

Port Governance in South Africa

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Abstract

Ports in South Africa have passed through various governance structures. This paper examines the literature and gathers industry perspectives on the historical evolution of South African port governance structures. The findings show that South African port governance has evolved from the Pre-Union autonomous structures (1833 – 1908) to the South African Railways and Harbours (1909 – 1981) to the South African Transport Services (1982 – 1989); and to Transnet from 1989 till the present. South Africa is pursuing a democratic developmental state and the country's state-owned enterprises are to play a vital role. Therefore, the port reform rhetoric in South Africa has clearly shifted from discussions on the potential concession of port terminals to discussions on public-private partnerships. The nascent Ports Regulator of South Africa has the potential to address several of the historical governance issues, but the Regulator needs to be strengthened. Furthermore, Transnet National Port Authority should improve governance through increased transparency by providing more detailed information to the Ports Regulator.

Key Words: Port Governance, South African Ports; Privatisation

JEL: R48; L33; L91

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1. Introduction

The South African government has acknowledged the strategic role of ports and the necessity to promote effective and efficient transport throughout the logistics chain (NFLS, 2005; Havenga, 2010; Chasomeris, 2011a). Port users have expressed a justified discontent with port governance, policy and pricing that promoted: import substitution; intra- and inter-port cross subsidisation; inter-modal cross subsidisation; insufficient investment in port infrastructure and superstructures; bureaucracy; skewed prices; and created suspicion in the maritime and transport industries about the impartiality of the port entity (Jones 1988; Department of Transport, 2002: 13; Chasomeris, 2011a).

This paper examines the literature and gathers industry perspectives on the historical evolution of South Africa's port governance structures. There are several definitions of governance. Most frequently, the term governance is used to refer to corporate governance (Brooks & Cullinane, 2007). Sternberg (1998: 20 in Brooks & Cullinane, 2007: 11) defines corporate governance as constituting "ways of ensuring that corporate actions, assets and agents are directed at achieving corporate objectives established by the corporation's shareholders." Consequently, private corporations are not expected to deliver on the social welfare or public policy objectives of government (Brooks & Cullinane, 2007). South Africa's ports are publicly owned, by a state-owned enterprise called Transnet National Port Authority that is obligated to implement public policy objectives and act in the best interests of the country.

The World Bank report (2010: 9) suggests that "policy has a strong influence on logistics sector performance". Micco and Perez (2001) confirm that distance is still the main factor behind transport costs; however, among the many other variables that affect transport costs, the efficiency of ports is the most important, and the one that can be most directly affected by government. Legislation, policies, rules and codes of conduct have the ability to shape governance. Proper governance requires that a company must be compliant with all legislative requirements, that is, those emanating from parliament. In addition, the King Code of Governance for South Africa (King III, 2009) outlines seven characteristics of good corporate governance for which all South African companies should comply. These characteristics are; discipline, transparency, accountability, independence, responsibility, fairness and social responsibility (King III, 2009).

This paper proceeds as follows. Section 2 provides an historical background and context to port governance in South Africa. Section 3 examines contemporary impressions of port governance issues in South Africa. Section 4 concludes.

2. Historical Overview of the Evolution in South African Port Governance Structures

South Africa's ports have evolved under various forms of governance from the Pre-Union autonomous structures (1833 – 1908) to the South African Railways and Harbours (1909 – 1981) to the South African Transport Services (1982 – 1989); and to Transnet from 1989 till the present. Port users have expressed an often justified discontent with the commercial ports performance, pricing and governance. As a result, the state-owned Ports Regulator of South Africa came into effect in May 2007. As per the National Port Act of 2005, the main functions of the Ports Regulator are to: “exercise economic regulation of the ports system in line with government’s strategic objectives; to promote equity of access to ports and to facilities and services provided in ports; to monitor the activities of the National Ports Authority to ensure that it performs its functions in accordance with this Act; and also to hear complaints and appeals under the Ports Act. This mandate is to be exercised in accordance with government policy in respect to commercial ports, as set out in the National Commercial Ports Policy” (Ports Regulator, 2011a). Table 1 provides a brief history on South Africa’s port governance and pricing.

