

---

Date: 8 June 2020

Our Ref: D Maharaj

Your Ref:

---

The Minister of Transport  
The Honourable Mr Fikile Mbalula  
159 Struben Street  
Forum Building  
Pretoria

Per Email: [transportministry@dot.gov.za](mailto:transportministry@dot.gov.za)  
[phenyam@dot.gov.za](mailto:phenyam@dot.gov.za)

Dear Sir

Re: **MEMORANDUM ON BEHALF OF PRIVATE CHARTER PASSENGER OPERATORS ASSOCIATION**

1. We act on behalf of the Private Charter Passenger Operators Association, an entity comprising passenger transport operators who are exclusively involved in the private charter passenger transport industry in South Africa.
2. You may well recall that our clients members made representations to yourselves through our offices on 26 May 2020 with recommendations on how to ameliorate their financial plight and in this regard, we are taking the liberty of attaching hereto, for your easy reference, a copy of the aforementioned representations which we trust that you have had sight of and considered.

---

**Directors**

Dev Maharaj, Teboho Putsoane and Shikar Maharaj

**Senior Associates**

Jason Perumal, Mayuri Mangla, Abhishek Maharaj

**Consultant**

Tarisai Gonyora

P O Box 70758, Bryanston, 2021 | Docex 10, Bryanston

(DMA Inc: Registration No: 2015/002357/21)

3. Notwithstanding receipt of the representations to yourselves having been acknowledged, we have yet to receive a response thereto and more importantly, none of the measures that had been recommended appear to have been considered and it is unknown whether any of them will be implemented in any of the new regulations that may be formulated and published in terms of the Disaster Management Act.
  4. The contents of the attached letter still stand, and are even more apposite notwithstanding the country presently being in Level 3 of the lockdown as the financial hardships continue to be experienced by our clients.
  5. The above hardship is unjustifiably aggravated by the inequities actions by Government, dealt with below, to the extent that the actions could rightly be seen to violate the principle of legality applying to actions of the executive. We believe that legal proceedings can be avoided if you are willing to address the unfair intended or unintended consequences created by the inequities actions.
  6. Therefore, we are instructed to address, in addition to the issues raised in our previous correspondence attached hereto, the proposed subsidy that is to be afforded to the taxi industry alone and the unfair intended or unintended consequences of that. The Honourable Minister of Transport
-

has publicly stated on more than one occasion that extensive consultations have taken place with the taxi industry, including SANTACO, and that agreement has been reached in principle to make available a subsidy to that industry. We are also aware that the Competition Commission has conducted an in-depth investigation into public passenger transport generally in the country and is also commented that the taxi industry is in need of a subsidy.

7. The Honourable Minister of Transport has also indicated in the media that a submission has been sent to National Treasury to make available the necessary funds in respect of the proposed subsidy to the taxi industry. Consequently, for all intents and purposes the subsidy to that industry is a *fait accompli*, and all that is awaited is for final determination of the funding from the Treasury Department.
  8. Unfortunately, there has been no, alternatively inadequate, consultation with the private charter transport operators who also provide public transportation services, albeit not on a scheduled basis as the taxi or long-distance transport industries. This is extremely unfair as will be highlighted below.
  9. In considering the impact of the the proposed subsidy to the taxi industry, it must be understood that our client's members have no issue with making a subsidy available to the taxi industry and welcomes such an initiative.
-

However prior to a subsidy to the taxi industry being formalised, our clients require an undertaking from you and the national Treasury Department that they will be given equal consideration and equal treatment insofar as the proposed transport subsidy is concerned. In fact, the facts will show that our client's members are not only deserving on equal treatment but there is a desperate need to promote equal treatment.

10. In this regard, you will appreciate and we reiterate that notwithstanding our clients' members predominantly servicing the tourism and events management industry, many of them also provide scholar transport in a private charter basis and have to compete with the same transport operators who are beneficiaries of the scholar transport contracts and State transport subsidies. As you will appreciate, our client simply cannot compete against those state contracted or subsidised transport operators.
  
