

# PRESENTATION TO PORTS REGULATOR OF SOUTH AFRICA

## PORT TARIFF METHODOLOGY: 2021/22 – 2023/24

### 5 FEBRUARY 2020



**competition commission**  
south africa

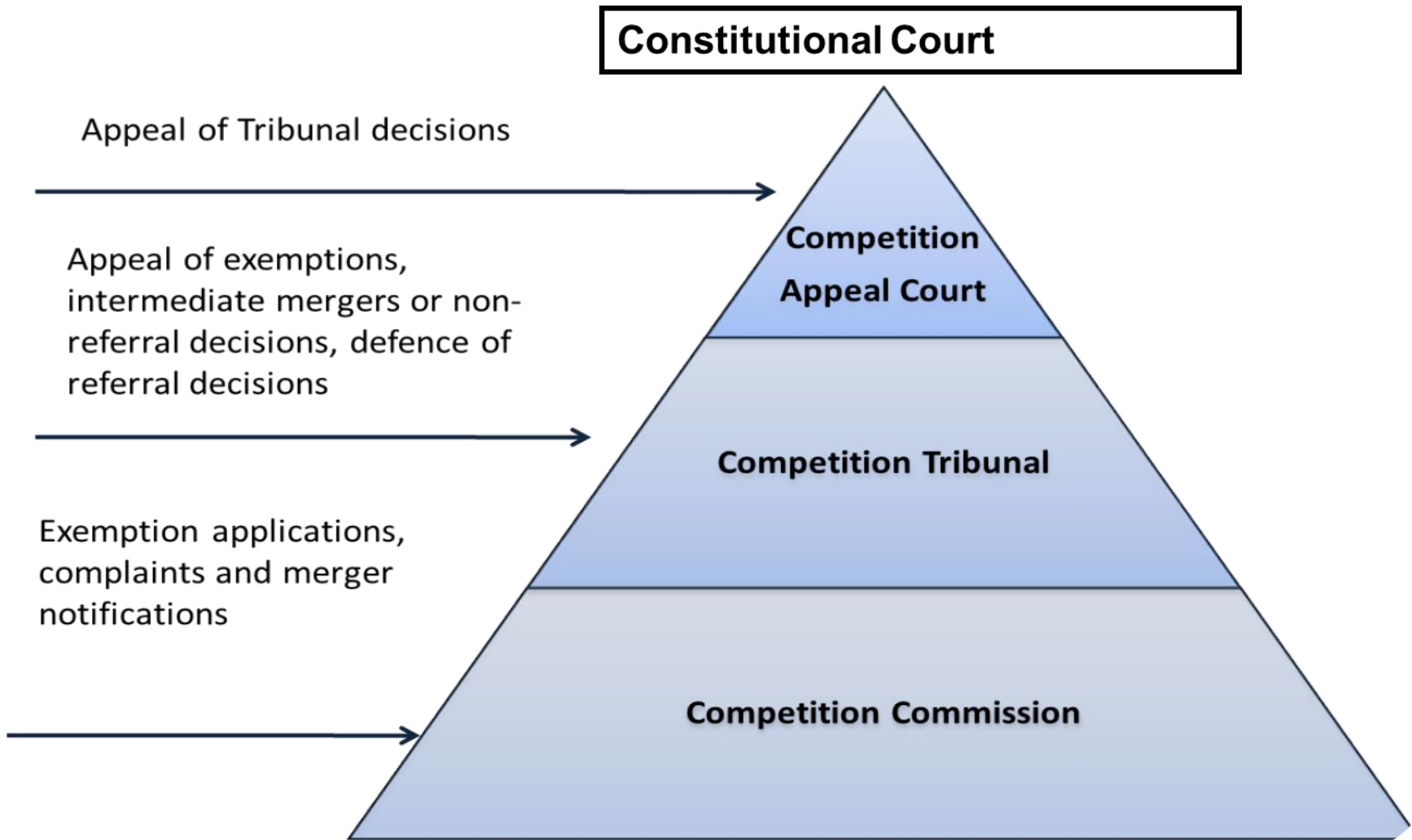
# Outline of the presentation

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- Competition issues within the ports sector:
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# Commission's Mandate and Objectives

- Commission is established in terms of the Competition Act 89 of 1998 with the purpose of promoting and maintaining competition in South Africa
- The mandate of the Commission includes *inter-alia*:
  - Investigate and prosecute restrictive horizontal and vertical practices
  - Investigate and prosecute abuse of dominant positions
  - Decide on merger and acquisition applications
  - Conduct formal market inquiries
- Section 21(1) of the Act empowers the Commission *inter-alia* to:
  - Participate in the proceedings of any regulatory authority
  - Advise, and receive advise from any regulatory authority

