

THE HISTORY OF THE RAIL TRANSPORT REGULATORY ENVIRONMENT IN SOUTH AFRICA by R. A. Janse Van rensburg

1. An overview of the development of railways

1.1 The development of state intervention in railways internationally.

State intervention in rail transport began in England with public demand for safety regulation which resulted in Lord Seymour's Act in 1840 and the Railway Gauges Act which followed in 1846. Approximately a century later, on 1 January 1948, the main railways in Britain were nationalised.

In France, from 1851 onwards, concessions were granted for a planned railway system for which the Government provided ways and works, while private companies provided track and rolling stock. Provision was made for the gradual take-over of the lines by the State, and the Société Nationale des Chemins de Fer Français (SNCF) was formed in 1937 as a company in which the State owned 51% of the capital.

The Belgian Railways were owned and operated by the State from the outset in 1835. The Prussian State Railways began in 1850 and the Netherlands Railways in 1839. Italy nationalised her railways between 1905 - 1907 and the Netherlands in the period 1920 - 1938.

In the United States, between the Civil War and World War I, the railways, along with all the other important industries, experienced phenomenal growth as the country developed. This period was marked by rate wars and financial piracy. The Interstate Commerce Act was passed in 1887 in order to regulate the railways, which nearly had a transport monopoly. After World War II the railways were allowed to deteriorate as private car ownership became almost universal and public money was spent on an interstate highway system, making road haulage profitable, despite the comparative efficiency of railways to move freight and passengers (The Encyclopedia of Transport, 1981:105-108).

1.2 The early development of railways in South Africa

Like the railway systems of most countries in the nineteenth century, that of South Africa is the indirect product of the great Railway Boom in England. However, development in South Africa was hesitant and beset with difficulties. From a population point of view, South Africa in the first half of the nineteenth century was insignificant - there were no industries, not many large urban communities and even agriculture was still in the early pastoral stage. The Cape of Good Hope was the only part of the sub-continent known to the outside world.

As far as can be discovered, the very first reference to the question of railway construction in South Africa was made in the South African Commercial Advertiser of 10 October 1838 (The South African Railways, 1947:10).

The Cape Town Railway and Dock Company was formed in 1853, and according to its Articles of Association "the object of the Company is to introduce into the Cape Colony, a progressive system of railways, and to supply to its capital safe and convenient access and facilities for the reception and repair of shipping, the want of which has been so long and severely experienced as a serious prejudice to the commercial and agricultural trade of the Colony, and to the development of its natural resources" (The South African Railways, 1947:10).

The first line to be proposed in South Africa was to run from Cape Town to Wellington, a distance of 45 miles (72 kilometres). This however was merely regarded as the forerunner of a far more ambitious system which would ultimately link up all parts of the country (The South African Railways, 1947:11).

The Natal Railway Company was formed in 1859 and on 26 June 1860 the line between Point and Durban was opened. On 13 February 1862 the line between Cape Town and Eersterivier was opened and on 1 May 1863 to Stellenbosch. The line between Stellenbosch and Wellington was opened on 4 November 1863 (A Century of Transport, 1960:ix).

Practically no growth in railway construction had taken place from the time when the routes from Cape Town to Wellington and from Cape Town to Wynberg were opened. The total distance was 104 kilometres (65 miles), and so it remained for 12 years, when the discovery of diamonds caused railway construction to take a great leap forward. On 1 January 1873 the Cape Town - Wellington line was transferred to the Government and the Cape Town Railway and Dock Company, as well as the Wynberg Railway Company, ended their existence. The newly acquired enterprises were placed under the Department of Public Works until growth of traffic and turnover prompted the establishment of the Cape Government Railways (CGR).

In Durban the Natal Railway Company continued operations until the latter seventies when the Government decided to follow the example of the Cape, and to set up a system of its own. The first section of the line destined to run from the coast to Pietermaritzburg was placed in operation in 1878 (*The South African Railways*, 1947: 16) and it reached Pietermaritzburg on 1 December 1880 (*A Century of Transport*, 1960: ix).

As late as 1887 "Anti Railway Conferences" met at Ladybrand, Dewetsdorp and Brandfort in the Orange Free State, at which such arguments were used as: (a) All railways are unnecessary; (b) they are detrimental to transport riding by wagon; (c) they are injurious to horse breeding; (d) they are likely to entail heavy land taxes; and (e) they will encroach on property rights. None the less, the majority of Burgers realised that the day of the ox-wagon was rapidly ending, and that they had to prepare for new methods of transport.