Table 1. A brief history of South Africa’s port governance and pricing

Duration	Organisation	Governance and Pricing attributes
1833 – 1908	Autonomous Structure Pre-Union	<ul style="list-style-type: none"> • The harbours were financially autonomous • Each port authority administered its own tariffs • Revenue generated as a result accrued to harbour administrations and was easily identifiable. • Inter-port competition was rife and promoted competitive tariffs.
1909 – 1981	South African Railways and Harbours (SAR&H)	<ul style="list-style-type: none"> • The unification of both the harbour and railway authorities. • The subsequent introduction of a uniform tariff structure brought to an end the prior inter-port competition. • The ports were supposed to be run according to sound business principles, generating enough revenue to remain self-sufficient, with the exception of providing preferentially cheap transport specifically for the agricultural and industrial sectors. • There was a large degree of cross-subsidisation from the surplus profits generated by harbour activities to cover the

		losses incurred by the railways
1982 – 1989	South African Transport Services (SATS)	<ul style="list-style-type: none"> • The SATS Act of 1981 transformed SATS into a business enterprise belonging to the state. • The ports’ physical capital, from an expenditure and revenue perspective, was controlled by SATS. • The Act also required that the “economic interest and the transport needs of the whole country” be taken into consideration, rather than just those of the agricultural and industrial sectors. • Although SATS reduced inter-modal cross-subsidisation that placed harbour profits in better perspective, there was still some surviving inter-modal and considerable intra-port cross subsidisation.
1989 – 2007	Transnet	<ul style="list-style-type: none"> • To commercialise the activities of SATS, a public company called Transnet was formed on the 1st November 1989, with government as the sole shareholder. • Transnet was the umbrella company, which maintained five divisions: Spoornet (rail); Portnet (ports); Petronet (pipelines); Autonet (roads); and South African Airways, all of which operated as separate companies. • Portnet had two conflicting objectives: firstly, it had to act as a port authority to safeguard public interest, and secondly to exploit its comparative advantage in the pursuit of its objectives. • In 2002, Portnet split into a landlord port authority (now called Transnet National Port Authority and a port operator (now called Transnet Port Terminals). This was a result of the National Commercial Port Policy of 2002.
2007 – Present	Transnet and Ports Regulator	<ul style="list-style-type: none"> • Ports Regulator was established under the provision of National Ports Act of 2005 which objectives are to: <ul style="list-style-type: none"> ○ Develop an effective and productive port industry for economic growth and development ○ Promote and improve efficiency and performance in the management and operations of ports. ○ Promote the development of an integrated regional production and distribution system in support of government policies • Although both Transnet and Ports Regulator are state owned entities, they are independent of each other. • Since 2010/11 TNPA has to apply for tariff increases

		<p>annually to the Ports Regulator.</p> <ul style="list-style-type: none"> • Ports Regulator allows for industry comments on the TNPA tariff application and TNPA’s responses to those comments and then makes a decision. • TNPA has developed Port Rules in terms of section 80(2) of the National Ports Act “for the control and management of ports and the approaches thereto and for the maintenance of safety, security and good order in the ports”. Port rules came into effect on 6 March 2009.
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Source: Adapted from Jones, 1988a; 1988b, Chasomeris 2007, Ports Regulator 2009 in Chasomeris 2011b: 6 and Transnet 2011.

3. Contemporary impressions of Port Governance issues in South Africa.

This section discusses contemporary impressions of port governance, ownership and operation in South Africa. This section also shows contrasts and similarities between the South African ports model and other port models worldwide. Table 2 shows a Port Function Matrix. The matrix offers a conceptual framework to better understand four port models of regulation, ownership and operation. In a study of the world’s top 100 ports, Mouknass (2001) categorises 7 ports in model 1, 88 ports in Model 2, 2 ports in model 3 and the remaining 3 ports in model 4.

