Services Transit Agreement (Chicago, 1944).

1.2 International Air Transport Agreement (Chicago, 1944).

#### **2. Protocols to the Convention on International Civil Aviation**

2.1 Protocol on the Authentic Trilingual Text of the Convention on International Civil Aviation (Buenos Aires, 1968).

2.2 Protocol on the Authentic Quadrilingual Text of the Convention on International Civil Aviation (Montreal 1977; not yet in force).

#### **3. Amendments to the Convention on International Civil Aviation**

3.1 Article 93 bis (Montreal, 1947).

3.2 Article 45 (Montreal, 1954).

3.3 Articles 48(a), 49(e) and 61 (Montreal, 1954).

3.4 Article 50(a) (Montreal, 1961).

3.5 Article 48(a) (Rome, 1962).

3.6 Article 50(a) (Montreal, 1971).

3.7 Article 56 (Vienna, 1971).

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- 3.8 Article 50(a) (Montreal, 1974).
- 3.9 Protocol of Amendment (Final Clause) (Montreal, 1977; not yet in force).
- 3.10 Article 83 bis (Montreal, 1980; not yet in force).
- 3.11 Article 3 bis (Montreal, 1984; not yet in force).
- 3.12 Article 56 (Montreal, 1989; not yet in force).
- 3.13 Article 50(a) (Montreal, 1990; not yet in force).

### **(b) Conventions with respect to Aviation Security.**

- 1. The Tokyo Convention (Tokyo, 1963); convention on offenses and certain other acts committed on board aircraft.
- 2. The Hague Convention (Hague, 1970); convention for suppression of unlawful seizure of aircraft.
- 3. The Montreal Convention (Montreal, 1971); convention for the suppression of unlawful acts against the safety of civil aviation.
- 4. Protocol Supplementary to the Montreal Convention (Montreal, 1988); protocol for the suppression of unlawful acts of violence at airports serving international civil aviation.
- 5. Convention on the Marking of Plastic Explosives (Montreal, 1991); not yet in force.

### **(c) International carriage by air: Conventions concerned with liability issues with respect to the international transportation of persons, baggage and goods performed by aircraft for remuneration or hire.**

- 1. The Warsaw Convention (Warsaw, 1929); convention for the unification of certain rules relating to international carriage by air.
- 2. The Hague Protocol (The Hague, 1955); protocol to amend the Warsaw Convention.
- 3. Guadalajara Convention (Guadalajara, 1961); convention for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier.
- 4. Guatemala City Protocol (Guatemala City, 1971); protocol to amend the Warsaw Convention and the Hague Protocol.
- 5. Additional Protocol No. 1 (Montreal, 1975); protocol to amend the Warsaw Convention, not yet in force.
- 6. Additional Protocol No. 2 (Montreal, 1975); protocol to amend the Warsaw Convention and the Hague Protocol, not yet in force.
- 7. Additional Protocol No. 3 (Montreal, 1975); protocol to amend the Warsaw Convention, the Hague Protocol and the Guatemala City Protocol, not yet in force.

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## ANNEXES

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8Montreal Protocol No. 4 (Montreal, 1975); protocol to amend the Warsaw Convention and the Hague Protocol, not yet in force.

### **(d)Other Conventions.**

1The Geneva Convention (Geneva, 1949); convention on the international recognition of rights in aircraft.

2Rome Convention (Rome, 1952); convention on damage caused by foreign aircraft to third parties on the surface.

3Protocol to Amend the Rome Convention (Montreal, 1978); not yet in force.

## **2. Maritime Affairs conventions**

(a)Following the implementation of the Merchant Shipping Act of 1951, the subsequent conventions, and the codes and recommendations directly referred to therein, are in force in Namibia:

\*International Convention for the Safety of Life at Sea, 1974 (SOLAS -74), including amendments adopted 1983 or earlier.

\*International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978.

\*International Convention on Load Lines, 1966, including amendments adopted 1983 or earlier.

\*International Convention on Tonnage Measurements of Ships, 1969.

\*Convention on the International Regulations for Preventing Collisions at Sea, 1972, including amendments adopted 1981 or earlier.