The most important change which followed the take-over by the Cape Colonial Government of the original railway companies was the adaption of the 3 foot 6 inch gauge instead of the "broad gauge" of 4 foot 8½ inches (*The South African Railways*, 1947: 16). Not until 1880 did the 4 foot 8½ inch gauge disappear on the Stellenbosch route, and at the same time the third rail allowing the use of 3 foot 6 inch rolling stock, was laid between Cape Town and Wynberg. The end of this dualism only came in 1882, twenty-two years after the first trains had run in South Africa (*A Century of Transport*, 1960:17).

State ownership brought in its wake vexing difficulties arising out of vested interests and local politics. Judged on the simple criterion of economics the obvious line was one from either Port Elizabeth or East London as both these ports were appreciably closer to Kimberley than was Cape Town, and in any case the still uncertain long-term prospect for the diamondfields clearly demanded that wasteful overlapping or duplication of rail services be avoided as far as possible. But local jealousies among the three main ports of the Colony were strong and were prominent in the Cape Parliament, which of course would have the final say on railway construction; in the end not one but three lines were built, so that each of the ports would enjoy its own link with Kimberley. Until the formation of the Union of South Africa in 1910, and perhaps even thereafter, this theme of warring sectional interests would constantly recur (Solomon, 1983:101).

The railway politics of the period 1886-95 were complex. President Kruger refused to allow the CGR to extend the Kimberley line into the South-Western Transvaal, so that the Cape's approach to the Rand had to be through the Orange Free State, *via* Bloemfontein. The CGR reached Johannesburg at the end of 1892; at the end of 1894 the Delagoa Bay line was completed, and in 1895 the Natal Government Railways (NGR) reached Johannesburg *via* Volksrust. The completion of these three lines immediately raised questions of competition between their owners' underlying economic interests, and it will be instructive to view the question from their respective standpoints, as this will give a good idea of the close connection between economics and politics in those days (Solomon, 1983:103).

For many years the Transvaal Republic had cherished an ambition to reach the outside world *via* a non-British port, and this goal was now within the bounds of early achievement, since the revenues generated by the fast-developing gold-mining industry brought the Transvaal unaccustomed wealth and the funds necessary for railway construction. The old plan for a railway linking Pretoria with Delagoa Bay was thus resuscitated, and plans were at once set in motion toward this end. Not only would the line provide a route to the sea, but it would also be a lucrative investment. In contrast to the British lines a substantial portion

(practically the whole) of the Delagoa Bay route lay within Transvaal territory, which meant that the earnings of the line would accrue to the Transvaal government or its nominee, whereas that generated from the British lines obviously would not. On both political and economic grounds, then, the Transvaal was fully committed to the race.

It was soon apparent that the Witwatersrand gold-fields would henceforth be the economic hub of the whole subcontinent. However, to reach them the British railways would have to cross Republican territory; certainly the Transvaal, and (in the case of two of the three Cape lines) the Orange Free State as well. In brief, at least the final sections of all the lines would be at the mercy of the Transvaal, which would naturally be in a position either to build these last sections of the lines herself or, if she granted the British railways running powers over her territory, to manipulate tariffs to the advantage of her own Delagoa Bay line (Solomon, 1983:102).

With the annexation of the two republics during the Anglo Boer War the Netherlands South African Railway Company (NZASM) and the short-lived Orange Free State Railways were taken over by the British and merged into a unified body under the title of The Central South African Railways (CSAR). Three British lines, the CGR (Cape Government Railways), the NGR (Natal Government Railways) and the CSAR, now connected the Transvaal with the other parts, and to an optimist it might have appeared as if the railway squabbles of the Kruger era were of the past. But in fact the railway problem was to continue, and in exacerbated form (Solomon, 1983:105).

With the establishment of the Union of South Africa in 1910, comprising of the four once separate territories of the Cape of Good Hope, Natal, the Transvaal and the Orange Free State, the South African Railways (SAR) came into being a unit. Under the South Africa Act of 1909 "all Ports, Harbours and Railways belonging to the several colonies at the establishment of the Union shall from the date thereof vest in the Governor-General-in-Council" (The South African Railways, 1947:22).