Table 2. Port Function Matrix

Port Models	Port Functions		
	Regulator	Land Owner	Operator
1. Public	Public	Public	Public
2. Semi-Public	Public	Public	Private
3. Semi-Private	Public	Private	Private
4. Private	Private	Private	Private

Source: Baird (1995, 1997) in Song and Lee (2007)

South Africa’s ports model is distinctive. South Africa’s eight commercial ports are publicly owned. The Ports Regulator is state owned, the state-owned enterprise (SOE), Transnet is the port landlord as Transnet National Port Authority (TNPA) as well as the

public port operator as Transnet Ports Terminal (TPT). Even though both the Ports Regulator and Transnet are state owned, they are independent of each other. Unlike the 4 typical port models shown in table 2, South Africa has both public and private sector operators. Table 3 shows the market share and distribution between the public and private sector operators.

Table 3. Public and Private Sector Market Share for Major Service Categories

Service	TNPA	Port Operation	
		SOE - TPT	Private Sector
Marine services	100%		
Bulk cargo handling		37%	63%
Break-bulk cargo handling		78%	22%
Container handling		97 ^a %	3 ^b %
Car (on wheels) handling		100%	

Note:

- a. These figures are approximations based on testing actuals on a limited number of cargo terminal owners.
- b. This figure is derived by excluding the containers that move through the multipurpose terminals, as the majority are TPT run, thus analysis of private terminal operators indicate that private terminals handle only 3% of national container traffic.

Source: Ports Regulator 2010:31.

The current South African port institutional structure has led the port users to express their justified discontent which includes player-referee concerns, monopoly power which prevent competition and promotes the complementary system of ports with a unitary pricing system, that is, a single tariff book that applies to all eight commercial ports.

There are several case studies on port reforms (Brooks and Cullinane, 2007). Port reforms have included: privatisation, concessions, commercialisation, port competition, and other structural reorganisation of the public sector involvement (such as Municipal or Nationally owned and operated ports). While many studies argue that port competition provides the best basis for good and efficient governance (Song and Lee, 2007), the uniqueness of South Africa's port context should be considered. Moreover, the lessons from the evolution in governance structures in other countries are evidence that there is

no simple “one size fits all” approach that can be applied to port reform. Several governments around the world have viewed competition and privatisation as the main solution to achieving port efficiency. Baird and Valentine (2007) observed, however, that privatisation in the United Kingdom did not lead to or improve ports efficiency; rather it has led the maritime sector to rely heavily on subsidisation. In China and Korea, privatisation has resulted in a more efficient ports sector (Cullinane and Wang 2007; Song and Lee 2007). As a result of privatization, Song and Lee (2007) conclude that more transparent governance has been achieved in Korea. Cullinane and Wang (2007) observed that the objectives and progress of port reform in China are fairly understandable. Some countries have been able to improve their efficiency and port management with continued government involvement, whereas other countries have experienced challenges with government involvement. Australia retained public ownership that has ensured continued political input which has led to political objectives hindering efficiency as the political objectives frequently override port objectives (Everett and Robinson, 2007). In contrast to Australia, the Ports of Singapore have remained entirely government-owned. Singapore was able to separate ports business from political business (Cullinane et al. 2007). In summation, it is paramount to take into consideration the economic and political context that the port is operating in before applying a particular reform strategy. Ports still have a crucial role to play in contributing to the upliftment of the economy. Hence in South Africa, before advocating for any particular reform strategy, one needs to understand the unique context of the country and the democratic developmental state vision that the country is pursuing.

In Korea, port competition has led to improved port governance (Song and Lee, 2007). South Africa’s port governance promotes a complementary system of ports as opposed to competition between ports. Furthermore, the current governance structure does not challenge the uniform system of port pricing, that is, a single tariff book that applies to all eight commercial ports. Chasomeris (2011b) notes, however, that the lack of competition and possible player-referee governance concerns might be dealt with by suitable regulation.