  11. The net effect of the above situation is that those operators who are recipients of the States largesse are invariably working-out those operators who are solely dependent on the revenue from charter services being rendered. More importantly, those operators benefiting from State contracts are growing their businesses exponentially, using State resources to even create charter service divisions, thereby creating and favouring a few dominant players in the industry at the expense of our client's members, to the extent that their businesses have encroached in
-

areas far removed from their registered places of business to areas where there are local transport operators whose vehicles are standing idle.

12. In fact the Competition Commission Commissioner, Tembinkosi Bonakele said during the preliminary findings of the Commission's market inquiry into land-based public passenger transport, which started in June 2017, that there was a skewed relationship between ridership levels and subsidy funding. He further stated that "Government currently does not have a subsidy policy which provides justification for some modes of transport being subsidised, while others are not." Consequently a government entity has already recognised and pronounced on the inequities in the subsidy system.
  13. Unfortunately Covid-19 and the consequent lockdown have brought the inequalities in providing State subsidies to transport operators to the fore especially insofar as it relates to our clients members whose operations have been at a standstill since commencement of the lockdown and they have not been able to generate any income whatsoever.
  14. On the other hand, those transport operators who are in receipt of State subsidies, have by and large, still been receiving payments from State entities such as the Department of Transport and in most provincial Departments of Education in respect of the scholar transport services and other scheduled services. In some instances, for example in KwaZulu-
-

Natal, transport operators contracted to the state are receiving payments by way of subsidies as well as monthly contracted amounts from the Department of Education even though no transport services are actually being rendered. We are given to understand that in the Western Cape, contracted public transport service providers may well receive up to 90% of their monthly contract amount during the lockdown period. This is in complete contrast to our client's members in that province who receive no income whatsoever yet they also render transport services to the public.

15. The spill-over effect of inactivity and non-generation of revenue over an extended period will invariably result in the private charter transport operators having to shut down their businesses. This is despite the various government interventions that have been put into place to provide financial assistance to businesses suffering the effects of the shutdown and in this regard, we have fully addressed in our previous correspondence the problems experienced by those whom we represent in accessing the funding initiatives that has been made available to qualifying businesses generally. We reiterate that in most instances, our clients members do not benefit from those initiatives.
  16. We are aware that the Ministry of Transport has been engaging with the passenger transport industry in the recent past to consider ameliorating the apparent difficulties emanating from the lockdown. To this end we know that the South African Bus Operators Association (SABOA)
-

participated in a meeting and ought to have been championing the cause of its members. Unfortunately, all the passenger transport operators whom we represent are not members of SABOA and it is hardly conceivable that those representatives of SABOA who participated in the consultative meeting would have championed our clients cause or even articulated our clients position since many of their members are scheduled long distance public transport operators whose vehicles are currently working on generating an income and many of them, unlike our clients, receive State subsidies.

17. In our previous correspondence, we requested to be invited to the consultative meetings but were unfortunately left out of the same with the result that our clients concerns would not have been adequately considered, if considered at all. We must therefore insist upon being included in all future consultative meetings as those whom we represent comprise a significant number of passenger transport operators in the country and they have now constituted themselves as a separate Association to SABOA and are not represented by SABOA nor is SABOA mandated to speak on behalf of our clients members..
  18. Clearly, the unfair competitive advantage of the subsidy system on bus services negatively impact on our client's members. This will be further aggravated by the subsidies to the taxi industry without making our client's members participants. Our client's members are simply left behind
-

and the consequence of the subsidies to taxis at the exclusion of our client's members is to further promote inequity. Our client's members find it highly inequitable and unfair that subsidies are being afforded to the taxi industry whilst the entire industry is operative and generating an income. Those transport operators whom we represent are currently not operating and have not been generating an income since the lockdown and it is unknown as to when exactly they will resume operations. Consequently, as alluded to in our previous correspondence, it is only envisaged that our clients members will be allowed to trade during Level I, which is envisaged to be sometime next year.

19. You will appreciate that it will be impossible for our clients members to remain in business without generating an income for the better part of the year and it is inevitable that their businesses, as well as the businesses of service providers to the passenger transport industry servicing our clients, will also shut down unless their plight is given serious consideration and government support. The moratorium placed by the banks on payments in respect of credit agreements expires at the end of this month and there is no indication that the period will be extended.
  