Although the railway network joined the major inland towns with the ports, in general the population was thinly spread over the interior of the country and it was apparent that many potentially productive outlying areas were not being developed to their full potential because of inadequate transport facilities. It was no use building a branch line to most of these areas as it would not be a paying proposition, so the SAR resolved the matter by creating the National Road Motor Services as a feeder to their existing lines. While it is true that the SAR introduced the first such road motor service operated in 1912, which connected Hermanus with Botrivier, it must be remembered that this form of transport was still in its infancy and that the road system remained poor for the most part (Freeman, 1981:23).

For a while the Central South African Railways, Cape Government Railways and Natal Government Railways continued a more or less independent existence, but they were gradually merged, and the final "marriage" took place in 1916 when a supplementary act provided that "The Railways, Ports and Harbours of the Union shall be administered and worked under the authority of the Government-General-in-Council to be exercised through a Minister of State, who shall be advised by the Railways and Harbours Board. The management and working of the Railways and Harbours shall, subject to the control of the Minister, be carried by the General Manager who shall be governed by such regulations as the Minister may from time to time frame after consultation with the Board" (The South African Railways, 1947:22).

As already stated, with the formation of the Union of South Africa in 1910 the four colonial railway systems were merged into a single body the South African Railways (SAR). Control and operation were prescribed by Act of Parliament - Clause 127 of the Act of Union, 1910 - which read:

"The Railways and Harbours of the Union shall be administered on business principles, due regard being paid to the agricultural and industrial development within the Union and the promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland portions of all provinces of the Union."

Financial policy was laid down in the same Act, which required that:

"So far as may be the total earnings shall not be more than are sufficient to meet the necessary outlays for working, maintenance, betterment, depreciation and the payment of interest due on capital ..."

In other words, the political considerations which in the past had overshadowed the operation of the colonial railways would no longer dominate, it would be possible to pursue planning without direct reference to sectional interest, and railway operation would be geared to economic factors.

At the time of unification (1910) the SAR's main activities were the operation of railways and harbours only, but development in transport later added the operation of steamships, airways, aerodromes, road motor services, grain elevators and other subsidiary services to the original activities (The South African Railways, 1947:51).

By the late 1920's the great era of railway construction in South Africa had reached its end. The rapid development of motor vehicles had an obvious impact on the railways, and in particular made further construction of branch lines economically unviable, especially since several of the "agricultural" lines had failed to live up to the rosy promises of their advocates. By 1925 it was accepted SAR policy that further branch lines would not be built, but in the place thereof road transport would be used as far as practically possible.

In the late nineteenth century the railway displaced both transport riding and passenger coach services, along the major routes of the country. For obvious reasons the slow and cumbersome animal-drawn vehicles of the day could not compete in costs, carrying capacity convenience, comfort and time with the railway services. The development of the internal combustion engine at the turn of the century, and the rapid increase in the size and power of motor vehicles, brought about a reversal of the process.

As far as the transportation of goods for reward was concerned, the growth and adaptability of the road haulage industry posed serious problems for the SAR. As the national common

carrier, the SAR had made massive investment over the years in infrastructure and rolling stock, and, moreover, it was one of the country's biggest employers.

2. A historical outline of the regulatory aspects that effect railways in South Africa

2.1 The development of the process of road transportation regulation

Before implementation of the Motor Carrier Transportation Act (Act 39 of 1930), there was no control over the conveyance of persons and goods by road. Road transportation at the beginning of the twentieth century was still in its infancy and hence also little competition between road and rail transportation existed.

At the time of unification in 1910 rail transport was the only significant means of public transportation. The Constitution provided that the railway be run along business lines, due regard being paid to agricultural and industrial development. At that time most industrial goods were imported, and, in order to comply with the said provision in the Constitution, the railways introduced a differentiated tariff structure with relatively high tariffs for high-value industrial goods and low tariffs for agricultural and mining products. Not only was the structure intended to stimulate the local economy, but it also accorded with the tariff policy of that time, which was that the tariff should be fixed on the basis of what the traffic could bear.

In the twenties motor transportation assumed increasing importance, and, as result of the tariff structure applied by the railways, profitable high-tariff traffic was diverted to the roads. Since it had not been possible for the railways to convey low-tariff goods without financial assistance from high-tariff traffic, road transportation at that stage began to pose a threat to the economic stability of the railways. There were two possible solutions for the problem: a change in the tariff structure of the railways, or else a system of regulated transportation (Van Breda Commission Report, 1977: 5).

