PUBLIC SECTOR – GOVT. – STATE ENTER PRISE

1998

JANUARY – SEPTEMBER

Robyn Chalmers

Aventura restructures to prepare for 100% privatisation

(260) BD 5/1/98

STATE-owned holiday resort company Aventura has undergone a wide-ranging restructuring exercise to prepare it for 100% privatisation later this year

A report by the public enterprises ministry shows staff levels have been reduced to about 1 600 from 2 100 in 1993, significant refurbishment and expansion has taken place, and there has been a shift in the client base away from a predominantly white Afrikaans market to middle-income earners

Aventura had implemented social responsibility and affirmative action programmes while ensuring that staff developed a customer service orientation and moved away from a bureaucratic administrative style New products had been introduced, including the Club Privé 10-year holiday ownership scheme and discount packages for pensioners Occupancies increased to about 65% last year from 59% in 1993

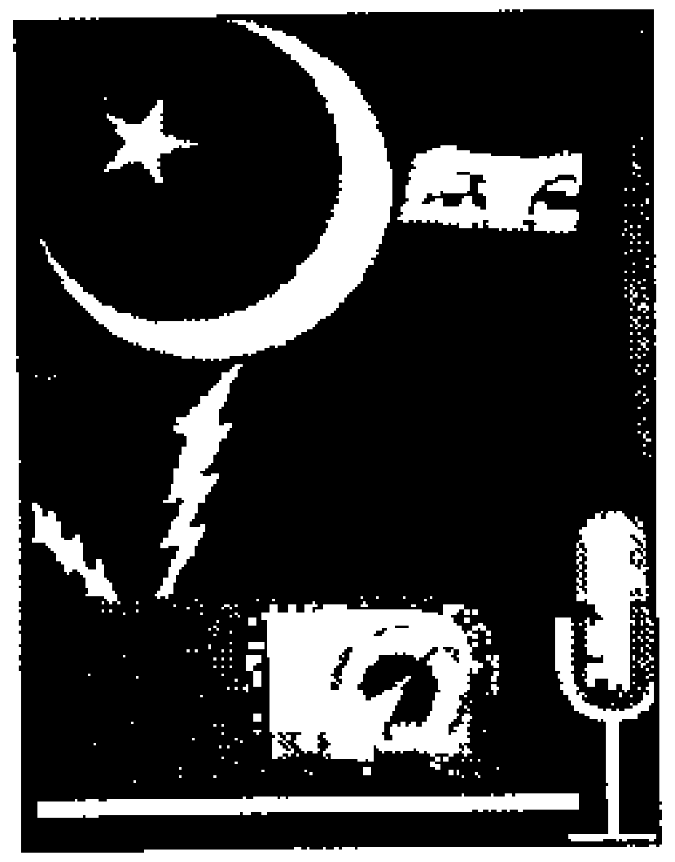
Aventura's sale has been hampered by land claims However, last month Public Enterprises Minister Stella Sigcau released a shortlist of bidders and she was confident that the sale would be completed this year

The five successful bidders for Aventura are Kopano ke Matla (Cosatu's investment trust), Phalafala Leisure Consortium, Sanco Consortium, Boiketlong Investment Consortium and Shomang Investment Holdings.

A due diligence exercise involves presentations by Aventura's management and visits to 15 holiday resorts The prequalifiers will be invited to submit binding offers and, in the meantime, the state will value Aventura's land

The report showed steady improvements were made in Aventura's profitability between 1994 and 1996 In the 17 months ended August 1994, Aventura posted a net loss of R13m on turnover of R123,8m It was turned into a net profit of R1,9m on turnover of R123,7m in the 12 months to August 1996.

As Aventura no longer received state subsidies, it borrowed funds and sold Club Privé "debentures" to fund its initial operating losses and limited refurbishment programme. Interest-bearing bank debt has been kept static for two years at R27m



One freedom versus another

Radio Islam issue pits religious rights against gender equality, writes Colleen Lowe Morna

(260) Star 15/1/98

Behind the legal gymnastics that have characterised Radio Islam's application for a new licence lies one of the most important constitutional issues of our time Does the right to religious freedom, as enshrined in the Bill of Rights, give a religious group the right to breach the fundamental values on which our new democracy is built: namely human dignity, equality, freedom and non-sexism? If so, what hope is there that we will ever get to the root of gender inequality, so much of which is justified on religious, cultural and traditional beliefs?

The Radio Islam case was first drawn to the public's attention by a progressive Muslim group called the Youth for Islamic Enlightenment and Development (YIELD). In complaints lodged with the Independent Broadcasting Authority (IBA) and Commission on Gender Equality (CGE) last year, YIELD argued that female members of the Muslim community were being discriminated against as a result of the station barring the voices of women from being heard on air

YIELD cited Section 14 of the IBA Act which required the radio station to "serve the interests of the Islamic community living within its broadcasting area"

A complaints committee constituted by the IBA ruled late last year that women be heard for at least three hours a day on Radio Islam programmes and that women constitute one-third of its management.

The station openly defied the ruling and used the public airwaves to issue threats against the parties who originally lodged the complaint, including a Muslim member of the CGE.

In applying for a new licence to replace its temporary licence which expired on January 10, Radio Islam sought to change the original terms of its licence – which required it to serve the interests of the whole Islamic community within its broadcasting area – to "serving the interests of the Muslims who adhere to and accept the Islamic rulings and interpretations of the Jamiatul Ulama Transvaal" By narrowing the definition of those whom it serves, Radio Islam is hoping to win its case for excluding women from the airwaves on grounds of the beliefs of this particular Islamic group

At what was supposed to be a hearing for a new licence on January 10, Radio Islam won itself a one-month extension to its temporary licence thanks to technical bungling by the IBA which resulted in none of the substantial arguments being heard. A new application, and objections to it, have to be lodged over the coming month. The case, which may yet find its way to the Constitutional Court, raises crucial issues.

Of the five Muslim radio stations in South Africa, Radio Islam is the only one which disallows the voices of women. Globally, with the exception of the Taliban-governed areas of Afghanistan, Muslim women are audible in the public media

Even if there were a way of ensuring that the radio station only reaches adherents of the Jamiatul Ulama Transvaal (which in itself raises a number of practical questions), and even if we accept that this group is entitled to its views, how does one deal with the conflict of rights which this case raises?

The constitution states clearly that no rights are absolute All rights must be balanced against each other and are subject to the limitations clause "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom". Equality in the constitution is not just a right It is a fundamental value which both shapes and limits other rights

If the right to religious freedom were to supersede equality, what would stop a certain ethnic group from believing that it is superior to other ethnic groups, justifying this in terms of its religion, and then proceeding to oppress other ethnic groups? Do we not find in that argument the perfect justification for apartheid in terms of the constitution of the new South Africa? And if so, how can we possibly use the right to religious freedom, as a justification for oppressing women, who constitute more than half our population?

The women in tight black veils with narrow slits allowing only their eyes to show who sit at the back of the room during the hearings convened by the IBA in the Radio Islam case cut a particularly striking visual image of the oppression of women in our society

But, as Constitutional Court judge Albie Sachs so aptly put it "It is a sad fact that one of the few profoundly nonracial institutions in South Africa is patriarchy Amongst the multiple chauvinisms which abound in our country, the male version rears itself with special equal vigour in communities . Thus to challenge patriarchy, to dispute the idea that men should be the dominant figures in the family and society, is to be seen not to be fighting against the male privilege but as attempting to destroy African tradition or subvert Afrikaner ideals or undermine civilised and decent British values"

One of Radio Islam's more memorable programmes was a half-hour lesson on how to beat your wife. Sadly, this is a skill in which many South African men are so proficient that they hardly require lessons, let alone any prompting. Is this what freedom of speech and freedom of religion entitle us to? How do we strike the balance between the right to believe whatever we want to, and the exercise of that right in such a way that it does not undermine the sacred right of anyone – in this case of women – to be free and equal citizens?

■ *Colleen Lowe Morna is an adviser to the Commission on Gend*

Eskom forced to resuscitate medical aid

BD 15/1/98 ([illegible])(260)

Robyn Chalmers

ESKOM had injected almost R25m into its ailing medical aid scheme while ending its contract with the scheme's managed care administrator, Medimo, executive director Jac Messerschmidt said yesterday.

Eskom's management stepped in last October to stabilise the parastatal's medical aid scheme — which provides for 28 000 of Eskom's 40 000 employees — as it was losing several million rands a month.

Messerschmidt said there were still "lots of problems" facing the medical aid scheme, Esmed, but it was now at least on a sound financial footing. A once-off cash injection of R24,5m had been required to ensure its liquidity

"The managed care option was not working Medimo was supposed to be responsible for payments to hospitals, doctors and other medical practitioners but we found they either did not happen or were late," he said. Medimo declined to comment yesterday.

Messerschmidt said Eskom had subsequently cancelled its contract with Medimo, but there was still a "big mess" which had to be cleared up.

Messerschmidt said Esmed planned to move away from the managed care option and to revise its contributions and benefits

Eskom was negotiating with trade unions, which had a number of concerns, before a new system was introduced. "We do, however, expect to be moving away from the managed care option and reintroducing limits."

It was expected that the medical aid scheme would be back on track by the middle of the year.

The old Eskom Medical Aid Society discontinued its operations in December 1996 as it could not be sustained as a viable concern in the longer term. Esmed, a new medical aid managed care health scheme, was registered from January 1 last year and offered a range of options. These were a core option for medical emergencies, a savings scheme and a managed care option The medical aid scheme also provided for visits to traditional healers.

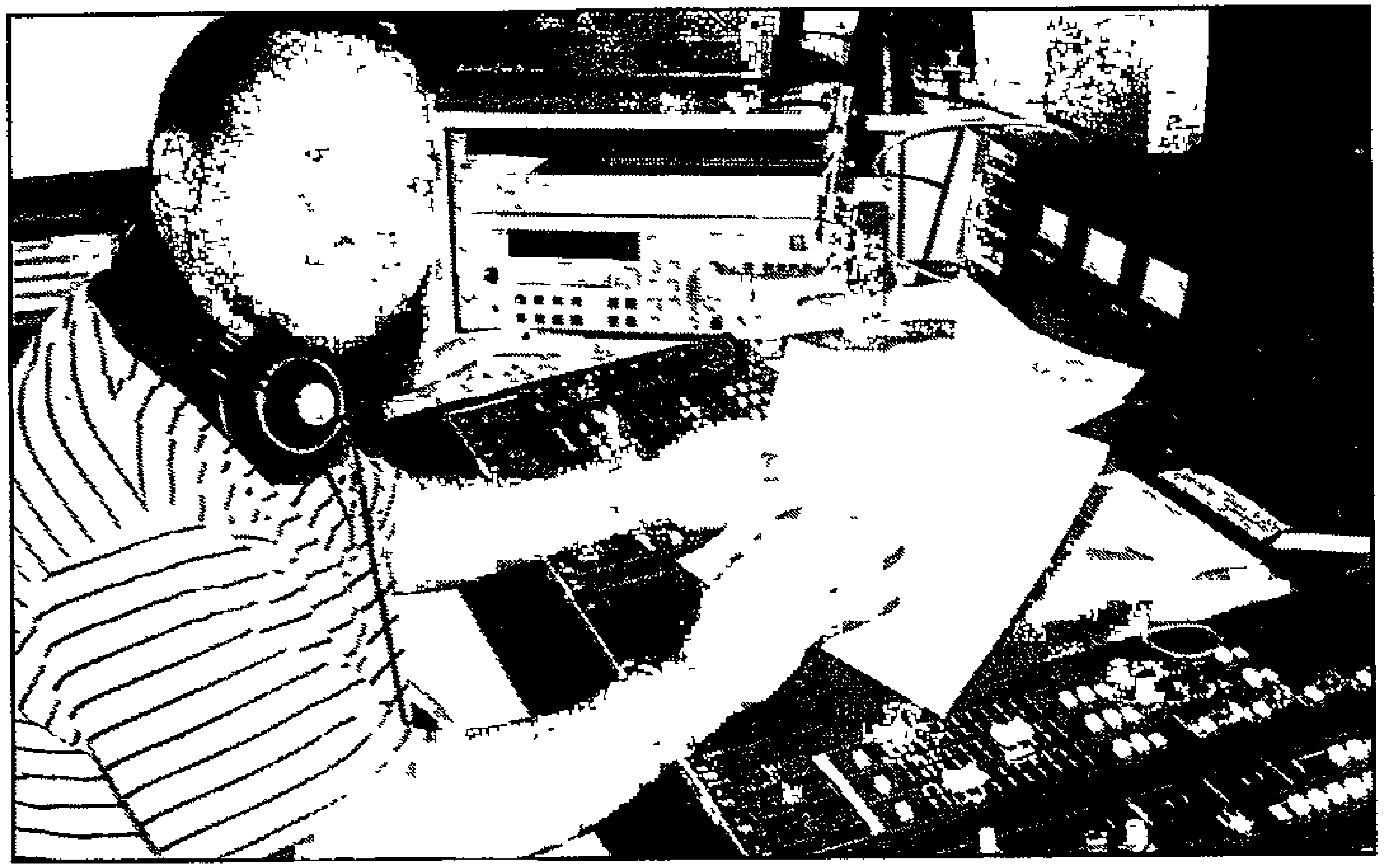
Eskom sources estimated that 75% of its 28 000 employees who belonged to Esmed had opted for or defaulted to the managed care option, the most expensive and also most open to abuse.

Messerschmidt said the managed care option had run into trouble due, among other things, to an overloaded administrative system, late payments and problems with service providers.

Eskom's board had instructed Messerschmidt to stabilise the scheme and investigate the way forward.

IBA's quota system stirs up a hornets' nest

(260) Sowetan 16/1/98



A random survey of some commercial stations shows that local music content is still low in South Africa.

By Gumisai Mutume

WHEN the Independent Broadcasting Authority (IBA) instituted a quota system to promote the development of local music in South Africa, it was ware of the problems to be faced

It had to ensure that nearly 100 licensed community radio stations and dozens of private and commercial and public stations complied with new licence conditions aimed at developing South African programming

"Without these regulations, some adio stations – which have no interest n African music – would continue to e like a European or United States peration in South Africa We are tryng to control that," says IBA pokesman Pekwane Mashilwane

Since last October, radio stations hich devoted more than 15 percent of heir air-time to music were compelled o ensure that 20 percent of that music s produced locally, but a random survey of some commercial stations has revealed that local musical content of their shows is still low.

"Some claim that there is not enough good local music and the little that is available makes their stations unattractive to their listeners," says Mashilwane

"Right now, the problem is about a state of mind," says Howard Belling of the Musicians Union of South Africa "Those radio stations that want will find the material, and those who do not will find excuses"

The IBA was set up in 1994 as the broadcast sector's regulatory body Its aim is to democratise the airwaves and ensure all South Africans receive fair broadcasts, free of government interference

It also seeks to encourage ownership and control of broadcasts by previously disadvantaged groups.

During the process of redefining broadcasting, the IBA has already granted community and commercial radio licences and is now in the process of opening up television

Private stations

Under IBA proposals, local content quotas are to increase to 55 percent by 2000 in the case of public and community broadcasters and 40 percent for private stations

The national broadcaster, the South African Broadcasting Corporation, is expected to ensure that 50 percent of its programming during SA television performance time between 5am and 1pm consists of local programming

According to the IBA, South Africa "has not seen itself reflected sufficiently on the television screens, nor heard its stories, folklore, mythologies and music on the radio".

In South Africa, 19 million people listen to the radio every day in a country of 37,9 million people To ensure compliance with its rules, the IBA's Broadcasting Monitoring and Complaints Committee investigates complaints regarding contravention, but it has its limitations

"With regard to monitoring, they are not really doing that," charges Tebogo Pooe, station manager at Soweto FM, a community radio station in Soweto

"We keep tapes of our broadcasts for 60 days as required, without anybody coming in from the IBA to pick them up Some stations are getting away (with ignoring the local quota)"

But critics also argue that the local content quotas are not necessarily 'reasonable and the market should be given free rein

Content quotas, they say, ignore the public's right to freedom, stifle the constitutional right of choice and could compromise the quality of programming "Unless somebody feels passionately that our music needs to be promoted and does so, we will remain a colony of America," says Belling

"We sought 50 percent (local music content), phased in over a three-year period, (but) they only gave us 20 percent I certainly believe it can work if we have the right approach"

The regulations came after much lobbying from South African musicians, who demonstrated in front of President Nelson Mandela's office to protest that local music was getting a raw deal

In countries such as Australia, it has been noted that local content requirements have promoted the development of indigenous music and the local record industry

Other critics have charged that the regulations pose a threat to specialist radio stations such as Classic FM which plays classical music

But according to Classic FM station manager Eon de Vos, they have no problem with the quota system *per se*, but regulations should allow for South African musicians based abroad to be considered "local" Music recorded and published abroad is not considered to be local – *Sapa-IPS*

Gender war becomes a radio jihad

(260) MtG 16-22|1|98

Ferial Haffajee

Women in black: Supporters of Radio Islam attended the IBA hearings. PHOTOGRAPH: RUTH MOTAU

Gender commissioner and renowned Muslim cleric Faried Esack has been given state protection after a series of death threats from the supporters of the renegade community station Radio Islam

Members of VIP protection services provide 24-hour security to the man who serves as acting head of the Commission for Gender Equality

"I have received very many death threats," said Esack, who also receives regular crank calls, including one this week from a cackling woman who claims she is about to give birth He lays the blame firmly at the door of Radio Islam, a Gauteng-based station that has broadcast programmes castigating the cleric

He is not the only target of the station's ire Two members of the organisation Youth for Islamic Enlightenment Leadership and Development (Yield) — which lodged objections against Radio Islam's refusal to allow women on the air — have had restraining orders served on the station Zayne Marimuthu and Iqbal Gaffoor claim they sought the orders after they received numerous death threats on the telephone

"They phoned me at work and at home They were usually short telephone calls where they would say 'Tonight you are dead ' It got so bad that we had to disconnect our phone," said Marimuthu this week

Gaffoor said the death threats had subsided after their court action though he also reports earlier calls where callers told him "We're after you We want to kill you"

The threats kept Esack away from last Saturday's Independent Broadcasting Authority (IBA) hearing for a new Radio Islam licence At the hearing women in full black purdah — the veiled covering where only the eyes are exposed — sat at the back of the packed hall while the front rows were filled by men wearing *kufiyyas*

The hearing was charged and while its leaders sat in front, the station's more gung-ho supporters at the back of the room threatened "We'll take the station to Swaziland if we don't get the licence We'll just broadcast from there "

Its temporary licence expired at midnight on Saturday, but it has been given a 30-day temporary licence to prepare to answer the concerns of six parties that object to the granting of further airtime to the conservative station

Radio Islam is in violation of a Broadcasting Complaints Commission ruling that last year instructed the station to allow women three hours broadcasting time every day

The station's powerful governing body has defied the order and instead sought help from high political office for its stand Essop Pahad, a deputy minister in Deputy President Thabo Mbeki's office, was reportedly approached for help and two African National Congress MPs, Ismail Vadi and Ram Saloojee, were present at the hearing The two had earlier sought to mediate a compromise with the IBA, which has not yet taken punitive steps against the station

Radio Islam is run by the Jamiatal-Ulama, the governing body for Muslim affairs in South Africa Controlled by South Africa's wealthiest Muslim families, the Jamiat carries great clout because it bankrolls most of the mosques, *madressas* (religious instruction classes) and Muslim schools in the country

The radio station claims that between 28 000 and 30 000 women supporters signed a petition supporting the Islamic principle the station invokes to keep their voices off air

The station has hired the best legal brains in the country to fight its cause consultant Quraysh Patel, who until a fortnight ago headed the IBA's policy unit, represented the station on Saturday while lawyer Goolam Ameer, of David Dison, Norval, Ameer and Ndlovu, one of the country's top media law firms, has been retained Neither comes cheap

Ameer this week said his clients were "misunderstood"

"The station regards the death threats as against good Muslim practice You get emotional elements in every community and they are just idle threats Nobody will carry them out," said Ameer, adding "My clients are not sexist, they have a very high respect for women "

Meanwhile Esack argues that "theirs is essentially a minority position Can a religious community seek refuge in its law [the shariah or Islamic law] to subvert the values of the country?"

All the parties in this case believe it could end in the Constitutional Court, where judges will have to weigh up the right to religious freedom against the enshrined right to gender equality It's a fight the Commission for Gender Equality is keen to square up for

"So much gender inequality is justified on religious, cultural and traditional beliefs," says Colleen Lowe-Morna, an adviser to the commission

The more moderate voices in the Radio Islam camp do not rule out some accommodation with the IBA's ruling there is talk of allowing women broadcasters on air and on to the management structures of the station

Their opponents from organisations like Yield argue that around the Muslim world, women broadcasters feature prominently on radio and television Radio Islam is the only one of the country's five Muslim community radio stations that has banned women from its programming schedule

Pay fees for all your TVs, govt warned

Star 17/1/98 (260)

By JACQUIE GOLDING-DUFFY
NATIONAL MEDIA EDITOR

The SABC is fed up and is about to clash with the Government because ministries and departments do not pay a cent in TV licences, even though they possess thousands of sets.

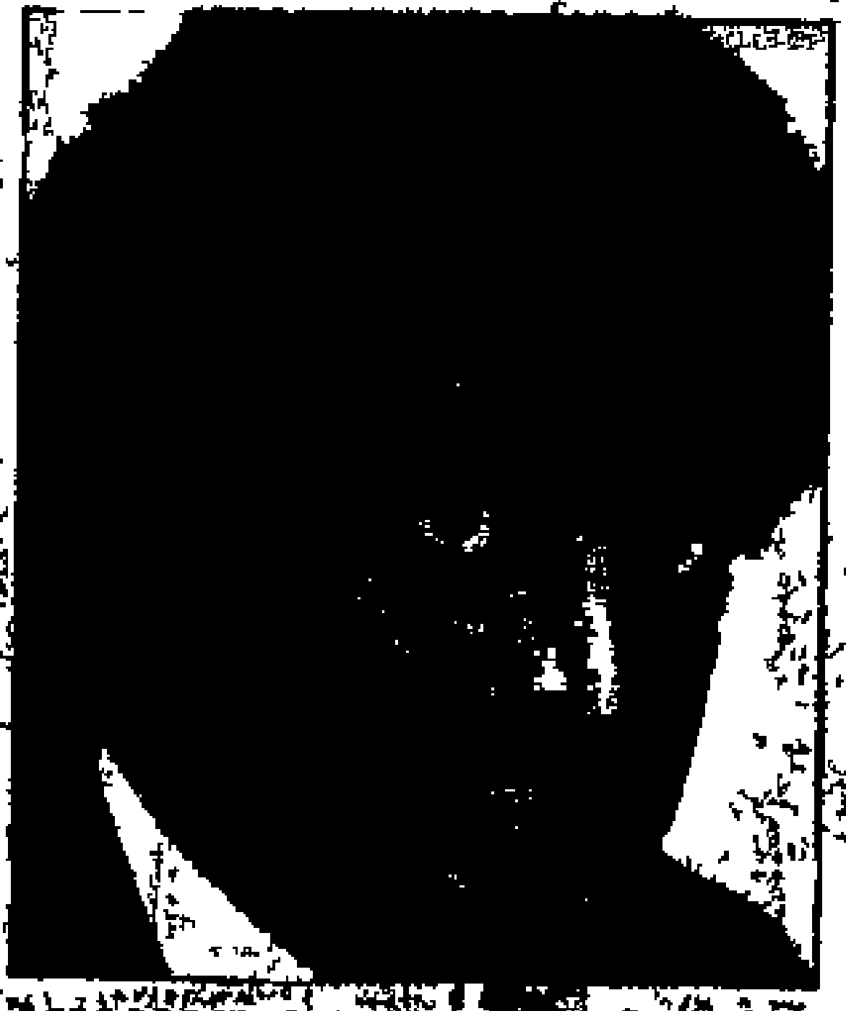
The Government does not pay licence fees to the SABC even though it pays provincial authorities for car licences, Telkom for telephones and municipalities and Eskom for lights and water. Millions of private viewers are being urged to pay their licences and threatened with prosecution if they do not.

And the SABC is threatening to send in licence inspectors – who will be empowered to issue fines – to state departments, as well as defaulting businesses.

What makes the corporation upset is the fact that, to carry out its Government-approved public service mandate, it required R530-million for this financial year, but was given less than half (R235-million) by the Treasury If the Government paid licence fees for its internal TV sets, the SABC would increase its licence revenue from the current R900-million-plus annually by "tens of millions" of rands, according to sources at the broadcaster.

"This is money that the corporation badly needs," one SABC staffer told the *Saturday Star*.

The SABC is set to challenge the Telecommunications Ministry to scrap a section of the Broadcasting Act which allows the minister, at his discretion, to decide whether government departments and bodies should or should not pay television licences.



JAY NAIDOO: Must thrash out implications of amending the act

The Department of Correctional Services has at one stage been the only department which bothered paying TV licence fees, but had stopped – apparently "after noticing that nobody else was bothering", said a source at the SABC.

It is understood that a meeting will be held between the SABC and Broadcasting Minister Jay Naidoo shortly to thrash out the implications of amending the act.

Ministry spokesman Connie Molusi this week said he was unaware of such plans. However, it is believed that plans are afoot at the SABC to introduce business inspectors who will be armed with identification cards and empowered, through a provision in the Act, to enter government and private buildings.

The inspectors, possibly sworn in as officers of the peace, will examine premises and provide an audit of television sets for the SABC.

Until now, government departments have not forwarded records of the number of television sets they own and have not paid television licences. While millions of television owners have been bombarded daily with pleas from the SABC to pay their television licences "because it is the right thing to do", government departments have been enjoying free viewing for years.

Although regulations exist which provide for the Government to pay licence fees for its 30 or so departments and 15 ministries, the laws have not been enforced, says the SABC.

The SABC continues to battle with a piracy rate of about 60%, even though it has generated between 16 and 29% of its income through viewers who pay up.

The SABC's goal is to increase licence payments to 50% or more, according to SABC chief executive Zwelakhe Sisulu, before the corporation can manage without government funds.

A quick survey of government ministries showed none of them have any idea of the precise number of TV sets they, or their departments, possess.

A spokesman for Water Affairs and Forestry Minister Kader Asmal said there was one TV in the offices of the ministry, which was used to monitor news broadcasts for matters of interest in the water affairs and forestry sphere.

Correctional Services said its TV at the minister's office in Cape Town was useful because it enabled parliamentary proceedings to be monitored.

A spokesman for Agriculture and Land Affairs Minister Derek Hanekom said there was one TV in the ministry offices, which was used to monitor TV news but was "switched off the rest of the time".

Health Minister Nkosazana Zuma watches the TV in her office to keep abreast of news, but the set is often switched off because it is faulty and a new one has been ordered, said a spokesman.

■ See Page 13

New jobs, but IBA trio still owe

ST 18|1|98 (260)

ANDRE JURGENS

THREE disgraced Independent Broadcasting Authority councillors who resigned eight months ago have found cushy new government jobs

They have yet to repay the R194 000 in taxpayers' money which the auditor general says they owe to the IBA

Peter de Klerk, Lyndall Shope-Mafole, and Sebeletso Mokone-Matabane resigned on May 15 last year after Auditor General Henri Kluever revealed a lack of financial controls at the IBA

De Klerk and Shope-Mafole are now employed by the Department of Communications (the old Department of Posts, Telecommunications and Broadcasting)

De Klerk is a broadcast policy research consultant with an annual gross income of R191 792

Shope-Mafole earns R24 000 a month as a special adviser to Communications Minister Jay Naidoo

Mokone-Matabane is employed as a consultant to Sentech, which is owned by the Department of Communications

Sentech managing director Neel Smuts said she was a high level consultant with a salary matching her status

Who must be silenced — the patriarch or the woman?

~~[illegible]~~ (260) BD 19/1/98

Radio Islam's policy on women has raised the issue of a conflict of rights, writes **Colleen Lowe Morna**

BEHIND the legal gymnastics that have characterised Radio Islam's application for a new licence lies one of the most important constitutional issues of our time.

Does the right to religious freedom, as enshrined in the bill of rights, give a religious sect the right to breach the fundamental values on which our new democracy is built· namely human dignity, equality, freedom and nonsexism? If so, what hope is there that we will ever get to the root of gender inequality — so much of which is justified on religious, cultural and traditional grounds?

The Radio Islam case was brought to public attention by a progressive Muslim group called Youth for Islamic Enlightenment and Development. In complaints lodged with the Independent Broadcasting Authority (IBA) and the gender equality commission last year, the group argued that Muslim women were being discriminated against because the station barred their voices from the air It cited section 14 of the IBA Act, which required the station to "serve the interests of the Islamic community living within its broadcasting area".

A complaints committee constituted by the IBA ruled late last year that women had to be heard for at least three hours a day on Radio Islam programmes and that women constitute one-third of its management. The station openly defied the ruling and used the public airwaves to issue threats against the parties who lodged the complaint, including a member of the gender commission

In applying for a new licence to replace its temporary licence which expired on January 10, Radio Islam sought to change the original terms of its licence — which required it to serve the interests of the whole Islamic community within its broadcasting area — to "serving the interests of the Muslims who adhere to and accept the Islamic rulings and interpretations of the Jamiatul Ulama Transvaal". By narrowing its definition, Radio Islam is hoping to exclude women from the airwaves on grounds of the beliefs of this particular Islamic sect

At what was supposed to be a hearing for a new licence on January 10, Radio Islam won itself a one-month extension to its temporary licence thanks to technical bungling by the IBA which resulted in none of the substantial arguments being heard. A new application, and objections to it, have to be lodged over the coming month The case, which may yet find its way to the Constitutional Court, raises crucial issues

Out of the five Muslim radio stations in SA, Radio Islam is the only one which disallows the voices of women Globally, with the exception of the Taliban-ruled areas of Afghanistan, Muslim women are audible in the public media.

Even if there were a way of ensuring that the radio station reached only adherents of the Jamiatul Ulama Transvaal (which in itself raises a number of practical questions), and even if we accept that this sect is entitled to its views, how does one deal with the conflict of rights which this case raises?

The constitution states clearly that no rights are absolute All rights must be balanced against each other and are subject to the limitations clause "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human, dignity, equality and freedom" Equality in the constitution is not just a right, it is a fundamental value which shapes and limits other rights.

If the right to religious freedom were to supersede equality, what would stop an ethnic group from believing that it is superior to other ethnic groups, justifying this in terms of its religion, and then proceeding to oppress others? Do we not find in that argument the perfect justification for apartheid in terms of the constitution of the new SA. And if so, how can we possibly use the right to religious freedom as a justification for oppressing women, who constitute more than half our population?

As Constitutional Court Judge Albie Sachs put it. "It is a sad fact that one of the few profoundly nonracial institutions in SA is patriarchy Among the multiple chauvinisms which abound in our country, the male version rears itself with special equal vigour in communities Thus to challenge patriarchy, to dispute the idea that men should be the dominant figures in the family and society, is to be seen not to be fighting against the male privilege but as attempting to destroy African tradition or subvert Afrikaner ideals or undermine civilised and decent British values "

One of Radio Islam's more memorable programmes was a half-hour lesson on how to beat your wife Sadly, this is a skill in which many SA men are so proficient they hardly require lessons, let alone prompting. Is this what freedom of speech and of religion entitles us to? How do we strike a balance between the right to believe what we want to, and the exercise of that right in such a way it does not undermine the right to be free and equal?

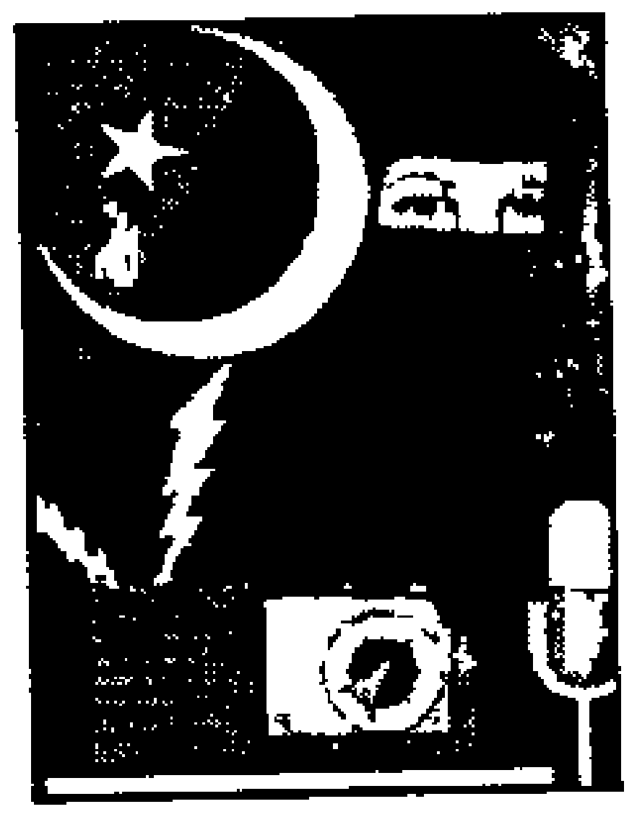
□ *Lowe Morna is an adviser to the Commission on Gender Equality*

OPINION

Balance is the key in radio battle

Freedom of religion should not to be sacrificed for gender equality, writes Moulana Hayder Ali Dhorat

Star 22/1/98 (260)



The recent dispute between the Independent Broadcasting Authority (IBA) and Radio Islam has raised a set of complex issues. When Radio Islam lodged its first application for a temporary community broadcasting licence just over a year ago, little did it realise that it would soon get embroiled in an epic David-and-Goliath struggle on these vexed questions with two independent, statutory structures, namely the IBA and the Commission on Gender Equality

In searching for an amicable resolution to the dispute and the underlying issues, the IBA will have to balance delicately and sensitively constitutional values such as gender equality, religious freedom and freedom of expression. Alongside this it will have to develop a more nuanced understanding of the concept of "community" in community radio stations, particularly in relation to the diverse religious communities in our country

As the IBA asscrts its independence and authority, it will have to dispel the looming image of itself as an authoritarian agency bent on shutting down young community radio stations in breach of licences, which ironically it is meant to empower and to develop.

IBA councillors will have to address this, and any other dispute, in a non-emotive and dispassionate manner, setting aside their personal values and social preferences and keeping in clear focus the provisions of the law and our constitution At the same time they will have to deal with the needs of religious and cultural groups with sensitivity and understanding

Two issues stand at the heart of the IBA-Radio Islam deadlock The first is the elusive concept of "community" in any community broadcasting service.

The IBA simply defines "community" as a "geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest" Such a legal definition is necessarily broad. It is amorphous and nebulous, allowing for multiple interpretations of what constitutes a community with a common interest.

What exactly constitutes a community? In the ordinary sense of the word it will mean men and women in a defined geographical area But it could also mean a melting pot of other stakeholders such as the disabled, the youth, the clergy, the workers, the traditional leaders, the witches etc. It could mean rival organisations in civil society actively competing for support and influence. And in the religious sector it could mean multiple sects propagating differing interpretations of the same faith

The legal definition, therefore, fails to take into account that with a community in a particular area there are likely to be conflicting and competing interests, contradictory and opposing forces who do not necessarily share the same social, political, cultural and religious values And yet, a community broadcasting service targeting a sector with specific interests in an area is expected to serve as many, if not all, of the diverse and at times contradictory and conflicting interests in the community

Religious communities are faced with hotly contested interpretations of faith and social reality Different theological interpretations and religious schisms run deep in Islam. To assume that such historical diversity can comfortably be serviced via a single community-based radio station is being idealistic.

Radio Islam argues that it serves the Muslim community in Lenasia on the basis of its interpretation of Islam which does not favour women coming on the airwaves In advocating such a position it is technically in breach of its licence conditions. It has come up against opposition from individuals and groups within the Muslim community itself as well as the Commission on Gender Equality, all arguing that the radio station discriminates against women.

In its responses to an apparent non-compliance of Radio Islam's licence conditions, the IBA ruled that the radio station had to bring women on to its programmes within three days for three hours daily This decisive prescription has created an impression in the Muslim community that the IBA is attempting to regulate religious practice rather than strictly the airwaves. This has become the source of intense anger among Muslims who support the policy of Radio Islam. They believe that the IBA is insensitive to the religious beliefs and practices of Muslims

It might be opportune for the IBA to establish with certainty the nature of communities that community radio stations are meant to serve.

'This brings me to the second core issue, which is the gender policy of Radio Islam. The station acknowledges that our constitution places strong emphasis on gender equality But it also guarantees freedom of religion and belief and the right to free expression Radio Islam has noted the gender commission and certain Muslim organisations are passionately in favour of gender equality. Radio Islam is equally passionate about safeguarding a set of religious values. So, should the right to gender equality be exercised simply at the expense of the rights to free religious belief and free expression? Radio Islam's plea is that the IBA should not discount the latter in favour of the former.

If compelled, Radio Islam will re-examine its gender policy. But it will not be bulldozed into submission by any force that wishes to impose unilaterally western civilisation norms and values on Muslims in South Africa

■ *Moulana Hayder Ali Dhorat is the station manager of Radio Islam*

Top officials desert Sigcau

M+G 23-29 (~~[illegible]~~) 1/98 (260)

Marion Edmunds

Skilled officials from the Department of Public Enterprises — including its chief accounting officer, Professor Sipho Shabalala — are abandoning their minister, Stella Sigcau

Sigcau's representative, Wandile Zote, confirmed this week that Shabalala, public enterprises deputy director general, had resigned and would leave at the end of the month, in what appears to be a mass exodus of senior personnel

Shabalala refused to comment this week, saying he wished to leave without politicising his departure However, sources in the department say he has fought a low-level but bitter battle against Sigcau for the past three years.

Areas of conflict are believed to have included her dictatorial management style, her lack of leadership in government, her relationship with specially appointed advisors and differing interpretations of transparency and accounting

Shabalala, known for his by-the-book approach, is believed to have privately complained to Deputy President Thabo Mbeki's office about Sigcau's management style. Mbeki took over the chair of the powerful interministerial Cabinet committee on the restructuring of state assets from Sigcau last year

Sectoral ministries have exerted more and more control over the restructuring of parastatals which fall under their portfolios, and consequently Sigcau's area of responsibility has been reduced considerably.

It is also speculated that Sigcau's humiliation at the African National Congress's Mafikeng conference — she was the only Cabinet minister who failed to be voted on to the party's national executive committee — is taking its toll on her credibility within political and public-service circles.

There is a strong lobby to close her ministry down and shift her department to the finance or trade and industry departments, or to Mbeki's office When asked whether such moves were in the pipeline, Zote said: "It will be up to President Nelson Mandela He may or may not agree to such recommendations "

Other sources from Sigcau's department say there are no grounds for such a lobby, and that the department is on course, despite the resignations

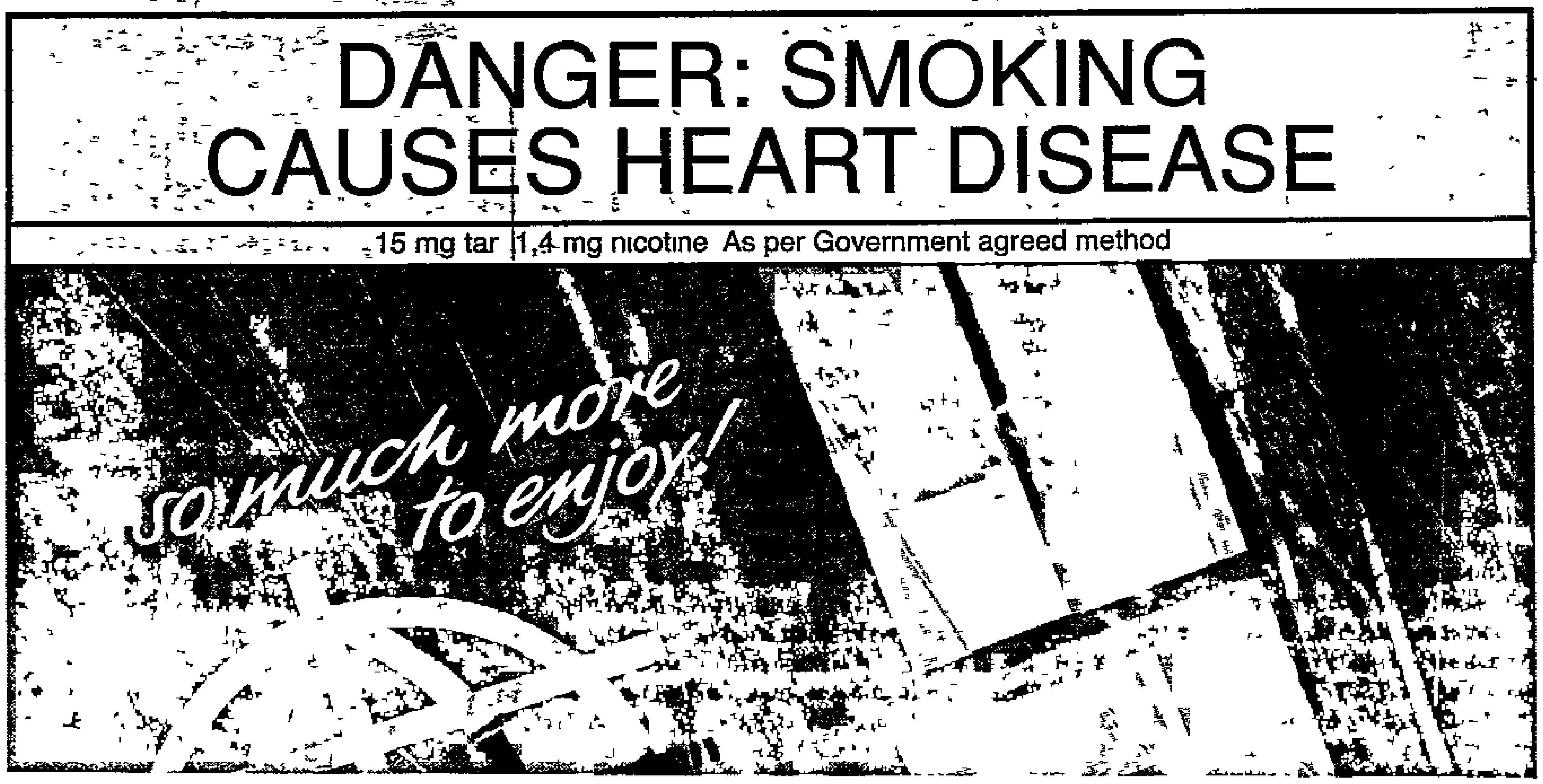
"The really serious question is whether Shabalala's leaving is a sign of government back-tracking on privatisation," said Jenny Cargill, of Business Maps "There doesn't seem to be a clear strategic perspective and areas of doubt have been allowed to grow "

The minister's special advisor, Kennedy Memani, quit last month, and is working at Transnet in anticipation of moving into the private sector. Mongezi Mngqibisa, formerly employed as a director for performance evaluation and analysis, also quit in December after two years' service, and is working in the Department of Communications "I would not like to comment," he answered when asked why he had left. "It was a career move "

His assistant director, Bayanda Mtse, is moving to the Department of Agriculture's information and technology section in February. Dr Kobus Vorster, the director of restructuring, has taken early retirement and will leave the department in March. Sigcau's private secretary, Aesta Marie, also resigned over Christmas

Shabalala is the third director general to leave the ANC government's service after disagreements with political heads Sigcau was contacted, but declined to comment

Stella Sigcau: Left out in the cold after top-level resignations. PHOTO: RODGER BOSCH


DANGER: SMOKING CAUSES HEART DISEASE
15 mg tar 1,4 mg nicotine As per Government agreed method
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Enterprises ministry not under threat despite resignations, say officials

(260)

Robyn Chalmers and Reneé Grawitzky

BD 23/1/98

THE public enterprises ministry has been hit by five departures from its top management team, including director-general Sipho Shabalala

However, top government officials scotched widespread speculation that there were moves afoot to close the ministry, saying Deputy President Thabo Mbeki had recently agreed to boost its capacity because of a high workload this year.