# Competition Authorities



## Commission's investigation

- In 2016, the Commission is initiated a complaint against Transnet SOC Ltd (“Transnet”) and its two divisions, namely, TNPA and Transnet Port Terminals ("TPT") for alleged:
  - Excessive pricing in the provision of port services - Section 8 (a) of the Act
  - Exclusionary practices in the prioritisation of cargo and berthing at port terminals - Section 8(c) of the Act
  - Exclusion of private terminal operators- Section 8(b)/8(c) of the Act
- The investigation was initiated based on information available in the public suggesting high port charges and possible exclusionary practices

# Commission's Preliminary Findings

- Commission's preliminary findings include –
  - Port tariffs and charges remain high in South Africa
  - Treatment of capital invested is the main cost driver
  - Ports users continue to raise concerns around the high costs of using South African ports
  - Private terminal operators continue to raise concerns around the market structure and alleged exclusionary practices
- NB: The Commission is yet to make a final determination on the alleged excessive pricing and exclusionary practices

## Other investigations: Siyakhupuka Complaint

- Complaint received in the past regarding structural issues
- Siyakhupuka brought a complaint to the Commission on 02 April 2014 alleging that TNPA favours TPT regarding terminal licencing
- Complaint was not pursued by the Commission and was heard by the Tribunal after self-referral by Siyakhupuka
- Complaint was dismissed by the Tribunal noting that:

*“Although the inaction by the Minister of Transport and Minister of Public Enterprises, contrary to sections 4(1) and 4(2) of the Ports Act, and its failure to establish National Ports Authority (Pty) Ltd is undesirable, this is a matter for Parliament to determine and not the Competition Tribunal”*

## Other investigations: Siyakhupuka Complaint

- The Tribunal decision was overruled by the Competition Appeal Court in July 2018
- In its judgement, the Competition Appeal Court ruled that:  
*“Having considered the appellant’s complaint, I am satisfied that it is squarely based in alleged competitive conduct under Chapter 2 of the Competition Act, abuse of dominant position and refusal to provide access to an essential service in violation of section 8 of the Act. To my mind, these are matters of competition which are better dealt with by the Competition Commission”.*
- The matter is yet to be resolved before the Tribunal
- Access to ports remains a challenge to private terminal operators



## Port Tariff Methodology- 2021/22- 2023/24

- The proposed changes in Port Tariff Methodology: 2021/22- 2023/24 include *inter-alia*:

***“ii. The Regulator will differentiate between assets in existence in 1990 and those with capitalisation dates after 1990 and will treat the older assets on a Historical Cost basis.***

***iv. On application by the NPA as part of its annual Tariff Application, the Regulator may, in considering the revenue impact of the implementation of the methodology decide to accelerate the depreciation period of the pre-1990 assets in order to smooth out the revenue”***

## Commission's Comments

- The Commission notes the proposed changes on the draft tariff methodology for 2021/22 – 2023/24
- TNPA's asset base appears to be the main cost driver of port tariffs
- The Revenue Requirement Model appears to have been over-compensating TNPA through old assets (i.e. assets acquired before 1990 from the State) - such assets should be treated differently in order to achieve competitive and developmental prices given TNPA's monopoly
- The proposed distinction of pre and post 1990 assets as well as depreciation of assets pre 1990 will likely reduce TNPA's asset base, Revenue Required and eventually reduce tariffs charged

## Commission's Comments Cont..

- The current methodology has limited information on how cost should be allocated per customer group (e.g. cargo owners, shipping lines)
- Lack of appropriate methodology on cost allocation and a fair allocation of revenue amongst customers has the potential to lead to excessive revenue or prices being charged to some customer groups
  - The Ports Regulator should therefore consider implementing a transparent methodology on cost allocation between the different port users

## Commission's Comments Cont..

- The market outcomes prevailing in the ports system are as a result of various factors such as:
  - Market structure (i.e. the TNPA and TPT falling under Transnet). The structure is undesirable and has the potential to result in gatekeeping, inefficiencies and exploitation of users
  - Lack of competitive constraints (i.e. limited competition against TPT as a result of terminal licencing regime by TNPA)
  - Choice and scope of regulation (i.e. regulation of TNPA's prices by the Ports Regulator and unregulated environment of TPT)
  - Port Tariff Methodology applied in the past (i.e. Revenue Required Model and no distinction of pre and post 1990 assets)

## Conclusion

- The proposed methodology will contribute to lower costs
- However, there are other areas which require further consideration in order to achieve an efficient and competitive ports system
- The further areas of consideration include structural reforms such as:
  - Implementation of Section 3(3) and 4(1) of the National Ports Act of 2005, which requires the creation of a new company, called National Ports Authority (Pty) Ltd to carry out the functions of TNPA in an independent manner
  - Possibility of regulating tariffs charged by TPT and other private terminal operators in line with the proposal of the Transport Economic Regulation Bill currently before Parliament. The Bill seeks to regulate pricing of all entities or facilities in the transport sector

**THANK YOU!**

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