(b)The following conventions are not in force in Namibia and have in a consultancy report been considered to have high priority for ratification:

\*International Convention relating to Intervention of the High Seas in Cases of Oil Pollution Casualties, 1969.

\*International Convention on Civil Liability for Oil Pollution Damage, 1969.

\*International Convention on the Establishment of an International fund for Compensation for Oil Pollution Damage, 1971.

\*International Convention for the Prevention of Pollution from Ships, 1973.

\*International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1973.

\*Manual on Oil Pollution.

\*International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.

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- \*Guidelines on the Provision of Adequate Reception Facilities in Ports.
- \*Torremolinos International Convention for the Safety of Fishing Vessels, 1977.
- \*1988 amendments to SOLAS -74 (cf. above), including requirements concerning the Global Maritime Distress and Safety System.
- \*Code of Safety for Fishermen and Fishing Vessels, 1975/1983.
- \*Guidelines for
  - noise levels on board ships,
  - code of safety for special purpose ships,
  - intact stability criteria for passenger and cargo ships,
- \*International Convention on Maritime Search and Rescue, 1979.
- \*International Code of Signals.
- \*Standard Marine Navigational Vocabulary.
- \*IALA Aids to Navigation Guide, 1990.
- \*IALA Guide to the Availability and Reliability of Aids to Navigation.
- \*ILO Convention concerning Minimum Standards in Merchant Shipping.
- \*ILO Convention concerning Seafarers' Welfare at Sea and in Port.
- \*ILO Convention concerning Health Protection and Medical Care for Seafarers.
- \*ILO Convention concerning Social Security for Seafarers.
- \*ILO Convention concerning the Repatriation of Seafarers.

### 3. Roads Conventions

The following conventions are reflected in Namibian laws and regulations :

- (a)The International Convention relative to Motor Traffic (Paris 1926),
- (b)The United Nations Convention on Road Traffic (Geneva, 1949).
- (c)The United Nations Convention on Road Traffic (Vienna, 1968).

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## ANNEX 2 : Legislation related to the Transport Sector

All the South African legislation which was administered in Namibia, has been amended since Independence, and is now fully Namibianised. Legislation will, however, have to be reviewed to reflect the new policies of this White Paper. If nothing else is said, the Acts enumerated below are administered by the Department of Transport.

### 1. Aviation legislation

(a) The Carriage by Air Act, 1946 (Act No. 17 of 1946).

Gives effect to Warsaw convention of 1929.

(b) Air Services Act, 1949 (Act No. 51 of 1949).

Provides for licensing and control of air carrier and services.

(c) The Aviation Act, 1962 (Act No. 74 of 1962).

Gives effect to the Chicago Convention and Air Services Transit Agreement.

(d) The Aerodrome Ordinance, 1963 (Ordinance No. 12 of 1963).

Sets out requirements for construction and maintenance of aerodromes. NB: The two state airports are governed by regulations under the Aviation Act of 1962.

(e) The Civil Aviation Offences Act, 1972 (Act No. 10 of 1972).

Gives effect to the Tokyo, Hague, and Montreal Conventions of 1963, 1970 and 1971, respectively.

### 2. Maritime legislation

(a) The Merchant Shipping Act, 1951 (Act No. 57 of 1951).

Provides for the control of merchant shipping and matters incidental thereto.

(b)The Marine Traffic Act, 1981 (Act No. 2 of 1977).

Regulates marine traffic in Namibia and provides for matters connected therewith.

(c)The Prevention and Combating of Pollution of the Sea by Oil Act, 1981 (Act No. 6 of 1981).

Provides for the prevention and combating of pollution of the sea by oil. Determines liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers of offshore installations.

### **3.Road transportation legislation**

(a)The Road Transportation Act, 1977 (Act No 74 of 1977).

The Road Transportation Regulations, 1977.

Provides for the economic regulation of road transportation.

### **4.Road traffic legislation**

(a)The Road Traffic Ordinance, 1967 (Ordinance No 30 of 1967).

The Road Traffic Regulations, 1967.

Sets out basic responsibilities with regard to control of vehicles and traffic by the executive authority.

### **5.Roads legislation**

(a)The Advertising on Roads and Ribbon Development Ordinance, 1960 (Ordinance No. 30 of 1960).

Restricts advertising and building developments along proclaimed roads.