The rumours were fuelled when Public Enterprises Minister Stella Sigcau was the only cabinet minister not to be elected to the African National Congress's national executive committee last month. One government source said this had given the incorrect impression of a "vote of no confidence" in the ministry's performance.

There has been criticism from the private sector and within government of what is considered the slow pace of privatisation Much progress has, however, been made recently in carrying out, Mbeki's original restructuring plan, outlined in December 1995.

A labour source said it was logical that the department would exist until the national framework agreement between government and labour lapsed in 1999 or the election took place.

Shabalala said he had resigned to return to KwaZulu-Natal, his home base There was a possibility that he could enter the province's government, but this had not been confirmed "I weighed up all the variables, which includes my happiness at the department, and decided it would be better for me to return to KwaZulu-Natal "

Asked if his relationship with Sigcau was good, Shabalala said they had a "working relationship". A case could be made to examine the reasons behind the resignations and transfers which had taken place since last month, he said "I cannot say if this is due to dissatisfaction or whether people had better opportunities elsewhere "

Public enterprises ministry spokesman Wandile Zote said six people had either resigned or left to take other government positions.

Special adviser, Kennedy Memani, had been transferred to Transnet, but would still advise the ministry. Business performance analysis director Mongesi Mngquibisa had gone to a more senior position in the communications department, while Bayanda Mtse, his assistant director, had also taken up a more senior position in government Restructuring director Kobus Voster had retired. Sigcau's personal assistant, Hester Visser, had "gone to pursue private interests"

ANC brass lash out at threats to Muslim cleric

(260)

VIP protection for man fighting for women's right to be on Radio Islam

ST 25/1/98

Sunday Times Reporters

ANC cabinet ministers have condemned the death threats made by Radio Islam supporters against Muslim cleric Dr Farid Esack, who has demanded that the controversial community radio station allow women on air

Minister of Justice Dullah Omar, Minister of Water and Forestry Affairs Kader Asmal, and Deputy Minister in the office of the deputy president Essop Pahad — all Muslims — said the threats were reprehensible.

Esack, who is the acting chief executive officer of the Commission on Gender Equality, now has three VIP unit bodyguards to protect him

Radio Islam has defied a Broadcasting Complaints Commission ruling that it allow women broadcasters on the air

Esack and the Youth for Islamic Enlightenment and Development organisation have been at the forefront of protests against the station's decision to bar women

Esack and the youth organisation claimed the station had violated its licence conditions and the Constitution

Radio Islam is owned by the Jamiat Ulema (Transvaal), a council of Muslim theologians

Esack said yesterday "There have been mutterings at the Broadcasting Monitoring and Complaints Commission's hearings and at public meetings held by the station that my blood is permissible

"This means that it is all right to kill me The other thing that emerges from these mutterings is that whoever kills me will become a martyr "

Omar's spokesman Paul Setsetse said the minister condemned the threats against Esack "(He) said the police must see to it that all these threats are investigated and that he is certain the safety of Dr Esack will be assured "

But Omar had "no comment" on the issue of whether Radio Islam should allow women on air

Asmal said "I have a high opinion of Farid Esack's role and no one is entitled to make any threats against him It's totally unacceptable "

Asked about Radio Islam's ban on women, Asmal said "It's improper to make comments, particularly since the IBA dealt with the matter But in general, (in terms of the Constitution), we must ensure that women have equal access to all rights and privileges

"Equality is the most primary consideration to bear in mind."

Pahad, deputy minister in the office of the deputy president, said "It is my hope that both the IBA and Radio Islam will find a solution which will be in the interests of both parties

"No democratic state can countenance death threats against anybody "

The chairman of the Human Rights Commission, Dr Barney Pityana, said the Constitution made it clear that the right to freedom of religion could not contravene the Bill of Rights

Radio Islam station manager Moulana Hayder Ali Dhorat said the station had distanced itself from any threats of violence and intimidation against Esack

"Radio Islam has no personal problems with Esack We have repeatedly broadcast that Radio Islam prohibits all of its listeners from participating in any form of violence or intimidation

"We received numerous calls from angered Muslims about those comments Esack made

"Therefore, I would not be surprised if Esack is getting threats I have not spoken to him as yet But now he has to face the consequences of his actions and fend for himself," said Dhorat

Dr Essop Jassat, an ANC member of the Gauteng legislature, who is also chairman of two mosques in Lenasia, Johannesburg, said Dhorat came to see him on Friday

"I think they have accepted my advice that they will have to accept women — otherwise they will have to close down

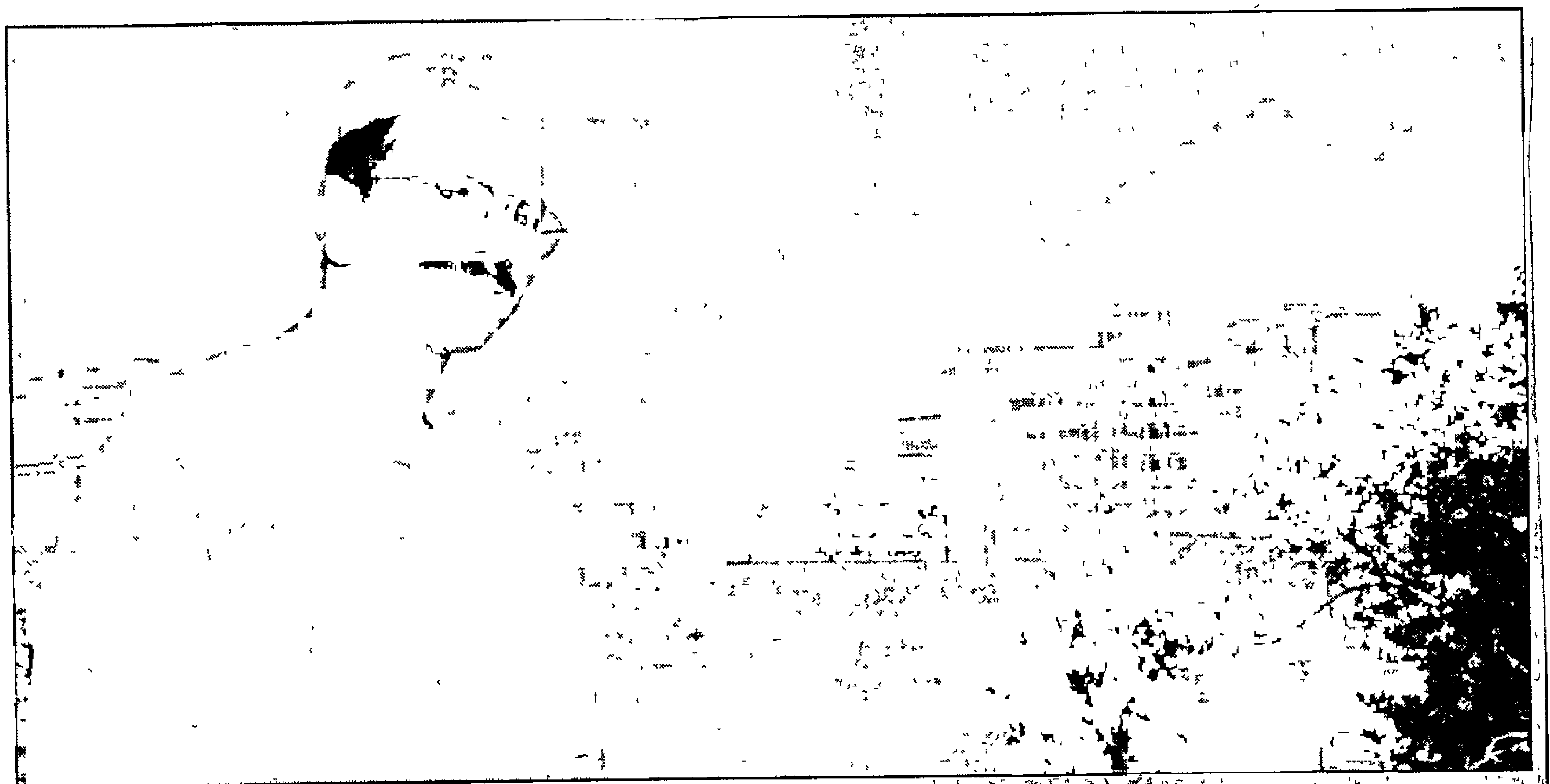
"I do not want to comment on the religious aspect, but in terms of our Constitution they have no choice but to allow women on the air," he said

It now appears that Radio Islam is almost certain to back down on its men-only stand Although in its latest application for a licence it says there will be "no intermingling of sexes"

The application — received by the IBA on Wednesday — states that there are now three women on the station's management board and 15 on its programming committee

"This committee is very active The women research, suggest, prepare, edit and scan programmes," Radio Islam claimed

However, the station is still not adhering to a ruling last October that it must have women on air for at least three hours a day



'MY BLOOD IS PERMISSIBLE': Dr Farid Esack says he has heard that whoever kills him will become a martyr Picture: TERRY SHEAN

Eskom meets its current targets

(260) (??)

ST(BT) 25/1/98

ELECTRIFICATION

By SVEN LUNSCHE

THE electrification programme remains one of the few successes of government policy Last year well over 400 000 homes received electricity for the first time, according to industry figures released this week

Eskom electrified 274 000 homes last year, in line with its RDP targets, while the municipalities — with assistance from Eskom — linked up almost 150 000 houses to the national grid The continued success of the electrification programme comes amid moves to restructure state-owned Eskom as well as rationalise the 460 entities (mainly municipalities) which distribute electricity in SA

Government, Eskom, provincial and local authorities and other industry players meet this week to thrash out key issues affecting the industry

According to government sources, the key issue is whether to rationalise the distribution industry into five or six regional distributors or group together a number of municipalities into larger entities, where feasible

Last year cabinet approved the rationalisation into smaller units in principle as well as the introduction of fewer and more cost-reflective tariffs

The cabinet also backed the creation of an electrification fund to fund the electrification programme The move is not too popular with Eskom as it entails tax and the paying of dividends for the first time Much of the taxes and dividends would be channelled into the electrification fund, but the remainder would go to state coffers

"We have always argued that the electrification programme, coupled with low electricity prices, are our contribution to the economy of the country," says Sifiso Dabengwa, Eskom's director of distribution "Undoubtedly government will take this into account when it makes a decision on the future funding of electrification "

Dabengwa says last year's electrification programme cost Eskom R900-million as the cost per connection was reduced from R3 300 to slightly more than R3 150

Since the start of the electrification programme, Eskom has supplied 1 54-million homes with electricity In addition, 81 000 farmworkers received electricity for the first time via a subsidy provided by Eskom to farmers

The utility is well on target to meet its RDP commitment of providing 1 75-million houses with electricity by 2000, which means that well over 60% of the population will have electricity by then — in 1992 a mere third of South Africans were able to turn on an appliance at home

Dabengwa says the electrification programme is still running at a considerable loss, as newly electrified households spend on average about R50 a month, well below the break-even level.

"However, apart from the fact that the R50 normally powers lighting, a fridge and a television or radio, the macro-economic benefits of electrifying a home outweigh the mere financial considerations," says Dabengwa

He says that consumption picks up the longer a household has electricity

The local authorities also met their commitment of electrifying 150 000 homes last year, says Johan du Plessis of the National Electricity Regulator.

Previously, municipalities largely lacked the capacity to link up homes in their areas to the grid but financial and technical support from Eskom remedied the situation last year

Du Plessis says Eskom will provide a R315-million grant to local authorities this year, slightly higher than last year's R300-million allocation

HOT CONNECTION . . . Sifiso Dabengwa turns the power on

CT 28/1/98

~~[illegible]~~ (260)

An open letter to all Muslims

Radio Islam's refusal to allow women on air has brought the issue of sexism within the Muslim community to the fore **FARID ESACK**, acting CEO for the Commission for Gender Equality, responds with an open letter to all Muslims

ANALYSIS

DEAR brothers and sisters May the peace, mercy and blessings of Allah be upon you

South Africa under a democratic, non-racial and non-sexist Constitution poses a number of serious challenges to religious communities, including the Muslim community Responses from within our community have been diverse and often alarming In this respect the most recent controversy around Radio Islam is particularly significant and has brought to the fore the need for me to address you too

This need was highlighted when MP Dr Ebrahim Moosa and Hafiz Dr Shu'aib Manjra contacted some Muslim MPs in Gauteng to examine the possibility of their mediating with the management of Radio Islam Both spoke to some of these MPs and, other than the issue of Radio Islam, it was also apparent that some MPs have a number of problems with me and with positions which I seem to have taken or statements which I am suppoſed to have made

Moosa, to whom I am deeply grateful, took the opportunity to raise with me a number of these issues along with my general public conduct, my rough edges and the rather arrogant manner in which I conduct myself

I want to address you on some of these issues In the final analysis, the ideas which we believe in will suffer if we do not address the questions which cloud our relationship and prevent us from effective support for each other in our various terrains of struggle for a progressive appreciation of Islam

I want to address and clarify some of the issues before commenting on some of the underlying problems

The Abortion Question

Last year, when the debate raged in the ANC on whether to allow a free vote or otherwise, I wrote an article in the Cape Times wherein I stated my support for the Abortion Bill I also suggested that ANC MPs opposed to it should resign their seats given that this was a part of its election manifesto

While the matter affected a number of Muslim MPs, it also affected others and the article was not in any way directed at Muslim MPs

The issue of abortion in Islam is complex Many of us adopted the more conservative positions without acquainting ourselves with the intricacies of the issues at an Islamic jurisprudence level There is a need to earnestly reflect and read up on the developments in Islamic philosophical and legal thinking before hastening to adopt conservative and sometimes reactionary positions

The TRC presentation

On Thursday November 13, last year, I received a call from Manjra informing me that the religious communities were making submissions to the TRC the following week and that Mawlana Ebrahim Bham from the Jamiatul Ulama of the Transvaal, the managers of Radio Islam, would be the sole Muslim making presentations.

According to Manjra, some leading progressives had had a week's prior knowledge of this, but had not intervened to ensure that the voice of progressive Islam was also represented I strongly opposed the idea that a group that had displayed consistent contempt for the struggle against apartheid, be the only Muslim voice at the TRC

Radio Islam and the Voice of Islam in Afghanistan are the only Muslim stations, among thousands in the world, which do not allow women on air.

I called a number of TRC commissioners to express my dissatisfaction and argued forcefully for Imam Abdurrashid Umar and Ebrahim Rasool and I to be allowed to make a representation

The following day commissioner Piet Meiring told me they had discussed the matter and given, a) the lateness of the hour and, b) that each community had only one spokesperson, they could not let the Muslim community have four representatives However, they agreed to allow me to make a submission I faxed this information to Rasool, Manjra and Umar and indicated that I would let them have a copy of my proposed presentation for scrutiny

Due to work pressures I ended up at the TRC without any written submission I did, however, consult at length with Naeem Jeenah of the Muslim Youth Movement, on my input and incorporated all his points I rather belatedly informed Omar, Rasool and Manjra about the reasons for never getting back to them

On Tuesday, the day of the presentation, Bham informed Meiring that due to illness he would no longer be present at the hearing On the same day the Muslim Judicial Council (MJC) whose president, Shaikh Naeem Mohammed, had originally agreed to Jamiatul Ulama Transvaal making a presentation on behalf of the United Ulama Council which he heads, succumbed to internal and external pressure and withdrew his approval of the Jamiat's presentation

The MJC, in response to this pressure, intervened with the TRC to secure a slot Thus, contrary to newspaper reports, MP Imam Hassan Solomon's intervention was not secured in response to my presentation, but before it

Two points regarding my presentation a) In my introductory remarks I made it clear that there was no person who could really speak on behalf of any religious community I made it clear that I had no organisational or community mandate, but that what I would be saying would find broad agreement among Muslims who identified and were committed to the struggle for a non-racial and democratic South Africa

b) Contrary to hearsay, I believe that I delivered a balanced, but passionate, presentation In addition to speaking about the betrayal of the struggle by the established Muslim religious leadership, I also spoke about the enormous suffering of our people

Radio Islam

Whatever one's position on women on the airwaves may be, many of us, including myself, are constitutionally bound to defend the equality of women

I do, however, wish to place the following on record

● Despite the highly personalised campaign against me by Radio Islam, I wish to make it quite clear that I have no personal axes to grand with the Jamiatul Ulama (Transvaal), the station managers, or any of their members I have dealt with the issue in a professional manner, and at a CGE level other commissioners are dealing with the issue

● I have never called for Radio Islam to be closed I did say that, if they persist on their present course, then, in terms of their licence agreement, they are inviting their own closure

● My own personal position is more nuanced, whereby I often have doubts about whether "these people" should not have their radio station the way they want it?

After numerous calls from friends to react to the interminable invective and slander which Radio Islam heaped on me as a commissioner on gender equality, and several death threats, I did listen to some tapes

Other than the funny parts about my being a paid up member of the Jewish Board of Deputies and so forth, I really felt sad at the fear which Radio Islam and their numerous callers-in displayed for an open society

Victor Frankl — no apologies for citing a Jew — made some profound observations about his fellow prisoners in the Nazi concentration camp at Dachau Some of those prisoners despite having yearned desperately for their freedom, had been held captive for so long that, when they were eventually released, they walked into the sunlight, blinked nervously and then silently walked back into the familiar darkness of the prisons to which they had been accustomed for such a long time

● The CGE does however, have a firm position and one which I am under obligation to uphold I am, however, not and have never been the driver of this position I do not believe that the CGE is the terrain to fight essentially Muslim theological battles

● I am of the opinion that Radio Islam should abide by its agreement and then have women on the air on every alternate day On the "women days" they can instruct their male listeners to switch off Quite simply their slogan can be, "If you get turned on, you turn off"

If they believe that their listeners are truly committed to their theological position and that it is really what Allah wants from them, then there is no doubt that they would comply and that the plan will work If the plan is rejected as absurd, then the Jamiat has to reflect on the real depth of their support or lack of it

● Many of you have encouraged me to take action against Radio Islam for, in terms of Section 18 (d) of the Commission on Gender Equality Act of 1996, it is a criminal offence to defame a commissioner I am not convinced that this is the best option, for I understand where these people come from (Incidentally, I studied in the same Karachi seminary as Radio Islam's station manager) I am not sure that dragging fearful prisoners of the past through the courts is the best way to persuade people of the benefits of living in a democratic society

The final decision on this though, rests with the CGE. The CGE has subpoenaed the relevant tapes of Radio Islam in order to arrive at a decision

● I have never said that the Jamiat holds that "women are lower than pigs", nor anything to that effect, as Radio Islam alleges and claims to have a tape recording to this effect Regrettably some have assumed that these claims are correct I am not going to go through the hassle of getting the tapes from the "Afrikaans SAfm" (whatever that may mean) which the station manger, Mawlana Haider Dhorat alleges he has, to prove my innocence

● Of the seven Muslim radio stations currently broadcasting in South Africa and the many thousands in the world, Radio Islam and The Voice of Islam in Afghanistan are the only two in the world adopting this position

It is rather like the mother watching an army regiment at a parade and saying that the entire regiment is out of step, except her son

Furthermore, their position is a minority one within the Hanafi school of legal thought and a position found only within that school. While, on the one hand, Radio Islam insists that it continues along its present path because "the majority" or "ninety-nine percent" of our listeners approve of our position, on the other hand it insists that "the entire community of Muslims", (which it blissfully ignores) is not synonymous with Islamic shari'ah

Here too is a case where those among us who take Islam seriously need to look at the issue in a studied and scholarly manner before being tempted to jump into bed with the most reactionary forces among us simply because their noises are the loudest, their financial clout the most or because the elections are around the corner

Some underlying issues

I frequently come across as unnecessarily confrontational, harsh and arrogant I recognise the truth and the seriousness of this, and the damage that it does to one's message I believe that I have a responsibility to urgently and earnestly cultivate a more gentle way of speaking, both in private and in public

I do not believe that being a commissioner on gender equality allows you to turn your back on your community and to spit on its organisations Often the combination of simply being overworked on CGE commitments and the aforementioned problems lead to the perception that this is, in fact, the path that I have taken I sincerely regret this and I will work to redress this

During the eighties we did not hesitate to break ranks with large sections of our community on the question of racism Why should we preserve ranks on the question of sexism? (And if one is not convinced of the gravity of the latter then one needs to openly engage those who are so convinced)

Lastly, I sincerely believe that many of us continue to live in two worlds the political and the religious, and that we have failed to understand the full implications of progressive political views for our theological beliefs Far too many of us take positions on theological issues inconsistent with our political views

We cannot talk about empowering the masses when we effectively disempower ourselves At the very least we should attempt to study the views and works of those who do attempt to take both their commitment to Islam and to the vision of a just society seriously

I remain Your Brother in Allah

Farid Esack

([illegible])

Esack receives death threats

(260)

CT 28/1/98

MUSLIM theologian and acting chief executive officer of the Commission on Gender Equality, Dr Farid Esack, is being protected by two VIP bodyguards and calls to his cellphone are being monitored.

His voice-mail message warns callers not to leave malicious messages as they will be traced.

The heavy security measures are in response to several death threats, apparently emanating from Radio Islam supporters after Esack demanded that the community radio station allow women on air.

"Whatever I have done, I have done as Farid Esack of the Gender Commission and not as Farid Esack the Muslim theologian," he said yesterday.

Esack told the Cape Times that he was not the only person who had been threatened over the women-on-air issue

Radio Islam's application for a broadcasting licence states that there are three women on its management board and 15 on its programming committee. However, the station is still not adhering to an IBA ruling last October that it must have women on air for at least three hours a day

● See Page 6

MINISTER OF PUBLIC ENTERPRISES

Unravelling the mysteries of the ministry

260

fm 30/11/98

Foreign advisers back Sigcau over Shabalala's resignation

Public Enterprises Minister Stella Sigcau is receiving something close to sympathy from leading players involved in the privatisation process, following reports that she has been abandoned by department officials led by Head of Office Sipho Shabalala

Sigcau is one of government's most criticised Ministers In charge of the projected selloff of State assets, she has come into conflict with other Ministers and has been accused of missing crucial deadlines

The latest furore stems from reports that her management style prompted a flood of departmental resignations Press reports claimed that Sigcau's "dictatorial management style", her "lack of leadership in government", and her "differing interpretations of transparency and accounting", led to the resignations, particularly that of Shabalala

Nonsense, says a leading European banker who has worked closely with both of them "Stella has been trying to get rid of him since 1996 They never got on Shabalala has consistently been someone who's dragged his feet He doesn't approve anything and was always interfering The only way to get anything done has been by not involving him

"Mind you, Stella runs her office entirely on the basis of contracted personal advisers, who act as if they were her DG The office is a shambles "

Sipho Shabalala

Shabalala was formerly the secretary of economic affairs for the PAC In 1992, calling for a properly phased socialisation process, he wrote that it "should spread the ownership and management of economic assets and institutions to the disadvantaged African people and to individuals involved in social production "

This view differs so markedly from government's concept of foreign equity partners in the privatisation process that at least one banker suspects that Shabalala was on a campaign to sabotage the privatisation process

Not so, insists a top government official who worked with Shabalala in forums in the early Nineties "I don't think he would have been capable of implementing such an agenda He's very much an academic type of person He loves theory and is not a very practical manager It got complicated when the Minister appointed advisers who were given the main responsibility, which was to look after the privatisation process and he was marginalised

"His relationship with Stella broke down more than a year ago A head of department not talking to the Minister is one of those situations which is not sustainable Especially when the Minister doesn't have a very strategic management ability herself "

A senior colleague of Shabalala's inside the ministerial office says "He might be a good academic, but he was useless as the head of department "

Shabalala responds "Every employee has a right to resign his or her job and I merely exercised that right

"I have no place for irregularity, cutting corners, unethical and immoral initiatives, whether they are perpetrated by special advisers or renowned international bankers For this I stand accused

"The role of advisers and heads of department are clearly stated by Cabinet My responsibility was to maintain order as specified by Cabinet This I have been doing without fear or favour Indeed the affected have not liked it, but so what!

"It is not my wish to engage through the media the so-called inside colleagues, informed international bankers and advisers I warn, though, that no-one should take me for granted There is a lot I can say and write about the Ministry for Public Enterprises I sincerely do not wish to do so "

Jack Lundin

Jobs to be lost as former TBVC broadcasters tune in to SABC

(260)

Star 31/1/98

By CATHY POWERS

Broadcasting will metaphorically move on to a single wave-band tomorrow when the Transkei, Ciskei, Venda and Bophuthatswana broadcasting corporations integrate into the SABC

The integration is intended to create a "single independent and publicly accountable national public broadcaster in South Africa", according to a statement It follows more than two years of negotiations and debate about legislation.

"It will see the services of Radio Transkei, Radio Ciskei, Radio Thohoyandou, Radio Mmabatho, TV Mmabatho, Bop TV and Bop Radio become part of the SABC.

These radio and television stations' assets will also be transferred to the SABC.

The Bophuthatswana Broadcasting Corporation (BopTV) will continue to operate on a management contract basis for the time being.

The Government has made provision in its budget to cover costs, which include retrenchment packages, leave payouts, and operational costs such as relocation of staff."

The effect of the integration on the SABC, which is now in the black after past staff upheavals and financial losses, is debatable. Although the SABC conducted a full audit of the TBVC broadcasters' assets and liabilities before assuming full management control of the stations, none being taken over are profitable, said Enoch Sithole, general manager of communications and TV licences

SABC spokesman Marj Murray said: "It will give us more capacity in terms of facilities and enable us to reach a wider audience"

But Sithole said there were instances where the SABC could benefit The integration of the SABC's Radio Umhlobo Wenene, which is breaking even, with the loss-making Radio Transkei would give the SABC an additional 800 000 listeners

"The chances are we can make a profit there," Sithole said, adding: "We could even reap benefits overnight"

Radio Mmabatho and the SABC's Radio Motsweding presented a similar scenario. But in Venda, the SABC was far from making a profit and the medium-wave Radio Bop faced serious competition from Radio Metro.

The SABC would not have to bear the brunt of integration costs alone. Sithole said the Government would provide funding for the SABC's additional stations over the next four years.

The plan to integrate the four corporations has been in the pipeline since 1995 and has been fraught with bureaucratic delays.

Claimants, Sigcau agree on Aventura sale

(260) CT (BR) 2/2/98

NCABA HLOPHE

Johannesburg — The sale of Aventura, the ailing state-owned resorts company, took a huge step forward last week when Stella Sigcau, the public enterprises minister, rallied behind her vociferous land claimants in Mpumalanga to support the speedy privatisation

The minister said it was agreed at an "amicable meeting" held in Blyderport that government would sell the business and land of those areas unaffected by land claims and would hold the land and sell the business in affected areas, pending the outcome of the claims

"They are not against the privatisation," Sigcau said of the land claimants "Their major concern was that they wanted to participate in the final evaluation of the bids But they realised that it would be suicidal and foolhardy not to privatise in record time"

Earlier this month the land claimants had asked the Legal Resources Centre to file an urgent application to halt the sale of Aventura, claiming Sigcau had failed to respond to their demand for representation in the final stages of the bidding process

Louise du Plessis, an attorney at the Legal Resources Centre, said the claimants wanted, inter alia, veto rights over the decision of the tender evaluation committee that would make final recommendations to the government on the sale

They also wanted to regain land rights that would give them a share of the potential resort revenue, and demanded access to tender documents related to the privatisation process

Sigcau said she was keen to consult the affected communities and win their trust in government's ability to represent their interest

But she said government would not allow the communities to claim representation in the final evaluation process, because that would set a precedent which would plunge the process in disarray

"Just imagine how many other stakeholders would come up and lay a claim to representation The whole process would be a free-for-all that we would not be able to manage," Sigcau said

She said Aventura was running on a shoestring budget and the privatisation process could not be delayed any further

Government had shortlisted five bidders for the resorts company Kopano ke Matla (Cosatu's investment trust), Phalafala Leisure Consortium, Sanco Consortium, Boiketlong Investment Consortium and Shomang Investment Holdings

Scores face retrenchment as SABC absorbs former homeland stations

By Cathy Powers

The SABC will employ 39 of the 200 staff members who face possible retrenchment after the integration of the Transkei, Ciskei, Venda and Bophuthatswana broadcasting corporations with the SABC, which began yesterday.

The fate of the other 161 employees rests on whether the SABC can find vacant posts within its broader structure, according to Posts, Telecommunications and Broadcasting Minister Jay Naidoo.

From yesterday the services of Radio Transkei, Radio Ciskei, Radio Thohoyandou, Radio Mmabatho, TV Mmabatho, Bop TV and Bop Radio were integrated with the SABC.

Their assets will be transferred to the SABC.

The SABC will retain 25 Radio Transkei staffers for local programming on Radio Umhlobo Wenene, and 14 Radio Thohoyandou staffers will work on local programming on the SABC's Radio Phalaphala. Staff at Bop TV and Bop Radio are safe for the moment as the SABC will run Bop Broadcasting on a contract management basis until its future is decided.

The future of Radio Ciskei is still under negotiation but a private radio station or employee buyout could be on the cards.

The Government has made a once-off provision in its budget to cover the costs of retrenchment packages, leave payouts and relocation of staff.

According to a statement, the Communication Workers Union and the Media Workers Association of SA were consulted and fully agreed with the integration process.

Meanwhile, public broadcaster SABC TV will face increasing competition when the Independent Broadcasting Authority awards a free-to-air TV licence to one of the seven applicants that will present their case tomorrow.

(260) Star 2/2/98

Body will oppose Islam radio licence

Dustin Chick (260)

Gender equality commission special adviser Colleen Lowe-Morna and commission deputy chairman Phumelele Ntombela-Nzimande discuss Radio Islam's refusal to allow women on air.

Picture TREVOR SAMSON

THE Commission on Gender Equality and members of the Muslim community met yesterday to discuss the refusal by Radio Islam to allow women to participate in its activities.

The meeting followed a decision taken by the monitoring and complaints committee of the Independent Broadcasting Authority (IBA) in December ordering the station to allow women on air or face having its licence revoked.

According to the station's management, the decision to bar women from Radio Islam's activities had been taken because of Islamic religious beliefs.

BD 6/2/98

Deputy chairman Phumelele Ntombela-Nzimande said the gender commission would oppose the renewal of the station's licence.

The deadline for public submissions on the suitability of Radio Islam having its licence renewed expired today.

Although Radio Islam's right to freedom of religion was protected by the Constitution, there was a limitations clause which prevented individuals from infringing on the rights of others, said Ntombela-Nzimande.

Ntombela-Nzimande said radio stations were not about practising religion as they were in the public arena.

Condoning the exclusion of women from the public airwaves would set a dangerous precedent for other forms of discrimination.

The head of the legal section of the Muslim Judicial Council, Siraj Hendricks, said the beliefs propagated by Radio Islam were not those shared by the greater Muslim community.

IBA gets leaner and meaner (260)

M+G 6-12/2/98

Ferial Haffajee

A leaner, meaner Independent Broadcasting Authority (IBA) went on show this week at the start of its most gruelling licence hearings yet.

By the end of March it must decide which of seven strong contenders will win the coveted private television licence. That's a decision likely to be contested whichever way it goes and that's why much has gone into making this a very different set of hearings

For starters the IBA showed off a much more modest face this week it is keen to shake off the reputation for graft and high-living which previous councillors helped carve

The new IBA chose the simple Parktonian Hotel in Johannesburg as the venue The hotel's quality was reflected in the councillors as well In previous hearings councillors occupied centre stage, making grandiose speeches and asking verbose questions. This time around, they did more listening than questioning, leaving that task to a team of local and international experts who have been studying the bids day and night for several months

The result was a thorough interrogation of the Free to Air bid which kicked off proceedings on Tuesday Fellow bidders complained that the powerful consortium put together by Free to Air would advance the advantaged because it includes players who have already made it in the industry and the likes of producer Dali Tambo and film-maker Anant Singh

"That kind of structuring is hostile to the freeing up of the airwaves," said Cawe Mahlati, the head of Afrimedia Mahlati thought that Free to Air's bid had been "dented" by the deluge of inquiries

Others complained that the bid's decision to leave 17,5% of its shares unsubscribed — Kagiso Media was excluded from the bid by court order — weakened it substantially, because it left too much of a black hole

The past of Free to Air's managing director, Quentin Green, came back to haunt him when Mahlati questioned his previous role at the SABC while its management was in grip of the apartheid government

She also suggested that the bidders be disqualified because their plans make provision for regional transmitter splits (to enable it to provide regional programming) and not a single service

Free to Air's two rows of directors and technical experts were largely white males This didn't go unnoticed by several participants, who also questioned the absence of women from the bid

(260)

Sigcau faces Aventura court case

M+G 9-15/1/98

Ann Eveleth

Two landless communities claiming prime eco-tourism land in Mpumalanga instructed attorneys this week to take Minister of Public Enterprises Stella Sigcau to court over the planned sale of tourism parastatal Aventura.

The Moletele and Mashilane communities asked the Legal Resources Centre (LRC) in Pretoria this week to file an urgent application to halt the sale of Aventura after Sigcau failed to respond to their demand for representation in the final stages of the bidding process

Their action follows a government decision in late 1996 to make Aventura the country's first privatisation exercise Government suspended the sale in April 1997 after the emergence of several potential land claims on the parastatal's resorts, but lifted the suspension in October with promises to settle the claims separately.

LRC attorney Louise du Plessis said the claimants' action would proceed within the next week after the ministry failed to accede to seven demands, including effective veto rights over the decision of the tender evaluation committee which will make final recommendations to the government on the sale.

The communities—who are not against the sale of Aventura but want to regain land rights that would give them a share of the potential resort revenue — have also demanded access to tender documents and other information related to the privatisation plan.

Kennedy Memani, an adviser to Sigcau on the Aventura sale, accused the claimants of "mischief" and said they had not allowed sufficient time for the ministry to respond to their letter of demand sent on December 19. "Everybody has been on holiday and you must remember that my minister is an ANC minister and she had to attend the conference in December," he said.

Memani denied a dispute existed between the claimants and the ministry, claiming the parties had reached "an amicable agreement" at a meeting on December 18. But he refused to disclose the terms of the alleged agreement.

Du Plessis rejected this claim as "nonsense We've never, never agreed on anything," she said.

Memani claimed the government had gone to great lengths to consult the communities and the Department of Land Affairs to ensure the claimants benefited from the sale.

But Du Plessis said Sigcau's ministry had "never consulted the claimant communities They've consulted surrounding communities, the Commission [on the Restitution of Land Rights] and the Department of Land Affairs, but never the claimants," she said.

She added that her clients wanted to ensure they would benefit from any future developments on the Blydepoort and Claremont farms they are claiming. They had been removed from the land in the 1960s, some of them to make way for the construction of the Blyde Dam, and many lost access to ancestral graves in the process.

Land affairs chief director of restitution Jean du Plessis said his department had supported Sigcau's move to proceed with the sale of the land after a "technical hitch" prevented the state from selling Aventura without the land, but added that the successful bidder should be the company that gained the support of the claimant communities

Bid to extend stay of IBA councillors

Vuyo Mvoko

BD 12/2/96

(260)

CAPE TOWN — Moves to extend the stay of Independent Broadcasting Authority (IBA) councillors whose contract's end next month were not well received by Parliament's communications portfolio committee yesterday.

The contracts of John Matisonn, Libby Lloyd and Roy Williams are due to expire at the end of next month.

Officials of the posts, telecommunications and broadcasting department argued before the portfolio committee yesterday that the IBA councillors be retained for at least another year.

The IBA had just begun holding hearings into its biggest project to date, a process that would lead to the licensing of the country's first ever private television licence, departmental officials Mongezi Tshongweni and Connie Molusi said.

They said that to lose the three in the middle of the process would affect continuity, investor confidence and industry stability.

To appoint new councillors would take three more months, given advertisements, hearings and referrals that would have to be undertaken.

There was also the question of the imminent merger between the IBA and the SA Telecommunications Regulatory Authority (Satra), which required the undivided attention of councillors and which was supposed to have been completed by the beginning of April 1.

The granting of four-year licences to community radio stations was another task in addition to the council's workload over the next few months, the officials said.

Members of the committee asked why the issue was being raised now and not earlier when there was still time for the necessary replacement mechanisms that were provided for in the IBA act to be undertaken.

The ministry, however, pointed out that it was the parliamentary committee itself, the National Assembly and the president that had the power to appoint the IBA council.

The ministry had come to ask if the standing committee had a problem with the "principle" of extending the councillors' tenure, the officials said

Parliamentary legal adviser Anton Meyer told the committee that he saw no other way of dealing with the issue except to change the legislation, something that would inevitably take time.

Before the committee postponed the issue until next week to seek more legal opinion, there seemed to be agreement among committee members that a normal selection process could still be put in place and finished before the end of next month.

IBA trio still owe R200 000-plus

(260) Star 14/2/98

Cape Town – Delays in accessing documentation were hampering efforts by the Independent Broadcasting Authority to reclaim unauthorised expenses from three of its former councillors

More than R200 000 is still owed by the ex-councillors, who were found to have used IBA money to pay personal expenses.

The IBA planned to issue summonses to the three councillors within a few days.

An IBA spokesman said yesterday the summonses had not been issued because the IBA had experienced delays in obtaining petitions written by the three – Peter de Klerk, Linda Shope-Mafole and Dr Sibiletso Mokone-Matabane – disputing the amount found to be unauthorised.

The matter was expected to be finalised before the end of the month, the IBA said. – Sapa

Dolny leads the changing of the guard at Land Bank

ST(BT) 15/2/98 (260)

Transforming the parastatal has been an absorbing exercise but not always plain sailing, writes DON ROBERTSON

IT HAS taken Helena Dolny nine months to transform the Land and Agricultural Bank from an antiquated and rigidly authoritarian institution established in 1912 into a more representative bank with new products and new service ideals

The new Land Bank will officially be launched in March and CE Dolny concedes that the past three quarters have been, "great fun, challenging, nerve-racking, stimulating and far, far more exciting than I had ever imagined" But it has not all been plain sailing

"The old guard is having a hard time When I took over nine months ago, there was not one senior black manager Now there are four women and seven black men out of a total of 37 Some managers, who tend to follow the old system, feel they are being undermined and the GM of finance resigned as he felt he could not fit in comfortably with this

"As a result it has been difficult, but satisfying "

The new-look bank was achieved by introducing a number of new task groups

The first has been tasked to look at new products and revamp old systems The intention is to launch new products for black entrepreneurs and make available small loans of as little as R500, but it is difficult to assess risk as there is generally no collateral

Dolny says the intention is to increase the small loan component of borrowings to an additional 6 000 farmers this year, an increase of 23% over 1996

"This is the first time a parastatal on a national level will deliver finance to the bottom end of the market This will be done at the prime rate plus a charge for the risk, depending on track record We believe, however, that even if a borrower has more than one source of finance, he will pay back the one with the highest rate of interest first."

A second task team assessed human resources and this provided a few shocks, says Dolny

"Women were discriminated against, they had to wear uniforms and had different pay scales," she says "We also discovered that there was the equivalent of R15-million in unpaid leave as holidays were considered a privilege rather than a right "

A third group investigated support services and found there was effectively no cost accounting in the bank.

"For instance, the bank's cost of conveyancing bore no relation to actual costs and it was discovered that the mainframe computer was utilised at only about 15% of its capacity," says Dolny

'It has been fun, nerve-racking, stimulating and far more exciting than I had ever imagined'

Clients were asked their opinion of the bank's services and the response was not encouraging

"We have been tied into large agricultural finance, so commercial banks had more flexibility than us We also hope to improve our service administration "

Communication within the bank was another concern and it has been decided to cut the layer of regional managers

"In one meeting of four hours we took 14 cost-cutting decisions This impressed a lot of people," says Dolny

In the year to March 1996 the bank had R4 5-billion on loan to farmers plus R5 8-billion to co-operatives, R202-million to control boards and R158-million to agricultural institutions Reserves were R1 7-billion

The bank has persistently provided R40-million for bad debt which has largely not been needed For this year Dolny has board approval to utilise R15-million of this to settle unpaid leave and provide for a large loss after the fall of Vleissentraal

TRANSFORMER DYNAMO . . . Helena Dolny has kicked the Land Bank into a more elegant shape

ELECTION 'ONLY EXPLANATION'

'Indecent haste' over SABC bill

CT 19/2/98 (260)

REORIENTATION of the SABC will not change the broadcaster in a way that will affect viewers, says the director-general of communications. **ESTELLE RANDALL** reports.

THE Democratic Party has slammed the government for its proposals to transform the SABC into a state-owned company and for plans to merge the Independent Broadcasting Authority (IBA) and the SA Telecommunications Regulatory Authority (Satra) before it completes formulating a new broadcasting policy

"The election offers the only explanation for the indecent haste being displayed," Ms Dene Smuts said at yesterday's briefing on the Broadcasting Amendment Bill to the portfolio committee on communications

Director-general of communications Mr Andile Ncaba had told the committee the bill did not change the SABC in a way that would affect viewers

"This is reorientation of the SABC 'It is not pre-empting models (for restructuring the SABC) which are contained in the Green Paper," he said

The bill was tabled in Parliament at the beginning of this month and it is hoped it will be approved before the start of the new financial year in April

Ncaba said the bill would transform the SABC into a state-owned company to position it better in a highly competitive environment.

Transforming the SABC into SABC Ltd would not change the corporation's role as a public broadcaster or its accountability to Parliament

The change would enable the SABC to explore all market options on its own or as a partner with other regional broadcasters.

Ncaba said a strategic equity partnership in the SABC was not in the offing. But the bill gave the SABC the means to be a strategic equity partner in another broadcaster

The state would not fund capital investments or losses. Dividends would also have to be declared if a profit was made, as would the fate of assets that were sold

Smuts argued that the bill would turn the public broadcaster into a "private" company, where instead of reporting to Parliament, a board of directors would report to the minister of communications

Merging the IBA and Satra, Ncaba said, was being done in tandem with the broadcasting Green Paper process

The cabinet approved a merger of the two regulatory bodies in June last year, and now the detail of a single regulatory authority was being discussed by the IBA, Satra and the department

It was in this context that repeal of section 192 of the Constitution, providing for an independent authority to regulate broadcasting, was being raised.

Merged body could have 16 councillors

(260)

Robyn Chalmers

BD 20/2/98

THE new merged body of the Independent Broadcasting Authority (IBA) and the SA Telecommunications Regulatory Authority (Satra) may have to absorb 16 rather than the originally intended eight councillors, which is likely to have significant cost implications.

This follows a decision this week by the parliamentary communications committee to shelve a request by Post and Telecommunications Minister Jay Naidoo to extend the contract of three IBA councillors whose contracts end in March.

Broadcasting industry sources said the new merged body, recently approved by the cabinet, was likely to have double the originally intended number of councillors, possibly wiping out any cost savings expected through the merger

The broadcasting and telecommunications regulatory authorities bill was handed to the tripartite committee negotiating the Satra and IBA merger this week for discussion

The sources said a subcommittee of the tripartite committee dealing with constitutional implications of the merger had suggested that section 192 of the constitution be amended, repealed or replaced

"This is a legal tidying up exercise as the constitution mentions only the IBA Act by name and not the Telecommunications Act. Yet both are required to be dealt with in law if the merger is to be legal "

The Democratic Party (DP) has rejected the need to repeal section 192 to put Satra and IBA under one umbrella Spokesman Dene Smuts said Naidoo was "sending a clear signal that government will stop at nothing — not even the constitution — to get control of at least a portion of the airwaves".

Naidoo said the merger would go ahead The DP was making an election issue of the process, which was first raised in a telecommunications white paper in 1996. "This was adopted by Parliament "

A government source said the motivation for the bill was financial efficiency and effectiveness. The bill would allow for the corporatisation of the SABC, part of the restructuring agreed to by the SABC board

Jay Naidoo moves in on the SABC

(260) M+G 20-26/2/98

Jay Naidoo's bid for greater broadcasting control has caused an outcry in and out of Parliament, reports
Ferial Haffajee

Media mogul: Jay Naidoo moves from hands off to hands on in the broadcasting industry. PHOTOGRAPH: RUTH MOTAU

Broadcasting minister Jay Naidoo this week fired the first salvo in a battle for greater state control of broadcasting when he rushed badly drafted legislation before Parliament to commercialise the SABC

He also came under fire inside and outside Parliament for trying to strip the Independent Broadcasting Authority (IBA) of its constitutionally enshrined independence, and for subverting a six month-old public process to overhaul broadcasting policy.