South Africa is pursuing an effective democratic developmental state (Poon, 2009). Edigheji (2005) defines the concept of a democratic developmental state as one that generates broad-based alliances with the general public and which ensures popular involvement in the governance and transformation processes. Edigheji (2005: 18) clarifies that the democratic developmental state should be “guided by the goals of coherence and authoritative governance, accountability inclusiveness, stability, ability to generate consensus and popular participation.” In discussing the democratic developmental state Edigheji (2005: 6) suggests that “a premium must be placed on its institutional or organisational attributes and its relations to surrounding social structures.” The concept of democratic developmental state entails that, in order for a country to

promote and achieve better economic performance, the country's SOEs are to play a vital role (Edigheji, 2005). Poon (2009: 2) explains that: "The concept of the 'developmental state' has become a buzzword for certain government officials and political figures, indicating their predilection to use greater degrees of state intervention and industrial policy as a means of achieving wide ranging priority economic/social policy objectives such as: creating economic growth, decent jobs and reducing poverty levels; spurring rural development, and land reform; as well as improving health/education sectors and public service delivery, and cutting the incidence of crime and disease". As a requirement to fulfill the democratic developmental state, Zuma (2009) suggests that South Africa has to strengthen her democratic institutions and improve public services. The strategy that South Africa will use to achieve the vision of the developmental state is to involve the state-owned enterprises and Development Finance Institutions in both strategic planning and performance monitoring and evaluation (Zuma, 2009).

This notion of South Africa being a developmental state has led Transnet (2010b) to believe that the current institutional structure is consistent with the quintessence of a democratic developmental state and further to have confidence that Transnet will remain the dominant player in regards to owning and operating of certain parts of the freight system for many years ahead. The South African economy has a number of challenges, which the SOEs in South Africa still need to confront. These challenges include a huge level of unemployment, skills shortages, increasing congestion, poor regional integration, weak maritime connectivity and the carbon intensity of the current system (Transnet, 2010b). More specifically, South Africa has an unemployment crisis. With just over 17 million people in the labour force, South Africa has an official unemployment rate of 24%, using a narrow definition, and a 36.4% unemployment rate using the broad definition that includes the 2.2 million discouraged work seekers. Transnet (2010b) believes that they are in a good position to enable the South African freight system to confront these challenges going forward. In addition to ports, Transnet controls all rail freight business in the country through Transnet Freight Rail (TFR) as well as pipelines. Notteboom (2011: 52) explains that "Transnet's unique position has prevented global terminal operators from entering the South African container stevedoring market ... While many argue that the powers of Transnet prevent competition, it creates an excellent environment for coordination among ports and between the ports and the rail system". Additionally, Transnet (2010b: 4) claims that they have "made significant strides over the past five years," and they have plans that include "creating additional capacity through efficiency improvements and expansion of the infrastructure network, attracting more cargo to rail and promoting intermodal solutions, developing a transshipment hub to overcome challenges of poor maritime connectivity both regionally and globally and developing a climate change strategy for the company." Since the country's focus on a democratic developmental state, the port reform rhetoric in South Africa has clearly

shifted from discussions on the potential concession of port terminals to discussions on public-private partnerships.

Companies in South Africa are generally considered to have good governance if they comply fully with the Companies Act 71 of 2008 as well as the King Code of Corporate Governance (King III, 2009). The King Report outline the seven elements for good governance as being discipline, transparency, accountability, independence, responsibility, fairness and social responsibility. While Transnet claims to be complying with the King Report a number of studies have criticised Transnet for not being transparent and for their lack of information in their reporting (Botes, 2006; Goode, 2007). Likewise, Thompson (2009) argued that a lack of transparency and a dearth of information, especially under consolidated reporting, makes oversight and regulation difficult if not unattainable. Hence, the burgeoning Regulator will be hindered by a lack of information. Indeed, the Ports Regulator decision making continues to be hindered by a lack of detailed information from Transnet. For example, the assessment of the 2011/12 tariff application was limited by insufficient information provided by TNPA (Ports Regulator, 2011b). A further hindrance to effective ports regulation is that the Ports Regulator is essentially under-resourced as it is allocated a budget of R9.3 million for 2011/12 to regulate TNPA with an assets base of about R50 billion.

4. Conclusions

This paper examines the literature and gathers industry perspectives on the historical evolution of South African port governance structures. The findings show that South African port governance has evolved from the Pre-Union autonomous structures (1833 – 1908) to the South African Railways and Harbours (1909 – 1981) to the South African Transport Services (1982 – 1989); and to Transnet from 1989 till the present. In 2007 the Ports Regulator of South Africa was established.

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