(b)The Roads Ordinance, 1972 (Ordinance No. 17 of 1972).

The Road Regulations, 1973.

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Sets out responsibilities of the executive authority in regard to provision, maintenance and control of roads.

### **6.Parastatal legislation**

(a)The National Transport Corporation Act, 1987 (Act No. 21 of 1987).

Established the National Transport Corporation, now known as TransNamib Limited, as a multimodal commercial corporation.

(b)The Namibian Ports Authority Act, 1994 (Act No. 2 of 1994).

Established the Namibian Ports Authority (NAMPORT) on 1 March 1994 to undertake the management and control of ports and lighthouses in Namibia and the provision of facilities and services related thereto; and to provide for matters incidental thereto.

(c)Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992)

To provide for the incorporation of a postal company, a telecommunications company and a holding company; to provide for the transfer of the postal enterprise to the postal company and of the telecommunications enterprise to the telecommunications company; to provide for the conditions of service of persons transferred to or employed by the postal company or the telecommunications company; to provide for the control of the Post Office Savings Bank by the postal company; and to provide for matters connected therewith.

(d)Posts and Telecommunications Act, 1992 (Act 19 of 1992)

To make provision for the regulation of and exercise of control over the conduct of postal services and telecommunications services; to provide for certain powers, duties and functions of Namibia Post Limited and Telecom Namibia Limited; and to provide for matters connected therewith.

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### **7. Roads taxation**

(a) Petroleum Products and Energy Act, 1990 (Act No. 13 of 1990). (Administered by the Ministry of Mines and Energy.)

Provides inter alia for a National Energy Fund and gives the right to impose a levy on fuel to the Minister of Mines and Energy. (This Act was not specifically promulgated for the purpose of infrastructure cost recovery, i.e. to implement road user charges.)

### **8. Other legislation**

(a) The National Road Safety Act, 1972 (Act No. 9 of 1972).  
(Administered by the Ministry of Home Affairs)

Establishes the National Road Safety Council to control road safety.

(b) The Motor Vehicle Accidents Act, 1990 (Act No. 30 of 1990). (Administered by Ministry of Finance.)

Provides for the payment of compensation for certain loss or damage unlawfully caused by the driving of certain motor vehicles.

(c) Namibian Transport Advisory Board Act, 1991 (Act No. 23 of 1991).

Provides for the establishment of the Namibian Transport Advisory Board and the composition and functions thereof.

### **ANNEX 3 : The Views of the Namibian Transport Advisory Board**

As mentioned in the Executive Summary, the DWP was referred to the Namibian Transport Advisory Board (NTAB) for comment. The NTAB in general supported the competition oriented approach to transport policy as advocated in the DWP. In this regard the NTAB was therefore supportive of the recommendations to deregulate domestic road transport, not to protect the railways and to continue with the present regulatory policy with regard to shipping.

The NTAB supported the DWP recommendations with regard to quality regulation of road traffic, but was of the view that further work should be undertaken to determine the format of a professional association, whether more than one association is required and how an association should be funded. The DWP recommendations have been amended in the White Paper to make provision for a further investigation to be undertaken by the Ministry of Works, Transport and Communication regarding the proposed association. The White Paper also supports the NTAB's concerns that quality control, specifically on overloading, of road transport should be improved prior to deregulation of road transport. The White Paper, however, does not envisage that the implementation of the proposed new road transport legislation should be postponed pending implementation of the recommendations with regard to quality regulation of road transport and thus the completion of the proposed further work regarding the professional association. The Ministry of Works, Transport and Communication should, however, seek to tighten control over practices of overloading and other road traffic violations within the ambit of the powers provided in the new legislation until the proposed association can be implemented to assist in this regard. In this regard, also, a recommendation has been included in the White Paper.

As far as Namibia's participation in the Memorandum of Understanding on Road Transportation in the Common Customs Area is concerned, the NTAB proposed that Namibia should seek to modify the terms of the agreement to provide for a regulated (enforced) 50:50 division of traffic. The White Paper does not support this proposal of the NTAB, which amounts to regulatory intervention with respect to international road transport, since it would be in conflict with the competition policy of the White Paper. Such a policy would also be in conflict with policies adopted by other countries in the region.