In the context of ongoing government attacks on the media, his package of plans could be an attempt to wield political control of broadcasting, the most influential and far-reaching media in this country South Africa is currently one of the world leaders in broadcasting independence.

The broadcasting amendment Bill, tabled this week, seeks to transform the SABC into a public company and eventually place it on the path to privatisation.

Together with another yet-to-be-unveiled draft Bill aimed at merging the country's broadcasting and telecommunications regulators, it could give Naidoo greater control over the SABC specifically, and broadcasting generally.

If the Bill is passed, he will be the SABC's sole shareholder and will have greater control over its finances.

Naidoo is also seeking a constitutional amendment to repeal a clause which enshrines the independence of the IBA. This could set off fireworks when it is debated by Parliament's portfolio committee on communications

On Wednesday, he presented the "SABC Bill" — as the broadcasting amendment law has become known — to the committee after it had received the thumbs-up from both the SABC and its board.

Despite the SABC's approval, the content of the Bill raises many questions. Corporatising the broadcaster will change its shape and nature in crucial ways, yet this plan was excluded from Naidoo's Green Paper It is the first step to privatisation, but in the interim it could give the minister greater power over the SABC in the run up to next year's election as he will be its sole shareholder

Naidoo's representative, Mandy-Jean Woods, denied he was bypassing the Green Paper's deliberations She said the Bill flowed instead from last year's restructuring of the SABC, when the McKinsey consultancy recommended the corporatisation of the broadcaster

Not everyone is satisfied with the powers Naidoo could enjoy Media freedom analysts, like the Freedom of Expression Institute, lobby for a more hands-off approach, with the SABC funded in three-year budgets, as is the case with leading international broadcasters

"The draft Bill reduces the status of the public broadcaster from an independent operation to one sub servient to the minister's dictates. By having control over the finances, the minister could gain control of the public broadcaster," said the Freedom of Expression Institute

SABC representative Enoch Sithole said. "There's nothing to panic about. Telkom and the Post Office went through the same process. The SABC cannot technically be independent of the government because it is 100% owned by the government."

Sithole says a charter between Parliament and the SABC — like that between the BBC and the British Parliament — could be drafted later to ensure non interference

In Parliament, the Democratic Party's Dene Smuts raised objections "Instead of the current SABC board reporting to Parliament, there would be a board of directors who would instead report to a shareholder — the minister of broadcasting," she said.

At all parastatals the relevant minister is the only shareholder representing the public, but broadcasting requires built-in protections because it can be politically manipulated.

Chair of the SABC board, Professor Paul Zulu, said the board had no problems with the Bill, which he believes is necessary in a country with limited resources and infinite needs.

"In principle, it's about a public broadcaster that has to be commercially viable You cannot see broadcasting in isolation from the rest of society," he said.

Some broadcasters in other countries have been corporatised in this way, as have local parastatals like Eskom and Telkom. And it's not all bad news

"It will enable them to run the corporation like a company which is assessed along strict business principles," said Jenny Cargill of the consultancy BusinessMap. The SABC could later craft a public share offering, list on the stock exchange, enter into joint ventures, or even sell off parts of its operations But big ideas like these should have been germane to the Green Paper

Also absent from the Green Paper is the Department of Communications's Bill for discussion on the merger between the IBA and the South African Telecommunications Regulatory Authority (Satra). Yet in the Green Paper stakeholders are asked whether such a merger should happen at all.

The merger is in reality a *fait accompli*. The Director General of Communications, Andile Ngcaba, is personally driving the merger, having already drafted a Bill for discussion. He chairs regular unity talks between the two authorities.

The merger has the support of some quarters of the IBA, but there are questions from outside. "We are concerned. What is the point in asking the question in the Green Paper when it has already been answered?" said Jane Duncan, author of the Freedom of Expression Institute's response to the Green Paper

Woods said the merger has already been part of a public debate in the Green Paper and White Paper deliberations which led to a new telecommunications law "It's necessary for efficiency in the management of licensing and frequency distribution," she said.

But the fact of the merger is not being contested — it is common for telecommunications and broadcasting regulators to live under one roof.

The rules need fine tuning and honing; to do this successfully will take between 18 and 24 months and should not be rushed, as appears to be the case.

The IBA enjoys greater independence than Satra, the IBA reports to Parliament, while Satra reports to the minister. In their governing statutes, the broadcasting authority's independence is more carefully enshrined and defined than Satra's

Many lobbyists, including the Freedom of Expression Institute, are pushing for more discussion before the merger takes place — ideally in the negotiations around the Green Paper

In Parliament this week, Ngcaba told the portfolio committee the government would like to see the SABC Bill passed by the end of April, to coincide with the start of the new financial year

Plenty of changes and expansion in broadcast media are coming our way as South Africa embraces the information age and enters the next millennium

More TV, radio ahead as broadcast options flower

ARG 21/2/98 (260)

ESTELLE RANDALL

By this time next year the South African Broadcasting Corporation will be SABC Ltd, our television sets will receive four, instead of three, free channels and there may even be a community television channel.

And our radios will offer us an even wider choice of entertainment and information about the areas where we live, our country and the world, as broadcasting opportunities, which have been blossoming like wildflowers since 1993, expand

This year the Department of Communications will start to put in place laws and mechanisms to ensure that enough broadcasting flowers bloom where they are needed and appreciated

However, there are fears, expressed by the Democratic Party's Dene Smuts at a meeting this week of Parliament's portfolio committee on communications, that the Government is trying to ram through legislation while consultation on a new broadcasting policy continues

'The SABC has to become a world-class public broadcaster, managed efficiently'

The consultative process kicked off last August when Posts and Telecommunications Minister Jay Naidoo drew together 26 stakeholders in the broadcasting industry to develop a green paper on new broadcasting policy – one which would guide South Africa into the 21st century

The brief was to review the broadcasting system and use this review to devise a new policy in keeping with the best international practices

The green paper identified three tiers of broadcasting governance

- Formulating national policy (the Government's responsibility),
- Regulation and licensing (the responsibility of the merged Independent Broadcasting Authority and the SA Telecommunications Regulatory Authority (Satra), and
- Service provision (the responsibility of station operators)

Based on public comments, the department will draw up a draft white paper during the first quarter of this year, subject this to public scrutiny and table it in Parliament in July Legislation aimed at overhauling broadcasting will follow.

Parallel to the review of broadcasting policy and legislation which will flow from this, the Department of Communications said it has plans to rationalise and develop the sector

An example is the Broadcasting Amendment Bill, tabled in Parliament this month

The bill will transform the SABC into a public company, with the state as sole shareholder This means the SABC – reoriented into SABC Ltd – will report to its shareholder in accordance with the 1973 Companies Act and the state will pay dividends from the shares into the National Revenue Fund

Communications director-general Andile Ngcaba told the portfolio committee on communications this week that transforming the SABC into a state-owned company would better position it to take advantage of the highly competitive broadcasting environment

"The bill doesn't change the SABC in a way which will impact on viewers, but the SABC has to become a world-class public broadcaster, managed and run efficiently "

He said no assets were being redistributed and the bill did not pre-empt proposals for restructuring the SABC, contained in the green paper on broadcasting. Since the Companies Act did not compel entities to be profit-driven, transforming the SABC into a public company would not change the broadcaster's role of providing a public service or its accountability to Parliament

However, the change would enable the SABC to take advantage of foreign-investment opportunities – on its own or as a partner with other broadcasters

Big boss: head of the SABC, Zwelakhe Sisulu This year the state broadcaster is expected to increase its service to the country

The bill would make SABC board members liable for bad investments and other losses of the company "Now the board has no responsibility besides monitoring content," said Mr Ngcaba

When Parliament gave responsibilities to the board, it would not be a "caretaker", Mr Ngcaba said.

Dividends would have to be declared if a profit was made, as would the fate of assets which were sold

Company assets would have to be handled in keeping with the policies of the country and financing of projects would be decided by the state on the basis of business plans submitted, he said The state would not fund capital investments.

Also, there is a plan to merge the IBA and Satra this year Satra regulates and controls the radio frequency spectrum by issuing licences for telecommunications service providers, such as Telkom

The IBA issues licences for radio and television service providers. It was established to regulate broadcasting in the public interest, as stated in the Constitution

The Constitution says national legislation must establish an independent authority to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society

The IBA Act in 1993 ended SABC's broadcasting monopoly and opened radio and television to competition The Act also aimed to level the playing field by making the regulation of media markets a priority, through quotas on cross-media ownership and local content.

In June last year the IBA and Satra agreed and the Cabinet approved a merger of the two regulatory bodies. The structure and format of the merged regulatory authority was being discussed between the IBA, Satra and the communications department

'There are four million television sets in SA, out of 12 million in Africa'

Other initiatives in the sector include the integration of former TBVC (homeland) broadcasters into the SABC This has already started and should be completed by April

Money has also been set aside to support emerging community radio stations in historically disadvantaged communities – two in each province – through the purchase of infrastructure A tender for the equipment has been issued and will be awarded this month.

The communities will be chosen in terms of the IBA's licensing process and should be finalised by end of June, with stations expected to be fully operational by the third quarter of this year A task team of the communications and education departments is investigating the possibility of the SABC launching an educational channel The team will report on the viability of this project in the next three months

Consultants are also looking at ways in which the signal distribution sector can support broadcasting and help it meet the needs of all South Africans

Six SABC radio stations have already been privatised and seven new stations have been licensed – three in Cape Town and three in Johannesburg There are none yet in Durban, where one FM licence is available The Eastern Cape, Northern Province, Free State and Mpumalanga have expressed interest in commercial radio station licences

The IBA is currently hearing applications from seven companies for one available free-to-air television Selection should be completed by the end of March

The IBA will also be investigating the feasibility of introducing community television

- The broadcasting industry in South Africa employs about 10 000 people in production, programming, management, advertising, sales, research and regulation There are also opportunities for manufacturers, retailers and suppliers

There are four million television sets in South Africa, out of 12 million in Africa The number is likely to double by the year 2000. Of the two-million video cassette recorders in the continent, one million are in South Africa Only a quarter of South African households have a television and a video cassette recorder

Star 21/1/98

Privatised SABC – and better TV?

(260)

Information, entertainment for all is aim of broadcasting shake-up

By ESTELLE RANDALL

By this time next year, the South African Broadcasting Corporation will be SABC Ltd, our television sets will receive four, not three, free channels, there may even be a community television channel, and our radios will offer us an impossibly wide choice of entertainment and information Some of us will also be involved in these broadcasting opportunities that have been blossoming like wild flowers since 1993.

This year the Department of Communications will start to put in place laws and mechanisms to ensure enough broadcasting flowers bloom where they are needed and appreciated

There are fears, expressed by the Democratic Party's Dene Smuts at a meeting this week of the communications portfolio committee, that the Government is trying to ram through legislation while consultation on a new broadcasting policy is still continuing.

The consultative process began in August last year when Posts and Telecommunications Minister Jay Naidoo drew together 26 stakeholders in the broadcasting industry to develop a green paper on new broadcasting policy – one to guide South Africa into the 21st century

The brief was to review the broadcasting system and use this review to devise a new policy in keeping with best international practices

The green paper identified three tiers to broadcasting governance·

■ Formulating national policy – the Government's responsibility

■ Regulation and licensing – the responsibility of the merged Independent Broadcasting Authority and the SA Telecommunications Regulatory Authority (Satra).

■ Service provision – the responsibility of station operators

IN CHARGE: Posts and Telecommunications Minister Jay Naidoo

Based on public comments, the department will draw up a draft white paper during this year's first quarter, subject this to public scrutiny and table it in Parliament in July Legislation aimed at overhauling broadcasting will follow

Parallel to the review of broadcasting policy and legislation that will flow from this, the Department of Communications says it has plans to rationalise and develop the sector An example is the Broadcasting Amendment Bill, tabled in Parliament this month

The bill will transform the SABC into a public company with the state as sole shareholder. This means the SABC – then SABC Ltd – will report to its shareholders in accordance with the 1973 Companies Act, and the state will pay dividends from the shares into the National Revenue Fund.

Communications director-general Andile Ngcaba told the portfolio committee on communications this week that transforming the SABC into a state-owned company would better position it to take advantage of the highly competitive broadcasting environment"

"The bill doesn't change the SABC in a way which will impact on viewers, but the SABC has to become a world-class public broadcaster, managed and run efficiently"

He said no assets were being redistributed and the bill did not pre-empt proposals for restructuring the SABC which are contained in the green paper on broadcasting

Since the Companies Act did not compel entities to be profit driven, transforming the SABC into a public company would not change the broadcaster's role of providing a public service or its accountability to Parliament

However, the change would enable the SABC to take advantage of foreign investment opportunities – on its own or as a partner with other broadcasters

The bill would make SABC board members liable for bad investments and other losses suffered by the company, which was not the case now, Ngcaba added

When Parliament gave responsibilities to the board, it would take full responsibility and not be a "caretaker"

Dividends would also have to be declared if a profit was made, as would the fate of assets that were sold

Another aspect of the process of overhauling the broadcasting industry is the merger this year of the IBA and Satra.

Satra regulates and controls the radio frequency spectrum by issuing licences for telecommunications service providers, such as Telkom

The IBA issues licences for radio and television service providers. It was set up to regulate broadcasting in the public interest, as stated in the constitution This, says national legislation must establish an independent authority to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society

The IBA Act of 1993 ended the SABC's broadcasting monopoly and opened radio and TV to competition.

In June last year the IBA and Satra agreed to, and the Cabinet approved, a merger of the two regulatory bodies. Now the structure and format of the merged regulatory authority is being discussed between the IBA, Satra and the department.

Other initiatives include integration of former TBVC broadcasters into the SABC, which should be done by April.

Money has also been set aside to support emerging community radio in historically disadvantaged communities – two in each province – through the purchase of infrastructure. A tender for the equipment has been issued and will be awarded this month. The choice of communities and the licensing should be finalised by the end of June, with stations expected to be fully operational by the third quarter of this year

Deregulation sees changes in industry

BD 24/2/98 (260)

Janet Parker

DEREGULATION of the airwaves, the proliferation of media platforms and increased competition, among other factors, have changed SA's media environment and made the jobs of media planners and buyers a lot more tricky

Mike Leahy, MD of Ibis Media Data, which produces the Media Inflation Watch index, reviewed a few key media trends in the 1998 Marketer's Media Guide compiled by Media Initiative Africa

Leahy said the dominant factor was that the pace of change in society and technology was accelerating "A fundamental effect of this is that the communications industry is becoming ever more volatile, not cyclical."

Internationally there was an increasing move towards "narrowcasting" — a focus on smaller and more homogenous groups on a geographical, racial or special interest basis. The narrowcasting trend, in turn, affected people's media use and led to a move towards selective "media consumption".

"More media competing for the same disposable hours results in the average medium receiving less attention time A new medium seldom increases total consumption of media — it steals from the overall time consumers are prepared to spend on it," he said. With increased competition for consumer's time, content had become all important

Leahy said narrowcast media opened the way for proportionately lower cost investment compared with mass media — like SABC1 and the Sunday Times — and opened up a narrowcast range of advertisers However, this trend would be at the expense of traditional cost efficiency measurements, as smaller mediums did not benefit from the same economies of scale as the large mediums.

The distinction between above-the-line and below-the-line advertising was disintegrating, and "despite the fact that 'non-traditional' opportunities are difficult to assess and manage, they are beginning to find their way onto media recommendations".

More information was available to media buyers and planners more quickly than before, and rate-fixing structures were crumbling, making it a buyer's media market There was a move towards greater flexibility and negotiability and a greater awareness of the value of buying, he said

There was a trend also from intramedia to intermedia competition, and owners of traditional media were likely to launch joint marketing schemes "in an attempt to keep their investments valuable, while competing like crazy in their own sector"

The tradition of signing off a year's media schedule would be replaced by setting strategic plans and buying objectives to capitalise on media opportunities. Leahy said covert political manipulation of the media was likely to replace the heavy-handed approach of the past. "It would appear politicians have learnt to be more sophisticated in dealing with the fourth estate "

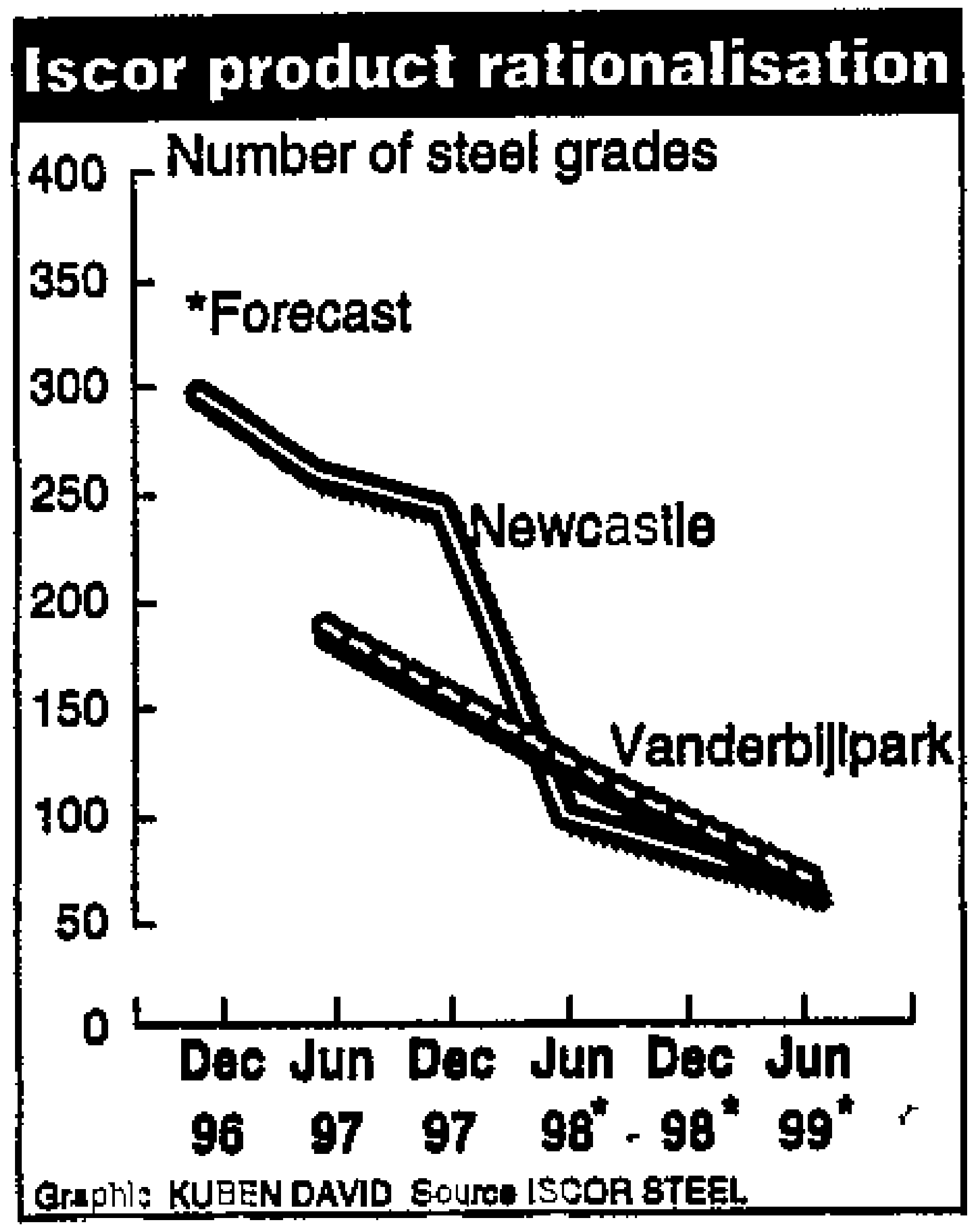
□ *The 1998 Marketers' Media Guide — the third edition of the publication — is compiled by Media Initiative Africa and is available with the February edition of Marketing Mix. The guide is produced specifically to update the marketing community on a broad spectrum of media issues.*

There are lessons for parastatals in Iscor's transformation

(260) BD 24/1/98

FOOTNOTES

Hilary Joffe



Iscor product rationalisation

Graphic: KUBEN DAVID Source ISCOR STEEL

"BY THE time we get to the top of the next steel cycle, which we predict will be in 2001, Iscor will be a very different company," chairman Hans Smith told analysts at the presentation of the group's interim results recently

There is little doubt that Iscor, which has a range of initiatives under way to modernise existing operations and grow and diversify its product base, will look different in 2001.

The interim results, presented at the soon-to-be-commissioned Saldanha Steel, reflected some of the changes implemented so far, with substantially increased operating margins in iron and steel.

There must be lessons in the Iscor experience for parastatals which have started transformation and gained private shareholders recently. The iron and steel giant is still ridding itself of its parastatal legacy — more than eight years after the listing which took it from public to private ownership. The transformation process begun about four years ago is beginning to yield dividends, but there is at least another year to go.

As Smith sees it, the Saldanha project, which will raise Iscor's output of finished product to more than 6-million tons, is as much expansion as he would like to see in steel. The group seeks volume growth in Iscor Mining, whose projects include iron ore, copper and cobalt in SA and abroad. But in steel the focus is on growing value, particularly through the re-engineering exercise which is being assisted by international management consultancy McKinsey.

The group's stated aim is to cut costs in all its divisions 25% over three years. But the cost target is simply the measurable aspect of the programme, which is intended to cut the number of steel grades produced dramatically, decentralise decision-making and reorient a traditionally production-driven management to a focus on customer service

Iscor's mandate was to ensure SA was self-sufficient in steel. It produced those grades required by the local market, rather than necessarily those which were profitable. Its Newcastle steel works, for example, produces 250 grades of steel — but 80% of its profit comes from only 50 of those.

Key aspects of the legacy of the past have been tackled only recently. At the beginning of last year marketing, which had all been done from Iscor's Pretoria head office, was decentralised to the individual plants.

The re-engineering process, implemented first — and successfully — in Iscor Mining, is now being taken to Iscor Steel. It started last year at the Newcastle works but implementation at the key Vanderbijlpark works, which accounts for about 70% of the group's steel capacity, was delayed until phase one of the modernisation programme, which involved a R600m investment in new plant, was up and running.

Smith now admits the group tried to do too much, too fast at Vanderbijlpark, which had serious production problems last year.

Objectives of the steel re-engineering are threefold cost reduction, product rationalisation and process redesign. Cost targets have been set to June 2003. Products are to be rationalised over a shorter period At Vanderbijlpark, there are 12 000 active products: the aim is to bring these down to 210. The group's joint venture with international steel trader Macsteel provides some comfort, Smith notes, since it ensures the group can source grades it decides not to produce.

Smith expects the re-engineering process to yield "quantum leaps" in value in Iscor Steel. So do some analysts, who expect strong earnings growth over the next few years despite the uncertain outlook for the steel market. Others are more cautious, pointing to the effect on commodity prices of turmoil in Asia, and to possible problems in commissioning Saldanha.

Iscor's share price has picked up since late last year, but it is still 50% below its level of 12 months ago. However, the increase in foreign holding is striking: foreign shareholders hold more than a third of Iscor's shares and the proportion is rising Though steel manufacturers worldwide have been marked down because of the Asian crisis, Iscor's share has fallen further than most — and international investors seeking steel exposure see value in it.

Stella fights for her political life

M+G 27/2-5/3/98 (260)

Marion Edmunds

Embattled Minister of Public Enterprises Stella Sigcau is attempting a political makeover, including privatisation road shows, to save herself from extinction before the 1999 elections

"I have set myself a deadline of six months to make people believe my department is alive and not dead," she said this week

Sigcau will have to justify the importance of her Cabinet seat in the coming weeks, after recommendations by the Presidential Review Commission that her ministry be scrapped and the privatisation work parcelled out to other departments

The review commission's recommendations are expected to be presented to Cabinet next Wednesday as part of a package to streamline the government Tense negotiations over the future of Sigcau's ministry are expected to follow

Sigcau says such restructuring will probably only take place after the elections This week she dismissed reports on the commission's recommendations as "hearsay", and criticism of her performance as a "misunderstanding of her portfolio"

Sigcau is fighting from a position of weakness She lost her top civil servant, Dr Sipho Shabalala, this year, and a number of senior officials have moved on to better jobs Her department lacks skilled staff and she relies heavily on the input of Hong Kong Shanghai Bank, which is contracted to advise on privatisation at R12-million a year

Sigcau has earmarked seven companies for privatisation, but commentators believe a lot fewer will actually go through this year because of inherent difficulties in the privatisation process

Denel, Alexkor, The Airports Company, Safcol, Aventura and Autonet are on the list Sigcau has committed herself to fast-tracking the South African Airways process

She is also preparing legislation to create the long-awaited National Empowerment Fund this year, which will give disadvantaged groups a stake in the privatisation of parastatals, at a discount rate

Despite these moves forward and headlines trumpeting her success this week, Sigcau's poor reputation persists, partly because she does not appear to have an intellectual grip on her portfolio

In an interview with the *Mail & Guardian* this week, Sigcau preferred not to answer questions relating to the more complex, commercial side of privatisation, referring these to advisers She also refused to give figures on how much privatisation would raise for the state before the elections It is clear she is more interested in personnel development and empowering the disadvantaged than in the complexity of the sale of state assets

"I am enjoying my job very much," she said when asked whether she would not be better suited to a welfare portfolio "I like it particularly where the privatisation of parastatals, through social programmes, can help rural communities in areas like electrification, small businesses, brick-making co-operatives, sewing groups and the running of piggeries, for example "

Stella Sigcau: Valued for her rural links. PHOTO: ERIC MILLER/IAFRICA

Sigcau may be floundering in her portfolio, but she has canny survival instincts and good rapport with rural community leaders She makes much of her special relationship with Deputy President Thabo Mbeki

Mbeki's office intervened recently to save the privatisation of Aventura in Mpumalanga from a potentially embarrassing court action, saving face for Sigcau Mbeki instructed his legal adviser, Mojanku Gumbi, to take control of defending the case brought against Sigcau by a community claiming the Aventura land

Sigcau's co-option on to the African National Congress's national executive committee last weekend has been interpreted as a vote of confidence in her from ANC leaders, who want to use her to secure votes in the former Transkei, where her arch-enemy, Bantu Holomisa of the United Democratic Movement, is gaining ground

"That is a fight I will take on gladly," she said, "and win for the ANC even if I go black in the face I do have a measure of respect among the ANC because they know I can deal with rural people "

Naidoo firm about ringing the changes

AKG 28/2/98

(260)

JACQUIE GOLDING-DUFFY
NATIONAL MEDIA EDITOR

He's come under fire recently for allegedly wanting the Government to exercise more editorial control over the SABC. He has also been accused of rushing before Parliament "badly drafted legislation" aimed at commercialising the SABC.

But this week the Minister for Posts, Telecommunications and Broadcasting, Jay Naidoo, simply dismissed the allegations as "mischievous"

Mr Naidoo is unfazed by the media hype, the criticisms levelled against him and the numerous allegations

Sitting in his stylishly furnished office in Parliament, Mr Naidoo is pleasantly engaged in banter about his childhood (he is the youngest of seven children), his admiration for the "spiritualness and generosity" of his mother, and the ministry's plans to bring telephones to township residents and outlying rural areas

He suddenly leans forward· "The issue of the corporatisation of the SABC arose out of the McKinsey Report which identified that the corporation has to become profitable if it is to be financially self sufficient

"Reports that the Broadcasting Amendment Bill is a ploy to increase the Government's control over the SABC are untrue

"The Bill was not rushed It was tabled on February 4 and deals with the SABC's corporatisation which is part and parcel of the report conducted more than a year ago "

The McKinsey report urges that the broadcaster cut costs and become less bureaucratic It also recommends that the SABC hone in on business mechanisms in an effort to break even, bring in revenue and become financially self-reliant

The corporatisation of the SABC will bring it in line with the King Commission's recommendations on corporate governance, says Mr Naidoo, adding that the issue at stake is one of "financial accountability and not editorial control"

Editorial independence of the SABC would be enshrined in the White Paper (which is in the process of being drafted) as well as in the legislation which will follow

The funding of the SABC is "not a priority" to the Government which has many other tasks to fulfill and many projects to fund

"To become profitable and draw in advertising, the SABC will be able to cross-subsidise public service programmes "

So, it will not abandon its public service mandate as laid out by the Independent Broadcasting Authority?

"Definitely not The challenge facing the SABC is to increase its revenue and then cross-subsidise in order to do public service programmes "

The SABC, however, is not the only focus of the Telecommunications Ministry

Mr Naidoo has promised to lay three million telephone lines in townships during the next five years He also aims to spread his telecommunications gospel to other African countries.

On line: Telkom chief Jay Naidoo

With 700 million people in Africa, it is almost incomprehensible that only 12 million have telephone lines This illustrates the telecommunications backlog on the continent, which is being tackled by South Africa and 32 other African countries

A common telecommunications strategy for Africa should be mapped out before the Africa Telkom 98 conference to be held in Johannesburg in May

Mr Naidoo stresses that Africa's participation in the information society is vital and that priority should be given to the building of an information infrastructure in order to enhance the competitiveness of the African economies

This financial year alone, the ministry installed 421 000 phones of which a large percentage were dedicated to outlying rural areas

Mr Naidoo also challenged those who criticised his decision to put off the privatisation of Telkom for another six years

"There's no country in the world which has liberalised before they have reached a certain quality We are working towards international benchmarks.

"We are moving towards competition but the monopoly currently talked about in the telecommunications industry only extends as far as fixed line voice transmission (telephones) "

Experts have been flown in from the US and Malaysia to infiltrate Telkom's top management to improve standards and to train black managers in establishing international standards of excellence in management and customer service

Mr Naidoo is also working towards catapulting those South Africans who are computer illiterate into the age of information technology

Television station criticised for ‘unrealistic’ business plan

BD 2/3/98 (260)

Janet Parker

COMMUNITY Television Network (CTN) said at the Independent Broadcasting Authority hearings for a commercial free-to-air television service last week it aimed to bring more effective television to viewers and small business entrepreneurs

The consortium said the proposed channel would address language, cultural and provincial diversity, was capable of broadcasting nine regional and 30 local “windows” and was dedicated to a 61% quota of quality local content programming

Rival bidders criticised CTN, however, and said the proposal was “unrealistic” New Channel TV contended that in the applicant’s business plan individual costs were underestimated, projected revenues were overestimated, operational plans were unrealistic and the application was based on hope and potential

New Channel TV said the black empowerment shareholders were taking all the risk However, if the licence bid was successful they would have to sell over 40% of their shares to “wealthy white banks and corporate shareholders”

CTN’s shareholding would include Millennium Entertainment Group Africa, United Television International, Genbel, Sankorp, and several previously disadvantaged groups

Free to Air criticised the bid as the consortium would change “significantly” if it was granted a licence and would include commercial partners such as Absa and ING Barings, among others, resulting in the existing black empowerment shareholding being reduced

CTN’s hearing continues today while New Channel TV, the last of the seven bidders, will begin its hearing on Thursday

Repayment of IBA funds unresolved

BD 3/3/98 (260)

CAPE TOWN — The Independent Broadcasting Authority (IBA) may have to wait another few weeks for clarity on whether three former councillors will repay the funds they allegedly misappropriated

In spite of a February 28 deadline set by Posts, Telecommunications and Broadcasting Minister Minister Jay Naidoo to resolve the matter, ministry officials confirmed yesterday the amount involved was still in dispute

In reply to a parliamentary question last month, Naidoo said the former councillors — two of whom were now advisers in the communications department — were still "engaged in correspondence with the IBA"

Ministry spokesman Connie Molusi said that forensic auditors had yet to finalise the matter It was hoped this would occur within a week or two

An IBA spokesman said that all outstanding money due to the authority was a matter between the former councillors and the department

The IBA had wanted to take legal action in October, but had then been made aware that there was "some arrangement with the department".

The auditor-general last year found widespread abuse of credit cards and the misappropriation of IBA funds — Sapa

New Channel TV supports '40% local content quota'

(260)

Janet Parker

BD 3/3/98

NEW Channel TV, which will appear before the Independent Broadcasting Authority on Thursday, says local content and bolstering the capacity of SA production companies is critical to its success

The group, one of seven bidders for SA's first free-to-air commercial television service, said it had a three-pronged strategy to promote local content It was committed to a 40% quota of local content, would use international expertise and outsourcing to build capacity in the independent production industry, and would facilitate international co-productions with its international partner, Television Francaise 1 (TF1).

Communication group TF1 is listed on the Paris Stock Exchange and operates in production, audio-visual rights trading, advertising sales, thematic channels, publishing and distribution, and digital television TF1 would hold a 20% stake in New Channel TV and has committed finance and human resources to training and skills transfer to New Channel TV staff and certain players in SA's independent production industry

New Channel TV's other shareholders include the National Empowerment Corporation (30,1%), the SA Railway and Harbour Workers' Union Investments (10%) and nominee company Jenapr (5%) which holds its shares for a media company or other investor which would be identified by New Channel TV's shareholders Shelf companies Micawber Ninety Seven and Micawber 108 hold the remaining 24,9% and 10% respectively, consisted of numerous black empowerment groups and were both acquired for investing in New Channel TV

The group said its funding needs were R852m of which R95m was represented by share capital, R285m by shareholders' loans and R472m by external borrowings Forecasts indicated the channel would break even in its fourth year of broadcasting, and retained profit was forecast to become positive in its seventh year Net after-tax profit was expected to be about 20% of net revenue in its fourth to eighth year, thereby allowing for the repayment of debt

Foreign funders leave SA donors far behind

(260) Star 9/3/98 (~~247~~)

Although millions of rands have been used to fund the new community media in black communities in the past four years almost all comes from foreign funders.

The Independent Media Diversity Trust has provided R14-million in grant funding to some 40 print and radio projects over the past 4½ years. This was mainly to community newspapers and magazines with R1,2-million going to fledgling community radio stations

This funding was largely derived from Dutch, Danish and Swedish aid agencies, with R840 000 coming from South African groups.

German, Norwegian, Australian and Canadian aid groups have also been prominent in the funding of community radio.

Money for community and small-venture print media has dried up while new funding for community radio stations is just getting going, from new sources, including the Government.

The Open Society Foundation of SA (OSF-SA) has to date been the major donor of funding for community radio, providing some R7-million since 1994, with the intention of future funding at the rate of R4,8-million a year. The society's funding comes from the Soros Foundation in the US.

Jointly, with the Independent Media Diversity Trust (IMDT), it established the Kgaso Fund (Broadcasting Fund) in May 1995.

This was based on an agreement by Danida and the SA Government each to provide R6,3-million in grant funding for the community radio sector over 30 months.

The Department of Communications of the SA Government has planned to provide R10-million of this funding over four years for community radio stations

It is spending R3,139-million on equipment for 18, mainly rural, stations. The Development Bank of Southern Africa recently decided to provide community radio infrastructure with loans. The problem for most community radio stations in black communities is one of seed funding, training and capacity building as well as the provision of equipment and studios.

Community stations are legally prohibited from making profits. The IBA Act sets a requirement that community broadcasting be non-profit, dedicated to the services of the community and operated with genuine community support and participation.

Foreign governments have found ways of supporting the media.

■ The Dutch government established a Press Fund after World War 2 to promote press pluralism and especially to help publications in financial trouble. It did this by providing favourable rail and postal rates and exemption from sales taxes.

■ Sweden established a system of subsidies in the 1970s for newspapers also to promote pluralism, with the largest subsidies going to newspapers with the second largest circulation in any one region.

■ France established an aid mechanism in the 1980s for general and political national dailies with little income from advertising.

■ Other incentives came in the form of exemptions from VAT to reduce the selling price of newspapers: Britain, Portugal, Sweden, Denmark, Luxembourg and Brazil exempt newspapers from VAT. Austria, Ireland and Spain reduce VAT by 50%; France reduces VAT between 18% to 2%, and Finland waivers VAT on subscriptions.

■ Some states reduce telephone and telex costs: Italy, Belgium and France by 50%, Portugal by 30%.

■ Direct subsidies to newspapers are provided by some states to ensure all sectors of society have adequate media voices.

Governments in developing countries tend to be behind the First World in supporting the development of media, or linking media to their policies and strategies for development.

Radio Islam shut down

ARG 11/3/98 (260)

Johannesburg – Lenasia-based community station Radio Islam has a month to dismantle its operations.

The Independent Broadcasting Authority has refused it a one-year community broadcasting licence, saying that although the station proposed to allow women on air, the IBA was not convinced there would be "substantive gender equity".

Radio Islam was taken to task when the Youth for Islamic Enlightenment and Development lodged a formal complaint over the station's refusal to allow women on air. In December, the IBA ordered it to allow women three hours of airtime daily

IBA spokesman Pekwane Mashilwane said yesterday the authority disagreed with the station's intention to broadcast to only a limited portion of the Muslim community. – Argus Correspondent

Restructuring may need to be reconsidered

BD 11/3/98 (260)

Robyn Chalmers
and Reneé Grawitzky

GOVERNMENT and labour may go back to the drawing board to sort out clashes on the restructuring of several parastatals, including Transnet and the SA Forestry Company (Safcol), which are threatening the privatisation process

There is growing uncertainty about labour's role in the process, which is leading to clashes between government and labour on the extent of labour's role in a number of entities up for privatisation.

The public enterprises ministry said yesterday that government would meet unions early next week An attempt would be made to iron out differences on parastatals — notably Transnet, where the situation is most acute because 10 unions have suspended their participation in the restructuring committee

Public Enterprises spokesman Wandile Zote said yesterday mistakes had been made with the restructuring process, but he did not think the problems were insurmountable.

"We will have to relook at the commitments each party made in the national framework agreement (forged between government and labour)," Zote said

Sapa reports Public Enterprises Minister Stella Sigcau said yesterday the restructuring of Transnet was on track despite labour discontent

One of the unions' main gripes was that government was spending "millions" on its advisers in the restructuring process, while unions had to make do with far less Sigcau said she would provide the unions with a breakdown of the work government advisers had done, as well as a justification for the money spent

Labour argued yesterday that government was being inconsistent in its approach to labour advisers

Labour had a solid relationship with the Airports Company, for example, where partial privatisation was unfolding smoothly, but said government did not see a role for labour advisers in Transnet

There have been lengthy delays in Safcol's privatisation, which sources close to government said could be attributed to both sides One of the main problems was the lack of an overall sector strategy on Safcol Union sources said there was no clear way forward

There were also problems between labour and government with the restructuring of loss-making diamond mine Alexkor A meeting is scheduled for today.

Sigcau said the majority of labours' concerns around the restructuring of Transnet had been addressed at a meeting on Monday She said "we were all surprised to learn that a news conference was held" later that day referring to the points already discussed

A meeting to resolve the issue of labour advisers would be held next week while Transnet had already paid more than R1,5m in less than a year for expenses for labour and its advisers on the restructuring process.

Ministry adviser took home R76 000 a month

(260) ARG 13/3/98

CLIVE SAWYER
POLITICAL CORRESPONDENT

Questions are to be asked in Parliament about a Public Enterprises Ministry adviser who was allegedly working simultaneously as a consultant to Transnet, which is controlled by the ministry.

Reports in December said Kali Mabantsela was paid R48 000 a month as a consultant while earning R28 000 from the ministry.

Mr Mabantsela said at the time that he won the Transnet deal only once his contract with the ministry was coming to an end.

An invoice for R48 000 that was sent to Transnet was just a way of receiving payment while he was finalising his employment conditions, he was quoted as saying

Stella Sigcau

Democratic Party leader Tony Leon has asked Public Enterprises Minister Stella Sigcau if the reports about Mr Mabantsela are true, and DP MP Bukelwa Mbulawa has asked Public Service Minister Zola Skweyiya about guidelines for the appointment of consultants in the public service

Nine nominees for three broadcasting authority vacancies

CT 16/3/98

(260)

ANDRE KOOPMAN

NINE people will be interviewed in Parliament this week for three positions on the influential Independent Broadcasting Authority council, which grants radio and television broadcasting licences

The terms of office of three members of the seven-member council expire at the end of the month.

The nine people shortlisted for the three positions include present members Ms Libby Lloyd and Mr John Mattison Public interviews of the aspirant councillors will be held in the National Assembly from tomorrow

Mr Sam Moeti, chairperson of the parliamentary communications portfolio committee, said the committee hoped to finalise the three positions before the end of the week.

IBA councillors earn an annual salary of R328 322 and the chairperson earns R413 924

Those shortlisted, other than Lloyd and Mattison, are·

● Mr Raymond Louw, former editor of the *Rand Daily Mail* and former commissioner on the Independent Media Commission, which monitored broadcasting of party political material in the run-up to the first democratic elections in April 1994

He was nominated by the Freedom of Expression Institute, which also nominated Lloyd.

Two of the nine people shortlisted for three vacant positions on the IBA council are sitting councillors.

● Mr Jan Gabudhla Tugwana was nominated by Mr Enoch Sithole, General Manager of Communications and Television Licences of the SABC Tugwana was a journalist with the *World* and *Weekend World* in 1973-74 and worked for the *Rand Daily Mail* from 1976 to 1985 He was co-founder of the *New Nation* and later became its editor until it closed in May last year.

He was also on the three-person committee of inquiry appointed by the International Olympic Committee to probe SA sport and a co-founder of the National Olympic Committee of SA.

● Ms Martina Della Togna of the Community Video Education Trust (CVET), an Athlone-based training and development non-government organisation that nominated her

CVET runs training courses for aspirant film-makers from disadvantaged communities and works in partnership with organisations that want to use video as a medium for training, information sharing and documentation Togna has worked as a programme co-ordinater and trainer at CVET.

She was also nominated by the Salt River based Bush Radio where she worked as a volunteer and the Open Window Network of the Centre for Democratic Communications. Togna also assisted Bush Radio with its first application for a temporary broadcasting licence

She produced *Community Eyes*, a 26-minute documentary examining the role of Community Television in South Africa and *In our voices*, a voter education series for TV

● Lumko Mtimde was nominated by the National Community Radio Forum (NCRF) He is the chief executive officer of the NCRF and a member of the advisory stakeholders' committee to the Posts, Telecommunications and Broadcasting Minister Jay Naidoo

Mtimde was involved in the establishment of the IBA He has a B Sc in physiology and biochemistry and is studying at Unisa for a postgraduate diploma in telecommunications

From 1993 to 1994 he was chairperson of Bush Radio, and from 1992-1994 he was on the executive committee of the Campaign for Independent Broadcasting, Western Cape. He was a founder member of the national community Media Forum and of the NCRF. From 1995-1997 he was vice-president (Southern and Eastern Africa) of the World Association of Community Radio Broadcasting and also served on the board of directors of Radio Freedom

● Attorney Mr Mhlaliseni Michael Mthembu was nominated by S D Moloi and Associates, a Durban firm of attorneys in which he is a partner Mthembu was awarded an LL B in 1991

In 1994 he followed the Diplomacy and Diplomatic Training Course offered by the ANC's department of international affairs, run under the auspices of Zimbabwe's Department of Foreign Affairs.

● Ms Nadia Bulbulia was nominated by the Children's Broadcasting Forum. She is presently unit head in the policy development department at the IBA Her areas of expertise and research are women and children

Bulbia has a BA honours in dramatic art from the University of the Witwatersrand and is reading for an MA in media studies

● Mr Bernard Roebert was nominated by United City Fellowship, an East London based "prayer fellowship of ministers and wives"

In the past five years Roebert has been instrumental in developing, formulating and piloting the process that made Trinity Broadcasting Network the first South African group to obtain a broadcasting and signal distribution licence granted by the IBA to a community television network, United City Fellowship said.

Roebert has a diploma in agriculture He currently serves as director of operations at African Continent of Trinity Broadcasting Network based in Bisho

He is also a board member of the National Association of Broadcasters of South and Southern Africa and a board member of the Association of Christian Broadcasters of Southern Africa

Sacrificing SABC's freedom?