  20. We have consequently been instructed to demand that the issuing of subsidies to the taxi industry be placed on hold until such time that there has been meaningful engagement with those operators whom we represent and until a fair and just system of State subsidies and contracts
-



is implemented for the benefit of all passenger transport providers, including our clients members, to ensure that the entire passenger transport industry is sustainable and no preference is given to a few operators of the majority in the industry.

21. At this stage, even if our clients members manage to receive any enquiries or secure any meagre work, the restriction placed on transporters having to restrict vehicles to carry 50% seating capacity, whilst the taxi industry is allowed 70% capacity simply does not make it economically viable to render passenger transportation services and no client will pay for two buses when one would have been adequate. This distinction between the passenger transport industry and the taxi industry is simply untenable and adds to the unsustainability of our clients members businesses.
  22. Unfortunately we have to remind you of the exorbitant licencing fees that bus operators are required to pay and whilst there was a 3 month moratorium on the payment of licencing fees, there is no mention of the extension of the period to take into consideration the financial burden that will be faced by those operators such as our clients members whose vehicles are not earning any income and wont be doing so for some time to come.
  23. We appreciate that all relevant departments are presently inundated with submissions in our best to ameliorate the harmful effects of the lockdown
-

but unfortunately, the parties whom we represent a significant role player in the passenger transport industry and cannot be overlooked especially in view of the very dire situation in which they find themselves.

23. Unfortunately, we are under strict instructions to ensure that their plight is given due consideration and that there is meaningful engagement with them, notwithstanding the various other issues that your Departments are presently attending to and we have no alternative but to demand the following undertakings from yourselves, namely:

23.1 that to the extent the National Treasury is presently implementing a process to fund the proposed subsidy to the taxi industry, that the initiatives being undertaken in that regard, will be suspended pending the finalisation of this dispute;

23.2 That an urgent consultative meeting be called between your departments and those whom we represent to enable our clients concerns to be canvassed and deliberated upon;

23.3 that no new contracts will be issued for state passenger transport services, including scholar transport services until such time that this dispute is resolved, unless our clients are the recipients of such contracts;

---

- 23.4 That your departments will look at methodologies on how to utilise the resources that our clients members have at their disposal in order to provide services to the State;
- 23.5 That your departments will look at any other measures to ameliorate the financial plight presently being suffered by those whom we represent;
- 23.6 That your Departments will extend the moratorium on the payment of licencing fees until such time that the private charter service industry is fully operational.
- 23.7 The above are not exhaustive of all our clients demands and the reserve the rights to add to or amend what has been set out above in this paragraph.
24. We therefore trust that the contents hereof will be received and treated with the seriousness that it deserves and that steps will be implemented forthwith to address our clients concerns and you can be rest assured that should we not receive any of the undertakings requested above, we will have no alternative but to turn to the courts for redress on behalf of those whom we represent.
-

25. We thank you for your co-operation and consideration of the above and look forward to hearing from you within five (5) business days from date of receipt hereof with meaningful measures to provide relief to our clients, failing which, we will presume that there is no intention on the part of government to address their concerns in which event, court proceedings will be initiated without any further reference to yourselves whatsoever.
26. We trust that such action will not be necessary as our clients are committed to working closely with government to find a suitable solution to the issues raised herein.

Yours faithfully.

*Dev Maharaj*  
(devm@dmalaw.co.za)

CC: The Director General  
Mr Alec Moemi  
Department of Transport  
Forum Building  
159 Struben Street  
Pretoria  
Per Email: [DirectorGeneral@dot.gov.za](mailto:DirectorGeneral@dot.gov.za)

The Minister of Trade and Industry  
The Honourable Mr Ebrahim Patel  
77 Meintjies Street  
Pretoria  
Per Email: [ministry@economic.gov.za](mailto:ministry@economic.gov.za)  
[TMasoga@thedti.gov.za](mailto:TMasoga@thedti.gov.za)

---

The Director-General  
Mr Lionel October  
Department of Trade and Industry  
77 Meintjies Street  
Pretoria  
Per Email: [loctober@thedti.gov.za](mailto:loctober@thedti.gov.za)

---