With regard to international intercontinental scheduled air services the NTAB proposed that the granting of licences for international intercontinental air services should be subject to an analysis of demand and existing supply of air services, i.e a less liberal approach than recommended in the DWP. The White Paper could not support this proposal. Such an approach would be tantamount to protection of the



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existing services and once again be in conflict with the general policy of the White Paper as well as the policies being developed elsewhere in the world. See discussion in Chapter 7 : Civil Aviation.

The White Paper took note of the NTAB's view that the road user charging system should be operated through a dedicated Road Fund as well as that such a system should be implemented at the same time or prior to deregulation of road transport. The White Paper supports both the above views in principle and sees the achievement thereof as dependent on the early acceptance by Cabinet of the recommendations of the Interministerial Committee referred to in Section 5.8 of Chapter 5. It is, however, not the view of the White Paper that implementation of the White Paper's recommendations should be postponed to enable the road user charging system to be first implemented, should such a situation arise. It is beyond the scope of the White Paper to make specific recommendations about the proposed road user charging system since this is the subject of a separate policy study. The NTAB's views regarding the proposed road user charging system are further dealt with within the relevant policy study.

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## **ANNEX 4 : Comments on the White Paper received from Other Interested Parties**

### **The Namibia Bus and Taxi Association (NABTA)**

NABTA expressed support for the proposed new transport policies and the concept of healthy competition. As far as regulation of urban transport operations, basically bus and taxi operations, is concerned, NABTA supported the White Paper proposals.

### **Namibia National Chamber of Commerce and Industry (NNCCI)**

The NNCCI expressed support for competition as having an important role to play. The NNCCI was of the opinion that protection of Namibian businesses against foreign domination should not be completely precluded.

The opinion was expressed that it should be made possible for many Namibians to invest in the modes of transport currently under the control of TransNamib. This was seen as a means to ensure that TransNamib is placed on a sound financial footing.

It was stated that Government should provide supportive incentives for new entrants to the transport market.

The proposed road user charging system was supported and that road usage should not be subsidised whilst leaving rail transport to its own devices.

The NNCCI strongly advised against road safety and quality control being left to the proposed Operators' and Professional Drivers' Association (OPDA). OPDA was seen as a body which could advise on standards but the state should administer and police adherence to standards in order to prevent irregular practices.

The White Paper's coverage of the economic role of rail transport was regarded as not reflective of the present situation in Namibia. The importance of the rail network for the economy and especially the mining sector was emphasized. Support was, however, expressed for the recommendation of the White Paper that the railways should not be subsidised or protected, unless to promote affirmative action or to combat unfair competition from outside Namibia. The NNCCI supported the recommendation that the

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National Transport Corporation Act be amended to promote more transparency with regard to accounting, operational and other crucial information of TransNamib.

As far as international transport is concerned the NNCCI expressed the view that Namibia should be proactive in getting involved in regional endeavours to work out a more equitable transport system which will benefit the entire region. To this end the NNCCI recommends that Namibia should sign the Memorandum of Understanding on Road Transportation in the Common Customs Area (MOU) and contemplate the chances of implementing the PTA "Transit Regime". The recommendation is nevertheless that Namibia should only enter such agreements on the basis of mutual benefit which should not discourage smaller Namibian road transport operators. The 50:50 principle is mentioned and that care must be exercised not to erode this principle and that entry by foreigners to the Namibian market should be controlled.

As far as Civil Aviation is concerned, the NNCCI in general agreed with the DWP recommendations.

### **Further Parties who submitted Comment on the DWP**

Comment was also submitted on the DWP by TransNamib Limited, NAMROAD (representing established road transport operators), the Namibia Truckers Association (NTA) (representing mainly operators who do not hold permanent public road carrier permits<sup>3</sup>) and Namib Contract Haulage (Pty) Ltd.

The former two parties are represented on the Namibian Transport Advisory Board (NTAB) and their comment is regarded as covered in the NTAB's recommendations concerning the White Paper. (See Annex 3). Namib Contract Haulage (Pty) Ltd submitted comment on their own behalf. The gist of the comment is that competition is encouraged as a general principle.

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<sup>3</sup> The Namibia Truckers Association is no longer active.

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