(260) Sowetan 18/3/98

Non-commercial broadcaster under market threat

By Jane Duncan

RECENTLY there has been public debate about the future of broadcasting in South Africa in the context of globalisation

Government officials have also called for broadcasting to contribute to the Growth, Employment and Redistribution (Gear) programme by creating an export market for its products

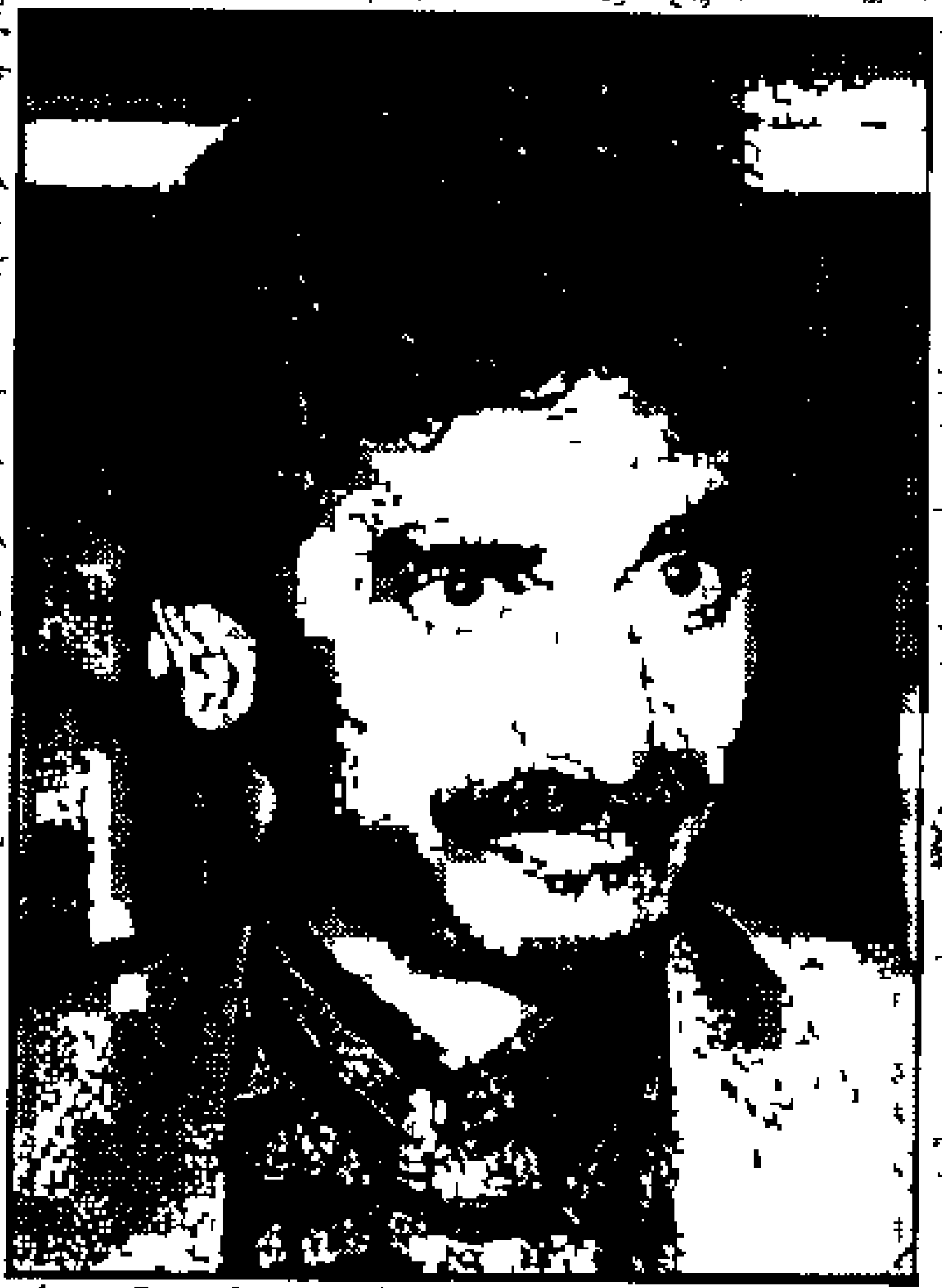
The South African Broadcasting Corporation (SABC), in particular, has been put in the spotlight with a comment in Parliament recently that it should be transformed into "a world-class public broadcaster in the face of increased global competitiveness"

This rhetoric is becoming normalised, the new "common sense". Yet at the same time documents like the recent green paper on broadcasting say that the sector has a role to play in nation building

Are these objectives compatible, particularly with regard to the development of a Public Broadcasting Service (PBS)?

Public broadcasting services are cast in the logic of welfarism, where the social responsibilities of the state are emphasised

With the increasing globalisation of the economy after the fiscal crisis of the 1970s, states have come under pressure from forces favouring economic globalisation to pare down their operations, and to intervene in only the most "necessary" areas to facilitate foreign investment



Communications Minister Jay Naidoo.

This has given rise to waves of privatisation and cutbacks of social spending

State institutions not privatised have been increasingly subject to managerialist and market reasoning, with pressures on them to operate more along business lines (in other words, more efficiently)

A strategy that has been used to prepare the ground for these arguments was to deprive the institutions of state funding, and then to point to their "inefficiency"

Internationally, the corporatisation of public institutions has become a stepping stone in their reorientation towards the market, especially in broadcasting, and is often a prelude to privatisation

It is in this context that proposals tabled in Parliament recently to amend the founding legislation of the SABC, the Broadcasting Act of 1976, should be evaluated.

The amendment, in the form of a draft Bill, seeks to corporatise the SABC, in the process making the State (in effect the Minister of Communications) the sole shareholder

While corporatisation can mean many things – and in fact several PBSs around the world have been corporatised – the concept can only be unpacked in relation to the reasons put forward for this move.

The Government has made the proposal to facilitate a change in culture at the SABC from what exists currently (whatever that is) to a public institution run along business lines

This will ostensibly allow the corporation to enter into partnerships and take advantage of foreign investment

Can a public broadcaster run along these lines deliver on its public service mandate at the same time, namely to inform, educate and entertain, and play a role in nation building as per the green paper?

It appears that a subtext of this proposal is that the SABC is not going to receive funding from the state on an ongoing basis

The Freedom of Expression Institute has argued that state funding is necessary to ensure a PBS that is not driven by a commercial need to "deliver audiences to advertisers"

There are certain forms of educational and informational programming that will simply never be attractive to advertisers, but which is of vital social importance

Whether such programmes will succeed in global markets is unlikely languages and idioms relating to our national circumstance may well fall foul of the shibboleth of international competitiveness

State funding of the PBS is not a luxury but an absolute necessity it should be provided through a parliamentary vote on a triennial basis so that the PBS has the financial stability to plan in advance This should be coupled with a welter of strategies ensuring good governance that does not involve corporatisation

The recent corporatisation proposals will bring the SABC's editorial independence into question Under the existing Act, the minister appoints the board, the single most important body shaping the SABC, and therefore the body most in need of protection against political interference

Blank cheque

The appointment procedures in terms of the proposed Bill are not known as they are to be included in a still-to-be-drafted memorandum of association, so in effect the minister is asking us to endorse a blank cheque

Also, such memoranda are subordinate to legislation In strict company law terms they can be changed by the shareholder without recourse to Parliament

While the minister is politically accountable to Parliament, he will be held accountable in terms of the laws of the country

But if the law does not make provision for certain procedures, then he cannot be held legally accountable for his actions To enshrine these procedures in documents with a lesser status is politically dangerous.

Furthermore, there can be no greater violation of a PBS's editorial independence than subjecting it to the dictates of the market

In the total information picture, the space occupied by media driven by the profit motive is expanding all the time, and the existence of non-commercial media is under threat

Hence there is an urgent need to defend the existence of all three tiers of broadcasting – namely community, public service and commercial broadcasting – on the principle of diversity

In fact, nation building is best served by this approach as space will be made for constituencies that are not wealthy enough to really constitute viable "markets" for advertisers

Clearly, the underlying tensions between nation building and globalisation in relation to broadcasting should be subjected to public debate, and the correct forum is the policy review currently under way.

Yet the policy debate on the character of the SABC seems to have been closed in that a particular shape for the SABC has already been assumed

If legislation is a codification of policy positions, what policies are these draft pieces of legislation being based on and why are they not being subject to review?

Given these developments, it is difficult not to ask whether we are being set up

Currently, the notion of a publicly-funded PBS is under attack internationally, with many saying that it is a modernist idea out of sync with current realities

Welfarism may have had its day but the social needs it attempted to address are still very much with us. In fact, untrammelled globalisation has become notorious for exacerbating the gaps between rich and poor

We therefore have no reason to believe that gearing South African broadcasting towards international competitiveness will close these gaps Therefore, the right of the masses to lay claim to state resources to develop media that reflect their aspirations remains.

In this regard, we should be sceptical about the discourse that seeks to convince us that "there is no alternative", that state resources will not stretch as far as funding a PBS

The basis on which the state allocates resources is a very tricky and complex debate. The very fact that this is a debate should make us wary of taking the lack of resources for certain services for granted.

As Robert Young states "The effect of certain discourses is to make it virtually impossible to think outside of them" So it is with the discourse on globalisation

Let us not censor ourselves, and surrender our right to think freely on these matters

(The writer is the publications and education coordinator of the Freedom of Expression Institute, Johannesburg)

ANC 'steamrollered' IBA appointees through — NP

BD 19/3/98 (260)

CAPE TOWN — The National Party (NP) accused the African National Congress (ANC) yesterday of resorting to "steamrollering" tactics after the National Assembly's communications committee recommended that Libby Lloyd, Nadia Bulbulia, and Lumko Mtimde be appointed to the Independent Broadcasting Authority's (IBA) council

The committee interviewed eight candidates this week for positions which become vacant at the end of this month when the terms of office of three members of the seven-member council expire

The recommendations now go to the National Assembly for verification, and then to President Nelson Mandela for approval. Members of the committee could not reach consensus on the appointments and they were decided upon by voting

In a statement released afterwards, Swanepoel, who is also a member of the committee, said the NP objected to the confrontational approach taken by the ANC, who displayed no willingness to discuss the merits of arguments put forward relating to a balance of skills and sectoral interests

"In their view, the racial argument was more important than merit, and once they confronted the committee with their names, they were not prepared to accommodate the views of others," he said

While not questioning the integrity of the councillors appointed, the NP objected to the ANC's inflexible attitude and prescriptiveness The ANC had dictated to all other stakeholders, Swanepoel said.

Lloyd is currently a councillor, while the other two are new appointees Bulbulia is head of the IBA's policy unit, and Mtimde is chief executive officer of the National Community Radio Forum — Sapa.

Sisulu's move spurs race for SABC head

M+G 20-26/3/98 (260)

Ferial Haffajee

SABC chief executive Zwelakhe Sisulu made a rapid about-turn at the weekend when he accepted a top-notch job at New Africa Investments Limited (Nail) instead of a very senior post at Independent Newspapers

It appears that Sisulu finally made up his mind about a new job at the weekend and made rushed attempts on Saturday to inform Independent Newspapers' chief executive Ivan Fallon The announcement of his appointment to Nail was timed for a splash in the Sunday newspapers

Sisulu will leave the SABC in September to become Nail's executive deputy chair in charge of its growing media, communications and information technology interests Its newspaper interests include *The Sowetan* and shares in Times Media, which owns the *Sunday Times* and is joint owner of the *Financial Mail* and *Business Day*

His departure from the broadcaster is likely to spark a race for the top position Current front runners are the SABC's head of programming for television, Mandla Langa, the deputy chief executive, Govin Reddy, and television chief executive Molefe Mokgatle

This week Fallon confirmed that his group had been talking to Sisulu "on and off for months about a potentially senior management role with international ramifications". He could reportedly have walked into the position of chair of the board, which would have given him a key decision-making power over the group's 14 print titles and its embryonic broadcasting interests

The company was so certain of the deal that word had already filtered down to the newsrooms where his appointment was eagerly awaited "I think they're very disappointed," said a senior staffer

Sisulu apparently believes that Nail's newspaper interests need more urgent attention than do the Independent's His combination of political clout and connectedness, his newspaper background and his recent successes at the SABC have made him hot property. In addition to Nail and the Independent group, Times Media has also been competing for his attention

"He is tough," said Fallon, adding "he stood up to well-entrenched management and staff [at the SABC] and came in for huge criticism And he's come through" Under Sisulu, the SABC has turned around a deficit of R60-million and is now firmly in the black, and he has crafted a management team with a fine balance of programming and financial talents

The favourite for the top position is Langa who this year started work at the SABC His job is understood to be a grooming post for the top job as Sisulu's intention to quit has been known for some months now The novelist and journalist is something of a luminary, who served for five years as the deputy chief representative for the African National Congress's United Kingdom and Ireland missions He is well-liked for his independent mind, a quality shared by Reddy who is running a close second

Reddy, a teacher and journalist by training, has more hands-on experience than Langa Where Sisulu's role at the broadcaster has been diminishing of late, Reddy has stepped into the gaps, taking hold of the engine rooms and driving changes

Mokgatle has stabilised the SABC's three channels and quietly made them a force to be reckoned with But some indicate that the 39-year-old may not yet possess the gravitas such a crucial position requires

This week the SABC began advertising the post internally and externally, taking the race outside where their headhunters are sniffing around for people with broadcasting talent, a good measure of political suss and a firm business hand

Africa must use media to build continent

The media's role in promoting good governance cannot be underestimated but in Africa it still has a way to go, writes Constitutional Court Judge **Richard Goldstone**

(260) BD 24/3/98

THE power of the media in the modern world cannot be exaggerated or overemphasised And, like any important power in public life, it can be used for both good and evil The evil use of the media is always more easily identified than the good It is time that we on this continent start to harness the positive power of the media to help build up our continent.

Human rights abuses more often than not occur in darkness And, as the famous US Supreme Court Justice Louis Brandeis once wrote "The best disinfectant is sunlight" By bringing light to those dark places, the media is able to expose some of the worst human rights atrocities, which is why it is so frequently under attack by repressive governments around the world. A free media and tyrannical government are incompatible

In countries ruled by authoritarian leaders, the media is required to report favourably on government policies and their implementation Where it does not, systematic purges are carried out in order to snuff out voices of dissent or criticism This process has marked the recent history of the former Yugoslavia and is occurring even today Only two days ago, the London Times reported that Serbian police interrogated five Belgrade newspaper editors who refused to describe as terrorists the 20 Albanians killed in last week's security clamp down in Kosovo The information minister, Radmila Milentjevicx, was quoted as saying· "The government can expect greater patriotic support than some of these papers have been giving"

In a few cases evil leaders have actually used the media as an important instrument in the execution of evil policies The first well-documented use of the media in that way was, of course, by the Nazi leaders in Germany It was the skilful use of propaganda by Joseph Goebbels and his underlings that played so crucial a role in demonising Jews, gypsies and homosexuals and in justifying the genocide policies of Adolf Hitler In Rwanda, it was the similar use of propaganda by Radio Milles Collines that enabled the architects of the 1994 genocide to incite the murder of more than 10% of the population in three months

We should not underestimate the beneficial power of the media The horrific images on millions of television screens of starved Muslim men in Bosnian Serb detention camps so reminiscent of images of Nazi concentration camp victims, sent shock waves through the international community What was often referred to as "the CNN factor" helped impel the United Nations (UN) Security Council to take action in the form of establishing the first international criminal tribunal for the prosecution of war crimes

The decision to carry out air strikes against Bosnian Serbs by Nato was taken soon after horrifying media coverage of the breadline massacre in Sarajevo

In national states the media can play a less dramatic but no less important role It is often an effective watchdog for protecting human rights In SA during the apartheid years it was a handful of brave journalists who brought some of the worst excesses of that system to public attention Some of them paid a heavy price for their courage — some were killed in crossfire and other were forced into exile

SA's pariah status was a consequence of the daily attention given by the international media to the plight of the majority of our nation. It was the reports from local journalists which enabled that to happen. The success of the anti-apartheid campaign was one of the major media victories of the 20th century

As we approach the end of this century, there are still far too many countries in the world which do not have in place an adequately functional free media And, certainly in respect of our own continent, we have no reason to be proud. There are few African nations that can boast of a media which effectively informs people of events in their own countries let alone the rest of the continent or the world Even in countries with democratic constitutions, the media is often under threat Of the Southern African Development Community (SADC) nations, with the single exception of Swaziland which does not have a written constitution, media freedom receives protection under the constitution The bad news is put as follows in an article in a recent edition of the Southern African Media Law Briefing· "It is important to remember that despite the constitutional protection accorded to it, media freedom continues to be under constant threat in most SADC countries In some cases the freedom is not sufficiently entrenched in the constitution In other cases statutory and case law permit wide exceptions to media freedom on the grounds of national security The situation is also made more hostile to media freedom by laws which place the burden on journalists to prove that particular publications do not undermine national security"

I would suggest that, generally speaking, African journalists do not concern themselves sufficiently with the collective responsibility of the media to raise public awareness about the many important issues facing our continent. Indeed, there is more African news on Cable News Network and the British Broadcasting Corporation than on any African state television or radio As Africans we all need to take ownership of the successes occurring daily on our continent and to share mutual concern for the humanitarian disasters which continue to unfold on a daily basis

The truth commission is playing an important role in sensitising many South Africans, some unwillingly, to the sordid criminal reality of the apartheid era The gruesome murders and other serious human rights abuses committed by members of the security forces would never have been made public but for its work.

GOLDSTONE

The success of the commission in bringing greater awareness of these dark events, without question, is largely attributable to the extensive and sensitive coverage given to its activities by the media.

Much national and international media attention was given to the commission of inquiry into political violence which I headed during SA's difficult years of transition That media attention led to Security Council pressure on the government, forcing it to provide greater political and logistical support to the commission. One consequence was the government agreeing to allow the commission its own local and foreign police investigators. That gave us the capacity to conduct what became a well-publicised raid on an office used by military intelligence The raid provided the first hard evidence of what was referred to as a "third force" operating to sabotage the movement to democracy in SA.

Another example relates to the UN war crimes tribunals for the former Yugoslavia and Rwanda. Without media attention neither of these institutions would have grown into the viable institutions that they have become Firstly, media attention forced the cash-strapped UN to put its money where its mouth was and to allocate a substantial budget to both tribunals at a time when it had to make difficult budgeting choices There was a lot of sensitive reporting on the effects of delaying the work of the tribunals — the anguish of the victims who had already waited too long; the prejudice to the peace process (in the former Yugoslavia) itself of allowing war criminals to live in freedom in the very places where their terrible crimes were committed.

Media coverage of the slow progress of the Rwanda tribunal ultimately resulted in an internal inquiry into maladministration within the tribunal, which led to important remedial action.

As far as the Yugoslavia tribunal is concerned, in recent months we have seen a significant turnaround in Nato policy with regard to the arrest of alleged war criminals in Bosnia Herzegovina As result the tribunal now has 24 of those charged in its custody — as opposed to one 18 months ago

Much work needs to be done on our continent with regard to the training and development of good journalists In the northern hemisphere well-established and respected schools of journalism are plentiful How many are there in Africa? Pitifully few And the answer is not only to send budding African journalists to schools in faraway places We need a media that is staffed by well-trained journalists who are part of their own culture

In too many African countries the news coverage of what is happening even in neighbouring countries is minimal

Last week I had occasion to criticise the many white South Africans who have become pessimistic after just three years of freedom for our country I referred to their failure to appreciate the tremendous strides we have made Much of that negative sentiment can be attributed to the failure of our media to report those achievements with the same energy as they report negative developments The same, I would suggest, is true of the media generally although I am not suggesting that the bad news should not be given full attention.

The responsibility to uncover abuse and to promote transparency in government is one of the most important roles of the media Without such exposure we risk sliding back down a slippery slope towards totalitarianism. However, this role has to be exercised responsibly and constructively Equally important to the development of a viable and flourishing democracy is a sense of confidence in people and institutions For every instance of corruption there are two or three or four selfless people are working positively to reconstruct our society If the media is to do justice to its responsibility to promote a culture of democracy and human rights, it is vital that sufficient energy is devoted to the progress towards these goals and a pride in African successes cultivated

□ *This is an excerpt of the address by Goldstone at the African Journalist of the Year awards in Sandton on Friday*

Admin error blamed for consultant's double pay

(760)

CLIVE SAWYER
POLITICAL CORRESPONDENT

ARG 27/3/98

The man at the centre of a controversy about allegedly having got double pay working for the Public Enterprises Ministry and Transnet was never employed simultaneously by both, says Public Enterprises Minister Stella Sigcau.

She said this in the National Assembly in reply to questions by Democratic Party leader Tony Leon.

Prompted by reports in December, Mr Leon had asked whether it was true that Kali Mabentsela was paid R48 000 a month as a consultant to Transnet while being employed by the ministry, allegedly enabling him to be paid a total R76 000 a month.

Mr Mabantsela said at the time he was given the Transnet contract only once his contract with the ministry was drawing to a close.

An invoice sent by his consultancy company to Transnet for R48 000 was just a way of receiving payment while he was finalising his employment conditions, he was quoted as saying.

Mr Leon asked whether any action was to be taken against Mr Mabantsela because of the alleged conflict of interest from doing both jobs simultaneously.

Ms Sigcau said Mr Mabantsela had a contract as an adviser to the ministry and office of public enterprises

During April and May 1996 changes were made to the structure of the department which led to the closure of the policy unit.

She said that after the unit's closure, it emerged that Mr Mabantsela had not been informed of the impending closure.

His contract said that termination required three months' written notice.

"As such period of notice had not been given it was mutually agreed that in view of the abrupt ending of his contract, he would be compensated with one month's fee in lieu of period of notice.

Sigcau clears man said to have been paid twice

(260) Star 27/3/98

By Clive Sawyer
Political Staff

Cape Town – The man at the centre of a controversy about allegedly having got double pay working for the Public Enterprises Ministry and Transnet was not employed simultaneously by both, according to Public Enterprises Minister Stella Sigcau.

She said this in the National Assembly in reply to questions by Democratic Party leader Tony Leon, who had asked if it was true that Kali Mabentsela was paid R48 000 a month as a consultant to Transnet while being employed by the ministry

Mabantsela said at the time that he was given the Transnet contract only once his contract with the ministry was drawing to a close

An invoice sent by his consultancy company to Transnet for R48 000 was just a way of receiving payment while he was finalising his employment conditions, he was quoted as saying

Sigcau said Mabantsela had a contract as an adviser to the ministry and the office of public enterprises. During April and May 1996, changes were made to the department and these led to the closure of the policy unit

She said that, after the unit's closure, it emerged that Mabantsela had not been informed of the impending closure.

His contract said termination required three months' written notice. "As such period of notice had not been given, it was mutually agreed that, in view of the abrupt ending of his contract, he would be compensated with one month's fee in lieu of a period of notice"

Mabentsela ... did not work simultaneously for two employers.

Sigcau suppresses report of Denel fraud

M+G 27/3/98

(260) (~~254~~)

Marion Edmunds

Minister of Public Enterprises Stella Sigcau is suppressing evidence which could force former Denel chief Johan Alberts to repay some of his R18-million "platinum handshake" to the state

Sigcau struggled this month to bury the evidence after last year commissioning a R2-million forensic audit into Denel business since 1994

According to senior government sources, Alberts was allowed to take his lucrative retirement package on condition that he pay back the state's contribution to his pension, should the government discover evidence of fraud during his tenure

The audit has uncovered evidence of fraudulent deals which should be sufficient to prompt a commission of inquiry or a referral to the public protector, a government source said

The probe, conducted by Manase & Associates and Gobodo, could give the government sufficient ammunition to sue Alberts for the state's contribution to his retirement nest egg

However, Sigcau is doing her best to prevent the audit's findings from being made public In response to questions from the *Mail & Guardian*, Sigcau initially denied an audit had taken place She also issued a gagging order to Denel to stop senior employees responding to questions

When confronted with further evidence, she said in a statement "An audit in Denel retirement packages was never commissioned as the subject matter of the audit It became a consequence of the audit. The audit was initially at the instigation of the minister However, an agreement was later reached for the board to take it over, as they were the right people to deal with issues of remuneration for the auditors "

Attempts by the *M&G* to obtain clarification about this strangely worded response failed

In response to detailed questions about the Alberts payout, Sigcau wrote "He got a package that had been tied up long before the advent of our democratic government "

Sources say this is untrue Alberts allegedly appealed to Sigcau last year to be released from his position as Denel's CEO His package was based on a deal with former minister of defence Magnus Malan that he be paid out as if he were 65 years old if he were ever forced out of the parastatal Sigcau conceded to this

In response to questions about a restraint-of-trade deal which made up a large part of Alberts's package, Sigcau said "The restraint of trade is a separate issue — a subject matter at another level — it does not form part of the package "

The *M&G* understands that the restraint-of-trade deal was an incentive offered by the incoming government to about 30 senior managers at Denel in a bid to stop them resigning The money was paid into the parastatal's retirement fund, for collection on retirement, in the guise of a restraint-of-trade package

It is difficult to understand why Sigcau is attempting to sweep the audit under the carpet, particularly as she and Alberts did not enjoy a good relationship while he was in office

"The minister has had sleepless nights about this," said a government source "Everything relating to Denel is considered to be extremely sensitive and dangerous "

USAid seeks team to help on privatisation

(260) ([illegible])

Simon Barber BD 27/3/98

WASHINGTON — The US Agency for International Development (USAid) is to hire a legal team to assist Public Enterprise Minister Stella Sigcau with restructuring and privatising parastatals as part of its SA aid programme

Interested parties, both US and South African, have been invited by the agency to submit bids by April 28 for a 17-month contract, to start in May, and possibly extendible for a further six months

USAid said it was acting in terms of an agreement signed with the SA government The team would "work closely with the ministry, other government departments, as well as Hong Kong Shanghai Banking Corporation Investment Bank, which is acting as overall adviser" on the restructuring programme

The successful bidder would have expertise in "corporate law, taxes, empowerment transactions, employee stock ownership plans, land claims and constitutional law" Duties would include reviewing laws governing specific parastatals

The contract will contain strict clauses enjoining the adviser from using inside information about the government's privatisation plans for personal enrichment, during or after the contract, or to steer consulting business to associates

Such abuses became an issue last year when USAid claimed members of a high-powered Harvard team it had retained to provide similar advice to Russian reformers had taken advantage of their position to play the local market and help their friends

Among conflict of interest provisions to be included in the SA contract are a requirement that the adviser comply with the ethical codes of such US professional organisations as the American Bar Association, the National Association of Securities Dealers and the American Institute of Certified Public Accountants

The adviser, who will be expected to be on call round-the-clock and to have a main office within 20km of the ministry, will be paid an hourly rate to be negotiated and up to $2 000 a month for additional expenses

US bidders not eligible for affirmative action treatment must bring in "disadvantaged" US firms as subcontractors

USAid has appended a list of parties who requested a copy of the notice before it was released "to help identify potential subcontractors" Eleven of the 29 are South African

SA's first private TV station

CP 29/3/98

(260)

By ARTHUR MAIMANE

IN JUST a few hours' time, definitely by the end of tomorrow, the Independent Broadcasting Authority (IBA) will make the most important announcement in its history It is one that will have a major impact on the country's social and political life

The IBA will announce which of seven consortia has won the bid for the first-ever private and commercial television licence in South Africa

The public perception is that the winner will have been awarded "a licence to print money" – an expression coined by Roy Thomson in the sixties, a few years after he won the licence to run Scottish Television The Canadian millionaire was amazed at how much the TV licence would enlarge his already sizeable media empire

I must at this early point declare my personal interest in the IBA decision, I am connected with one of the seven bidders, and actually took part in the hearings held by the IBA But my appearance was not as historically or "previously disadvantaged person"

Of course I shall welcome anything that trickles down to me if New Channel Televison is awarded a licence But my major interest is similiar to that of the IBA, to help in the transformation from apartheid to democracy by providing the population with the best means to the widest information available from around the world

This may sound too good to be true, altruistic claims from a man who has all his adult life been a media mercenary in the various countries after going into exile But mercenary only as in a making a living from a particular skill, be it as writer or soldier

I have only ever, since my days as a cub reporter at the original *Drum* magazine, worked and written for organisations of whose policies I approved of, an attitude which caused my deportation from East Asia many years ago

The IBA does not expect the new televison station to be run by IMBONGI It is an independent authority, and Madiba already has a young praise singer And he has repeatedly declared that he does not want the media to be his lap dog That's what he told us during a confrontation with black senior journalists after his accusation that some of us had become media mercenaries for white newspaper owners

I was managing editor of *The Star* at the time, but he did publicly absolve me of the charge because of my track record on *Drum* before he was exiled to Robben Island

The primary purpose of the winning applicant will be to serve the country as a medium which will not only entertain but also inform Very important when general elections are held next year, a few months after the station goes on air

The new station has to be independent not only from domestic party politics but also from foreign control

In its private deliberations since the hearings ended on March 6, the IBA has also been considering the applicants' financial viability, technical expertise and promises of programme quality by applicants

Row over TV bid winner

IBA faces court fight on media giant choice

(260) ARG 30/3/98

GILL LORD
TONIGHT STAFF

Midi Television, a consortium including United States media giant Time Warner, has won the coveted new television channel, but the decision is likely to be challenged in court.

The Independent Broadcasting Authority made the announcement today after months of jostling by seven bidders for a place in the multi-million-rand broadcast industry

But as the champagne corks pop in Johannesburg, where Midi Television is based, unsuccessful bidders are crying foul.

Speculation is rife that failed bidders are to challenge the IBA's decision in court Industry sources say that the objections are two-fold

The first is that the acquisitions agreement between Time Warner and Midi was not made public and the second contention is that Midi submitted a brand-new business plan to the IBA on the second day of its hearing, which was materially different to the one originally submitted

The players tipped to contest the IBA decision are Free-To-Air and Station For The Nation. Free-To-Air is backed by British group United News and Media, and Fox Sports International, with South African group Primedia as another partner

Station For The Nation has Australian media heavyweight Kerry Packer's Nine Network as a backer

Quentin Green, who headed the Free-To-Air bid, was tight-lipped on the consortium's intentions

A statement would be released later in the week after the board had met, he said.

Neither Station For The Nation nor the victorious Midi Television were available for comment at the time of going to press

Others in the industry wished them luck in their new venture

The pay channel, M-Net, congratulated them and wished them "bon voyage", while the SABC resigned itself to the fact that its first real competition is getting closer.

SABC spokesman Enoch Sithole, who conceded he had Midi on his list of top three contenders, said it did not make any difference who the competitor was, the important thing was that it was out there

"We've known for several years that someone was going to be licensed. Competition is healthy and the need to diversify is enshrined in our constitution.

"It's immaterial to us who it is, although we will work hard to ensure that while we compete we'll complement each other," he said.

Time Warner has a 20% stake in Midi, the maximum foreign shareholding permitted Other partners are Hoskins Consolidated Investment, Vula Communications and the Mineworkers Investment Company, the investment arm of the National Union of Mineworkers

Rival bidders threaten legal action against free-to-air licence winner

(260)

BD 31/3/98

Janet Parker

MIDI Television's victory yesterday in winning SA's first private free-to-air television licence, is set to be marred by legal action from rival applicants, and allegations of political interference in the decision-making process

Most of the six unsuccessful bidders said yesterday they were considering legal action against the Independent Broadcasting Authority (IBA) But they would first examine a document the IBA was due to release on Friday, detailing reasons for its decision.

Those considering action are Community Television Network, Station for the Nation, and Afrimedia New Channel TV said it would not take the decision "lying down" and Free to Air will meet today to consider its options

Unsuccessful applicants said they would argue the Midi consortium contravened the IBA Act, which calls for full disclosure on business plans and shareholding at the time of application. They alleged Midi changed its business plan and introduced new shareholders at the hearings on its application.

Various allegations have also surfaced of eleventh-hour political intervention and pressure on the IBA to award the licence to Midi.

However, a media analyst said this was not surprising as every licence the IBA awarded in the past two years was said to have been a result of political pressure. He said the industry always considered that if the decision was made on the best all-round bid, the licence would go to Free to Air, but that if it was based on politics it would go to Midi, which had a good balance of black empowerment and international expertise

Midi MD Jonathan Procter said no political favours were sought or given and the allegations were "spurious" Procter said the consortium was not concerned by the threat of legal action. There was likely to be a lot of "sabre rattling", but going to court was another matter altogether, he said.

Midi Television is 80% held by a consortium of black-controlled groups, including the National African Federated Chambers of Commerce and several trade unions

Media analysts said Midi's victory could be a cause of concern to entertainment-driven pay television broadcaster M-Net Midi's international partner, Warner Brothers with a 20% stake, guaranteed Midi good quality entertainment programming. However, the channel was pitched at a different audience and aimed to reach 100% of television households whereas M-Net aimed to reach only the top 20%.

SA research councils to stay

(260)

Vuyo Mvoko

BD 31/3/98

CAPE TOWN — Government was set to retain the existing statutory scientific-research councils as they were found to be "a major strategic asset", Lionel Mtshali, the minister of arts, culture, science and technology, said yesterday.

Mtshali's announcement followed a review of the councils conducted by international and local experts, which began last October

A number of the councils have suffered budget cuts in the coming financial year. There have been talks of streamlining them to avoid duplication and to cut costs, raising concerns about job losses.

TELEVISION *IBA's choice of licensee pleases the ANC, but confounds the analysts*

Midi scoops free-to-air licence

CT(BR) 31/3/98 (260)

JONATHAN ROSENTHAL
INDUSTRIAL EDITOR

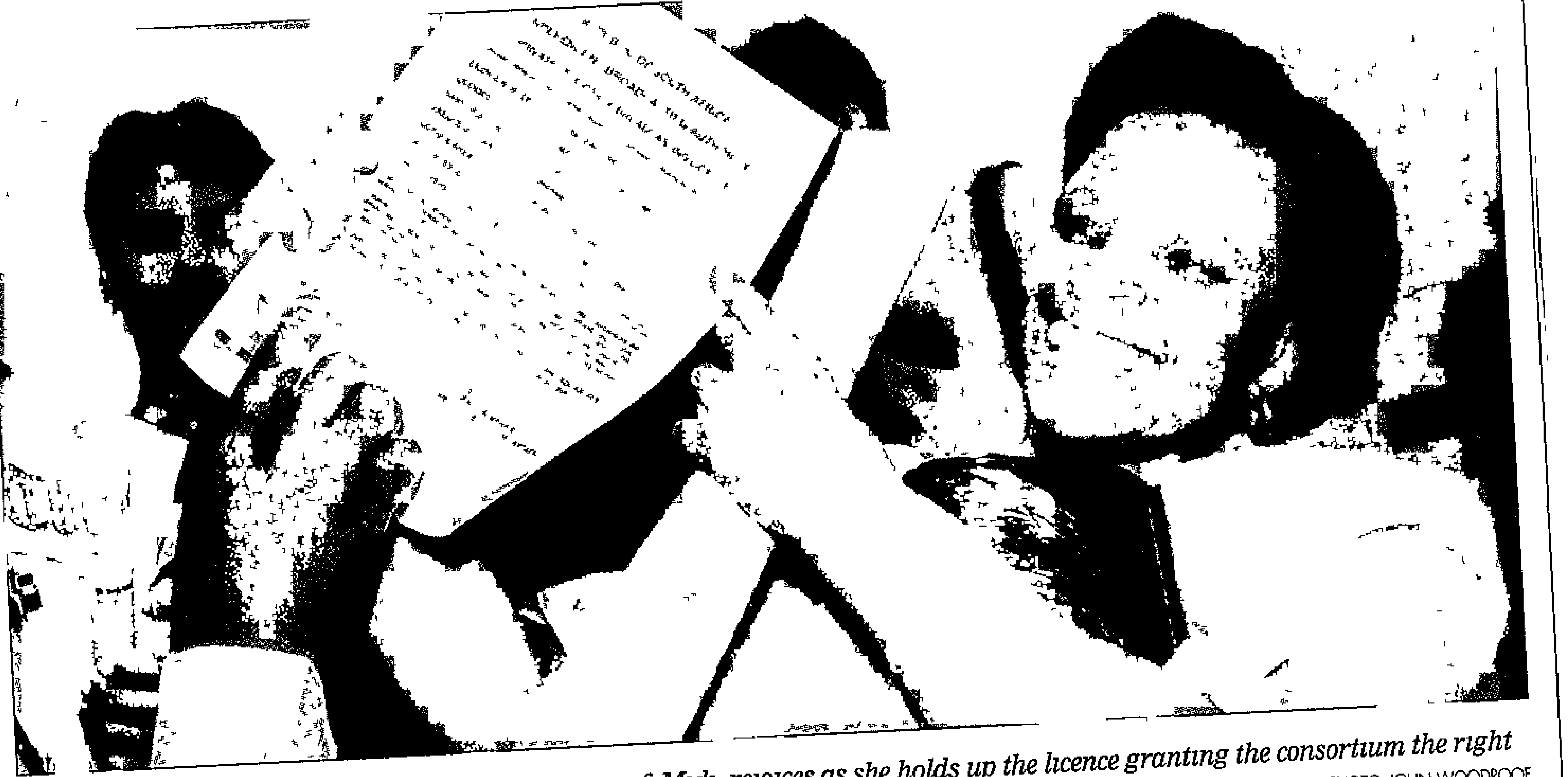


PHOTO JOHN WOODROOF

JUBILATION *Nomazizi Mtshotshisa, the chairman of Midi, rejoices as she holds up the licence granting the consortium the right to broadcast its free-to-air television channel, called e tv, to South Africans*

Johannesburg — The Independent Broadcasting Authority (IBA) yesterday confounded the market but pleased the ANC when it awarded the country's first private free-to-air television licence to a consortium of unions, empowerment funds and Time Warner of the US

The Midi consortium, which from October will challange the SABC's monopoly, is 80 percent black-owned and 20 percent held by Time Warner, the owners of CNN

Midi's local shareholders include the JSE-listed union investment group Hosken Consolidated Investments, with 26 percent, Vula Communications, which will take 25 percent on behalf of black business associations and union investment vehicles, and various minority shareholders representing the youth, disabled people and small businesses

"The ANC welcomes the decision of the IBA to grant a new terrestrial television licence to Midi," the ANC said in a statement It commended the IBA "for the professional manner in which they conducted the public hearings and the entire process of awarding the licence"

Felleng Sekha, the IBA's chairman, said the decision was complicated by the fact that the IBA had wanted to ask some of the leading applicants to merge

"We had to decide which, on balance, was the best of the seven," she said Written reasons for the decision will be released later this week

Nomazizi Mtshotshisa, Midi's chairman, said the new channel, called "e tv", would exceed its local content requirements and assist independent producers in selling their films through Time Warner's distribution network

Midi said that within two years its transmitter network would reach 75 percent of South Africans In its initial application it said it had planned for equity capital of R200 million with debt of R250 million It said it planned to have sufficient cashflow to begin repaying debt within four years and be debt-free after eight years

But several top media analysts, who asked not to be named, said they were shocked and surprised the licence had gone to Midi ahead of what they believed were far stronger bids

"I already have my doubts about the viability of another channel, and this is definitely not the strongest bid financially I don't like Primedia much but at least they would have the capital and expertise to make this thing work," said one analyst

Another analyst said he had expected at least two other bids to come in ahead of Midi's

□ Business Watch, Page 18

Private TV station to go on air in October

CT 31/3/98

(260)

JOHANNESBURG: It will be new, innovative and focused on what is happening in South Africa.

This is what e.tv — the country's first free private television station — promises viewers, and it's due on your screen in October

Midi Television editor designate Mr David Niddrie said the station would give its viewers good quality programming equivalent to Hollywood productions

A daily soap opera, youth drama, a local police drama, animated and local folk stories are to be regular fare

Niddrie said the station would commission independent black producers for programmes, and some would be produced in-house

International programming would come from Time Warner, which has a 20% stake in Midi

The station owners promise their news coverage and current affairs will differ sharply from what is now available in the country

News on the economy and political issues will be in an accessible format

"It will be predominantly about events and developments in South Africa and will concentrate on issues directly affecting South African audiences," said Niddrie

"International news coverage will focus on Southern Africa and Africa first.

News will be broadcast three times a day, with the main news bulletin at 7pm

The station will broadcast mainly in English and aims to reach more than 65% of the population, rising to 85% in four years

● See Page 11

Aventura restructures to prepare for 100% privatisation

(232) BD 5/1/98

Robyn Chalmers

STATE-owned holiday resort company Aventura has undergone a wide-ranging restructuring exercise to prepare it for 100% privatisation later this year.

A report by the public enterprises ministry shows staff levels have been reduced to about 1 600 from 2 100 in 1993, significant refurbishment and expansion has taken place, and there has been a shift in the client base away from a predominantly white Afrikaans market to middle-income earners.

Aventura had implemented social responsibility and affirmative action programmes while ensuring that staff developed a customer service orientation and moved away from a bureaucratic administrative style New products had been introduced, including the Club Privé 10-year holiday ownership scheme and discount packages for pensioners. Occupancies increased to about 65% last year from 59% in 1993.

Aventura's sale has been hampered by land claims. However, last month Public Enterprises Minister Stella Sigcau released a shortlist of bidders and she was confident that the sale would be completed this year.

The five successful bidders for Aventura are Kopano ke Matla (Cosatu's investment trust), Phalafala Leisure Consortium, Sanco Consortium, Boiketlong Investment Consortium and Shomang Investment Holdings.

A due diligence exercise involves presentations by Aventura's management and visits to 15 holiday resorts. The prequalifiers will be invited to submit binding offers and, in the meantime, the state will value Aventura's land

The report showed steady improvements were made in Aventura's profitability between 1994 and 1996. In the 17 months ended August 1994, Aventura posted a net loss of R13m on turnover of R123,8m. It was turned into a net profit of R1,9m on turnover of R123,7m in the 12 months to August 1996.

As Aventura no longer received state subsidies, it borrowed funds and sold Club Privé "debentures" to fund its initial operating losses and limited refurbishment programme. Interest-bearing bank debt has been kept static for two years at R27m

SAB seeks court order to stop probe

(232) BD 20/1/98

Shareen Singh

THE Competition Board is to oppose a high court application by SA Breweries (SAB) to halt an investigation into whether the group is "operating in a monopolistic way".

Competition Board chairman Pierre Brooks said the reasons for the board's investigation, which were announced in July last year, were valid and the probe was justifiable. The board was determined to proceed with the investigation and was involved in a legal process to challenge SAB's application, which has been filed in the Pretoria High Court. A date for the hearing has not yet been set.

SAB, which controls almost 98% of the local beer market, argues that the investigation is too broad and ill-defined, and does not fall within the ambit of the Maintenance and Promotion of Competition Act.

"We don't know what we have to prepare for because we don't know exactly what the case is against us," a group employee said.

The investigation as set out by the Competition Board was to cover, among others, SAB's distribution system and licensing agreements; the launching of brands by SAB; agreements, arrangements or understandings not to compete with any other participants in the alcoholic beverage industry; threatening or acting improperly against any potential or existing competitor and whether the group imposes discriminatory conditions on those in the industry with whom it does business.

SAB MD Graham Mackay recently described the investigation as "a fishing trip". Yet the group has welcomed the probe. In July SAB beer division MD Norman Adami said: "We are convinced that a thorough investigation of these issues is almost overdue.... SAB has been subjected to rumours, innuendoes, unfounded allegations and orchestrated misinformation."

It is understood that the corporation had a change of heart after studying the parameters of the investigation and seeking legal counsel.

AIRPORTS PRIVATISATION

(233)

Who will land the big one?

FM 23/1/98

Tarmac tempo hots up as world operators vie for slice of SA gateways

Six high-powered teams from the cream of the world's airport operators are in town preparing their bids for the 20% stake on offer in the pending partial-privatisation of SA's airports

Their bids go in on March 9, with the winner expected to be announced at the end of that month The bidders are Amsterdam's Schiphol, British Airports Authority, Montreal, Rome, Frankfurt and Milan

With the value of Airports Company SA (Acsa) estimated at about R2,5bn, the winner will have to come up with about R500m for his 20% — big money, even in the international arena

A veil of secrecy is draped over the bidding activity Harry Hensgens, Schiphol's bid manager, emerges from three days of talks with government and Acsa management and says he's had no contact at all with any of his rivals

Three data rooms, containing all the documentation to put a bid together, have been laid on for the players Two teams share each data room, and get it for a fortnight each But they don't meet

Hensgens is cautious when it comes to discussing Schiphol's bid, especially the price "At the moment the emphasis is on due diligence, trying to get a picture of the possibilities of the company

"The capex side is important What capacities do the nine airports have? Acsa has a lot of figures, but these are based on master plans What are they planning to do? Do we agree with all these plans? Do we see some changes there?