2.2 Commissions on road transportation regulation and the effect thereof on railways

2.2.1 The Le Roux Commission (1945)

A commission of inquiry was appointed on 21 January 1929 under the chairmanship of Mr Jonathan Calf le Roux to inquire into and report on the whole problem of road motor competition and its effect on the road and rail services of the South African Railways Administration, as well as any measures to be taken in the public interest for the better regulation, co-ordination and control of road transportation. In its inquiry the Commission was to give attention to the following factors: (a) the fact that the country's main transportation system was State owned and that large sums of public money were tied up in it; and (b) the country's requirements as regards economic development. The said Commission reported on 6 December 1929 (U.G.8-'30) and recommend a fair degree of control over road transportation. The control of motor carriers was recommended to eliminate "wasteful an destructive" competition.

As a result of the report of the Le Roux Commission the regulation of road motor transport was introduced by the Motor Carrier Transportation Act (Act 39 of 1930), which came into effect on 6 June 1930. The introduction of a competition-orientated tariff structure for the railways at that stage would not only have been considered revolutionary, but it would not have been to the benefit of the country as a whole. At that stage of the country's development such a tariff structure would have hampered domestic economic development, according to the report of the Van Breda Commission (1977:5).

Under this Act a number of Local Road Transportation Boards were established in the four Provinces of the Union and a Central Board to which appeals could be referred. The Boards issued certificates to approved operators and carried out the general administration of the Act.

When the Act came into effect, the control of motor carrier transportation was limited initially to defined areas and to defined routes where competition with the Sate and other public transportation services was most severe. The sparsely populated areas of the Union

remained uncontrolled. All motor carrier transportation businesses for reward within the defined areas or on the defined routes had to be the holders of motor carrier certificates issued under the Act.

In 1932 the Act was amended and control tightened. Vehicles operated by commercial and industrial undertakings in the course of their businesses as such were then made subject to control and they had become specially exempted from the obligation to obtain motor carrier certificate to operate their vehicles. Inspectors were appointed to patrol the roads and to report unauthorised transportation. After 1932 numerous amendments were made to the Act to improve the control of road transportation in the Union. In 1933 the Act was made applicable to the territory of South West Africa.

In 1941 the limitation of control to defined routes was abolished and motor carrier transportation on all public roads was brought under the provisions of the Act and more effective control of taxi operations was provided for. The Union and South West Africa were sub-divided into eleven local transportation areas each with a local board. Virtually all transportation by road of persons and goods for reward or in the course of business had to be authorised by the local board concerned, or if it traverses more than two areas by the National Transport Commission, to which reference is made in the next paragraph.

In 1948 the Transport (Co-ordination) Act was passed which provided for the establishment of a National Transport Commission to which were transferred the functions of the Central Road Transportation Board, together with those of the Civil Aviation Council and the National Road Board. This Act laid down that the National Transport Commission had as object to promote and encourage the development of transport in the Union and, where necessary, to co-ordinate various phases of transport in order to achieve the maximum benefit and economy of transport service to the public (A Century of Transport, 1960:171-172).

2.2.2 The Page Commission (1945)

The next commission to inquire into and report on various aspects of road transportation was appointed on 17 October 1945 under the chairmanship of Major Sidney Maynard Page, with

the following terms of reference: "To inquire into and report upon the conditions regarding road motor transportation in the Union and the Mandated Territory of South West Africa, including the working of the Motor Carrier Transportation Act (Act 39 of 1930) as amended, and particularly -

- (1) securing the employment of all forms of road motor transportation to the greatest public advantage;
- (2) the advisability of defining the spheres of operation for various classes of public road motor transport operators; and the desirability in the public interest of conferring upon publicly-owned and other properly constituted transport organisations, the primary right to operate and develop motor carrier transportation in town and/or country areas in the Union;
- (3) the methods by which the safety and convenience of the general public, as affected by road transport, can be promoted;
- (4) the measures to be adopted for the better regulation, control and co-ordination of road motor transportation and the practicability of introducing a Road Traffic Act for the Union;
- (5) any other matters affecting road motor transportation which you may deem necessary to include in your inquiry."

The Commission of Inquiry into Road Motor Transportation published its report on 3 March 1947 (U.G. 46, 1947).

The Commission found that the need for the continuous regulation of road transportation and the prevention of excessive competition between road motor vehicles and the railways had been irrefutably proved (Page Commission, 1947:40).