"We have to think about what can be done with the retail side, the property side That brings us to a forecast about how Acsa can develop and will lead us to a price "

Apart from Holland, Schiphol holds the management contract to run Australia's Brisbane airport and the international terminal at New York's JFK With as much as R500m to find, the international bidders are teaming up with financial equity partners to ease the strain Hensgens is happy with the 20% on offer — and the option for a further 10% three years after the contract is signed Black institutional investors will get 10%, employees 9% and the National Empowerment Fund 10%

Jack Lundin

SUN AIR PRIVATISATION (232)

Rethabile still cash-strapped

FM 23/1/96

Government will charge prime until bucks are on the barrel

Rethabile, lead member of the black empowerment consortium that acquired Sun Air in SA's first full privatisation last year, has failed to meet the payment deadline for its acquisition

Payment of R9m for the first half of Rethabile's 35,75% stake in the R50m price tag was due by January 15

Last November the *FM* was assured that rumours that Rethabile was having difficulty raising the cash were untrue The rumours persisted, and this week Rethabile CEO Moss Ngwenya agreed that payment has not yet been made

"We have asked for an extension to February 15 because the institutions that are going to fund us didn't have enough time to consider the application due to the holidays," he says

Government has agreed to the 30-day extension, but will charge Rethabile prime rate interest on the outstanding R9m for the period

The consortium's offer of R50m — plus its shouldering of Sun Air's R47m interest-bearing debt — was accepted after rival bidders Phoenix and Bhekilanga pulled out of the race

Rethabile's consortium partner Co-ordinated Network Investments (CNI) holds 19,25%, giving the two empowerment groups control with 55% Comair has 25%, the National Empowerment Fund 15% and 5% is earmarked for management and staff

Both CNI and Comair met the January 15 payment deadline, handing over their cheques for R4,8m and R6,25m respectively

There is a two-year period of interest-free grace before the consortium members must stump up their proportional shares of the R25m price tag balance

Says Ngwenya "We asked for an extension as the bank (FNB) wanted to do further due diligence But we have a letter from the bank showing that we've secured financing subject to this due diligence "

The "sticking point," he adds, is that the bank needs to assure itself "there is a co-operation agreement between Sun Air and Comair " The airlines have been quarrelling over the more lucrative domestic routes

CNI executive director Sam Nematswerani is aware that Rethabile missed the payment deadline "We're totally separate from them and I'm not sure what happened," he says

Rethabile was advised in the Sun Air bid by Kagiso Financial Services Martin Bloch, senior manager of Kagiso's corporate finance department, says "The bank has given us a letter offering us finance subject to certain conditions precedent "

Asked to comment on Ngwenya's statement that the sticking point was a co-operation agreement between Sun Air and Comair, Bloch says "That's probably reasonably accurate Certainly there are a number of issues that need sorting out "

Steven Naude, head of corporate finance at BOE NatWest, which advised government in the sale, says "Government has given Rethabile an extension We've closed the transaction from a handover point of view and the consortium should be running with it from now "

Jack Lundin

Top officials desert Sigcau

M+G 23-29(232)1/98

Marion Edmunds

Skilled officials from the Department of Public Enterprises — including its chief accounting officer, Professor Sipho Shabalala — are abandoning their minister, Stella Sigcau

Sigcau's representative, Wandile Zote, confirmed this week that Shabalala, public enterprises deputy director general, had resigned and would leave at the end of the month, in what appears to be a mass exodus of senior personnel

Shabalala refused to comment this week, saying he wished to leave without politicising his departure. However, sources in the department say he has fought a low-level but bitter battle against Sigcau for the past three years

Areas of conflict are believed to have included her dictatorial management style, her lack of leadership in government, her relationship with specially appointed advisors and differing interpretations of transparency and accounting

Shabalala, known for his by-the-book approach, is believed to have privately complained to Deputy President Thabo Mbeki's office about Sigcau's management style. Mbeki took over the chair of the powerful interministerial Cabinet committee on the restructuring of state assets from Sigcau last year

Sectoral ministries have exerted more and more control over the restructuring of parastatals which fall under their portfolios, and consequently Sigcau's area of responsibility has been reduced considerably

It is also speculated that Sigcau's humiliation at the African National Congress's Mafikeng conference — she was the only Cabinet minister who failed to be voted on to the party's national executive committee — is taking its toll on her credibility within political and public-service circles.

There is a strong lobby to close her ministry down and shift her department to the finance or trade and industry departments, or to Mbeki's office When asked whether such moves were in the pipeline, Zote said "It will be up to President Nelson Mandela. He may or may not agree to such recommendations "

Other sources from Sigcau's department say there are no grounds for such a lobby, and that the department is on course, despite the resignations

"The really serious question is whether Shabalala's leaving is a sign of government back-tracking on privatisation," said Jenny Cargill, of Business Maps "There doesn't seem to be a clear strategic perspective and areas of doubt have been allowed to grow "

The minister's special advisor, Kennedy Memani, quit last month, and is working at Transnet in anticipation of moving into the private sector. Mongezi Mngqibisa, formerly employed as a director for performance evaluation and analysis, also quit in December after two years' service, and is working in the Department of Communications "I would not like to comment," he answered when asked why he had left. "It was a career move "

His assistant director, Bayanda Mtse, is moving to the Department of Agriculture's information and technology section in February. Dr Kobus Vorster, the director of restructuring, has taken early retirement and will leave the department in March. Sigcau's private secretary, Aesta Marie, also resigned over Christmas

Shabalala is the third director general to leave the ANC government's service after disagreements with political heads Sigcau was contacted, but declined to comment.

Stella Sigcau: Left out in the cold after top-level resignations. PHOTO: RODGER BOSCH

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Enterprises ministry not under threat despite resignations, say officials

(232)

Robyn Chalmers
and Reneé Grawitzky

BD 23/1/98

THE public enterprises ministry has been hit by five departures from its top management team, including director-general Sipho Shabalala.

However, top government officials scotched widespread speculation that there were moves afoot to close the ministry, saying Deputy President Thabo Mbeki had recently agreed to boost its capacity because of a high workload this year.

The rumours were fuelled when Public Enterprises Minister Stella Sigcau was the only cabinet minister not to be elected to the African National Congress's national executive committee last month. One government source said this had given the incorrect impression of a "vote of no confidence" in the ministry's performance.

There has been criticism from the private sector and within government of what is considered the slow pace of privatisation. Much progress has, however, been made recently in carrying out Mbeki's original restructuring plan, outlined in December 1995

A labour source said it was logical that the department would exist until the national framework agreement between government and labour lapsed in 1999 or the election took place

Shabalala said he had resigned to return to KwaZulu-Natal, his home base. There was a possibility that he could enter the province's government, but this had not been confirmed. "I weighed up all the variables, which includes my happiness at the department, and decided it would be better for me to return to KwaZulu-Natal."

Asked if his relationship with Sigcau was good, Shabalala said they had a "working relationship". A case could be made to examine the reasons behind the resignations and transfers which had taken place since last month, he said. "I cannot say if this is due to dissatisfaction or whether people had better opportunities elsewhere."

Public enterprises ministry spokesman Wandile Zote said six people had either resigned or left to take other government positions

Special adviser, Kennedy Memani, had been transferred to Transnet, but would still advise the ministry. Business performance analysis director Mongesi Mngquibisa had gone to a more senior position in the communications department, while Bayanda Mtse, his assistant director, had also taken up a more senior position in government. Restructuring director Kobus Voster had retired. Sigcau's personal assistant, Hester Visser, had "gone to pursue private interests".

Inquiry over Pick 'n Pay, Plascon row

(232)

ROY COKAYNE

CT (BR) 26/1/98

Pretoria — The Competition Board would investigate claims by Pick 'n Pay that Plascon Paints had stopped supplying the supermarket chain because it had refused to adhere to a supply agreement, Pierre Brooks, the chairman of the Competition Board, said at the weekend

The supply agreement with Pick 'n Pay prevents the supermarket chain from advertising the price of Plascon-branded products in the media "This is certainly something that will arouse the interest of the Competition Board," Brooks said

He questioned how consumers could compare the prices of goods if they were not published.

Brooks said many South African businesses tended to operate in a similar manner to that alleged against Plascon Paints

"They don't want competition on price in the marketplace and, if their products are sold below their recommended retail price, they want to stop supply," he said.

"They must make a clear assessment that what they are doing is not competition-enhancing, and that it is a situation in which the Competition Board would take a great interest "

The Competition Board had not received a formal complaint about the alleged action by Plascon Paints, but Brooks said it was not necessary for the board to receive a formal complaint before it took action.

"If the facts were correctly reported in the press, it has competition law implications and is a matter that requires further attention by the board," he said.

Martin Rosen, the marketing director for Pick 'n Pay, said last week that the supermarket chain would continue to advertise the price of Plascon paints and would not be bullied by Plascon

Erwin will decide Pulseline's fate

232

Lisa MacLeod

BD 29/1/98

THE Competition Board's report into the activities of medical products company Pulseline has been forwarded to all stakeholders in the matter, after which Trade and Industry Minister Alec Erwin will make a decision

The board has recommended that Pulseline's activities be declared unlawful and that the 180 anaesthetists holding shares in the company sever their ties with it, on the grounds that their activities are anticompetitive

The SA Medical Device Industry Association (Samed) lodged the complaint because the anaesthetists' financial interest in Pulseline would and had resulted in competing medical product companies, many of whom are Samed members, losing business.

Pulseline is 50,1% owned by listed Medhold, and 49,9% by Anesticum, the anaesthetists' holding company.

Board chairman Pierre Brooks said it was "standard procedure" for the minister to afford all interested parties the opportunity to comment on the report

If the reaction was in support of the recommendation, he would formulate a prohibition to be published in the Government Gazette

The defendants could then take the matter on appeal to a special competition court, with high court judges

Brookes emphasised that the board had no objection to individual doctors owning shares in medical companies, but said the issue was "collectivity" — the fact that a large group was operating in concert to push their products for financial gain

While the board had focused only on the competition and business aspect of the case, the SA Medical and Dental Council was still investigating the ethics of the matter.

Even if the board chose to withdraw the recommendations after input from stakeholders, there was still a real possibility that the council would ban the activities on ethical grounds, he said

In the board's report, it was noted that Samed's complaint had "led to acrimony" between the anaesthetists and Pulseline's competitors. The board anticipated that relations would be further strained by its findings and recommendations, and said "it would not be entirely surprising" if the anaesthetists embarked on a collective boycott of the products of those companies who initiated or supported Samed's action

Such action would also be "regarded as restrictive practice and would probably also be unlawful under the common law".

Doctors 'must cut ties with Pulseline'

BD 27/1/98 (232)

Lisa MacLeod
and Shareen Singh

THE Competition Board has recommended that a group of anaesthetists be forced to sever their links with Pulseline, the medical products company in which they have a 49,9% stake.

The recommendation was approved by Trade and Industry Minister Alec Erwin last week

The recommendation — which follows complaints from competitors and medical industry associations — coincides with a probe by the SA Medical and Dental Council into the ethics of anaesthetists holding shares in a firm that sells products that the doctors themselves use

Pulseline is 50,1% owned by medical products group Medhold, and 49,9% by Anesticum, in which about 180 anaesthetists hold shares

The board said in its recommendation that Medhold, Pulseline, Anesticum, and the participating anaesthetists should be ordered "to take such action, either in terms of the Companies Act 1973 or any other law, as may be necessary to sever the links that Anesticum and the participating anaesthetists have with Medhold/Pulseline"

The recommendation was reached after a finding that the relationship between the firms and the anaesthetists constituted "a situation that restricts competition in the relevant market"

A spokesman for the SA Medical Device Industry Association (Samed), which lodged the complaint against Pulseline, said the Competition Board had set "the correct precedent for a fair and equitable marketplace".

Samed lodged the complaint on the premise that Pulseline, by virtue of it having shareholders who had access to major hospitals, would be at a competitive advantage over other suppliers of similar products

Continued on Page 2

Pulseline (232)

Continued from Page 1

BD 27/1/98

Samed also represents a number of companies that are in direct competition with Pulseline. The spokesman said these companies had suffered financially as a result of the anaesthetists punting Pulseline's disposable anaesthetic products.

The Competition Board found that linking the anaesthetists' support "to the progress of Pulseline into a potentially dominant medical supply company ... is a clear indication that participating anaesthetists could be and were expected to exert an influence on the buying patterns of the private hospitals at which they operate".

Evidence in support of this was placed before the board, and it was found that hospitals which had for some time been using a particular product had suddenly 'switched' to Pulseline products with no explanation to the previous supplier. Hospitals where this had happened were Kenridge Hospital, Sandton Clinic, Morningside Clinic, Flora Clinic, Wilgers Hospital and Olivedale Clinic.

Pulseline director Pam Marshall said yesterday the firm was not prepared to comment on the findings as it had not received a copy of the report.

A spokesman for the medical and dental council said an investigation into the ethical conduct of the individual stakeholders in Pulseline — and not into the company as a whole — was under way, but was not yet complete.

Airports Company a gilt-edged gateway

ex (BR) 29/1/98 (232)

Ncaba Hlophe

Johannesburg — The partial privatisation of the Airports Company of South Africa (ACSA) and the initial 20 percent stake floated to a strategic equity partner (SEP) have sparked a battle of titans as leading airport companies scramble for what is perceived as the gilt-edged gateway to the African continent

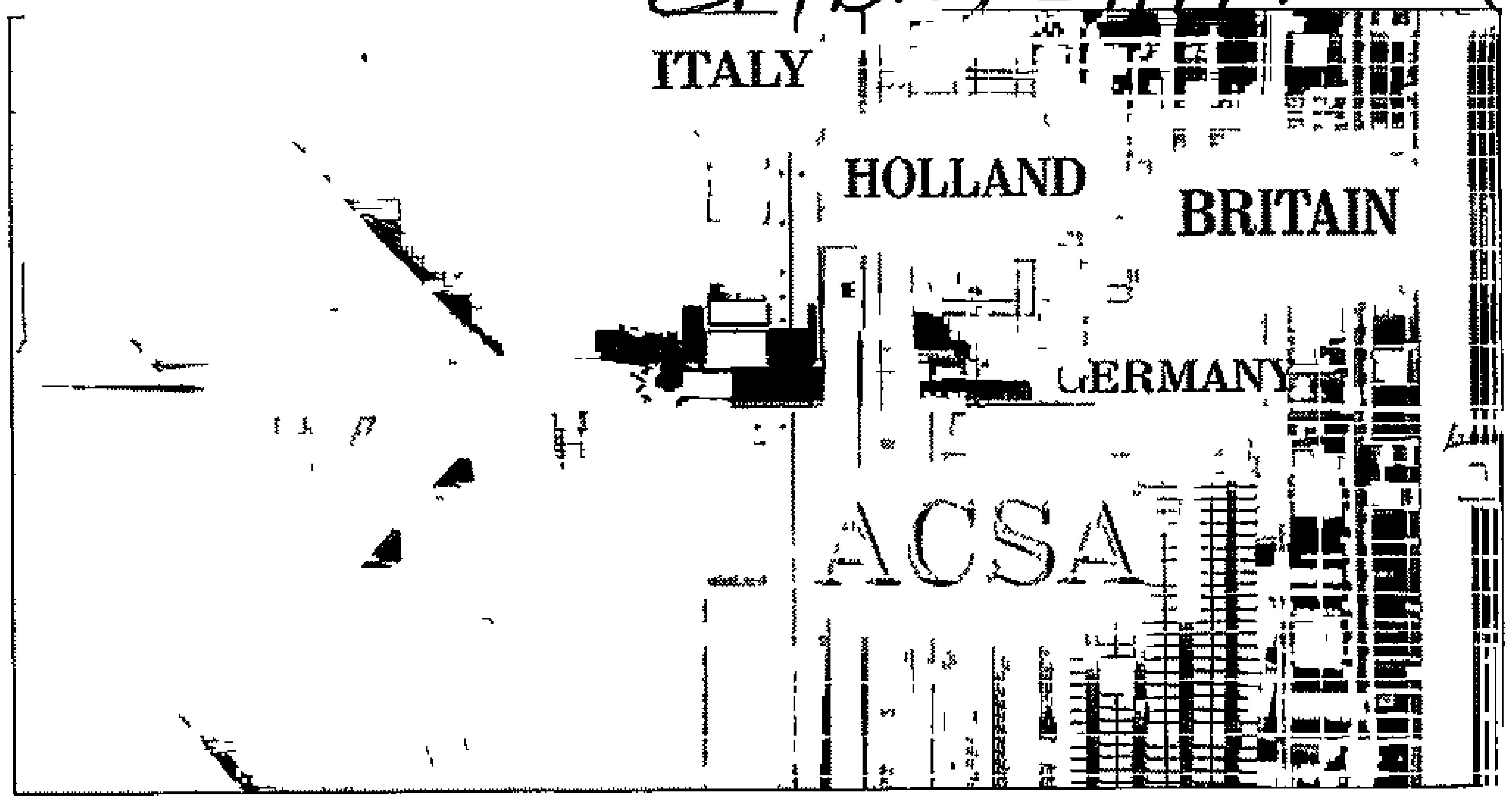
The gruelling tussle was sparked last November by the announcement of the six prequalification bidders BAA (formerly British Airports Authority), Aeroporti di Roma (Italy), Aeroports de Montreal (Canada), Amsterdam Airport Schiphol (Netherlands), Flughafen Frankfurt Main (Germany) and Sociata Esercizi Aeroportuali (Italy)

The successful bid is expected to be announced in the second quarter of the year, followed by the sale of 10 percent of ACSA to black investors, 9 percent to staff and 10 percent to the National Empowerment Fund

Government will retain the majority stake of 51 percent, but it has indicated it will reduce its holding through a future listing of the company and will increase the SEP stake by another 10 percent

ACSA's partial privatisation has been motivated by government's commitment to hive off state-owned entities and by global trends in airport management These dictate the accelerated commercialisation of airports to grapple with liberalisation and competition

According to a report published last year by Mecer Management Consulting, the British management consultancy, tremendous investment programmes are required to keep pace with projected air travel demand and the reduction of government funding of airports Successful management skills are critical to most airports as they grapple with the challenge of financing capacity growth to accommodate increasing demand Airports could spent an estimated $250 to $350 billion worldwide to the year 2005



Already mega-projects such as the new Hong Kong Airport, Berlin Brandenburg International Airport and renovations to the New York International Airport are under way

"However increasing pressures to reduce or redirect government spending make public investments in airport infrastructure unlikely," says the Mecer report

The privatisation of BAA in 1987 set the pace for the commercialisation process in Copenhagen, Vienna, Athens and Amsterdam and the sale of long-term airport leaseholds in Australia, Naples and Bolivia

"Even the US, the bastion for government-owned airports, has launched a privatisation pilot programme involving five airports," the report says

Although privatisation and commercialisation have become a worldwide fait accompli, the process's approach, culture, skills and philosophy differ from country to country

Britain went for full privatisation in 1987, while Amsterdam Airport Schiphol and Frankfurt airport have remained in the claws of state ownership These three companies rank as favourites for the 20 percent stake at ACSA

Mercer ranks BAA and Schiphol as world-class airport operators involved in several global management and ownership transactions

BAA manages seven airports in Britain and is involved in operations in Europe, North America, Asia and Australia While its two successful US transactions to date — in Pittsburgh and Indianapolis — do not involve equity, they are seen as stepping stones into the US market

Schiphol is involved with airports in Kuala Lumpur, Jakarta, Vienna, New York, Banjul in The Gambia and Brisbane

Schiphol and BAA are competing against each other for the first berth as world-class airport operators as well as for the 20 percent stake at ACSA Each has developed different — and successful — approaches and methods for privatisation or commercialisation

BAA adopted the hard-nosed privatisation route and went for full listing 10 years ago, transforming a potential tax burden into an independent and profitable business

Over this period, the group invested £3,2 billion — three times the £981 million spent from 1977 to 1987 — in spite of a decline in charges in real terms to airlines for each passenger carried on the international index

Unlike most privatised institutions, the group increased its workforce by 500 to 8 000 and there have been no compulsory redundancies

"Our mission is to add value to the South Africa airport," Richard Jeffrey, BAA director of Europe and Africa, said last year

"We believe in our skills and in South Africa as a lucrative market South Africa is looking for value-adding partners, hence our bid "

Schiphol, on the other hand, has taken the commercialisation route and retained government ownership of the airport — although the privatisation of the airport has become a topical issue in the Netherlands and the government approved privatisation in principle last year

In what could be described as a mature consultation process based on a philosophy of openness and transparency, the Dutch are expected to resist pressures to make any hasty privatisation decision

The shares of the airport are currently 76 percent-held by the national government, 22 percent by the City of Amsterdam and 2 percent by the City of Rotterdam

However, Schiphol operates as a commercial enterprise that makes a profit, pays out a dividend and finances its investments itself

In 1996, the airport invested Fl250 million (R610 million) in new facilities as part of the master plan for the period from 1989 to 2003, totalling Fl4,5 billion In the same year it recorded a 19,4 percent net profit increase to Fl174 million and a net turnover of Fl977 million

Against the backdrop of their respective performances, both BAA and Schiphol would be expected to demonstrate their value-adding expertise in their bids to South Africa

Master planning, retail and property development and intermodal transportation strategies would be high on the agenda

ACSA is expected to look critically at the value-adding factor as the primary criterion for the selection of the SEP, especially as it has already turned itself around financially without a foreign partner It moved from a deficit of R58 million in 1993 to after-tax income of R159 million for the year ending March 31 1997

While both BAA and Schiphol have demonstrated world-class competency, the onus lies squarely on ACSA to select the best partner to suit its particular needs

PORTNET

fm 30\1\98

Government dragging the anchor on privatisation

(232)

Wharfage charges being used to prop up monopoly are pushing SA harbours into backwater

SA trade is growing at least twice as fast as gross national product and for the first time ever the export of beneficiated products is beginning to rise as a proportion of total exports

It should be good news all round But it's not Instead of meeting the challenges of upgrading ports and inland transport infrastructure to ensure traders can take advantage of these new circumstances, government is instead dragging its feet in urgently needed privatisation This, say industry experts, is hindering trade and badly affecting SA traders' competitiveness

Nothing symbolises this sad state of affairs more than the departure from Cape Town harbour of a P&O Nedlloyd-owned ship in early January — without its cargo of exports worth R20m It was the Christmas period and no Portnet labour could be secured to load the containers P&ON was stymied by an antiquated ports law which rules that only port labour can be used to carry and haul containers within 110 km of a port

Cape Town wharf *over priced and out of sync*

This was at the height of the fruit season and, to add insult to injury, the next day P&ON received notification of a 9% hike in container handling charges This "uncommercial" attitude is holding up trade, says P&ON MD John Turner

Government realises this and there are moves towards privatisation But, as Department of Transport director-general Ketso Gordhan resignedly admits, "things move slowly in government" And there are those within government who are chary of privatisation

Gordhan himself feels strongly that change is required Most of Portnet's profits come from wharfage charges which, says Gordhan, are structured in a way which is out of sync with the rest of the world They are hitting SA's competitiveness, he says And the profits they generate, instead of being reinvested in ports, are being used to prop up the monopoly and make it look as though it is breaking even

Gordhan says Portnet would still be making money if the wharfage was 50% of what it is now P&ON's Turner says wharfage is nothing less than a tax on trade "It has nothing to do with commercial practice"

"Part of the complication is that Portnet is playing three roles," says Gordhan "It is a regulator, deciding on issues such as port safety, quality of service and charges It is also a landlord And thirdly, it is an operator, running all the port services"

In effect, says Gordhan, it is an unregulated conglomerate And this, he says, must end Government is looking at separating the three functions, retaining control of regulating ports but having a type of public corporation in charge of the landlord functions and privatising the operations

Commerce and industry has also demanded these changes Turner says the monopolistic and inefficient way Portnet and Transnet operate is a hindrance to the growth of trade He believes ports must be made to compete with each other to improve efficiency In the shipping industry today, turnaround time is crucial to competitiveness "A port which offers the most efficient and cost-effective turnaround times will attract the most business," he says

But railways would also have to be upgraded Spoornet, says Turner, is only beginning to see users as customers and is still too bureaucratic He believes there should be privately owned railheads which could use their own labour

Once the ports have an incentive to be efficient and competitive, investors will be prepared to invest in the expensive resources necessary to develop SA's ports up to world standards, says Turner

Meanwhile, SA is nowhere near ready to cope with its entry back into world trade

With the lifting of sanctions and the election of a new government in 1994, shipping container traffic growth shot up to 19,6%, rather than the predicted 3,5% Volume surges caused a huge traffic backlog at Durban and Cape Town, causing delays in turnaround times and costing shippers and shipping lines millions of dollars

Portnet seems keen to do something about its infrastructure requirements Capital investments increased from R185m in 1993/1994 to R646m in 1996/1997 For 1997/1998 a record capital budget of R1,442m was approved for the seven SA commercial ports **Vicki Sussens-Messerer**

WHISKY WISDOM

Just a wee dram

Nearly 600 entries were received for the *FM*'s "Test Your Whisky Wisdom" competition The following are the winners, drawn from the correct answers received

1 A case of The Famous Grouse H McCulloch, Box 1516, Eshowe 3815

2 A case of J&B Rare E R Badenhorst, 28 Emu Crescent, The Heads, Knysna

3 Three bottles of Dimple P K Durr, Box 22238, Windhoek, Namibia

4 A case of Glen Grant Dr J F C Morgans, 10 Bedford Road, Cowies Hill, Pinetown 3610

5 Three bottles of Chivas Regal J C de Jong, 6 Le•Roux Street, Eden Glen 1609

The prizes are donated by the manufacturers ■

Claimants, Sigcau agree on Aventura sale

(232) CT(BR) 2/2/98

Ncaba Hlophe

Johannesburg — The sale of Aventura, the ailing state-owned resorts company, took a huge step forward last week when Stella Sigcau, the public enterprises minister, rallied behind her vociferous land claimants in Mpumalanga to support the speedy privatisation

The minister said it was agreed at an "amicable meeting" held in Blyderpoort that government would sell the business and land of those areas unaffected by land claims and would hold the land and sell the business in affected areas, pending the outcome of the claims

"They are not against the privatisation," Sigcau said of the land claimants "Their major concern was that they wanted to participate in the final evaluation of the bids But they realised that it would be suicidal and foolhardy not to privatise in record time."

Earlier this month the land claimants had asked the Legal Resources Centre to file an urgent application to halt the sale of Aventura, claiming Sigcau had failed to respond to their demand for representation in the final stages of the bidding process

Louise du Plessis, an attorney at the Legal Resources Centre, said the claimants wanted, inter alia, veto rights over the decision of the tender evaluation committee that would make final recommendations to the government on the sale

They also wanted to regain land rights that would give them a share of the potential resort revenue, and demanded access to to tender documents related to the privatisation process.

Sigcau said she was keen to consult the affected communities and win their trust in government's ability to represent their interest'

But she said government would not allow the communities to claim representation in the final evaluation process, because that would set a precedent which would plunge the process in disarray.

"Just imagine how many other stakeholders would come up and lay a claim to representation The whole process would be a free-for-all that we would not be able to manage," Sigcau said

She said Aventura was running on a shoestring budget and the privatisation process could not be delayed any further.

Government had shortlisted five bidders for the resorts company Kopano ke Matla (Cosatu's investment trust), Phalafala Leisure Consortium, Sanco Consortium, Boiketlong Investment Consortium and Shomang Investment Holdings.

State mineral rights proposal

(232) (~~210~~) ARG 4/2/98

Pretoria – All mineral rights should, in the long term, be vested in the state, says a green paper on a new minerals and mining policy.

It also proposes that a tax on mineral rights be investigated to discourage non-use of privately-owned mineral rights

Launching the document yesterday, Minerals and Energy Minister Penuell Maduna said there was evidence that it would be to the benefit of all South Africans to vest minerals rights in the state

He said there was a "deep-seated element of racism" in the way mineral rights were distributed in the past.

Although there were constitutional restraints on changing the current dispensation, a continued system of dual state and private ownership was unacceptable

The green paper proposes that the Government take transfer of mineral rights where the holder of such rights cannot be readily traced or if they are still registered in the name of a dead person. – Sapa

State may own mineral rights

(232)

Sowetan 9/2/98

Maduna's proposal on mineral rights an attempt to address inequalities

By Abdul Milazi

MINERAL and Energy Affairs Minister Penuell Maduna played his trump card when he launched his Green Paper on Minerals and Mining Policy yesterday which suggests giving the state total control of all mining rights.

The document proposes that the state be granted ownership of all mineral rights in the country and hopefully put an end to the fight between trade unions, black communities and mining houses over the ownership of mineral resources.

A tax, still to be decided by the Department of Finance, is also proposed on private mining areas which are currently not being used to prevent the hoarding of wealth by companies and individuals who purchased mineral-rich land during the apartheid era.

Addressing a press conference in Pretoria, Maduna said: "In today's highly competitive world, a minerals policy should strive to find the ideal blending of interests between private enterprises and the state to enable the industry to adapt swiftly to changing conditions in world mineral markets."

He also argued that the wealth-creation potential of South Africa's extensive and diversified mineral resources was indispensable for the reconstruction and development of the country.

"The minerals and mining policy must therefore be aimed at developing the country's mineral wealth to its full sustainable potential and to the maximum benefit of the entire population.

"This should be done in accordance with the Growth, employment and Redistribution (Gear) and Reconstruction and Development Programme," said Maduna.

Penuell Maduna

Nationalisation

The National Union of Mineworkers (NUM) last year called for the nationalisation of the mining industry so that indigenous people living around mining areas should benefit from the industry.

The Green Paper's approach in seeking to vest all mineral rights in the state comes short of nationalisation, but maintains some degree of entrepreneurial freedom.

Blacks and small-scale farmers will also get easy access to the industry which has been the domain of conglomerates such as Anglo American and Gold Fields.

In addressing past inequities, the Green Paper proposes that the Government should facilitate access to opportunities in the mining industry to those previously excluded, including helping such individuals or groups with skills and resources to enable them to compete effectively.

The Paper also proposes the establishment of secondary and tertiary mineral-based industries aimed at adding maximum value to raw materials.

The NUM will be discussing the same thing at its gold summit on February 26 and February 27, as it believes that South Africa does not get much value out of its mineral resources by exporting raw minerals.

Robert Tshabalala

Stella Sigcau   rearranging the furniture

SAFCOL

(332)

Dead wood hampers privatisation

fm 6/2/98

Government conditions for sale are putting off investors

As any lumberjack knows, it takes a decisive, clean cut to preserve timber in pristine condition This fact appears to have eluded both Public Enterprises Minister Stella Sigcau and Water Affairs & Forestry Minister Kader Asmal, as they prepare to give the State-owned forestry assets the privatisation chop

Though government's Inter-Ministerial Cabinet Committee on the restructuring of State assets (IMCC) has been applauded for producing its forestry privatisation blueprint, there is less enthusiasm for the detail and the slow rate of progress

Talks began on the restructuring of the State-owned SA Forestry Company (Safcol) in late 1996 The word from Sigcau's office is that her department is "deep in preparations" for the restructuring and expects to dispatch invitations to possible investors to examine the potential in about three months The Minister hopes to complete the deal by the end of the year

"Having decided on privatisation they should simply get on with it, instead the process is taking an age," says Forest Owners' Association executive director Mike Edwards His organisation represents the corporate stake (including Safcol) in SA forestry — about 75% of the 1,4m ha of commercial timber plantations

Edwards' view is endorsed by Price Waterhouse corporate finance CE Pieter van Huyssteen, who says the delay has left Safcol in limbo, losing value through lost opportunities and for lack of capital

Few would dispute the logic of the IMCC's primary intentions as stated in its strategic summary These are to

❑ Create an internationally competitive forestry products sector,

❑ Create a framework for investment in high value-added processing activities,

❑ Stimulate exports and develop both the levels and quality of employment while also advancing government's wider policies on community empowerment, and

❑ Achieve an optimum return for the sale of its forestry enterprises, particularly Safcol

But according to some potential investors, the strings attached to the conditions of sale flaw the process, which involves disposing of Safcol's R570m assets and about 120 000 ha of loss-making timber plantations managed directly by Water Affairs & Forestry Government, however, intends to retain a minority stake in the restructured enterprises and says it will sell only the timber and not the land on which it is located

The IMCC stipulates that investors will have to meet "stringent conditions on matters of wage levels, business strategy, community involvement, empowerment, human resources development and small business development" Edwards complains that this makes it hard to run a profitable, internationally competitive enterprise

"The entity that gains control must be allowed to make its own decisions based on sound business and economic principles A company that is so constrained that it cannot improve its performance cannot survive Such conditions mean plantations would not be commercially viable even if they were given away," says Edwards

Forestry Industry Association chairman Alan Wilson is more specific "Those constraints simply do not make business sense when one considers buying operations such as the non-Safcol State forestry assets, which are losing R380m/year — more than R1m/day — and are over-manned and on higher (civil service) pay scales than industry norms "

Carl Seele, president of the SA Timber Growers' Association (Satga) — representing small to medium operators (1 ha-2 000 ha), believes the new owners should be governed by the Labour Relations Act and environmental legislation rather than being placed in a straitjacket of special conditions

He also worries that small timber operators may be cut out of contention if Safcol's assets are sold as a single entity "Only the big players and foreign investors will be able to bid and that will merely perpetuate the concentration of ownership in corporate hands "

The IMCC, however, says Safcol will be offered to potential investors as a whole or in carefully selected portions The businesses to be offered in parts would largely be in the Eastern Cape, where Safcol assets would be combined with those run directly by Water Affairs & Forestry to form the basis of processing and manufacturing operations such as paper and saw mills

Other concerns abound Durban-based knock-down furniture manufacturer and exporter Megacor, which has just landed a R60m contract to supply product to the US retail market, is concerned that government could be tempted to "sell the family jewels" by allowing foreign investors in on the privatisation deal

"Timber is a scarce resource and it seems crazy to even contemplate giving it away to a foreigner," says Megacor MD Tony Dixon

Herb Payne

Chamber seeks meeting on mineral rights

BD 9/2/98 (232) ([illegible])

David McKay

THE Chamber of Mines is seeking an urgent meeting with Minerals and Energy Minister Penuell Maduna to discuss its concerns about the green paper on minerals and mining policy.

Chamber president Bobby Godsell said at the weekend the chamber had "grave concerns and profound reservations about some of the proposals".

The policy paper proposed that all mineral rights in the long term be vested in the state, and that a tax on privately owned mineral rights be investigated. Analysts said what the green paper was suggesting was tantamount to nationalising mineral rights.

According to the constitution, compensation would have to be paid to the mining companies — although there was no guarantee in the green paper that this would be done.

Releasing the green paper last week, Maduna said there was overwhelming evidence that it would benefit all South Africans to vest minerals rights in the state.

(232)

Sigcau faces Aventura court case

M+G 9-15/1/98

Ann Eveleth

Two landless communities claiming prime eco-tourism land in Mpumalanga instructed attorneys this week to take Minister of Public Enterprises Stella Sigcau to court over the planned sale of tourism parastatal Aventura.

The Moletele and Mashilane communities asked the Legal Resources Centre (LRC) in Pretoria this week to file an urgent application to halt the sale of Aventura after Sigcau failed to respond to their demand for representation in the final stages of the bidding process.

Their action follows a government decision in late 1996 to make Aventura the country's first privatisation exercise Government suspended the sale in April 1997 after the emergence of several potential land claims on the parastatal's resorts, but lifted the suspension in October with promises to settle the claims separately.

LRC attorney Louise du Plessis said the claimants' action would proceed within the next week after the ministry failed to accede to seven demands, including effective veto rights over the decision of the tender evaluation committee which will make final recommendations to the government on the sale.

The communities—who are not against the sale of Aventura but want to regain land rights that would give them a share of the potential resort revenue—have also demanded access to tender documents and other information related to the privatisation plan.

Kennedy Memani, an adviser to Sigcau on the Aventura sale, accused the claimants of "mischief" and said they had not allowed sufficient time for the ministry to respond to their letter of demand sent on December 19. "Everybody has been on holiday and you must remember that my minister is an ANC minister and she had to attend the conference in December," he said.

Memani denied a dispute existed between the claimants and the ministry, claiming the parties had reached "an amicable agreement" at a meeting on December 18 But he refused to disclose the terms of the alleged agreement.

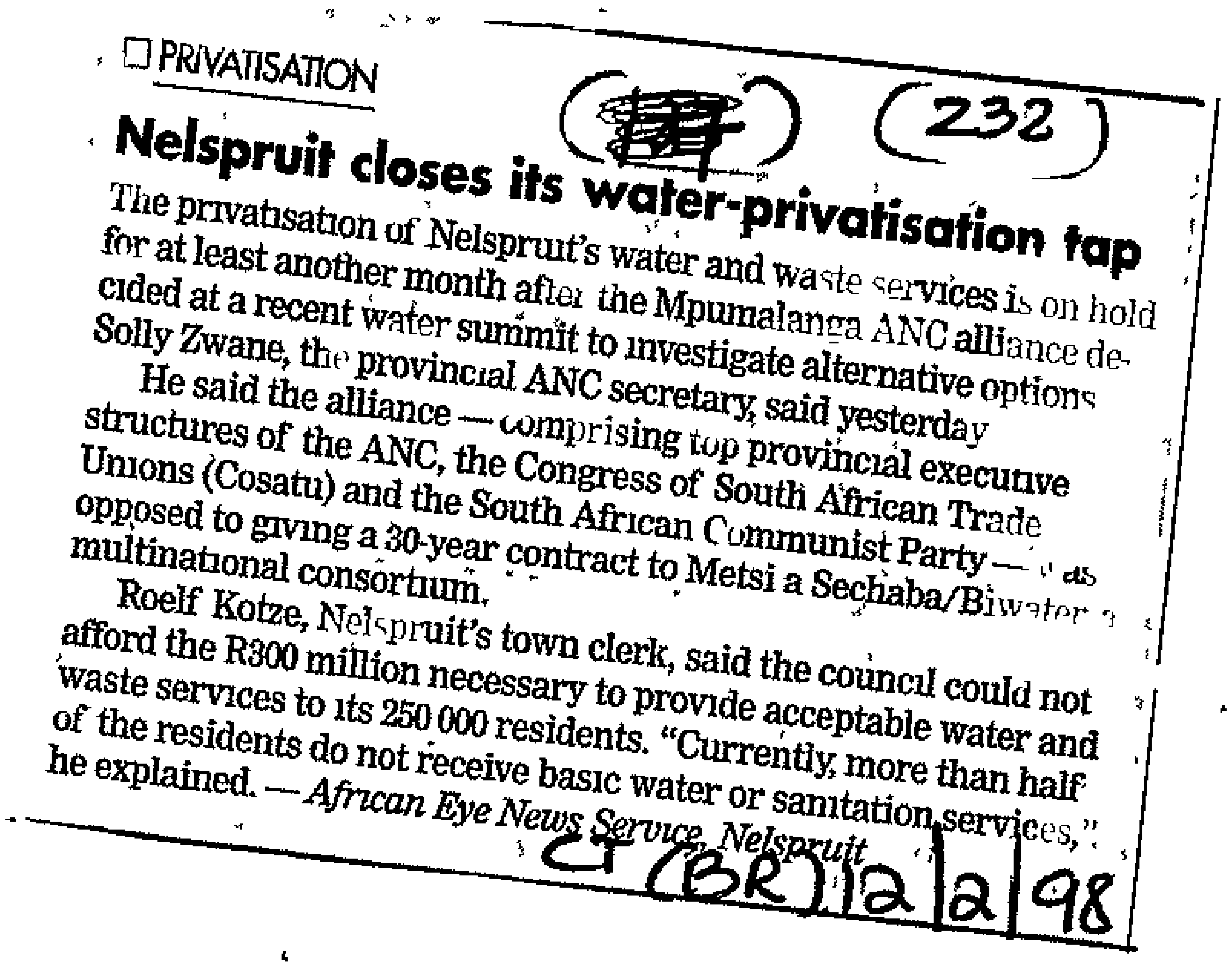
Du Plessis rejected this claim as "nonsense. We've never, never agreed on anything," she said.

Memani claimed the government had gone to great lengths to consult the communities and the Department of Land Affairs to ensure the claimants benefited from the sale.

But Du Plessis said Sigcau's ministry had "never consulted the claimant communities. They've consulted surrounding communities, the Commission [on the Restitution of Land Rights] and the Department of Land Affairs, but never the claimants," she said.

She added that her clients wanted to ensure they would benefit from any future developments on the Blydepoort and Claremont farms they are claiming. They had been removed from the land in the 1960s, some of them to make way for the construction of the Blyde Dam, and many lost access to ancestral graves in the process

Land affairs chief director of restitution Jean du Plessis said his department had supported Sigcau's move to proceed with the sale of the land after a "technical hitch" prevented the state from selling Aventura without the land, but added that the successful bidder should be the company that gained the support of the claimant communities.



□ PRIVATISATION

(232)

Nelspruit closes its water-privatisation tap

The privatisation of Nelspruit's water and waste services is on hold for at least another month after the Mpumalanga ANC alliance decided at a recent water summit to investigate alternative options Solly Zwane, the provincial ANC secretary, said yesterday

He said the alliance — comprising top provincial executive structures of the ANC, the Congress of South African Trade Unions (Cosatu) and the South African Communist Party — was opposed to giving a 30-year contract to Metsi a Sechaba/Biwater a multinational consortium.

Roelf Kotze, Nelspruit's town clerk, said the council could not afford the R300 million necessary to provide acceptable water and waste services to its 250 000 residents. "Currently, more than half of the residents do not receive basic water or sanitation services," he explained. — *African Eye News Service, Nelspruit*

CT (BR) 12/2/98

Sacob warns against impairing job creation

CT (BR) 18/2/98

(232)

THABO LESHILO

Johannesburg — The South African Chamber of Business (Sacob) welcomed efforts to reform the country's competition law but warned that the move should not undermine sustainable job creation

"Sacob is convinced that a sound competition policy and the related legislative provisions are desirable and essential for economic success in the new global environment," said Sacob's position paper, published this week

The state tabled its proposed guidelines for competition policy in the trade and industry chamber of Nedlac on November 27.

The proposed policy is aimed at promoting efficiency in the economy and meeting its socio-economic objectives, including promoting black empowerment and making local companies globally competitive

Nedlac's trade and industry chamber would discuss the proposed competition policy on February 23, said Angie Leu, Nedlac's spokesman.

Sacob's paper said an effective competition policy would restrict abuses of market dominance and restrictive behaviour, which reduce the scope for investment and prevent the development of a vibrant business sector.

It said competition law should be seen as an instrument for the promotion of economic efficiency and not as a tool for achieving social equity

"Although a more equitable distribution of wealth and other social objectives are desirable, one should guard against the relegation of economic efficiency, which is ultimately the function of competition policy, to the back ground in favour of the attainment of social goals," Sacob said.

It said the investigative unit of the competition authority should concern itself only with the abuse of dominance and restrictive practices that were anti-competitive

PRIVATISATION

SAA needs a bigger, better broom

CT(BR) 19/2/98 (232)

NCABA HLOPHE

Worsening internal revenue leaks, high jet fuel costs and stiff competition are expected to bludgeon SAA, the embattled state airline, into further losses of more than R300 million this year despite the success of Operation Clean-Up, the trumpeted cost-cutting strategy

Although the operation saved the airline more than R200 million, persistent revenue leakages will undermine its efforts to record a profit ahead of its privatisation this year

The airline's bottom line will also be pinched by high jet fuel prices, which cost more than R200 million a year, as its application for a licence to import fuel is likely to be rejected by the department of mineral and energy affairs.