2.2.3 The Marais Commission (1965)

On 5 March 1965 a commission of inquiry was appointed under the chairmanship of Dr Marthinus David Marais, with the following terms of reference:

"With due regard to -

- (a) the legal provisions applicable to the South African Railways concerning the balancing of its budget, and the fact that subsidising of the Railways by the Central Government is limited to the services mentioned in sections 105 and 106 of the Republic of South Africa Constitution Act (No 32 of 1961); and
- (b) the relevant road systems and the standards and carrying capacity of the roads;

to investigate and report upon -

- (i) the role which the different forms of transport such as railway, road, air, pipeline and shipping in the Republic of South Africa and the territory of South-West Africa must fulfil to promote the development of the national economy in the most efficient manner;
- (ii) the nature of the control measures and administrative machinery necessary to ensure that the role determined for each form of transport, in accordance with paragraph (i), is fulfilled in the most efficient manner, either separately or by way of co-ordination with one or more of the other forms of transport; and
- (iii) any other matter which the Minister of Transport may refer to the Commission."

The Commission of Inquiry into the Co-ordination of Transport in South Africa published its report in 30 January 1969 (R.P. 32/1969). The basic principles of control remained unchanged.

2.2.4 The Van Breda Commission (1977)

The commission under chairmanship of Mr Alexander van Breda was appointed on 21 July 1975 to inquire into, consider and report upon the Road Transportation Bill (W.1, 1975); and to make recommendations regarding amendments to the said Bill which may be deemed necessary.

Although various amendments to the Motor Carrier Transportation Act (Act 39 of 1930) had been made since 1930, the principles underlying the regulation and control of transportation remained unchanged. Generally speaking, the transportation of persons and goods by motor vehicle on a public road for reward or in the course of trade or business was prohibited, unless the necessary authorisation to undertake such transportation had been obtained in the prescribed manner from the statutory bodies established to administer the Act. These statutory bodies, viz the National Transport Commission established under the Transport (Co-ordination) Act (Act 44 of 1948) and the local road transportation boards established under the Act, were autonomous Government bodies which performed a quasi-judicial administrative function.

The basic objective of the Motor Carrier Transportation Act (Act 39 of 1930) was to provide a system of control of unauthorised road transportation so as to prevent the development of an unsound, unco-ordinated and uneconomic transportation system which would be to the detriment of the general public (Van Breda Commission, 1977:6).

The Van Breda Commission found that by 1977 neither the private sector, nor the South African Railways in particular, favoured the complete abolition of statutory control measures in the field of road transportation, but both agreed that gradual deregulation in various fields was desirable. The Commission found that qualified deregulation should take place gradually, and that for the railways to enter a situation of freer competition would involve tremendous adjustments in tariffs, which would have a profound effect on the country's economy, particularly if the lower uneconomic tariffs were to be raised to a cost basis (Van Breda Commission, 1977:7).

The Road Transportation Act (Act 74 of 1977) was promulgated on 1 January 1978 and under the Act concessions were made in order to achieve the goal of freer competition in the interests of both the road transportation industry and the country as a whole. Although the Act allowed more freedom, it also controlled what may be transported where, and by whom. Permits public, private and temporary allowing the transportation of goods were granted to an operator by local road transportation boards, who had the power to impose certain conditions regarding the permissible type of goods, area of operation, and the effective period. Under the principle of deregulation, more and more transportation was exempted from the permit system. Certain "exempted goods" could be transported anywhere without permits and transportation of any goods could be undertaken freely in proclaimed "exempted areas" (Fleet Management Digest, 1995:37-38).

2.2.5 The White Paper on National Transport Policy, 1986

The National Transport Policy Study (NTPS) was undertaken to investigate and formulate recommendations towards a revised transport policy for the Republic of South Africa which would be compatible with the current environment and which would also be in line with national policy. Various affected parties formulated prerequisites for the implementation of certain other recommendations.

The most notable of these prerequisites were that:

- (1) The South African Transport Services had to be relieved of the financial burden of providing uneconomic socio-economic services.
- (2) The South African Transport Services were to be allowed to introduce cost related rail freight rates.
- (3) Private road hauliers should have been made to contribute "their relative proportion" to the provision and maintenance of roads.

- (4) The South African Transport Services were to be allowed to remain autonomous and be relieved of other obligations imposed on it. It had to, for example, been given the right to refuse traffic or to suspend services.
- (5) Appropriate and sufficient infrastructure for on-the-ground enforcement of road quality matters ought to have been introduced. (Infrastructure implies testing centres, and route facilities, sufficient and adequately trained inspectors, and so on.)
- (6) The role and function of the SA Road Transport Services of the South African Transport Services had to be clarified.
- (7) The rates at which harbour charges, including ad valorem wharfage, were levied against coastal shipping had to be brought onto a cost recovery basis and that the South African Transport Services should have been relieved of its burden of inter-departmental cross subsidisation.
- (8) Operators in all modes were to pay full taxes, licences and levies on inputs. The South African Transport Services' reciprocal agreements on these matters were to have been terminated.

The Government accepted these pre-conditions set by various organisations to be met prior to the implementation of a new transport policy (White Paper on National Transport Policy, 1986:3-4).

The Government accepted the NTPS principles for a new freight transport policy, and its view was that the implementation of these principles would bring freight transport policy in line with national policy regarding the desirability for competition, the provision of easier entry into the road transport market, more scope for private initiative, the encouragement of small business development and the creation of a framework for a more efficient and less costly system of transport for the country.

As a result of the NTPS the Transport Deregulation Act (Act 80 of 1988) was promulgated and Section 5 of the Act empowered the Minister of Transport to gradually phase out the restrictions of the Road Transportation Act. By 1 July 1993 the Road Transportation Act ceased to be in force in respect of all goods vehicles that were not engaged in cross-border transport.

The Road Traffic Act (Act 29 of 1989) consolidated and repealed the four provincial Road Traffic Ordinances in order to achieve national uniformity and simplification. Under the Act the economic regulation of the road transport industry were abolished and replaced by the technical regulation of operators and vehicles.

Although not implemented until later, certain sections of the Act provided for the institution of the "Road Transport Quality System" (RTQS) with the introduction of additional new stringent regulations aimed at setting certain standards for road transport operators, a step which was a prerequisite for the eventual abolition of the permit system operating under the Road Transportation Act (Fleet Management Digest, 1995:37,39).

2.3 Other commissions of inquiry on rail transport in South Africa

2.3.1 The Schumann Committee, 1964

The Committee on Railway Rating Policy and Industrial Location in South Africa (the Schumann Committee) was appointed on 2 February 1962. The complete terms of reference of the Committee were to inquire into, report upon and make recommendations in regard to-

- (i) the principles underlying the existing rating policy and method of tariff determination of the South African Railways in respect of goods and passenger traffic by rail and by road, as well as the harbour services, but excluding air traffic and the activities of the Publicity and Travel and Catering Departments and the Grain Elevators;

- (ii) the influence of the existing railway rates and the total costs of transport on the national economy and in particular on the geographical location and/or development of industries;
- (iii) the adaptation, where necessary, of the rating policy and the method of tariff determination with a view to -
 - (a) the promotion of decentralisation of industries and the development of border areas, and
 - (b) the elimination or reduction of present uneconomic rates;

with due regard to the effect of the proposed adjustments on the general well-being and development of the national economy, on the understanding that the revenue of the South African Railways derived from all services and sources should be sufficient to cover the total expenditure (Schumann Committee Report, 1964:ix).

The Schumann Committee published a report 10 April 1964 with details of how railway rates could be revised in line with the suggestion that the SAT should become less dependant upon its system of differential rating, by aligning railway rates more closely with the cost of conveyance. It was not proposed that the "value of service" principle should be abandoned entirely, but rather that greater emphasis should be attached to real cost of transport. The recommendations of the Schumann Commission were, however, initially only accepted in principle. Five years later the Marais Commission of Inquiry into the Co-ordination of Transport in South Africa (1969:29) strongly endorsed that the Schumann recommendations be implemented. The Marais Commission also believed that there was a need for transport by rail to be speeded up and suggested that a modernisation programme be undertaken (Freeman, 1981:33).

2.3.2 The De Villiers Report on S A Transport Services, 1986

The study by Dr W.J. de Villiers regarding the strategic planning, management practices and systems of the South African Transport Services was published in July 1986. It was accepted in its entirety by Parliament, except for the recommendations that (i) the Minister of Transport Affairs should serve as chairman of the Control Board and (iv) that the Transport Services be exempted from company tax.

Since the completion of the report it has become Government Policy (i) that the transport market be deregulated as far as possible; (ii) that the S A Transport Services be converted into an undertaking pursuing profit which is liable to taxation on the same basis as any other company; and (iii) that high priority be given to the privatisation of Government undertakings (Report of the Minister of Transport Affairs on the De Villiers report).