Two previous attempts have been rejected "The department has advised against the importation of jet fuel," Theunis Burger, the director of trans port energy, said last week

Although no final decision has been taken, Burger's view indicates that the department would reject the application for the third time, which would cost the airline industry more than R400 million a year

The industry argued that the high prices were caused by the outdated in-bond landed pricing structure, set up to address sanctions against the previous government The price formula charges airlines a deemed import parity price, freight, insurance and a blanket 12,8c railage fee

Additional costs such as concession, hydrant fees and supplier margins cost airlines about R1 litre at Johannesburg International Airport and other local airports, making South African airports 30 percent higher than the world average.

SOUTH AFRICAN

SAA lifts about 60 percent of its fuel from local airports.

The industry has argued that the railage fee was unfair because it assumed all the fuel at Johannesburg International was transported to the airport by rail tank cars from refineries in Durban

In fact, only 20 percent was transported by Spoornet's rail cars, and the crude oil was carried at a lower price through Petronet's pipeline to the Natref refinery in the Vaal region, which is owned by Sasol and Total

Burger argued the department was concerned that im porting jet fuel would affect downstream and empowerment opportunities in the oil industry, espousing the view that the restructuring of jet fuel would have to be part of the broad deregulation of the oil industry

"That should not be necessary because the jet fuel price is not controlled like the price of other liquid fuels such as petrol The restructuring of jet fuel should go ahead separately, especially because the current system is draining the airline industry," said John Morrisson, the executive director of the Airline Association of Southern Africa

SAA is expected to put pressure on the department and Penuell Maduna, the minister, by lobbying other state organs to support its bid for a permit.

However, SAA's perceived enemies are not only the department and the oil industry Spoornet, another Transnet division, is also a major beneficiary of the pricing system The proceeds of blanket railage fee of 12,8c are pocketed by Spoornet.

Spoornet, also billed for corporatisation, has been under pressure to turn around and im prove its performance It could be reluctant to forgo the railage fee windfall, despite the fact that it unfairly hurts SAA

It is highly probable that a visceral family feud could break out among Transnet's siblings

The possible rejection of the import licence could dent the vaunted corporatisation programme, which would result in a new look and independent SAA Pty Limited by the end of March

SAA's corporatisation programme was far ahead of the other Transnet's divisions such as Portnet and Spoornet The airline has already appointed Merrill Lynch as the transaction adviser to the privatisation exercise to introduce a strategic equity partner Final bidders are expected to be announced in October this year

But there are dark clouds hovering over the plan

Firstly, the cost base of more than R200 million on unnecessary expenditure would dent SAA's profile to potential strategic equity partners Secondly, the immediate response to the fuel permit debacle would be to pass it over to the consumer by raising airfares and possibly leading to price wars

Thulani Nzima, the SAA manager for the Benelux countries, has dubbed price wars as the "Frankenstein monster" that bounces back to gobble the very airlines that initiate them

Price wars hurt struggling airlines while strong airlines also fail to sustain then The moment SAA increases its fares to offset the jet fuel costs, other airlines would seize the chance to offer huge discounts to squeeze it out of its market share

The rationalisation of the SAA fleet could put paid to a protracted dispute with Boeing over the purchase of four B777s and an option to buy three more The airline froze the orders for the B777s, and Zukile Nomvete, Transnet's executive director in charge of SAA, commissioned a fleet rationalisation exercise to determine which aircraft were replaced and for which routes

Subsequently, the airline missed its production slots at Boeing and lost a lot of money in interest for its deposit The question now is how SAA would service its payment for the B747s due for delivery this year

The possible entry of Airbus, Boeing's rival aircraft manufacturer, with an offer of more relevant aircraft, is expected to exacerbate the tiff between Boeing and SAA SAA was expected to reject the option for three B777s

Operation Clean-Up alone will not be enough to sweep the internal strife that manifested itself in strikes and low morale among employees

But recent reports that a senior management staff member in Bloemfontein had cost the airline R6,7 million in lost revenue in a year by offering discounts and issuing tickets with zero-values fly in the face of the effectiveness of the operation

The most disturbing aspect of the findings by Transnet's internal audit unit was that the abuse of management positions spread between several air stations.

Nomvete would have to intensify his hard line approach to stamp out vestiges of corruption that threaten to sully the success of Operation Clean-Up. It would only be after containing internal revenue leaks that the airline would hope to tackle external costs

Business slates Erwin's policy guidelines

(232)

Greta Steyn

BD 19/2/98.

BUSINESS has fired its first salvo in negotiations with government over competition policy in a document which criticises several aspects of Trade and Industry Minister Alec Erwin's guidelines.

The SA Chamber of Business (Sacob) has made available a paper on the guidelines, which will form part of Business SA's position in negotiations

This is the first formal response to Erwin's guidelines, released late last year. Talks between government, business and labour are taking place in the National Economic Development and Labour Council (Nedlac), and will be taken into account in the drafting of legislation

Sacob's main criticism was that government believed competition policy should also be used to achieve social goals It was also worried that the new competition authority would not be sufficiently independent from government.

It called for clear definitions on anticompetitive behaviour and expressed concern about the proposal that the competition be allowed to enforce unbundling in certain circumstances

"Competition law should be seen as an instrument of promoting economic efficiency and ... it cannot in itself promote economic or social equity," Sacob said

The introduction of socioeconomic and other objectives might result in the ineffectiveness of competition policy when it came to the goal of economic efficiency.

The organisation said it was clear the new legislation would attempt to address social and developmental issues "in a very tangible way"

According to government, empowerment cases should be given priority. "This begs the question as to whether the independence of the new competition policy will be compromised by the state in order to further political aims."

Sacob welcomes competition policy

(232) Kuwetan 19/2/98

By Joshua Raboroko

[illegible]

Deregulation sees changes in industry

BD 24/2/98 (232)

Janet Parker

DEREGULATION of the airwaves, the proliferation of media platforms and increased competition, among other factors, have changed SA's media environment and made the jobs of media planners and buyers a lot more tricky

Mike Leahy, MD of Ibis Media Data, which produces the Media Inflation Watch index, reviewed a few key media trends in the 1998 Marketer's Media Guide compiled by Media Initiative Africa

Leahy said the dominant factor was that the pace of change in society and technology was accelerating "A fundamental effect of this is that the communications industry is becoming ever more volatile, not cyclical"

Internationally there was an increasing move towards "narrowcasting" — a focus on smaller and more homogenous groups on a geographical, racial or special interest basis The narrowcasting trend, in turn, affected people's media use and led to a move towards selective "media consumption"

"More media competing for the same disposable hours results in the average medium receiving less attention time A new medium seldom increases total consumption of media — it steals from the overall time consumers are prepared to spend on it," he said With increased competition for consumer's time, content had become all important

Leahy said narrowcast media opened the way for proportionately lower cost investment compared with mass media — like SABC1 and the Sunday Times — and opened up a narrowcast range of advertisers However, this trend would be at the expense of traditional cost efficiency measurements, as smaller mediums did not benefit from the same economies of scale as the large mediums.

The distinction between above-the-line and below-the-line advertising was disintegrating, and "despite the fact that 'non-traditional' opportunities are difficult to assess and manage, they are beginning to find their way onto media recommendations".

More information was available to media buyers and planners more quickly than before, and rate-fixing structures were crumbling, making it a buyer's media market. There was a move towards greater flexibility and negotiability and a greater awareness of the value of buying, he said

There was a trend also from intramedia to intermedia competition, and owners of traditional media were likely to launch joint marketing schemes "in an attempt to keep their investments valuable, while competing like crazy in their own sector"

The tradition of signing off a year's media schedule would be replaced by setting strategic plans and buying objectives to capitalise on media opportunities Leahy said covert political manipulation of the media was likely to replace the heavy-handed approach of the past "It would appear politicians have learnt to be more sophisticated in dealing with the fourth estate"

□ *The 1998 Marketers' Media Guide — the third edition of the publication — is compiled by Media Initiative Africa and is available with the February edition of Marketing Mix The guide is produced specifically to update the marketing community on a broad spectrum of media issues.*

Empowerment fund set to kick off with R2bn

BD 24/2/98

(232)

Robyn Chalmers

GOVERNMENT's long-delayed national empowerment fund is set to kick off in September with up to R2bn in assets from the partial privatisation of entities such as Telkom, Sun Air and the Airports Company.

Public enterprises minister Stella Sigcau is close to finalising legislation setting up the fund, which is designed to give previously disadvantaged communities a tangible stake in mainstream business.

A steering committee advising Sigcau proposed that a predetermined percentage — about 10% — of each privatised parastatal be sold into the fund. Units in the fund would be offered to trade unions, small black-owned businesses and rural communities at a considerable discount. The fund's investments would be directed by private sector portfolio managers.

Public enterprises spokesman Wandile Zote said yesterday government had invited applications from market research consultants to the fund's steering committee. "We hope to have legislation on the fund before Parliament in the coming months."

A steering committee member said the fund would be structured in three separate trusts. The biggest would be an investment trust holding most of the fund's portfolio. Seed capital would come from government, and it would also rely on investment returns.

The second element would be a joint venture between government and the Independent Development Trust It would acquire equity holdings in small and medium-sized enterprises held by disadvantaged communities.

The third leg would offer equity stakes in restructured parastatals to black-controlled companies. Cash raised for this "warehouse fund" would be transferred to the bigger investment fund.

Ways for cash-strapped South Africans to participate in the fund are being examined. They may include low-interest loans, interest-free salary advances and delayed payments.

Government is also setting up an employee shareholder option programme which has been negotiated with trade unions. Sigcau said last year that employees of privatised parastatals would have the right to buy shares worth R10 000 in their companies at a discount.

Trade and Industry Minister Alec Erwin said recently the empowerment fund aimed to raise more than R4bn over the next few years for the promotion of small and medium-sized businesses. He said at least R1bn would be transferred into the fund this year, but government officials said this could be higher. Much depended on the amount received for the initial 20% stake of the Airports Company which is up for sale

Zote said the fund would buy at a discount an allocated percentage of shares from each parastatal.

Without discounts a 10% stake in Telkom would total R1,8bn; a 15% stake in Sun Air would amount to R7,5m and 10% of the Airports Company was expected to bring in a minimum of R200m. Other parastatals up for sale this year include holiday resort company Aventura, the SA Forestry Company and SA Airways

Govt takes over electricity restructuring

BD 25/2/98 (232)

Robyn Chalmers

GOVERNMENT [illegible] been forced to take control of [illegible] initial electricity supply restructuring process after its stakeholder advisory committee failed to reach consensus on the way forward.

Minerals and energy department deputy director Wolsey Barnard said at yesterday's national power summit that two task teams would be appointed by Minister Penuell Maduna.

The teams would look at financial modelling issues and tariffs within the electricity supply sector. Other task teams would be set up to deal with employment, assets, governance and other issues.

Government officials would consult individual groupings in an attempt to bring them closer together.

Barnard said the stakeholder advisory committee was set up to advise government on a new industry structure and on how this could be achieved. It was also to have advised on a chair-

Continued on Page 2

Electricity

(232)

Continued from Page 1

BD 25/2/98

man for a transformation team to plan and implement the process. The committee could not reach consensus on any of these issues.

The cabinet decided in principle last year to consolidate the supply sector into an undetermined number of independent regional distributors It approved the introduction of cost-effective tariffs, an electrification levy and a capped tax for part funding of municipal services.

Eskom energy management manager Brian Statham said uncertainty over the future structure of the industry was threatening the development of the generation sector Decisions were either being postponed or were made on the basis of projections.

Bill to be revamped after objection from Eskom

(232)

BD 25/2/98

Linda Ensor

CAPE TOWN — A poorly drafted bill to constitute Eskom as a public and tax-paying company was sent back to the drawing board yesterday after Eskom pointed out that, in its proposed form, the bill would negatively affect the utility's status as a borrower on international markets

Briefing Parliament's portfolio committee on public enterprises on the Eskom Amendment Bill, Eskom's legal and secretarial manager Mohamed Adam said Eskom and its customers needed time to prepare for the change in status. Paying taxes might have an effect on electricity tariffs and, in the interests of certainty, Eskom and its customers needed to know the implications in advance.

The legal adviser to the public enterprises department, who conceded the bill had been put together hurriedly, undertook to present a reworked version which took account of Eskom's objections by the end of the week

The committee agreed to hold public hearings over five days in April on the implications of the proposed legislation to test public feelings

The bill was intended to clear up uncertainty in present legislation about who owned Eskom's assets, by making the state the sole shareholder, and to prepare for Eskom's incorporation as a public company.

Eskom approved of the bill in principle but found its wording wanting. "The effect of the bill in terms of its present wording is to deprive Eskom of ownership of its assets but to leave Eskom with its liabilities In fact, Eskom would be bankrupt and its creditors would have no security for debts due," Adam said.

"If the proposed section is allowed to become law, it would amount to an event of default or covenant default in respect of certain loan agreements in terms of which there are prohibitions, for example, of disposal of a significant portion of assets or property without the consent of the lender."

MP's speculate about a longer parliamentary sitting

Delays plague the passing of new competition laws

(232)

BT(MR) 26/2/98

Lynda Loxton

Cape Town — Preparation of the new competition law has fallen behind schedule, and the trade and industry department is expected to come under strong pressure to step up its programme so that legislation can be passed by parliament this year

This emerged yesterday when Alister Ruiters, a chief director at the department, briefed the parliamentary portfolio committee on trade and industry

There has been some speculation among MPs that, because of delays in getting legislation from state law advisers and through committees, parliament would have to sit beyond September If it does, this might give the department some leeway, but if it fails to get legislation to parliament this year, it might not be able to get its new competition law through until after the elections

Ruiters told the committee the department had originally hoped the legislation would be completed by July and then considered by Cabinet in July or August It would then go to the committee in September

"But we are already finding that the time frames are slipping It is now only likely to go to parliament in October," Ruiters said

This was because, although the policy guidelines were submitted to the National Economic Development and Labour Council (Nedlac) in November, business and labour asked that the three-month period they were given to make their recommendations should only start in January

Rob Davies, the committee chairman, said parliament was due to rise at the end of September to allow MPs to prepare for the 1999 elections Current rules also stipulated that any legislation tabled in the national assembly could only be reported on after three weeks, and then had to go through the national council of provinces

"We will have to revise the way forward," Ruiters said

He said the competition law would be the first of new legislation examining various aspects of law in South Africa to ensure greater competitiveness This covered issues like consumer protection, trade policy, financial policy and intellectual property

The department was also looking at disclosure by banks because it wanted to see greater transparency about lending policies and reasons for refusing loans

Once the new competition law was accepted by parliament, the department hoped there would be as little delay as possible in the establishment of new structures to deal with competition law

There was clearly a need for a competition authority with stronger powers that would be able to act in a pre-emptive way, said Ruiters

"We would like to see a situation where, before a merger takes place, the board can act in a pre-emptive way in a similar way to which the Monopolies and Mergers Commission operated in Britain"

The agency involved would have to have a relative degree of autonomy to eliminate the duplication of effort now possible between the trade and industry minister and the Competition Board

Asked whether the legislation would cover all professions, some of which had been accused of preventing competition, Ruiters said the aim was not to create a "super-authority" that would oversee competition in every sphere of life

Where there were regulatory bodies or departments covering professions, they would be expected to take government's competition policy into consideration when regulating their particular areas of competence, he said

(232) BD 26/2/98

Time problems threaten long-awaited competition legislation

Wyndham Hartley

CAPE TOWN — Long-awaited competition legislation could be delayed until late next year if the time frames of the trade and industry department fail to coincide with the scheduled closure of Parliament in late September

This emerged yesterday when the department's chief director responsible for competitions policy, Alister Ruiters, said the target of tabling the draft competition law in Parliament by the end of September might have to be extended into October because of delays in getting the policy document to the National Economic, Development and Labour Council (Nedlac) He conceded that time was a problem.

Parliament's trade and industry committee chairman Rob Davies pointed out to Ruiters that Parliament was scheduled to rise on September 23 and that there was a mandatory three-week period between the tabling of a bill and its reporting by a committee This meant that a bill tabled after September 2 would not have enough time to pass through Parliament

In addition, Parliament is set to meet in the first part of 1999 to deal only with the budget and then to rise so that political parties can concentrate on the election. This will mean that legislation which misses the 1998 sessions of Parliament will begin its progress through the system only after the election in mid-year

Senior officials in Parliament have said that September 23 is "set in stone" and legislation which does not make it in time will have to wait

Davies, at the conclusion of the meeting, said that it appeared that if the time frames outlined by Ruiters remained in place, then the competition law was unlikely to be passed this year

He said it would be up to the trade and industry department to speed up the progress of the legislation if they wanted to get it into law this year

He would have to have urgent meetings with Ruiters to discuss the time factor and what would allow the law to come into effect this year

The publication of the Monopolies Bill is now scheduled for the end of March. It will then be followed by a 12 week period for public consultation.

The final draft would have to be produced, approved by cabinet and state law advisers in three months if the bill was to make it to Parliament.

Ruiters briefed the committee on the broad shape of competition policy, and the legislative instruments contemplated, as published in the department's guidelines released last November

Last week, the SA Chamber of Business (Sacob) criticised the guidelines on the basis that it was inappropriate to try and achieve social goals through competition law Ruiters said that he was delighted, however, that Sacob was generally supportive of the policy document

Partnerships 'will not raise rates, cut jobs'

(232) ~~[illegible]~~

Deborah Fine

BD 2/3/98

BUSINESS should assist in assuring communities that public-private partnerships did not necessarily mean expensive municipal services and job losses, Johannesburg southern local council executive committee chairman Prema Naidoo said on Friday

He was speaking at a function held to update the business community on the progress made by Greater Johannesburg's five local authorities to stabilise the cash-flow crisis which threatened to impede service delivery throughout the city last year

He said the city had managed to reverse severe liquidity constraints by dramatically slashing capital and operating expenditure, and cracking down on municipal payment defaulters by cutting off their services The city was owed about R1,7bn in outstanding municipal debts

Apart from narrowing the significant gap between the city's expenditure and income, the five councils were also being reviewed to ensure that their limited resources would be used more efficiently

This entailed eliminating the duplication of functions within and between councils, and identifying the core functions of local government. Peripheral activities such the management of cattle farms and beer halls would no longer be carried out.

The city was also looking at forming partnerships with the private sector where private firms might be better equipped, financially and technically, to provide more effective, value-for-money services.

Moves in this direction were being strongly resisted by civic organisations and the labour movement, who had expressed concerns that such partnerships would lead to soaring services tariffs and large-scale retrenchments.

Naidoo said these reservations were based on perceptions that the private sector would seek to maximise their profits at the expense of communities

Meanwhile, the National Business Initiative (NBI), the Rand Water Board and Standard Corporate & Merchant Bank have jointly set aside R2m to fund a five-year training programme aimed at providing local authorities with the skills and expertise needed for successful private/public sector partnerships and improved service delivery.

"Such partnerships are essential for the delivery of basic services and infrastructure in an environment where local authorities are experiencing financial constraints," NBI director Andre Fourie said

COMPETITION POLICY

SA cannot afford to ignore global realities

CT (PR) 4/3/98

(232)

SAUL KLEIN

The time problems and expressed delays announced last week in competition policy legislation have reignited the debate over the state's Proposed Guidelines for Competition Policy, released last November, and in particular over market concentration

I have two major concerns with the proposals competition policy will be used to achieve social and political objectives, and policies will be out of line with those found in the business environments of foreign competitors I fear that the ability of South African businesses to compete in the global environment will be adversely affected, and domestic growth retarded.

There is no dispute that markets here are dominated by few players There is disagreement as to whether this is bad and, if so, what the best remedy is

South Africa's small economy, with international sanctions and government policies that favoured self-sufficiency, made concentration inevitable Removal of artificial barriers and constraints will force a restructuring of the business environment, whereby the efficient will survive and the less able break apart on their own Substituting government judgement for market forces as to which firms are efficient is not desirable

The proposed guidelines are inherently incompatible in their attempt to merge antitrust elements with development considerations The proposed resolution, within the context of a national industrial strategy, raises questions about the state's interventionist mindset. Such a strategy begs the question of its desirability, never mind its feasibility, in assuming policy-makers' omniscience

The guidelines raise the real risk of reducing employment as business efficiency is undermined They ignore all recent history of antitrust where there has been a shift in developed countries to ensure economic analysis enlightens competition policy, and away from well-intentioned but naïve attempts to use antitrust for purposes other than those for which it was intended

The government argues that the uniqueness of South Africa requires a unique approach to competition policy This ignores global competitive realities No country can afford to have policies at variance with those of its foreign competitors and that impinge on the ability of its businesses to compete effectively

To me, the central question is whether competition policy will improve or reduce the international competitiveness of local industry Reducing market concentration will have devastating consequences if less efficient, smaller firms result and the few strong competitors are undermined by policy initiatives

A competition policy which attempts to achieve sociopolitical objectives will sap the aggressiveness of domestic firms

Competition policy must be compared with those countries competing with South Africa for export markets and foreign investment For the most part, these competitors are the emerging markets of South America, Asia and eastern Europe. An investigation reveals that these countries lack stringent antitrust enforcement and avoid the imposition of social and political objectives on private business

Proponents of the guidelines argue that foreign investment is being dissuaded by the lack of a strong competition policy, and foreign companies are loath to enter markets dominated by a few large firms

There is, however, no evidence that foreign investors prefer an interventionist policy environment Indeed, South Africa would be very attractive to foreign investors if local business was as inefficient as the critics believe

South Africa's share of world trade has declined from 1,7 percent in the early 1960s to 0,7 percent in the early 1990s Only if exports can be stimulated will South Africa be able to achieve the levels of growth necessary to generate meaningful employment Undermining strong domestic players cannot help.

The policy is intended to further the public interest, but this represents a very loose standard It includes business, workers, consumers, emerging black entrepreneurs, and labour and community constituencies, which have interests which are not necessarily compatible.

Multiple, inconsistent standards create great uncertainty for business, not knowing which interest will be favoured under any particular circumstance While it is stated that the catalyst to state intervention will have to be a clear violation of the public interest, a case can invariably be made for intervention by judicious selection of the relevant dimension of public interest in any particular case

Multiple standards place intensely political decisions in the hands of the enforcement agency which then must weigh the benefits to consumers against those of other interest groups. The agency is likely to establish rigid rules rather than balance competing claims, resulting in arbitrary decisions.

The appropriate standard for competition policy, which has been recognised internationally, is economic efficiency Such a standard ensures that societal resources are optimally utilised. It is based on maximising consumer welfare, the original intent of antitrust laws It puts the power of correct decision-making in the hands of consumers.

Appropriate competition law must screen out firm behaviour that restricts output, and thereby disadvantages consumers, but it must also permit efficiency-creating activities that increase output and welfare. The proposed guidelines risk screening out too many efficiency-creating activities

South Africa is faced with limited resources and almost unlimited demands upon them. It is self-defeating to allocate resources in less than an optimal way by forcing firms to trade efficiency for other objectives The immediate priority is to maximise growth and ensure greater employment opportunities.

An examination of proposals for competition policy reform raises serious questions about their macroeconomic consequences In an increasingly interlinked global economy, such policies risk putting South African business under a set of constraints that principal competitors do not face, thus undermining the local economy

Developing countries such as South Africa should strive for competition policy that focuses on economic issues and helps stimulate growth, and not succumb to populist pressures to act against big business

□ *Saul Klein is SAB professor of international business at the Wits Business School*

CAPE TIMES
WEDNESDAY, MARCH 4, 1998 ★

SCHEME AMOUNTED TO UNILATERAL CHANGE

Privatisation unfair to municipal workers

CT 4/3/98

(232)

MEMBERS of Samwu who felt threatened by the privatisation of refuse removal in Khayelitsha took their fight to conciliation and won. **ERIC NTABAZALILA** reports.

THE Commission for Conciliation, Mediation and Arbitration (CCMA) announced on Monday that privatisation of refuse removal in Khayelitsha was an unfair labour practice and that the introduction of the Billy Hattingh Refuse Removal Scheme amounted to unilateral change in the terms and conditions of employment of municipal refuse removal workers.

CCMA upheld the agreement in the National Labour Relations Forum for Local Government that the public sector was the preferred deliverer of services

However, attorneys acting on behalf of the city of Tygerberg said they would be appealing against the CCMA's judgment to the Labour Court

The South African Municipal Workers' Union (Samwu), which had fought the privatisation, said last night: "It is highly questionable that the council should now find it necessary to take this decision by a neutral body on a costly and time-wasting appeal, considering that the motivation for the privatisation was that it would be the most cost-effective."

Samwu spokesperson Ms Anna Weekes alleged that since the introduction of the Billy Hattingh Scheme and the union demanding arbitration on the matter, the Tygerberg City Council had been paying for both the refuse removal scheme and the municipal workers who had been employed by the council's cleansing department.

"This is hardly cost-effective, although it was lucky that the municipal workers were retained as they had to assist in cleaning the area

"The scheme was not competent enough to do this as contractually agreed," Weekes said.

Samwu is demanding that the refuse removal company be removed from the Tygerberg substructure immediately, that the cleaning of Khayelitsha be returned to the municipality and that a sustainable system to keep the area clean be implemented

Weekes said the union questioned whether some councillors had vested interests in keeping the scheme in Khayelitsha.

Mr Vuyani Ngucka, who has been at the forefront of having the services privatised in the area, said last night: "The only reason we want the scheme to stay in Khayelitsha is that the services had totally collapsed in the area We only want services to be rendered to our people. We had no other vested interests except that."

Weekes alleged that after making calls to senior counsels Samwu found that it would cost about R700 an hour for the Tygerberg City Council to be represented

Ngcuka said he was not sure about the figures but he was convinced that it was going to be expensive He said whatever the council was doing it was doing for the good of the residents of Khayelitsha

Samwu is demanding that disciplinary charges against the union's members, who allegedly assaulted Ngcuka, the former mayor of Khayelitsha, be dropped. It believed that the CCMA's judgment had shown there were mitigating circumstances which led to the alleged assault of Ngcuka It said workers were not consulted about the restructuring of the cleaning services in Khayelitsha and felt their jobs were not safe

CCMA rules in Samwu's favour

Sowetan 4/3/98 (232)

By Abdul Milazi

THE South African Municipal Workers Union (Samwu) has won its first victory in its anti-privatisation campaign

This follows the Commission for Conciliation, Mediation and Arbitration's (CCMA)'s ruling on Monday that privatisation of refuse removal in the Western Cape's Khayelitsha township was an unfair labour practice

The CCMA further ruled that the introduction of the Billy Hattingh Refuse Removal Scheme in Khayelitsha constituted a unilateral change in the terms and conditions of employment of municipal refuse removal workers

Samwu spokeswoman Ms Anna Weekes said the township had not been clean since Hattingh's company took over refuse collection In the last month the council had to redeploy municipal workers to assist with the cleaning of the area

Tygerberg councillor Mr Vuyani Ngcuka said the privatisation of waste removal services was meant to instill discipline in a work force of about 160 people

Weekes said "It goes without saying that any form of privatisation should only be contemplated with due regard for the right to a fair labour practice"

Samwu has been fighting a losing battle against privatisation of basic services in municipalities around the country

Councils have been privatising water and sewerage services to cut costs

In Khayelitsha, Ngcuka and other council members were allegedly assaulted by striking workers, who were angered by the privatisation move

"Workers whose jobs were under threat became involved in a scuffle with councillors," said Weekes

PRIVATISATION

Stella no star as seller of State assets

Public Enterprises Minister should pick up useful tips (232)

FM 27/3/98

Just over two years after government first announced plans to privatise some State assets, Transport Minister Mac Maharaj has skilfully concluded his first, and SA's fourth, privatisation — a stake in the Airports Company of SA (Acsa), which operates nine of the country's airports.

Maharaj has earned his spurs, along with Communications Minister Jay Naidoo. Both have pulled off quick, efficient and relatively painless privatisations. Naidoo has been responsible for two successful sell-offs — six SABC radio stations and 30% of Telkom. The complex telecommunications deal took less than a year to wrap up.

The laggard in the privatisation league table is Public Enterprises Minister Stella Sigcau. In four years she has managed only one privatisation — insignificant Sun Air — for which she attracted one bidder offering a price well below what she had expected. The process was messy and dragged on for months.

The FM can only conclude that if you give a job to Sigcau, who sits on State assets worth more than R50bn, nothing happens. If you give a job to Maharaj or Naidoo you get quick results.

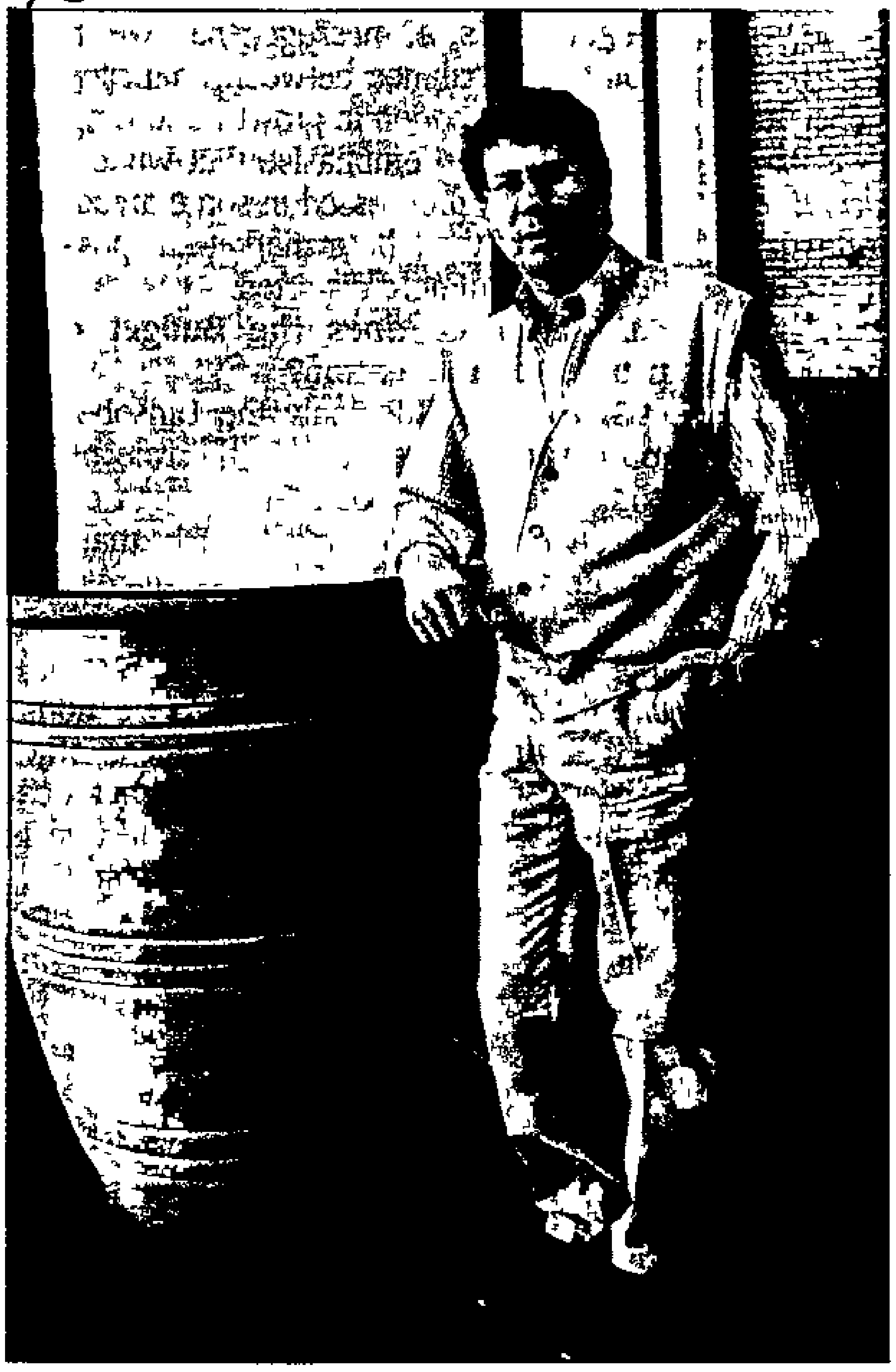
Sigcau could learn a few lessons from the two men. The key to their success has been the involvement of labour and strict adherence to deadlines.

Maharaj concluded the airport privatisation in a little over a year after setting up the Airports Company Restructuring Committee, which brought together government, management and labour.

While Telkom and Sun Air eventually attracted one bid each, Maharaj can boast four quality bids for a 20% stake in Acsa and an option on another 10% at the same price, adjusted for inflation, when it lists in two or three years' time.

Maharaj also managed to pocket a huge premium for government from surprise winner Aeroporti di Roma (ADR), which offered R819m. This valued Acsa (after taking into account the value of the option) at roughly R3,7bn — well above expectations.

This is the first time government has collected a premium price for a State asset. In 1995 British consultant Allan Munds valued Acsa at R1bn.



Arnold Pronto

Fabio Battagia believes there is huge potential in Acsa

Acsa MD Dirk Ackerman and his management team deserve credit for the value they have unlocked for government. Four years ago Acsa was costing government R60m/year. For the year to March 1998, it will report a taxed profit of R224m.

But awkward questions remain about Maharaj's coup this week.

Is ADR the right strategic partner and did price have an undue influence on the decision? Could the price tag make it more difficult for empowerment investors to buy into Acsa?

Sources say the British Airports Authority was disqualified on the basis of price after offering R540m, the Flughaven Frankfurt and Aerports de Montreal consortium offered R580m, Amsterdam Schipol offered R600m. In the end, government could not resist the Italians' offer — R219m more than the second-highest bid.

What, apart from money, does ADR bring to the partnership? The company operates two airports in Rome, the fifth-largest airport system in Europe. ADR, one of four publicly traded companies in Europe, listed on the Milan Stock Exchange in July last year. Since then its share price has trebled.

And investment bank Goldman Sachs has rated ADR, which trades on a p e ratio of 33, as its favourite in the European airports sector, describing it as "a developing equity story that has yet to be fully reflected in its share price."

The group has a turnover of R3,2bn and a market capitalisation of R9bn.

The losers' opinions, as can be expected, are scathing. "We lost to a rogue bidder who came from the blue and offered a price way beyond any sensible valuation of the company," says an adviser to one of the consortia. "Is it a coincidence that three sensible bidders and your government had placed similar values on Acsa's operations?

"The Italians have a tendency of coming in late with little preparation and overpaying in such auctions because they know that nobody wants to partner them. ADR is not a world-class airport operator. Its airports are a nightmare, not in the league of, say, Amsterdam," the adviser says.

A source close to government says the deciding factor was ADR's successful listing last year.

But this does not appear to have been one of the 12 criteria that the four bidders were told would be important.

Gordhan says the Italians got the Acsa stake because they were more bullish on the prospects for increasing the company's non-aeronautical revenues.

ADR executive vice-president Fabio Battagia says aeronautical revenues make up 75% of Acsa's revenues. "With us, the figure is 18%. There is enormous potential to develop Acsa's other sources of revenue from property and retail development."

Ironically, Maharaj's success in extracting a premium from ADR could make it harder

Privatisation plan overruled

DRG 5/3/98 (232)

JOSEPH ARANES
STAFF REPORTER

The City of Tygerberg's decision to privatise its cleansing services in Khayelitsha is an unfair labour practice, the Commission for Conciliation, Mediation and Arbitration has ruled.

But the municipality will ask the Labour Court and, if necessary, the Labour Appeal Court, to review the ruling

In what could be interpreted as a landmark ruling in worker union opposition to privatisation, the commission said contracting a private company to run the council's cleansing services was a breach of the national Labour Relations Forum for local government, and of the basic conditions of employment for workers removing refuse in Khayelitsha

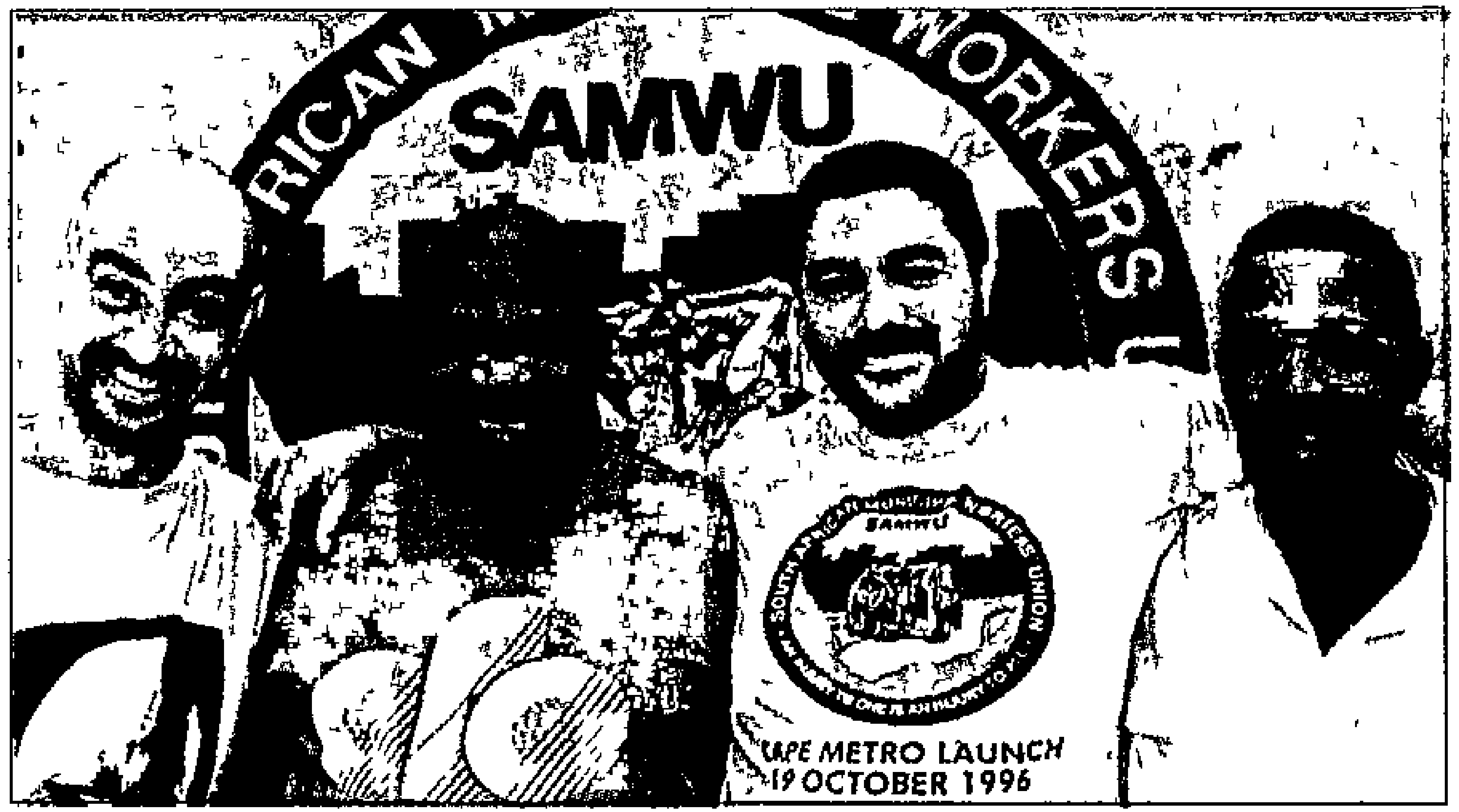
The matter went before the commission in November, when the South African Municipal Workers' Union opposed the council's plans for privatisation

Union general secretary Roger Ronnie said the ruling sent a clear message that unilateral decisions on privatising services were no longer an option.

"We are completely vindicated in our struggle for the jobs of workers It goes without saying that any form of privatisation can be contemplated only with due regard for workers' rights," he said

Tygerberg municipality chief executive officer Dave Wilken said it was always obvious that the council would not accept the commission's findings.

"This arbitration hearing was just the first step," he said



BRENTON GEACH

Victory! union officials Roger Ronnie, Xolile Nxu, Andre Adams and Thobile Ndwalaza

INSIDE LABOUR

Khayelitsha rubbish scheme escalates into political storm

CT(BR)6/3/98 (232)

TERRY BELL

The ripples caused by this week's anti-privatisation arbitration ruling in Cape Town may grow into waves and create dangerous political turbulence, particularly in the Western Cape

The ruling, handed down by the Commission for Conciliation Mediation and Arbitration (CCMA) should have put paid to a private sector rubbish collection scheme in Khayelitsha And there the matter might have rested, although the ruling has more general implications

But the Tygerberg council, having initially agreed to abide by any CCMA decision, has now announced that it would take the matter to the labour court on review

This decision — made by the 12-strong executive committee, which comprises National Party (NP) and ANC members and one member of the African Christian Democratic Party — will spin out an already protracted and often bitter row between an ANC trade union affiliate and some ANC local politicians headed by Vuyani Ngcuka, the Tygerberg councillor and unofficial "mayor of Khayelitsha"

"The only winner in this one will be the NP," noted an official of the South African Municipal Workers' Union (Samwu)

The row has been characterised by accusations of thuggery on both sides and at least one shooting incident

Most published allegations came from councillors and were directed at unnamed members of Samwu But no trade unionists have been arrested, and Roger Ronnie, the union's general secretary, has stated that any member involved in violence would be expelled from the union

In the shooting incident, still under the investigation of the Khayelitsha police, the Samwu driver of a front-end loader was allegedly shot at from a minibus — apparently one of two such vehicles provided by the NP-controlled Tygerberg council for "ANC Youth League" members to "monitor" the introduction of private rubbish collection for Khayelitsha's 350 000 population

The scheme involved private contractor Billy Hattingh providing the infrastructure for a "community entrepreneurship" programme involving neighbourhood rubbish collection units.

The primary reason for the council's decision to accept Hattingh's tender was economic. But, as the CCMA ruling states, "a private contractor would only be able to undertake such a contract if the workers employed .. were to earn substantially less than the city's workers currently do".

Francois Fourie, a council technical manager, admitted to the arbitration hearing that the council workforce would have to be cut as a consequence of the new scheme.

The arbitration ruling also stated that the process of consultation in what constituted a major change in working conditions for the 160-strong unionised workforce was flawed.

During the four months between the introduction of the privatised service and the CCMA ruling, the situation in Khayelitsha became increasingly tense

Earlier this year Samwu's head office warned members not to carry union insignia in the Khayelitsha area

"We didn't want them to be targets," said Ronnie. A small community campaign against privatisation also went into abeyance while local ANC councillors complained of threats and violence

On the one hand, Samwu was accused of frustrating an initiative aimed at benefiting the local community On the other, the union was hailed as a defender of the public interest

The matter was complicated by various individual and political agendas and racism. Some budding local entrepreneurs and desperate job-seekers saw a fulfilment of their hopes in the "Billy Hattingh scheme" Some supporters of a public sector operation saw the Samwu campaign as a last-ditch stand against "sell-outs"

Now, with a further legal battle looming, the tension is likely to continue

"It's a terrible waste of money," said Ronnie "Council is employing lawyers at great expense to fight this thing " The union has relied so far only on organiser Andre Adams to present its case "He just costs us his R3 500 a month wage," said Ronnie

"We just let the facts speak for themselves," said Adams This is the same approach Samwu will adopt at the Nelspruit water summit, tentatively scheduled for March 14, which is supposed to decide on the privatisation of water and sanitation services in the Mpumalanga capital

The CCMA decision regarding Khayelitsha, which has provided a considerable boost to Samwu's confidence, will also feature in union arguments against Nelspruit's plans for privatisation

Business, labour, govt at odds on competition policy

(232) BD 9/3/98

Bernard Simon
and Pearl Sebolao

BUSINESS, labour and government are headed for another clash over an important public policy area, judging by their sharply divergent proposals for a new competition law

The differences are highlighted in responses by Business SA (BSA) and a joint labour position to government guidelines on competition policy published late last year BSA and the Congress of SA Trade Unions (Cosatu) presented submissions to the National Economic, Development and Labour Council (Nedlac) last Thursday The three parties are to start talks on March 20 to try to reach consensus

Stef Naudé, convenor of the business group at Nedlac's trade and industry chamber, said the document "was prepared with negotiations in mind".

Business's main concern is that government is seeking to politicise competition policy by making the broad public interest the criterion for judging anticompetitive behaviour BSA's view is that the behaviour of companies should be judged only by its impact on competition "Defining such a concept of public interest with any degree of certainty for decision-making in business is not possible," BSA said

Labour has endorsed the public interest yardstick, and wants the "developmental" aspects of competition policy to be deepened. It proposed that the guidelines be amended to take into account and address the negative aspects of uncompetitiveness

These included the effect of overpricing on the incomes of the poor, job losses during mergers, acquisitions and restructuring of companies; limitations to workplace democratisation, and barriers to small and medium enterprise development

BSA criticised government's search for a "uniquely South African" approach to competition policy. Naudé said government's approach was outdated. "We keep on reminding government that you cannot ignore international realities Internationally, the entire thrust is away from broad criteria and towards economic efficiency."

BSA is especially concerned that the new competition law may give government the right to break up existing concentrations of power, or block mergers and acquisitions merely because of their size "Business is strongly opposed to a situation where the (competition) authority can, unfettered by competition law and using an elastic discretion (such as public interest), intervene in corporate structure through

Continued on Page 2

Competition

(232) BD 9/3/98

Continued from Page 1

divestiture measures "

BSA expressed misgivings about government's proposal that competition policy be used as a tool to achieve development objectives, such as black empowerment "A firm must not be subject to looser requirements in terms of its market conduct and structure by virtue of being black owned," BSA said.

By easing competition rules, government would risk dampening efficiency and innovation, and forcing prices up. "This cost is like a tax, but no one knows how large it is "

BSA also called for competition law to include a right of appeal against the authority's decisions, rather than merely the "judicial review" envisaged by government's guidelines

Labour agrees with most aspects of the proposed guidelines and believes the competition policy should be used as a decisive tool to break patterns of concentrated ownership and control, and to end anticompetitive practices to allow new players into the field, thereby democratising the workplace

It should create "a regulatory environment which attempts to avoid the negative uncompetitive tendencies of unregulated free-market capitalism", it said in its submission

It said an effective competition policy needed to address structural problems relating to high degrees of market domination, vertical integration and intermarket conglomeration

Unions pull out of Transnet restructuring

BD 10/3/98 (232) ([illegible])

Reneé Grawitzky

LABOUR suspended its participation in Transnet's restructuring committee yesterday, possibly jeopardising the sale of a 49% stake in SA Airways

The 10 unions involved in Transnet's restructuring — representing members from across the political spectrum — said government was not complying with the National Framework Agreement Their suspension would remain intact until government had addressed demands

The unions also accused SAA management of attempting to threaten and intimidate its employees by informing them last week that 3 000 workers (or 32%) could be retrenched

Labour's complaints included the failure by government to grant adequate funding for the restructuring process and to employ specialist advisers while government had spent millions to employ its own advisers

Other complaints included labour not being taken seriously in the process; a failure to grant access to all information deemed necessary and the unconditional transfer of individual and collective agreements to restructured Transnet entities

A source close to labour said problems had been brewing for nine months. Both government and Transnet management had made it difficult for the unions to participate fully in the process by putting obstacles in the way

Public enterprises ministry adviser Kennedy Memani said the privatisation of SAA would not be jeopardised Discussions would be held with labour and Memani was adamant that the restructuring would not continue without labour's involvement "Government cannot do this process in a unilateral manner," he said.

Transnet's restructuring labour steering committee chairman Christo van Heerden said labour had bought into the restructuring process and was fully committed to it on the basis that it would be an equal partner. Labour, he said, had in fact urged Transnet to fast-track the SAA restructuring process. In return, government had failed to take labour seriously and had purposefully limited labour's participation by withholding funding for advisers.

Labour, he said, could no longer sit by just to rubber stamp government's position especially as the unions had questioned whether the current management was competent to effect the necessary change

Van Heerden said government would have to respond within seven days or face a dispute.

Report says Safcol must stick to the rules

232(3) [redacted]

Robyn Chalmers

BD 10/3/98

THE Competition Board's long-awaited report on the SA Forestry Company (Safcol) calls for the implementation of a range of regulations to ensure the organisation does not engage in anticompetitive behaviour

In terms of the recommendations, Safcol cannot cross-subsidise its own sawmilling operations by providing logs to its in-house lumber mills at a cheaper rate than to competing sawmillers

It also cannot threaten to withhold supplies to its customers to force them to accept variations to their contracts. It is not allowed to refuse to deal with new entrants into the market which want to buy its products

The board began its investigation in 1996 after Safcol, which is up for privatisation this year, was accused of abusing its dominant position while negotiating new long-term supply agreements for saw logs. Complaints

Continued on Page 2

Safcol [redacted]

Continued from Page 1

BD 10/3/98

were received from a range of lumber millers, including the York Timber Organisation, Mondi Timber Products, the SA Lumber Millers' Association and CJ Rance, although other millers were supportive of Safcol's activities

Competition Board chairman Pierre Brooks said the report had not yet been released publicly, but "the board stands by its recommendations although we will accept comments".

Safcol communications GM Lebogang Hashatse said the organisation was still formulating its position on the report and would submit its comments to the Competition Board soon

Hashatse said, however, that Safcol denied it sold logs at a cheaper price to its own sawmilling operations, thereby cross-subsidising its processing division. In the report, Safcol said it had not abused its dominant position through anticompetitive conduct.

The restructuring of Safcol caused consternation among lumber millers. Many were concerned this could lead to their demise if the log supplies were terminated or reduced due to restructuring The report said government was faced with "difficult and controversial" choices in restructuring Safcol

While it might be beneficial to sell Safcol in its entirety to a foreign player, there could be problems if the buyer decided to export the bulk of its logs or absorb them internally. On the other hand, the piecemeal sale of Safcol was also problematic.

Public enterprises ministry advisor Eddie Munyai said the ministry would comment on the report later this week

Advertisers strongly oppose regulating body

(232) BD 10/3/98

Janet Parker

A ROW is brewing between the National Association of Broadcasters (NAB), and members of the advertising and marketing industries following the NAB's proposal to set up an advertising acceptance service

Industry members said they were "violently opposed" to the proposal which they described as a threat to self-regulation, a regression into the past and contrary to the constitutional right to the freedom of commercial speech

The NAB aims to set up a service which will assume responsibility for the acceptance of advertising to ensure it complies with the Advertising Standards Authority (ASA) code and regulations, such as those governing intellectual property in advertising

The NAB has also proposed that after a one-month phase-in period "no broadcaster will accept any advertisement unless it has been accepted by the NAB Advertising Acceptance Service"

Association of Advertising Agencies (AAA) executive director Nina de Klerk said the aim of the proposal was "to effect compulsory preclearance, which is censorship The right of free speech is ignored" The NAB proposal was contrary to the letter or spirit of the Bill of Rights upon which SA's constitution was based, she said

Another clause in the proposal states that if an agency gives an advert to the broadcaster which differs from the advert cleared by the acceptance service, "such an agency will be precluded from flighting advertisements for a reasonable period determined by the television committee of the NAB"

De Klerk said this had "severe" implications for the advertiser and the client as it effectively banned the advertiser from flighting any material whatsoever This was also unconstitutional

Association of Marketers executive director Derrick Dickens said the association had not received the NAB's official document but would oppose it

The proposal aimed to regulate a self-regulating industry, he said

O2 Communications director Thomas Oosthuizen, who is on the board of the Freedom of Commercial Speech Trust, said the proposal defeated the object of the trust, of which the NAB was a member

The proposal would divide the industry, and smacked of the censorship and paternalism typical of the apartheid years

From an advertising agency's perspective, the proposal would create havoc, adding another procedure to a process typified by looming deadlines, he said

The NAB's proposal said its "acceptance service" would be free for a two-day service period.

However, an "urgency fee" of R500 would be charged for a 24-hour service and R1 000 for a same-day service.

Additionally, the agency would also carry the cost if the NAB had to obtain expert opinion

Industry members have also criticised the fee structure, saying the NAB either "knows nothing about the deadlines associated with the industry, or it is a clever manipulation in order to make money for itself"

In the AAA's response document, De Klerk said NAB's claim that the service would be free was "highly suspect"

The experience of the AAA Advisory Service, which provides advice on ASA code conformity to the industry on a voluntary basis, had shown that a two-day turnaround was too long, and the NAB proposal would translate to an average cost of R550

Oosthuizen said the cost would ultimately fall on the consumer

TRANSPORT *Commuter corporation and 10 unions may pull out of restructuring deal in funds row*

Transnet privatisation in peril

CT (MR) 10/3/98 (222)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — Ten unions and the South African Rail Commuter Corporation (SARCC) threatened yesterday to pull out of negotiations on the restructuring of Transnet, the transport parastatal, in a row over the funding of advisers.

The prospect of the unions withdrawing from negotiations threatens to severely retard the restructuring process of the parastatal Chris de Vos, the general secretary of the South African Footplate Staff Association (Safsa), said the move hobbled the search for an equity partner

The unions, representing 102 000 workers, accused the government of treating them "as second-rate partners" and have given Stella Sigcau, the minister of public enterprises, seven days to respond in writing to a list of their grievances

"Failing to respond by this date without acceptable notice therefore shall be deemed to be an impasse between government and labour on the issues, and labour reserves the right to consider remedies afforded it in terms of law, agreements and otherwise," the unions said

Christo van Heerden, the chairman of the Transnet Restructuring Labour Caucus (TRLC), said labour wanted adequate funding, access to all information deemed necessary and requested by labour, implementation of processes necessary to facilitate the restructuring of Transnet, and of its divisions, including South African Airways, and that labour contracts, both individual and collective, be unconditionally transferred to new post-corporatised companies before concessions are negotiated

"Government is limiting labour's role by limiting our capacity to engage suitably qualified advisers," he said

"Thus, while it is clear that government will approve any such amount to fund their rates of suitable international advisers for themselves, (it) is paying millions of rands while wanting to restrict labour's advisers to a rate of R200 an hour"

Van Heerden said the unions did not want to rubberstamp the government's positions in the negotiations but wanted to influence the outcome

"The TRLC would not be party to or support implementation of any change until an acceptable social plan for Transnet and agreed national government guidelines were in place," he said

However, government spokesman Kennedy Memane said the state only differed with the unions in approach to the process and not in principle

ULTIMATUM *Christo van Heerden, Transnet Restructuring Labour Caucus chairman, with, caucas members on his right, Derick Simoko, Chris de Vos and Simon Willems* PHOTO JOHN WOODROOF

Sanlam races towards demutualisation by October

(232) CT (BR) 10/3/98

Marc Hasenfuss

CAPE EDITOR

Cape Town — Sanlam, South Africa's second largest financial institution, could conclude its demutualisation and JSE listing ambitions as early as October, sources indicated yesterday.

There was no official word on a target date from Sanlam executives, but a spokesman confirmed that the group, which boasts free reserves of almost R11 billion, had kicked off the demutualisation process by requesting policyholder details

Sources said signs indicated that Sanlam would attain its ultimate aim of a JSE listing a "comfortable" few months ahead of Old Mutual, the group's rival, which also has to deal with the demutualisation process.

The Sanlam spokesman said the policyholder details would assist in the allocation of free shares as a result of the demutualisation.

The spokesman said that with more than 2 million policyholders, Sanlam's process of confirming details was being carried out in one postal region at a time to ensure the exercise was handled as smoothly as possible.

He said general details on the progress made with the demutualisation process would only be made available in months to come. "Policyholders can expect further personal communication from Sanlam during the last quarter of this year"

Commenting on the confirmation of policyholder details, Marinus Daling, Sanlam's executive chairman, said it was extremely important that policyholders confirm their details on the forms without delay "This is a vital step in ensuring that eligible policyholders receive the free shares to which they may be entitled."

Daling said demutualisation would be a milestone in Sanlam's continued transformation into a world-class provider of financial services and products

Generally, eligible holders of Sanlam policies as at March 31 this year may receive free shares, provided they do not lapse or surrender their policies in the period leading up to the demutualisation vote.

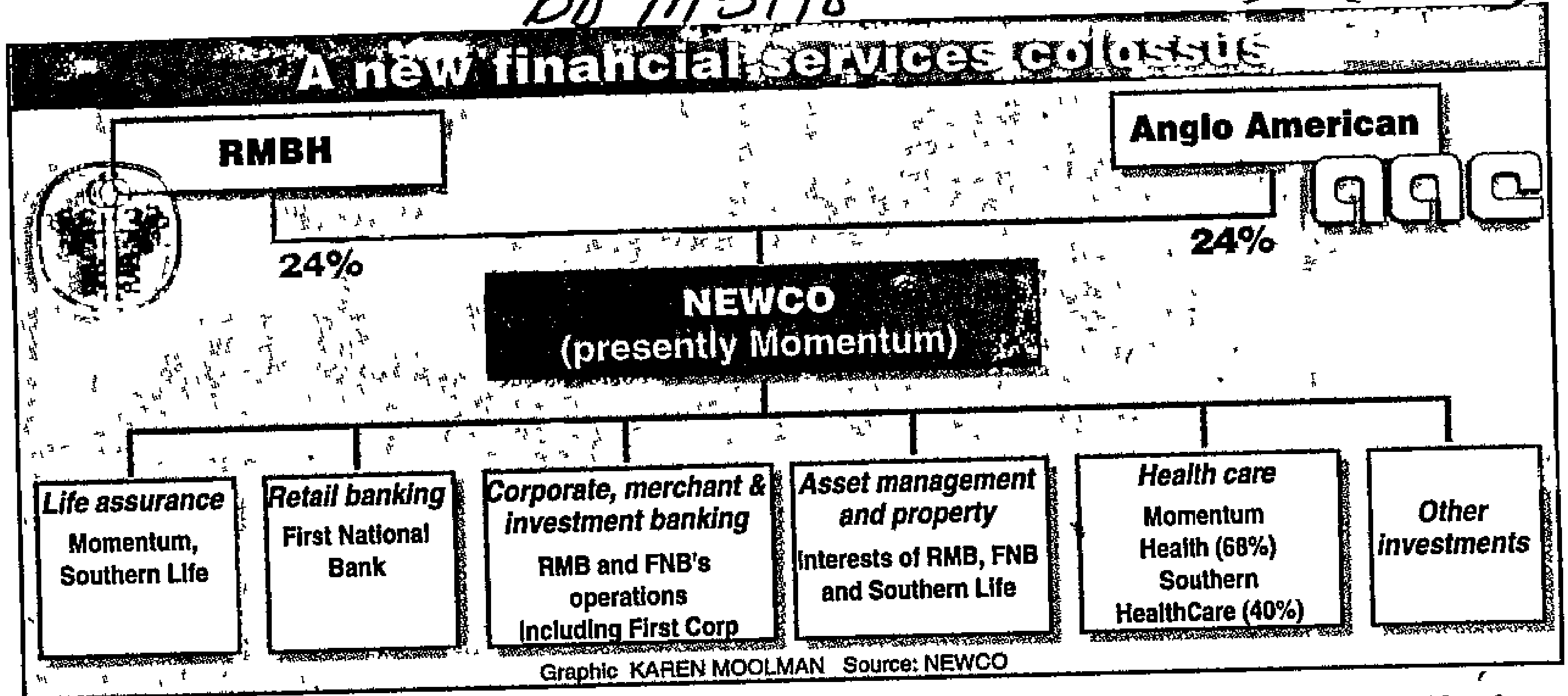
Holders of units in Sanlam's unit trusts, clients of Sanlam Health and Sanlam Medical Risk Managers, Multidata or other Sanlam subsidiaries will not qualify for free shares unless they qualify under a policy with Sanlam

Financial giants merge

BD 11/3/98

(232)

Samantha Sharpe and Madeleine van Niekerk


A new financial services colossus
RMBH
Anglo American
24%
24%
NEWCO
(presently Momentum)
Life assurance
Momentum, Southern Life
Retail banking
First National Bank
Corporate, merchant & investment banking
RMB and FNB's operations including First Corp
Asset management and property
Interests of RMB, FNB and Southern Life
Health care
Momentum Health (68%) Southern HealthCare (40%)
Other investments

Graphic KAREN MOOLMAN Source: NEWCO

CAPE TOWN — Anglo American and Rand Merchant Bank Holdings (RMBH) plan to join forces to create a R59bn financial services powerhouse that will be SA's largest listed company

The new group, to be formed by merging Anglo's and RMBH's financial services interests, will have assets estimated at R250bn, including the third-largest banking and life insurance groups in SA

Unveiling the merger in Johannesburg yesterday, the new group's CEO Laurie Dippenaar said First National Bank, Southern Life and Momentum Life would be consolidated under the umbrella of existing RMBH subsidiary, Momentum

Anglo and RMBH would each hold a 24% stake in the new group, as yet unnamed

In order to achieve the objective of a unified financial services grouping, FNB and Southern will be delisted from the Johannesburg Stock Exchange and all respective cross holdings eliminated.

Dippenaar said the merger would form a unique financial services group in SA, with the critical mass and potential to add significant value and to exploit the already considerable strengths of its respective components.

"We will add flair to this new grouping," he said. "We are obsessed with service "

The listing of business units and the introduction of black economic empowerment partners might arise "if and when appropriate", he said

Several subsidiaries of the proposed new group already had joint ventures with black empowerment partners.

The creation of the new group is expected to result in substantial job losses FNB and Southern are already in the process of retrenching a total of about 2 400 workers

The deal, which is due to take effect on April 1, is subject to numerous approvals, including shareholders of the constituent companies and regulatory authorities.

Dippenaar said the acquisition would be funded by the exchange of Momentum shares for FNB/Southern shares and a R5,1bn rights offer by Momentum. The terms of the share exchange would be 6,75 Momentum shares for every one FNB or one Southern share held.

Dippenaar disclosed that RMBH got the go-ahead from Southern Life and First National Bank "only last Friday and more than R5,1bn was raised in the market on Monday, in one day"

Following the merger, the relationship between Anglo and RMBH would be based on a solid partnership principle, he said The two main shareholders would focus on developing the merged group's strategic direction

Management of the new group will be controlled by an executive committee consisting of not less than seven members, with RMBH/Momentum holding overall operational responsibility

The new group's board will be chaired by Southern Life's Neal Chapman Dippenaar will be chairman and CE of the assurance arm. RMBH's Paul Harris will head the corporate, merchant and investment banking arm, while FNB MD Viv Bartlett will be CEO of the retail bank.

RMBH's GT Ferreira was named nonexecutive chairman of the bank holding company.

Dippenaar said FNB and Southern shareholders would immediately benefit from the deal, with further benefits to flow as the impact of rationalisation kicked in

The proposed deal caps a long period of hectic expansion for RMBH Harris said the group had grown more than 20% a year over the past 21 years He said he would be "very disappointed" if the pace could not be sustained

Restructuring may need to be reconsidered

BD 11/3/98 (232)

Robyn Chalmers
and Reneé Grawitzky

GOVERNMENT and labour may go back to the drawing board to sort out clashes on the restructuring of several parastatals, including Transnet and the SA Forestry Company (Safcol), which are threatening the privatisation process.

There is growing uncertainty about labour's role in the process, which is leading to clashes between government and labour on the extent of labour's role in a number of entities up for privatisation.

The public enterprises ministry said yesterday that government would meet unions early next week. An attempt would be made to iron out differences on parastatals — notably Transnet, where the situation is most acute because 10 unions have suspended their participation in the restructuring committee.

Public Enterprises spokesman Wandile Zote said yesterday mistakes had been made with the restructuring process, but he did not think the problems were insurmountable

"We will have to relook at the commitments each party made in the national framework agreement (forged between government and labour)," Zote said.

Sapa reports Public Enterprises Minister Stella Sigcau said yesterday the restructuring of Transnet was on track despite labour discontent

One of the unions' main gripes was that government was spending "millions" on its advisers in the restructuring process, while unions had to make do with far less Sigcau said she would provide the unions with a breakdown of the work government advisers had done, as well as a justification for the money spent.

Labour argued yesterday that government was being inconsistent in its approach to labour advisers

Labour had a solid relationship with the Airports Company, for example, where partial privatisation was unfolding smoothly, but said government did not see a role for labour advisers in Transnet.

There have been lengthy delays in Safcol's privatisation, which sources close to government said could be attributed to both sides. One of the main problems was the lack of an overall sector strategy on Safcol. Union sources said there was no clear way forward

There were also problems between labour and government with the restructuring of loss-making diamond mine Alexkor A meeting is scheduled for today.

Sigcau said the majority of labours' concerns around the restructuring of Transnet had been addressed at a meeting on Monday She said "we were all surprised to learn that a news conference was held" later that day referring to the points already discussed

A meeting to resolve the issue of labour advisers would be held next week while Transnet had already paid more than R1,5m in less than a year for expenses for labour and its advisers on the restructuring process

Monopoly law set to level business

(232)

The proposed guidelines for competition policy due to come before Parliament later this year will have vast, and possibly drastic, implications for the way business is conducted in SA. **Anthony Norton** looks at the issue

BD 11/3/98

THE manner in which business is conducted in SA will shortly be radically altered if the proposed guidelines for competition policy, unveiled by the trade and industry department, are translated into law.

One of the central features thereof is the proposal that a new monopolies law be enacted that will address ownership concentrations, restrictive practices and abuse of dominance. Furthermore, it is proposed that the new act be policed by a single-minded "National Inspectorate" which will monitor and enforce the provisions of the new legislation

Our present competition law is founded in the Maintenance and Promotion of Competition Act of 1979 The act has been criticised on the grounds that it does not prohibit restrictive practices or monopoly situations as such.

Instead, a particular restrictive practice only becomes unlawful after the Competition Board has investigated the particular conduct at issue and the minister, on accepting board recommendations, has declared the particular restrictive practice to be unlawful in terms of publication to that effect in the government gazette

The procedure for declaring a restrictive practice unlawful has been found to be cumbersome and one which is extremely susceptible to challenge from an administrative law point of view.

Indeed, the guidelines, tabled by the trade and industry department, roundly condemn our existing competition law as "relatively ineffectual, on both substantive and logistical grounds"

The response from the department to the perceived shortcomings of existing competition legislation has been to propose that a new monopolies law be enacted

One is able to deduce from the policy considerations outlined in the guidelines, that the central tenets of the new monopolies law will be·

□ A prohibition against monopolisation per se;

□ Provisions addressing vertical and conglomerate acquisitions,

□ Compulsory prenotification of mergers and acquisitions of substantial proportions,

□ Provisions addressing anti-competitive conduct; and

□ That the new monopolies law should be administered by an independent agency with wide-ranging powers

The department has also proposed the possibility of civil remedies for adversely affected competitors and consumers.

The response from the SA Chamber of Business (Sacob) to the proposed monopolies law has been largely favourable It has welcomed the proposal to create a new competition body and effect comprehensive competition rules

However, where the parties are likely to disagree is on the fundamental question of whether there should be an actively interventionist approach by the relevant competitions authority, on the basis that conglomerates which currently enjoy market domination or concentration could be forced to relinquish their stranglehold in a particular market

Indeed, the department clearly states in the competition guidelines that the monopolies law authorities should possess the residual power to "trigger structural remedies, both pre-emptively (to prevent anticompetitive mergers and acquisitions) and with respect to compelling disinvestment or exit from particular markets"

The looming debate in the National Economic, Development and Labour Council is likely to turn on whether monopolisation per se should be prohibited along the lines of antitrust legislation in the US or whether the provisions of the new monopolies law should be directed at controlling abuses of dominance by large corporations and conglomerates.

Sacob is in favour of a monopolies law premised on European models where the central focus is on restrictive practises and abuses of dominance, while the department clearly seems to favour the interventionist approach based on traditional US lines in terms of which three practices are outlawed — monopolisation, attempts to monopolise and conspiracies to monopolise.

The term monopolisation generally denotes a person's possession of a dominant share of the market, but does not necessarily require the power to exclude all competitors

In the US a person does not violate antitrust legislation by securing a dominant position in a particular market if such dominance is a consequence of a "superior product, business acumen or historical accident"

If SA's new monopolies law were to bear a resemblance to US antitrust legislation, then certain SA conglomerates will have to do some deep soul searching to decide if their stranglehold in a particular market is a result of superior products and business acumen or rather a result of barriers erected by their own business methods.

Indeed, many SA firms might hope for a "historical accident" exception There may be severe repercussions for conglomerates in the mining, pharmaceutical, media, petrochemical, telecommunications and beverage industries, if monopolisation is prohibited

Should the law authorise structural remedies, several large conglomerates in SA could soon face costly legal battles with the monopolies authority to retain their market share, or face the bleaker prospect of forced removals from particular markets

If big business in SA wants to make any meaningful input to the bill, it will have to rouse itself from its complacency — otherwise the realities of a new monopolies act could soon become painfully apparent

□ *Norton is an attorney with Hofmeyr Herbstein Gihwala & Cluver.*

document

BD 11/3/98

(232)

Nafcoc, BSA differ over competition policy

John Dludlu

THE National African Federated Chamber of Commerce (Nafcoc) has distanced itself from a response document submitted to the National Economic, Development and Labour Council (Nedlac) by Business SA (BSA) on competition policy, a move that is likely to worsen differences on the already contentious policy

David Mokoena, a senior vice-president at Nafcoc, said this week the document tabled by BSA last Friday did not represent the views of his organisation nor the whole business constituency at Nedlac Nafcoc, which is understood to have received a copy of the BSA paper last week, did not endorse the document, according to Mokoena, the federation's representative at Nedlac

An impression was created that the presence of a Nafcoc representative at last Friday's BSA briefing amounted to unity of purpose within business or an endorsement of the BSA paper. Although part of Nedlac's business caucus, Nafcoc is not part of BSA — though a close working relationship developed during the competition policy debate.

In fact, Nafcoc, which represents mainly small and medium-sized businesses in SA, looks set to take a diametrically opposed view to that taken by BSA — which includes the SA Chamber of Business and the black-based Foundation for African Business and Consumer Services — when it meets tomorrow

Expressing a personal view, but one which he said was "well-canvassed", Mokoena said: "Some of our problems (as black business) are clearly caused by monopolies. It cannot be easy for us to have the same position with people (with BSA, which also represented big business) who sometimes perpetuate the .. status quo that government is trying to change To me, conglomerates are a barrier to entry to the market for small business "

One of BSA's concerns is that the new law — whose principles are being negotiated at Nedlac's trade and industry chamber — may give government the right to break up existing concentrations of power, or block mergers and acquisitions merely because of their size.

However, Mokoena said BSA's views would be examined as well at tomorrow's meeting A possible point of conflict could arise over the issue of black economic empowerment and affirmative action which, Mokoena felt, big business was sometimes trying to thwart

BSA has raised concerns about competition policy being used to advance social goals like black economic empowerment Mokoena said Nafcoc might see eye to eye with big business only if the latter came up with "measurable" programmes to empower black business.

The labour component at Nedlac, which made a joint submission, has largely backed government's yardstick of public interest in judging anticompetitive corporate behaviour

Nedlac executive director Jayendra Naidoo said the competition policy task team would meet again on March 20 to discuss objectives of competition policy, issues of corporate behaviour and structure, and institutions

Union threat 'won't hold up privatisation of SAA'

(232) CT (BR) 11/3/98

Audrey d'Angelo

Cape Town — The threat by unions to pull out of the restructuring of Transnet was unlikely to cause delays in the privatisation of South African Airways (SAA) and the choice of a strategic equity partner, said Mac Maharaj, the transport minister, yesterday

He said problems would in any case have arisen over the internal restructuring of SAA. "I don't think the unions' reaction will cause delays. We'll get it back on an even keel I don't regard this as a major hiccup "

Kennedy Memani, adviser to Stella Sigcau, the public enterprises minister, said the privatisation of SAA would not be jeopardised. Discussions would be held with labour and it would be involved in the restructuring. Maharaj said the privatisation of SAA would be given special treatment within Transnet and he expected it to be completed by the end of this year

It was important that what was on offer and what was expected from the strategic equity partner should be set out clearly in the tender documents, as had been the case with the Airports Company.

Bids for the Airports Company closed on Monday and he thought it would take only two weeks for the preferred bidder to be chosen

Maharaj said the second phase of the privatisation of the Airports Company would come when, with the help of a foreign equity partner, sufficient value had been added for a JSE listing of the shares still held by the government.

This final phase was likely to take longer in the case of SAA which, unlike the Airports Company, was not yet profitable.

Johnnic and Nail in R17bn merger talks

BD 13/3/98 (88) (232)

Amanda Vermeulen

TALKS are under way to merge media, communications and financial services group New Africa Investments (Nail) with industrial holding company Johnnic to create a R17bn black-controlled conglomerate

Separate cautionary announcements were published by Nail, its subsidiaries Metropolitan Life and African Merchant Bank (AMB), and Johnnic on February 16 Although these are apparently not directly linked, officials have confirmed that they pertain to talks between the four companies Executives at Johnnic and Nail declined to comment on the record yesterday.

The deal taking shape is apparently designed to boost Johnnic's share price by linking it more closely to Nail's high-performing financial services interests This would make it easier for shareholders in the National Empowerment Consortium (NEC) to repay their loans taken for the 1996 transaction in which Johnnic was unbundled from Anglo American.

Nail owns 1,9% of Johnnic through Metlife. The insurance group is one of the biggest lenders to NEC members

It is understood that Nail, which already plays a significant role in the Johnnic group, will become its controlling shareholder It will then inject its financial services assets, including Metlife and AMB, into Johnnic, which has publicly stated its goal of becoming a serious player in financial services

The talks may also lead to a merger of Nail's media interests, held in New Africa Publications, with those of Johnnic, represented by Omni Media, the parent company of Times Media Ltd TML owns 50% of BDFM Publishers, owners of Business Day and the Financial Mail.

Omni Media — which owns 92% of TML — may be collapsed and merged with Nail's media interests. These include the Sowetan newspaper and a stake in Radio Jacaranda. This is not the first time such a move has been suggested Last year Nail and TML had discussions about merging their publishing interests.

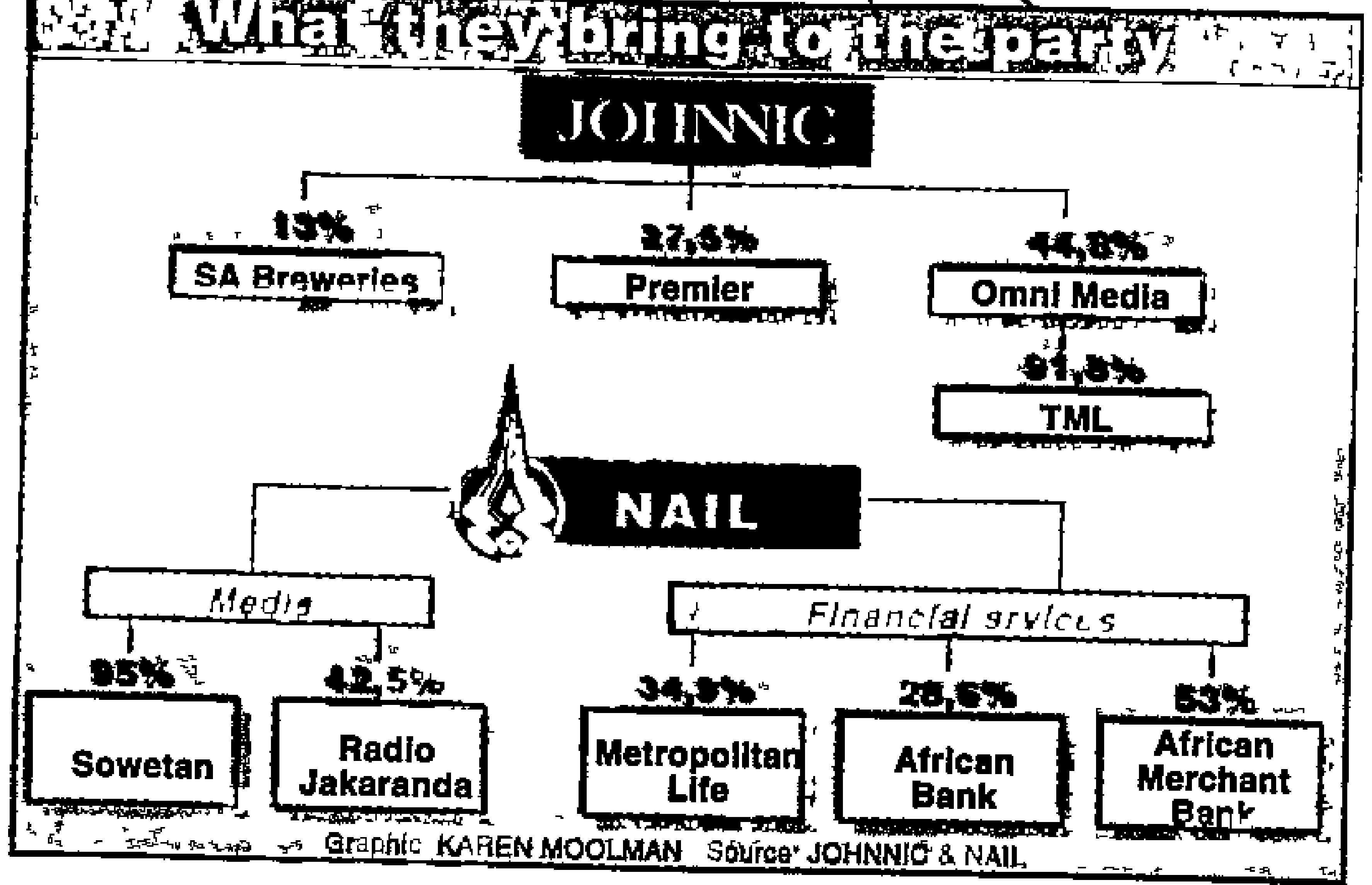
It is also understood that this enlarged media group — falling under the Johnnic umbrella — may be interested in buying The Citizen, which is in the Perskor stable. The paper — which has a large black readership and would be a good fit with the Sowetan — is one of the unknown factors in the proposed merger of media groups Caxton, CTP and Perskor.

Caxton director Gordon Utian said yesterday there were "no official talks" on the future of The Citizen He said the situation was fluid, as the merger talks with Perskor were still dominating the agenda.

The wild card in a possible Nail-Johnnic merger is Johnnic's 13% stake in SA Breweries. Johnnic is believed to be unhappy with holding portfolio investments — such as SAB — over which it has little influence.

Speculation is that Johnnic will dispose of its R6bn SAB stake. This would unlock value for the black empowerment shareholders by providing cash to repay the NEC's loans and to increase their stake in strategic investments, such as food-group Premier. Johnnic owns 27,5% of Premier.

Another option would be for Nail-Johnnic to swap its SAB shares for shares in Premier or even a merged Liberty Life-Standard Bank. This would take place in terms of voting agreements on the SAB shares between Liberty and Johnnic shareholder Anglo American. Such a move would kill two birds with one stone by beefing up Johnnic's food interests and enlarging its financial services portfolio



Graphic KAREN MOOLMAN Source: JOHNNIC & NAIL

Liberty turns in 20% earnings rise

(88) 13/3/98

Madeleine van Niekerk

LIBERTY Life, which is in merger talks with Standard Bank Investment Corporation, lifted headline share earnings 20% to R12,15 in the year to December, helped by a new accounting system that conformed with international norms.

The dividend rose 33% to 425c (320c), including a 40c a share bonus to celebrate the group's 40th birthday.

CE Roy Andersen said he hoped to conclude negotiations by the end of April. A merger would create an R80bn banking, life assurance and financial services giant Libhold's shares rose 420c to R162,20 on the Johannesburg Stock Exchange yesterday, while Stanbic's gained 800c to R298

Andersen said Liberty was restructuring because there were too many layers, with seven listed companies. "If we flatten the bigger structure, we will qualify for a full FTSE 100 listing".

Earnings attributable to Liberty Life shareholders increased to R1,18bn (R970m), helped by the new accounting system which includes investment surpluses in earnings Previously, these were credited to reserves

The total consolidated surplus rose 23% to R3,08bn.

Andersen said total new business grew 32,6% to R6,26bn, beating the targeted R6bn — "quite an achievement in the shrinking insurance market" Liberty Life's total assets grew to R101bn from R82bn

Liberty Holdings, which has a 53,9% share of Liberty Life, lifted total consolidated attributable profit 23% to R1,74bn on a restated basis. Liblife Strategic Investments headline earnings improved 22,6% to R789m, while First International Trust pushed up net income after tax 43% to R220,5m

Chairman Donald Gordon said Liberty International, whose share earnings rose 30%, was "looking at taking over a life company, with two or three major companies on our short list' but we are under no pressure to do it"

Picture: Page 3
Marriage could be swift: Page 15

Durban councillors arrested for corruption

BD 13/3/98 (254)

Farouk Chothia

DURBAN — THE Minority Front suspended Durban councillor Siva Pillay's membership yesterday, but the African National Congress (ANC) did not do likewise with metropolitan council tender board chairman Ndumiso Maduna after the two were arrested on corruption charges.

Durban mayor Obed Mlaba (ANC) said Pillay was arrested on Wednesday after he allegedly received a sum of money "on the pretext" that he was in a position to influence construction company tenders Further investigations led to Maduna's arrest

Mlaba said the ANC would wait until the outcome of the court case before suspending Maduna. Minority Front leader Amichand Rajbansi said Pillay claimed he was innocent, but he was suspended pending the court outcome

Police spokesman Capt Vish Naidoo said Pillay and Maduna appeared in court on corruption charges. Pillay was granted R2 000 bail Maduna was remanded in custody.

ABIS 712130

CUTTING THE APRON STRINGS . . . Zandile Jakavula, CE of Metrorail

Metrorail shunting itself into shape for competition

(232)

ST (BT) 15/3/98

PUBLIC TRANSPORT

By THABO KOBOKOANE

METRORAIL, the rail commuter service, is gearing itself up for private sector competition following the government's decision to introduce competition in the industry through concessioning.

Last year, the Ministry of Transport announced it was considering plans to hive off possibly 10% of Metrorail to the private sector as a demonstration project. To compete effectively, Metrorail will have to reduce its current subsidies in the face of government attempts to extend social services without too much pressure on the fiscus.

It is encouraging that the subsidy levels are being reduced In the 1996/97 financial year, Metrorail was a recipient of about R803 7-million in state subsidies, declining from about R1.2-billion in the 1994/95 financial year. Income, primarily from ticket sales, came in at about R500-million.

Zandile Jakavula, CE of Metrorail, says he is committed to reducing subsidy levels even further "We are aware that subsidies will be reduced and that we will be called upon to provide high levels of service. The gap between what we generate in ticket sales and what we receive in state subsidies is narrowing, and it is our commitment to reduce this even further."

Measures to achieve the goal include reducing high cost structures while growing income levels, especially from ticket sales.

Jakavula says ongoing cost-cutting measures such as re-negotiating contracts with suppliers, outsourcing non-core activities and freezing non-critical new appointments have been implemented. He says the rail commuter company has five strategic objectives to maximise income. providing a reliable and customer-friendly service, guaranteeing the safety of passengers (including property and that of employees); offering affordable prices; providing clean stations and trains; and ensuring the involvement of the community in decisions that affect them as consumers.

However, Metrorail's income levels are likely to be depressed by the wave of fare-evasion that is costing it about R100-million a year. It is estimated that 30% of its approximately 2.2-million daily passengers evade fares.

The problem is that of the 470 stations under Metrorail's supervision, about 54% are properly enclosed while the rest are open This means that the incidence of fare-evasion is prevalent

In the past two years, Metrorail has spent part of its R2.8-billion expansion programme upgrading and enclosing its stations more adequately.

"There has been a noticeable increase in fare revenue and a decline in fare-evasion as a result of the upgrades," says Jakavula.

A further problem is that between 50 and 60 stations are not financially viable, making policing a serious problem. "To police these effectively will need lots of manpower and we cannot afford that luxury

"If I had the authority to make decisions like closing down financially unviable stations, I would be happy to close them. But that remains a shareholder issue," he says

Jakavula says as far as transformation is concerned, Metrorail will play its role in developing the skills base of its employees and ensuring that the workforce reflects the demographics of the country. The parastatal says it will spend about 5% of its total wage bill on skills development and training To date, it has trained and placed 35 black train drivers while another 85 are currently undergoing training.

Labour quits Safcol restructuring body

(222)

Reneé Grawitzky

LABOUR's announcement on Friday that it had suspended its participation in the SA Forestry Company's (Safcol's) restructuring committee raises the spectre of an impasse with government over labour's overall role in the privatisation process.

In one week labour has announced its withdrawal from the restructuring process of two state enterprises facing partial privatisation. On Monday labour withdrew from Transnet's restructuring committee.

The nine unions involved in Safcol's restructuring said the public enterprises ministry had demonstrated an inability to understand Safcol's potential and labour's positive role in the process. Labour called for direct intervention by the ministry of water affairs and forestry.

One of labour's main grievances related to governments' failure to respond to recommendations by Safcol's restructuring committee in June. Labour believed Safcol could become an internationally competitive wood products company adding value to the nation's timber resource, creating jobs and generating foreign exchange.

In the interim, government was considering four options, including splitting the company into four parts but also incorporating water affairs and forestry department's plantations and government maintaining ownership of forest land as well as a significant stake of the forestry operation.

Public Enterprise minister Stella Sigcau said government was complying with the national framework agreement Labour had not given government time to consider grievances raised before announcing its suspension. Little points of disagreement created the wrong impression and implied government did not care about negotiating or consulting, she said.

She said the process at Safcol had moved "this far and any delay could affect the price we get at the end of the day".

Grievances raised by labour relate to ensuring its "full and unfettered participation" in the restructuring process, as well as to labour's role in the appointment of the transaction adviser, and its role in a government-established committee operating parallel to Safcol's restructuring committee.

Nine unions withdraw from Safcol's privatisation

CT (BR) 16/3/98 (232)

Frank Nxumalo
Labour Editor

Johannesburg — The nine forestry trade unions had suspended their participation in the restructuring of the South African Forestry Company (Safcol) because of the appointment of Real Africa Durolink as transaction adviser, the unions said on Friday

Bengeza Mthombeni, the general secretary of the Paper, Printing, Wood and Allied Workers' Unions, accused the department of public enterprises of having appointed the adviser unilaterally.

Mthombeni said the unions would boycott the restructuring process until they received "clear evidence" of the department's commitment to co-operating with them

Mthombeni said the unions had requested the "direct intervention" of the department of water and forestry in the matter

The unions demand "full and unfettered" participation in the restructuring process, including the appointment of a transaction adviser, clarification of the objectives of the new restructuring committee and labour's role in it.

Mthombeni said the unions were aggrieved by the government's apparent substitution of the original restructuring and transformation committee constituted in terms of the national framework agreement with the new committee He alleged that "government wanted to chair" the new committee.

Maduna appears to soften his stance on mineral rights

BD 17/8/98 (232) ([illegible])

Samantha Sharpe

CAPE TOWN — The adoption of current proposals in the green paper on mineral and energy policy in SA was not necessarily a fait accompli, Minerals and Energy Minister Penuell Maduna said yesterday

This comment came after industry criticism about Maduna's alleged insistence on the "use it or lose it" proposal in the green paper, which suggested that companies not using their mineral rights lose them to government — to distribute to other parties

Maduna said at the International Bar Association's energy and resources law conference he did not want to anticipate the final outcome of SA's future mineral and energy policy

However, it was clear that this should extend the opportunities within the sector beyond minority shareholders "Something ought to be done to ensure that wealth and resources . become more accessible . (and) the debate is not limited to the use of mineral rights "

Meanwhile, Energy Africa MD John Bentley said governments in Africa had "largely shown a keen desire to provide an attractive enabling environment for the industry and a legal framework which was robust enough to withstand abrupt changes of political power"

Bentley said "The recent upheaval in both Congos has had less effect on exploration and oil production than the sort of interruption to be expected from routine equipment failures

"Moreover, incoming governments have honoured all the existing contractual relationships "

However, he said: "There is a growing desire by the region's people for greater participation in the ownership, direction and management of the industry ... and here in SA black empowerment is a critical issue which all businesses must address.