3. The evolution of the SAR & H to Transnet

The South African Railways and Harbours (SAR&H) came into existence with the unification of the then four colonies of South Africa in 1910. The harbours of Natal and the Cape Colony as well as the railway systems of the Cape Colony, Natal, the Orange Free State and Transvaal were combined to form the SAR&H.

The organisation was established by virtue of the South Africa Act, 1909. In 1961, with the establishment of the Republic of South Africa, this Act was replaced by Act No. 32 of 1961. However, with regard to the manner in which the SAR&H should have been operated, the essence of the original Act did not change in 1961.

In 1981 the South African Transport Services Act, Act No. 65 of 1981, was substituted for Act No. 32 of 1961. With this Act the name of the South African Railways and Harbours was changed to the South African Transport Services (SATS). Section 7 of Act No. 65 of 1981 was substituted for Section 103 of Act No. 32 of 1961, which pertained to the management of the South African Railways and Harbours.

Section 7(1) of Act No. 65 of 1981 reads as follows:

"7(1) The South African Transport Services shall be administered on business principles with due regard to the economic interests and total transport needs of the Republic."

Until 31 March 1990 SATS operated under the South African Transport Services Act (Act No. 65 of 1981). This Act allowed a wide range of powers to SATS which effectively enabled SATS to be regarded as a commercial enterprise of the State, although its main object was to operate uneconomic passenger transport services.

The Legal Succession to the South African Transport Services Act, 1989 (the Act), implemented (with some modifications) the findings of the De Villiers Report, as accepted by Government. The Act mainly created a mechanism to privatise SATS and to separate the uneconomic rail commuter services from the economic services.

The Act provided for the establishment of a public company (the Company or TRANSNET) and the South African Rail Commuter Corporation (the Corporation) as successors to the legal interests of SATS. The twofold objective of the act is:

- to establish separate corporate institutions as successors to
 - * the truly commercial (i.e. profit-orientated) enterprise of SATS, namely its harbour, pipeline, airway, road transport, rail freight and mainline rail passenger services; and
 - * the social service provider of SATS, namely the currently (but not necessarily) unprofitable rail passenger commuter services; and
- to constitute and empower the Company and Corporation so as to facilitate and enable their purification in whole or in part (Passenger Transport Policy Review; 1, 2, 3).

4. The life cycle of railways

According to De Villiers (1986:15) four stages of the life cycle of a utility establishment in different service industries can be identified in the USA.

Stage 1 : The introduction of the service and the form of the utility.

Stage 2 : The system takes on form and grows rapidly by the acquisition of new marketing areas and the employment of the service or product. At this stage cross-subsidisation settles in, the utility usually starts demanding regulation and legality is given to regulation.

Stage 3 : The utility reaches technological maturity and its market becomes glutted. Competing technologies and services, however, increase which lead to greater cross-subsidisation.

Stage 4 : The system yields to competitive pressure and regulation decreases.

In South Africa stage one for railways lasted from 1860 to about 1896 and stage two, from 1896 to 1930, approximately 34 years. The third stage covered 48 years from 1930 to 1978 and in this stage the railway industry in South Africa experienced increasing pressure from motor truck competition. Rail transport continued to lose business and financial problems for the railways mounted. The railways reached technological maturity in this stage.

In stage four from 1978 to 1993 profitability decreased continuously and "natural" monopolies disappeared. Market forces increasingly, rather than regulation, determined tariff levels and the scope of service.

The role of railways is described in the report of the Royal Commission of Transportation, 1961. This refers to the last part of the lifecycle of the Canadian Railways when maturity had been reached.

"The railways' role as an instrument of national policy promoting settlement and production of traffic by the incentive of cross-subsidisation through the medium of a classified rate structure is obsolete. It follows that the only way to preserve the railway (as distinct from a railway company) as a viable commercial operation is to have it concentrate on fulfilling those transportation functions in which it has inherent cost advantages. The full economies of rail operation (as distinct from a railway company) can only be achieved by a plant and service adjusted to the realities of the new competitive environment. If rail services are demanded by the nation beyond inherent competitive advantages the cost of such demands cannot be avoided by the nation" (De Villiers Report, 1986:16-17).

The same applies for railways in South Africa and the impact of competition must be counteracted with new strategies.

4. Bibliography

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