"Increasingly, innovative ways of providing entry to local capital and management skills must be found to sustain continued development of the hydrocarbon resources of the region "

Monopolies law to get more teeth

(272)

New Act in place by year-end

ARG 18/3/98

New legislation regulating monopolies should be in place by the end of this year, the Department of Trade and Industry said in a submission to Parliament.

"The Government proposes that a new monopolies law be directed at restrictive practices and abuses of dominance and that it also contain provisions addressed at ownership concentration," the department said in its written submission yesterday

It said a draft Monopolies Act would be published during the second quarter of 1998 and it hoped Parliament would approve and implement the new law by the end of the year

New law will have more power than the existing Competition Board

The department said the new law would be directed by a competent and professional administrative authority

It would have more power than the existing Competition Board to enact remedies regarding industry structure

The new authority would have the power to prevent anti-competitive mergers and acquisitions and also to force existing firms to leave particular markets

The department was also examining existing securities regulations and institutions.

The department said it was mandated by the Government to address the concentration of economic power in the hands of a few white-owned conglomerates.

It said the Government was not opposed to large firms as such

But it was committed to introducing anti-monopoly, anti-trust and merger policies in line with international norms and practices – Reuters

SA competition policy a thorny issue at Nedlac negotiations (232)

BD 20/3/98

John Dludlu

TALKS on rewriting SA's ineffectual competition policy kicks off in earnest today, with divergent views from business, labour and government on the principles to underpin a new policy.

Although Business SA (BSA), representing a significant business element, and labour have submitted responses to government's guideline on competition policy revamp, the National African Federated Chamber of Commerce (Nafcoc) has yet to present its paper to the National Economic, Development and Labour Council (Nedlac).

Nafcoc has not endorsed the BSA document, a move that has raised fears that differences might be widened, making the already controversial policy difficult. Nafcoc has signalled it might take a diametrically opposed view to that taken by BSA.

Last week David Mokoena, a senior vice-president, said "some of our problems (as black business) are clearly caused by monopolies". Yesterday it was difficult to get comment from negotiators. But Nedlac executive director Jayendra Naidoo said this week he was not worried that business appeared to have different positions. "I am sure we'll be able to deal with whatever views that come up," he said.

Today's meeting, which continues tomorrow, would discuss areas of agreement, "without reproducing government's guidelines", said Naidoo.

He hoped this round would also isolate areas of further debate. The meeting would also deal with objectives of competition policy, issues of corporate behaviour, structure and institutions.

One of BSA's concerns is that the mooted law may give government the right to break up concentrations of power or block mergers and acquisitions merely because of size.

The labour component at Nedlac has largely backed government's yardstick of public interest in judging anti-competitive corporate behaviour. They also want "developmental" aspects of competition policy to be deepened.

No jobs lost in airport privatisation

233

FROM OPERATOR TO REGULATOR . . . *Minister of Transport Mac Maharaj has concluded a deal approved by government, labour and management*

By ALI MPHAKI

e/22/3/98

THE RESTRUCTURING of State assets reached another milestone this week with the Ministry of Transport announcing an Italian strategic equity partner for the Airports Company South Africa (Acsa), the company that operates South Africa's major airports

Of significance was the joint partnership of labour, management and government officials, whose shared vision made possible a deal said to be a precedent in the thorny issue of restructuring of State assets

Minister of Transport Mac Maharaj could even afford a joke, when he told a Press conference on Friday that government will in fact be nominating the joint chair of the restructuring committee, Randall Howard, who is also secretary general of the Transport and General Workers' Union (TGWU), for the award of "the privatiser of the year" at the next Cosatu congress

Maharaj said the decision to partially privatise the Airports Company underscores the Ministry's policy position that government must move from being an operator of transport to a regulator

The company that was selected is ADR International Airports South Africa, whose majority shareholder is Aeroporti di Roman S p A , the operator of the airport system in Rome

Binding contractual agreements have been signed whereby ADR South Africa has agreed to pay the government R819 million for 100 million Acsa shares, which represents a 20 percent stake of Acsa's shares in issue ADR South Africa also has the option to acquire from government a further 50 million shares (at the same price per share, adjusted for inflation) exercisable on the initial public offering of Acsa on the JSE

This is expected to happen within two to three years

Three major trade unions, all Cosatu affiliates, namely Sarwhu, TGWU and Nehawu, had their representatives at the function They expressed their delight at the manner in which negotiations for this deal were conducted.

Despite Cosatu's vociferous anti-privatisation stance, the unionists said being part of this partial privatisation deal does not mean they have abandoned their anti-privatisation stance

"We still are opposed to wholesale privatisation, especially when it is done without consultation Our view is that all parties have to be involved in the process. What prides us more about this deal is that there will be no job losses," said Howard

For ADR International Airports MD Gaetano Galia, this first overseas investment by his company can only have a major beneficial impact on both ADR's and Acsa's forthcoming public offerings

Metrorail hits govt snags in attempt to rationalise

BD 23/3/98

Vuyo Mvoko — (232)

CAPE TOWN — Metrorail, facing private-sector competition in the light of concessions that could be implemented in the next four-and-a-half years, is hitting snags in attempts to get authority from the government to take "business decisions" that will allow it to curb losses of between R85m and R95m a year

Transport Minister Mac Maharaj told Parliament an estimated R142m was lost in 1997/98 as a result of evasions by commuters against R141m the previous year. The figures accounted for 30% of the parastatal's revenue for 1996/97 and 26% for 1997/98

Maharaj said actions implemented by Metrorail included the closing of underutilised stations in order to concentrate staff; manning all possible access and escape routes; on-train verification on routes with high evasion; surprise checks on trains and in stations; and commuter-education programmes.

Yesterday, however, Metrorail CEO Zandile Jakavula lamented that the department had not delivered on a promise of furnishing Metrorail with guidelines to be followed in the closure of stations. Metrorail had asked for permission to close one station and there were 40 others it wanted closed.

Metrorail's budget for the coming financial year was R1,4bn, of which R560m would be self generated and the rest come as finance from the state, he said. Management was conscious of the need to turn things around to relieve government from subsidising it, "but we need to be given authority to make business decisions", Jakavula said.

SAA 'needs change before privatisation'

CT (BR) 24/3/98 (232) (

AUDREY D'ANGELO

Cape Town — SAA would have to complete the internal restructuring now in progress before it could call for qualifying bids from foreign airlines, Steve Gorman of Merrill Lynch, the government adviser in the privatisation process, said yesterday

Gorman said it was still too early to set any sort of timetable for the privatisation of SAA, or the choice of a foreign airline or airlines as its strategic equity partner. "Clearly, the airline will have to get itself in order first"

But it was still hoped the process would be completed by the end of the year, he said

Gorman said Lufthansa, the German airline, and Singapore Airlines, its ally, would derive no advantage from having been the first to inform the South African government that together they were interested in taking a stake in SAA It had been decided to go through the full process of calling for qualifying bids and weighing the advantages of each offer

Senior executives of SAA would not comment officially on the move by Lufthansa and Singapore Airlines, but some executives and senior managers said yesterday it would be "a bonus" to have the two together.

Lufthansa had been SAA's commercial partner since 1995 and the two worked closely Singapore Airlines was strong in south-east Asia, where SAA was not.

One senior manager said SAA was confident that air travel in south-east Asia, which had been affected by the economic turmoil in the region, would have recovered by next year

International airlines have been forming global alliances in opposition to each other. SAA has a foot in two camps It has been co-operating with other airlines in Lufthansa's Star Alliance but also has a code-sharing agreement with American Airlines, which is British Airways' ally

Singapore Airlines recently broke away from the Global Excellence alliance with Swissair, Austrian Airlines and Delta to ally itself with Lufthansa

Govt to privatise Pilgrim's Rest

PILGRIM's Rest, Mpumalanga's historic mining town, might soon be privatised in an attempt to cut government spending, public works MEC Jackson Mthembu said yesterday

The government was spending R2,7 million every year on the administration of the town

Mthembu said the department would also withdraw its 100 percent subsidy for water and a smaller subsidy for electricity services to hotels and shops in the town by September.

The drive to cut running expenses followed complaints by Mpumalanga's portfolio committee on public works.

The committee last week pointed out that the highly profitable hotels and other tourism enterprises in the town were not contributing to basic service costs

Legislature deputy speaker Cynthia Maropeng said: "Hotels here are always almost fully booked and make huge profits, but pay the government virtually nothing for maintaining the town Instead, they pay us ridiculously small annual rentals for the monuments they use as shops and hotels."

The government continued to pay all water provision costs in the town, Maropeng said. (232)

Committee chairman BJ Tolo demanded an explanation from the public works department as to why it had not transferred the management of the town to a more suitable department as it was ordered to do four years ago

Tolo also wanted to know why the order was ignored and why the matter had not been discussed with the executive committee

Mthembu said yesterday delays were the result of contracts signed before the 1994 elections The matter would be taken up with the executive committee soon He said six state-owned guesthouses in the centre of the town were already being prepared for full commercialisation by September

"We want to get out of Pilgrim's Rest completely because we're effectively looked at as the local government for the town, something which we're obviously not equipped to be," Mthembu said. – *Sapa*

Sowetan 24/3/98

Five-year wait for Metrorail concessions

BD 26/3/98 (232)

Robyn Chalmers

PRIVATE sector participation in managing SA's metro rail network will be postponed for at least five years in terms of an agreement between labour and government

Metrorail, which will receive a state subsidy of about R880m this financial year, is expected to sign a contract with government in July securing its status as sole concessionaire for five years

Government initially intended to introduce concessions on significant portions of SA's rail network within three years, with labour looking at 17 years. Recent negotiations between labour and government indicate that the compromise will be five years.

Transnet executive director Mafike Mkwanazi, who is responsible for Metrorail, said yesterday government would negotiate with the private sector during the five-year period.

Mkwanazi said the vision was to undertake private sector concessioning on a regional basis, depending on where the need was greatest.

"We will encourage the formation of private-sector consortiums between international operators and local business entities, with the focus on black economic empowerment."

He said Transnet believed it should acquire a minority stake in Metrorail, largely for technical reasons This would ensure technical standards were uniform throughout the network.

Public enterprises adviser Kennedy Memani said the delay in introducing private sector management was due in part to labour's wish for more information on the process.

He said government had agreed that it would not be in its best interests to allow Metrorail to bid against private-sector entities at this stage.

Labour and government met recently and agreed on terms of reference for Metrorail, he said. "We will look at setting up a pilot project in the interim to test private-sector interest and the principle of concessioning"

Memani said government's subsidy of Metrorail would not be phased out with private sector management Providing transport for rail commuters was seen as part of the state's social responsibility, although the reduction of subsidies was preferable.

Mkwanazi said Metrorail was in a financially stable position, with fare income growing 15,6% in 1996/97 over the previous year. Fare income was expected to amount to between R540m and R550m this financial year.

Unions 'must find ways around privatisation'

(232)

BD 27/3/98

Reneé Grawitzky

A NEW York-based investment banker, Michael Glanzer, warned unions yesterday privatisation had led to massive job losses in countries such as Argentina and Mexico where more than 50% of workers employed in state-owned enterprises had lost their jobs during and after such processes

Addressing delegates at the National Union of Metalworkers of SA's (Numsa's) investment company conference focusing on labour's role in the economy, Glanzer said if unions failed to resist privatisation, they had to find ways of shaping the newly privatised companies to incorporate union interests

Unions, he said, usually focused on short term job effects rather than "the long term relationship with the newly privatised company" Retrenched workers generally received training and other redeployment schemes, but it remained unclear whether such strategies were effective.

Traditional union strategies, he said, had become less effective as markets "became more global and competitive".

In this context, US-based unions had begun experimenting with different strategies in the early '80s to influence corporate policies Such strategies included employee ownership schemes; developing alliances with investor groups and utilising union pension funds

Numsa general secretary Mbuyiselo Ngwenda said labour faced many potential conflicts of interests by moving into the investment arena These had to be managed

Labour, he said, had to decide whether it would indiscriminately buy assets being sold off by the state when it had adopted a policy against privatisation.

Numsa had adopted a policy that it would not, at this stage, buy shares in a company where it had members Numsa, he said, had after two years of deliberation agreed to the establishment of a union investment company which would be used as a tool to participate in the general transformation of the economy

The investment company had to be accountable to members and should be informed by union activities, Ngwenda said

The union, in turn, had to consciously promote accountability and disclose information to members He said the Congress of SA Trade Unions had to develop a coherent policy on union investment activities

Union investments had to be guided by the extent to which it could provide additional benefits to members such as housing loans, bursaries and access to affordable bank services

USAid seeks team to help on privatisation

([illegible]) (232)

Simon Barber BD 27/3/98

WASHINGTON — The US Agency for International Development (USAid) is to hire a legal team to assist Public Enterprise Minister Stella Sigcau with restructuring and privatising parastatals as part of its SA aid programme

Interested parties, both US and South African, have been invited by the agency to submit bids by April 28 for a 17-month contract, to start in May, and possibly extendible for a further six months

USAid said it was acting in terms of an agreement signed with the SA government The team would "work closely with the ministry, other government departments, as well as Hong Kong Shanghai Banking Corporation Investment Bank, which is acting as overall adviser" on the restructuring programme.

The successful bidder would have expertise in "corporate law, taxes, empowerment transactions, employee stock ownership plans, land claims and constitutional law" Duties would include reviewing laws governing specific parastatals.

The contract will contain strict clauses enjoining the adviser from using inside information about the government's privatisation plans for personal enrichment, during or after the contract, or to steer consulting business to associates

Such abuses became an issue last year when USAid claimed members of a high-powered Harvard team it had retained to provide similar advice to Russian reformers had taken advantage of their position to play the local market and help their friends

Among conflict of interest provisions to be included in the SA contract are a requirement that the adviser comply with the ethical codes of such US professional organisations as the American Bar Association, the National Association of Securities Dealers and the American Institute of Certified Public Accountants.

The adviser, who will be expected to be on call 'round-the-clock and to have a main office within 20km of the ministry, will be paid an hourly rate to be negotiated and up to $ 2 000 a month for additional expenses

US bidders not eligible for affirmative action treatment must bring in "disadvantaged" US firms as subcontractors.

USAid has appended a list of parties who requested a copy of the notice before it was released "to help identify potential subcontractors" Eleven of the 29 are South African

Relationship with Transnet needs to be spelled out

Legal snag grounds Sigcau's plan for SAA

CT (PR) 31/3/98 (232)

Ncaba Hlophe

Johannesburg — Stella Sigcau, the public enterprises minister, has postponed the launch scheduled for tomorrow of the corporatisation of South African Airways (SAA)

She had done so pending the completion of legal issues governing the transfer of the airline business to the new entity, the ministry said yesterday

As from tomorrow SAA was supposed to be a separate legal entity operating at arm's length from Transnet

But Kennedy Memane, the ministry's adviser on restructuring, said the government needed more time to sort through legal documentation spelling out the relationship between Transnet and the airline and other third parties

He said the new date for the corporatisation would be determined by progress made in sorting out the technical glitches

"It is not anticipated that this will result in any delay in the restructuring process currently under way in SAA," Memane said

He said government remained committed to the overall privatisation process of the airline and to the introduction of a strategic equity partner (SEP)

The airline had planned to launch as a corporatised entity tomorrow and prepare itself for the introduction of an SEP and black empowerment groups by October

Top international airlines, including British Airways and Lufthansa of Germany, had expressed an interest in bidding for the possible 20 percent stake as an SEP for SAA

The airline had engaged the services of Merrill Lynch in December last year to drive the corporatisation process as its transaction adviser But restructuring was hampered by a threat from 10 Transnet/SAA unions to pull out of the negotiations in a row over the funding of advisers They also accused the government of treating them as second-rate partners

Last week, however, the government and the unions reached a provisional agreement to proceed with negotiations after Sigcau had given an undertaking that unions could appoint their own advisers for the SAA restructuring

The agreement also allowed the unions to engage potential equity partners and have full participation in developing restructuring policy options

The airline, which suffered a R323 million operating loss last year, has embarked on Operation Clean Up of internal revenue control measures It has saved more than R203 million to turn itself around ahead of the restructuring

Commercialisation of transport directorates will save public R90m

BD 1/4/98

(232)

Stephané Bothma and Robyn Chalmers

PRETORIA — Three transport department directorates would be commercialised today, bringing about an immediate saving of more than R90m annually to taxpayers, Transport Minister Mac Maharaj said yesterday

The three chief directorates will be renamed the SA National Roads Agency, the Cross-Border Road Transport Agency and the SA Maritime Safety Authority and come into existence today. A fourth, the Civil Aviation Safety Agency, is planned for October 1. The agencies will operate as autonomous statutory agencies along business lines with government as shareholder.

"There are no plans to take these new agencies down the road of privatisation," Maharaj said.

Each agency would have its own income stream. A total of 405 staff members from the department would move to the agencies, cutting its wage bill by about R50m.

Dipak Patel, land transport deputy director-general, said that in 1994 the department was bureaucratic, hierarchical and funded by fiscal and budgetary allocations. Up to 20% of these allocations were used for purposes other than they were originally intended

As a result, Patel said a range of strategies had been employed to streamline functions and downsize the department. These included setting up agencies, privatisation, public and private sector partnerships, concessioning and outsourcing.

Maharaj said the transformation of the transport department would see the number of employees reduced to 200 from 1 383 in 1994.

He said the roads agency would provide and manage SA's primary road network, including road safety and traffic law enforcement It would take over state assets worth R35bn. Its income would be derived largely from petrol levies, toll fees and fines and its creation would save the state R21m. Barry Adams was appointed chairman of the roads agency with its CEO being Nazir Alli.

The creation of the cross-border transport agency would save government R40m and its source of income would include cross-border permit fees. Lawyer and businessman George Negota was appointed chairman of the agency and Bokana Maluleka CEO.

The maritime safety authority would look after the safety of life and property at sea and prevent and control sea pollution, amongst other tasks.

It would be funded by levies on ships calling at SA harbours, user charges and fines.

Its formation would save the state some R22m and maritime law professor Hilton Staniland has been appointed chairman with Brian Watt as CEO.

Sapa reports another R34m a year would be saved when the Civil Aviation Safety Agency came into being.

Maharaj stressed that there would be no forced retrenchments in the department this year. Describing the commercialisation move as a milestone in transformation, he said: "This is a bold, correct direction. If it doesn't work, blame me." — Sapa.

Weak competition law in SA top of US complaints

(232)

Simon Barber

BD 2/4/98

WASHINGTON — Discriminatory tariffs designed to protect domestic producers, weak competition laws and lack of full protection for intellectual property headed the list of complaints against SA levelled by the office of the US trade representative

In its latest annual report on foreign barriers to US trade and investment, the US department griped that while SA's trade and industry department and the Board on Tariffs and Trade were "open to US advice, no evidence exists that (the advice) is persuasive in the SA decision-making process".

The report sounded a conciliatory note on the Medicines and Related Substances Control Act, which is seen in the US as a threat to pharmaceuticals companies' patent rights

"The US trade representative is discussing with the SA government ways to clarify the law and eliminate any potential violations (of SA's World Trade Organisation obligations) before it goes into effect."

Depending on how these discussions proceed, the US department will decide later this month whether to grant a US drug industry request to place SA on the US's "priority watchlist" of intellectual property offenders, which could lead to denial of certain trade benefits.

The beer industry was cited as "glaring example" of the continued prevalence of "oligopolies and monopolies" in SA due to "weak competition laws".

The power of an unnamed "corporate conglomerate" was evident in the Board on Tariffs and Trade's decision to slap a R2,20/kg tariff on imported, frozen chicken parts, the report said

Picture ZOE SELSKY

NOT FLIPPING ... Eskom chairman Reuel Khoza says the decision rests with the government, but it seems inevitable anyway

Eskom sees privatisation light

(232)

ST(BT)5/4/98

PUBLIC UTILITIES

By THABO KOBOKOANE

ESKOM has conceded for the first time that privatisation is an option for its future structure.

"It is not for me to say whether or not Eskom should be privatised. That decision that rests with government. But there is a certain inevitability about it," chairman Reuel Khoza said this week when questioned about Eskom's potential privatisation.

The privatisation of Eskom is likely to be one the most controversial in the light of its enormous social obligations under the electrification drive.

The utility is on track to meet its RDP commitment of electrifying 1.75-million homes by 2 000. Since the drive began in 1994, it has electrified 1.148-million homes Over the five years of the programme, Eskom has increased its customer base by a figure of 30%.

Public hearings are scheduled later this month on whether Eskom should pay taxes and dividends, as proposed in the Eskom Amendment Bill.

Eskom has accepted that it will have to pay taxes and dividends in 1999. The restructuring of the industry is also likely to have taken place by then

These taxes and dividends will be used in accordance with government's priorities, possibly for an electrification fund.

The recommendations are contained in the Electricity Restructuring Interdepartmental Committee which, among others, recommended that the entire electricity industry move towards cost-reflective tariffs, with separate transparent taxes to fund electrification and other government local services.

The committee also wants the distribution industry to be consolidated from its current 460 (mainly municipalities) into a limited number of commercially viable regional distributors

Khoza says the stalled discussions about restructuring the Electricity Supply Industry received a boost in 1997 and should be completed by the end of the year.

Eskom posted a 4 8% jump in revenue to R20-billion in 1997, while net income was virtually unchanged, at R3.08-billion.

The balance sheet is looking stronger with the debt to equity ratio reduced to 1.08. Eskom says the level is expected to reach parity this year.

Critically, it has managed to bring down non-payment levels, which cost it more than R1-billion over the past few years Eskom says it now collects about 90% of its revenue from problem accounts, compared with 39% in 1995 This is due to an agreement offered to municipalities under which bulk arrears were written off if current accounts were paid in full.

Its most critical challenge in the next few years will be squaring up to competition as the deregulation of the industry takes place, but Khoza is confident Eskom will meet the challenge

Khoza sees an increased role for Eskom in Africa, in line with Thabo Mbeki's vision of an African Renaissance.

"Eskom will also have a role in spearheading development on the continent. As one of the world's largest power supply companies, and arguably the most efficient, Eskom is particularly well-placed to provide developmental infrastructure. This will help change both the reality and the perceptions of Africa's circumstances."

Khoza says Eskom has been invited by the Democratic Republic of Congo to co-operate on the development of hydropower in that country. Other invitations have been received from Nigeria, Rwanda, Uganda and Tanzania to offer advice in the development of electricity generating capacity

Unbundling gains pace

Sowetan 6/4/98 (232)

By Isaac Moledi

ABOUT [illegible] Young [illegible] position [illegible] tivity [illegible]

[illegible] unbundling [illegible] 18 unbundling [illegible]

[illegible] billion worth of deals were [illegible] times higher than the 1996 figure of R62 [illegible] greater than the R6,1 billion recorded in [illegible]

[illegible] lues were disclosed [illegible] ear giving a total of 678 published [illegible]

[illegible] primary driver of change [illegible] Young corporate finance partner Dave Thayser.

[illegible] including black empowerment organisational [illegible] in the mining sector and market share [illegible] ition, were other principal deal drivers.

Two deals alone represent 17,5 percent of the year's total deal value [illegible] 17,2 billion merger of Anglo American Corporation's gold interests in Anglogold, and the R11,9 billion merger of the gold interests of Gencor and Gold Fields of South Africa to form Gold Fields Limited.

The collapse in the gold price to between R1 432 and R1 480 [illegible] trigger for an unprecedented and sweeping [illegible] cturing of the gold mining industry, the review [illegible]

[illegible] black economic empowerment transactions [illegible] R8,3 billion were recorded. Although the empowerment companies [illegible] their activity in the financial services, tourism and hotels, publishing, information technology and transport sectors, the average deal size was, however, smaller than in previous years.

Of these, the R4 3 billion acquisition by a consortium led by Real Africa Holdings of a controlling interest in PQ Africa was the largest.

[illegible] nd in 1997 was the sharp increase in the number of mega-deals (deals valued at more than R1 billion).

[illegible] ls last year as against 18 in 1996. Seven mega-deals [illegible] re than R5 billion and 28 at between R1 billion and R5 billion last year.

Acquirers, on average, paid [illegible] times earnings, 42 percent more than 1996's figure of 19.

Rumpus over Aventura bidders

CT (BR) 7/4/98 (272)

Ncaba Hlophe

Johannesburg — The United Democratic Movement (UDM) has called for a halt to the privatisation of Aventura pending an investigation into the involvement of Zanele Mbeki, the deputy president's wife, and Sun International, in one of the bidding consortiums, Bantu Holomisa, the UDM co-leader, said yesterday

The call by the UDM, which is jointly led by Roelf Meyer, comes just days before the government is due to announce the winning bid for the 100 percent stake in the state resort chain

However, Wandile Zote, a spokesman for the ministry of public enterprises, said there would be no reason for the government to stop the privatisation of Aventura as there was no conflict of interest He said Zanele Mbeki's involvement was known from the beginning and she was not directly involved in the bidding process

INTEREST *Zanele Mbeki, the wife of the deputy president*

"Zanele Mbeki is part of the Empowerment Alliance, which holds 30 percent of Phalafala Leisure Consortium, one of the bidders It also consists of Kersaf (30 percent), Genbel Securities (30 percent) and Belasco Investments (10 percent) Her Women's Development Business, trading as the Woman's Development Bank (WDB), is part of three partners that constitute the Empowerment Alliance

Zote said "The criteria involving any conflict of interest were met, and the bidding process was transparent If the bidders felt the alliance could influence the process, they would have raised the issue earlier"

The UDM also took a dim view of the involvement of Kersaf, the majority holder in Sun International, which the UDM claimed has a " relationship with the governing party"

In terms of the Phalafala agreement, Kersaf and Genbel Securities agreed to commit R5 million to cover costs and expenses and assist the Empowerment Alliance in raising its portion of the equity

The Phalafala Leisure Consortium agreed to Kersaf's terms to enter into an operational management agreement with Sun International Management Limited, a Kersaf subsidiary

"It stands to reason that these parties cannot adjudicate on the various bids for Aventura without favouring a particular interested party," Holomisa said in a letter to Stella Sigcau, the public enterprises minister, yesterday

Paper slates government competition policy

BD 8/4/98

(232)

John Dludlu

THE SA Foundation, the body that represents SA's largest corporations, has joined the competition policy debate by releasing a paper critical of government's initial position

The two-page paper, which the foundation said was published "in the interest of an informed public debate", said competition policy should "not be used directly as a developmental tool aimed at uplifting the poor"

In its discussion document, at present the basis of the debate at the National Economic, Development and Labour Council (Nedlac), government said competitiveness and development were "mutually supporting rather than contradictory objectives, if policies are properly aligned"

The foundation's paper acknowledges a need for policies to foster development, but said international experience had shown that such objectives were best pursued by means other than competition policy.

Like the foundation, the business element, excluding the National African Federated Chamber of Commerce, has expressed a similar concern, saying competition policy should not be used to achieve social goals

The foundation and business's positions run counter to a strong call by Nedlac's labour constituency for a "developmental" thrust of the reshaped competition policy.

Regarding corporate structure, as a variable in restrictive practices, the foundation's paper warned that "populist interventions" in corporate structure on the basis of size would undermine economic efficiency and damage investor confidence

It also noted that global competition forced several groups worldwide into unbundling, demonstrating that inefficient corporate structures would not simply disappear

The document suggested one authority be tasked with handling issues of structure, mergers and acquisitions as well as the competition policy.

Lack of consensus the spoke in SA's privatisation wheel

(332) BD 9/4/98

The SA government could learn a lot from privatisation elsewhere in Africa if it just took the time, writes London correspondent **Tim Cohen**

WHY has privatisation been embraced with such enthusiasm and implemented so effectively by a host of African countries — and yet it is viewed with such suspicion and trepidation by the SA government?

Many government members seem to regard criticism about the sluggish pace of privatisation from investors, fund managers and financial institutions as a form of political critique, informed by vested interests and ideologues unsympathetic to SA's political and economic system

Seen as ideological in nature, such criticism is easily dismissed by government as a political critique forwarded by political opponents In any case, it is argued, substantial part-privatisations are happening in SA and more are to come

On the other hand, proponents of privatisation often seem to positively invite this response by government, addressing the issue with ideological fervour, banging on the privatisation drum as though it was a catch-all solution for the whole gamut of SA's economic problems It is not, and there are all sorts of ways privatisation programmes can and do go horribly wrong In the UK for example, the recent privatisation of the rail system has resulted in more train cancellations, worse service and more late trains

The reasons for SA's slow pace of privatisation and its limited scope has little to do with ideological questions It has everything to do with the lack of a national consensus, which is driven by the structure of government and the African National Congress in particular, poor political leadership on the question and fuzzy understanding of the possibilities, virtues and limitations of a full privatisation programme

Compared to many African countries, the contrast could not be more stark

In Zambia for example, Zambia Privatisation CE Valentine Chitalu said at a recent Commonwealth Development Corporation conference his country was fortunate to start off with a national consensus on the subject.

After living through years of quasi-socialism, where in many of the shops there were more shelves than products on them, and when there were over 100 bus drivers in Kampala and only a handful of operational buses, ordinary Zambians were ripe for change.

In addition, by implementing the programme quickly, in what Chitalu calls a "surgical strike", the privatisation agency was quickly able to create examples of privatisation successes These had the effect of encouraging the process to the point that now, 40 to 50 new foreign companies are operating in Zambia and 80% of the economy is in private hands, compared to 90% in government hands before Zambia is now at the tail end of its programme, with only ZCCM, the big one, remaining

The trauma was substantial and some parts of the government could not be saved Zambia, uniquely, gave up on the idea of an airline which would carry the flag for the nation "We decided we could just give everyone flags if that is what they wanted Only 5% of Zambians ever used the airline anyway," Chitalu said

By contrast, in Kenya, the privatisation programme began with the sale of the national airline, which was losing money at a fabulous rate the time. According to director of external affairs David Namu, crucial to the success of the programme was a guarantee at the start that the process would be free from political interference This was necessary because the process was traumatic and could easily have been derailed

Also crucial was the atmosphere of modesty and pragmatism which surrounded the whole affair At one of the first staff meetings, it was decided that the airline's slogan "The Pride of Africa" was too arrogant "How could we say that we were the pride of Africa, we were never on time, we never kept to timetables?" Namu said

Far from fearing the staff's reaction, staff at Kenya Airways were involved from the start, and one of the key elements of the turnaround of the airline was an increase in staff morale. The privatisation was very successful and it was oversubscribed 100% when it first came to the market, although the share price has languished of late

In SA, the process is more difficult Government is not in a position to make a "surgical strike" against its alliance partner Cosatu, and the process needs to be managed more delicately

What is missing in SA — something quite apparent in some other African countries — is a desire to use privatisation to engender transformative rather than incremental change

An off-the-cuff remark by one delegate was also instructive Some delegates at the conference wanted to know if those in Africa who had been part of privatisation exercises had passed on their experiences to South Africans

"They don't think we have anything to teach them," one delegate said ruefully

Govt continues with Denel privatisation

(232) ([illegible])

Robyn Chalmers

BD 9/4/98

THE privatisation of Denel is moving ahead with government having instructed the defence parastatal to kick off with the formation of internal transformation structures.

Public Enterprises Minister Stella Sigcau said a meeting with stakeholders would be held next week to thrash out a view on Denel's future. The form and extent of any privatisation would be on the agenda.

"I have asked (Denel's) MD to form the necessary structures such as sectoral and enterprise task teams. We are going to start moving ahead with the privatisation process now," she said.

Sigcau said any decision on Denel's future had been delayed because there was a need for extensive internal restructuring. This included separating its information technology operations from the core military business, downsizing its head office and transforming the make-up of its board and management.

Denel MD Seshi Chonco announced recently that at least 95 of Denel's 190 head office staff were being retrenched. He said that Denel's overheads and corporate office employment costs far exceeded its operational requirements.

The group cancelled a number of foreign orders last year due to political pressure and this reflected on the company's profitability, he said. It was expected to move into the red in the year to March 1998. Denel's net profit fell sharply to R82m in the year to end-March 1997 from R370m the previous year.

Gross revenue also dropped to R3bn from R3,4bn previously which was the result of higher levels of competition, lower economic growth and cancelled contracts.

Chonco has previously thrown his weight behind Denel's partial privatisation, saying an equity partner should be found for the group's aviation operation.

However, other operations, such as guided weapons, were strategic and should not be opened up to foreigners.

A public enterprises ministry review said continued local as well as international defence expenditure would lead to increased pressure on Denel's profitability.

Holomisa calls on Heath unit to investigate sale of Aventura

Reneé Grawitzky

THE Heath special investigating unit into state corruption has been asked by United Democratic Movement leader Bantu Holomisa to investigate a potential conflict of interest around the sale of state resorts company Aventura

Holomisa questioned the involvement of deputy president Thabo Mbeki in attempting to settle land claims at Aventura.

He believed Mbeki's involvement had been governed by the fact that his wife Zanele, legal adviser Mojanku Gumbi and other government officials and "personal friends" were involved in the Phalafala Leisure Consortium — one of five bidders for the 100% sale of the resorts company.

Unit head Judge Willem Heath confirmed that a letter had been received from Holomisa and said the matter, as was the normal course of events, would be referred to President Nelson Mandela who would decide whether the unit should investigate the matter.

Holomisa denied claims that this issue was being raised as an "electioneering tactic".

Holomisa said the matter had been referred to the unit, which investigated corruption and maladministration of public funds and state assets, because of government's arrogance in dealing with his request to halt the sale of Aventura pending an investigation

He has also questioned the fact that Mbeki was chairing the interministerial cabinet committee on privatisation, the relationship between Kersaf and the African National Congress and Kersaf's financial backing of Zanele Mbeki Holomisa said the committee should recuse itself from handling this transaction

Robyn Chalmers reports that a public announcement on Aventura's preferred bidder has been postponed until early May.

Public enterprises ministry spokesman Wandile Zote said yesterday that binding bids were discussed with the various bidders yesterday, and a decision would be made soon.

However, a decision on the winner would have to be ratified by the interministerial cabinet committee, whose next meeting was on April 30 Talks on the winning bidder would then be held with involved communities.

The sale of Aventura has been hampered by community claims on the resort company's land (232)

As a result, government wanted to ensure all stakeholders were brought into the process before the winner was announced, Zote said.

BD 9/4/98

Hit squad commander breaks down

(232)

DURBAN — A former Inkatha military commander broke down and wept at a truth commission hearing in Durban yesterday when asked about attempts by the security police to recruit him as a government agent.

Daluxolo Luthuli, 50, is applying to the commission's amnesty committee for amnesty for murders committed by an Inkatha Caprivi-trained squad he commanded in the early 1990s.

Luthuli, a grandson of former African National Congress leader and Nobel Peace Prize winner Albert Luthuli, was also an Umkhonto we Sizwe cadre and spent time on Robben Island. He has admitted leading "the Caprivians" on a reign of terror against United Democratic Front-supporting areas in KwaZulu-Natal.

Luthuli appeared confident during his testimony about murders and assassinations, but broke down and wept when asked about attempts to recruit him as a security police agent. Luthuli was being questioned by Jeff Hewitt, SC, who is appearing for Inkatha Freedom Party officials.

Luthuli said the security police did try to recruit him to gather information about MK members in KwaZulu-Natal, but he refused

BD 9/4/98

When asked if he was offered any inducement, Luthuli replied that the way the police operated was to torture one to the point where he agreed to cooperate with them

At this point Luthuli broke down and began crying. The amnesty committee adjourned for 10 minutes while Luthuli recovered his composure.

He then continued his testimony, and when asked again about the inducement offered to him by the police, he said he received no offer of payment.

The hearing continues. — Sapa.

LABOUR

Ppwawu ends boycott of Safcol restructure

The forestry unions that boycotted the restructuring of the South African Forestry Company Limited (Safcol) last month had resumed their participation after reaching an agreement with the government, Bengeza Mthombeni, the union spokesman, said yesterday.

Mthombeni, the secretary-general of the Paper, Printing, Wood and Allied Unions (Ppwawu), said they had agreed to "align and participate in the restructuring process after meeting Stella Sigcau, the public enterprise minister, and Kader Asmal, the water affairs and forestry minister".

The unions had complained that Sigcau's ministry had failed to understand Safcol's potential and labour's positive role in the process. They had not been happy with the process leading to the appointment of Real Africa Durolink as the transaction advisor to the restructuring process. — *Ncaba Hlophe, Johannesburg*

FORESTRY (232)

CT (PER) 9/4/98

Call for probe into Mbeki's Aventura links

MtG 9-16/4/98 (232)

Ann Eveleth

United Democratic Movement leader Bantu Holomisa said this week he would ask Judge Willem Heath's corruption watchdog to probe the involvement of close associates of Thabo Mbeki in the privatisation of tourism parastatal Aventura.

Holomisa said Deputy President Mbeki and his entire office "should have recused itself" from a Cabinet committee set up to adjudicate on the bid because his legal adviser, Advocate Mojanku Gumbi; his wife, Zanele Mbeki, Department of Agriculture Director General Bongi Njobe Mbuli, and "other friends" were linked to one of five companies shortlisted for the bid.

Gumbi and Mbeki are directors of the Women's Development Bank, the investment arm of which is one of three members of the Empowerment Alliance, which holds 30% of shares in the Phalafala Liesure Consortium, a short listed bidder The consortium is wholly financed by Sun International subsidiary Kersaf and Genbel Securities.

Gumbi brokered a settlement last month with land claimants and Mpumalanga Land Claims Commissioner Durkje Gilfillan, both of which had attempted to halt privatisation pending the resolution of land claims on two Aventura resorts at Blydepoort and Swadini, Mpumalanga The two parties listed Mbeki as a respondent. Ironically Gumbi's involvement — as Mbeki's legal adviser — was welcomed by both as it led to resolution of the impasse

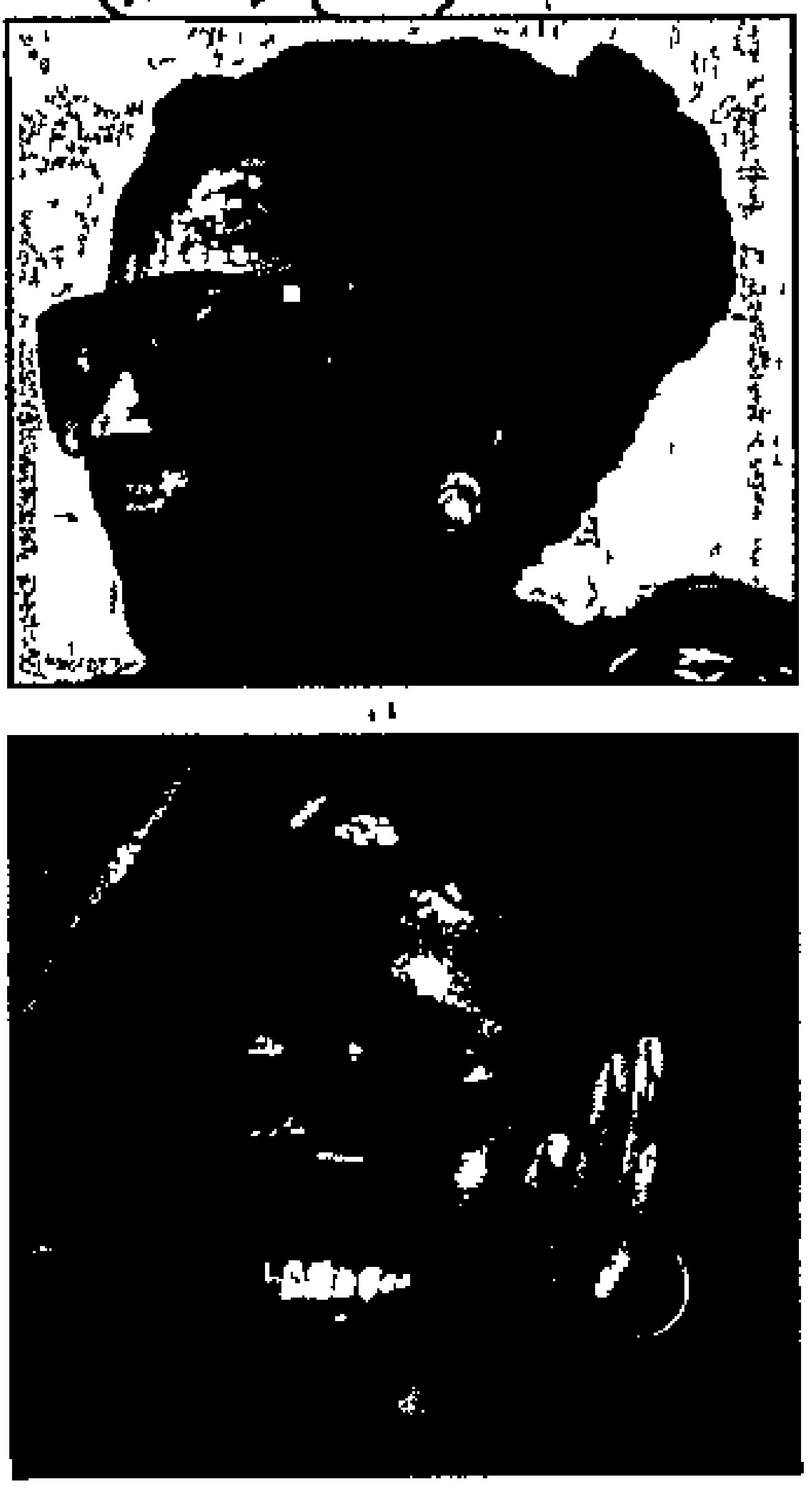
But Holomisa said this week that Mbeki's office should have pleaded a conflict of interest and directed an independent firm to handle the matter

Gumbi told the *Mail&Guardian* she had been unaware of any conflict of interest when she entered the legal dispute She said the Women's Development Bank had three separate arms, including the bank, a non governmental section 21 company of which she was a founding director; a trust which holds the savings of the bank's rural women clients; and an investment company of which she is not a part She said Njobe-Mbuli was even less involved, as she had suspended her participation in the bank Mbeki had resigned as an employee of the bank — but remained a director — after her husband's election as deputy president

Gumbi's explanation was supported by another Women s Development Bank director, Transnet chair and head of the Department of Trade and Industry's Unfair Business Practices Committee Louise Tager Tager said "These are two separate things The investment company has its own board of directors and takes its own decisions." But Tager could not explain why her name and others appeared on the bid.

Holomisa said "The onus is on them to say whether they have resigned [their bank positions], but their names are still [on the bid] In a nutshell, Sun International's Kersaf and Genbel are funding the bid 100%, but they are using the names of the deputy president's wife, his legal adviser and government ministers to support their bid "

Phalafala's bid documents include a breakdown of the consortium's membership Although the "Women's Development Business" section describes Women's Development Bank Investment Holdings Limited as the investment division of Women's Development Business, it lists 15 current directors including Njobe-Mbuli, Mbeki, and Gumbi, as well as tax guru Michael Katz, and Tager



Involved in Aventura's privatisation: Zanele Mbeki (top) and Mojanku Gumbi

Holomisa said he intended to ask the Heath commission to investigate alleged conflicts of interest related to the bid after the ministry of public enterprises accused him of electioneering: "I view the response as symptomatic of a complete disregard for accountability " He called for Mbeki to recuse himself from the Cabinet committee which will meet April 30 to ratify the bid selection of the Aventura bid evaluation committee

The evaluation committee was expected to announce its preferred bidder this week, but public enterprises representative Wandile Zote said this would not be finalised until after the Cabinet committee's meeting.

The Aventura bid selection is poised to become fraught by controversy, irrespective of which of the five consortiums emerges as the preferred bidder The consortiums represent a witch's brew of curiously competing interest groups, many of which are linked to the ruling party or South African based multinationals with their fingers in more than one bid The other bidders include

● the Kopano Ke Matla Consortium, comprising the Congress of South African Trade Unions's investment arm Kopano, the Danish People's Holiday Landsorganisasie Denmark, Protea Hotels, Rennies Travel (linked to Kersaf) and the World Bank's International Finance Corporation,

● New Adventure Investments, led by the Sanco Development Trust, but also including the Protea Hotel Group and the Southern Development Trust,

● The Boiketlong Investment Consortium, comprising Koti Investments, Nosanhlo Investment Holdings, the Embhuleni Tribal Authority and the Embhuleni Business Trust , both of which represent local community groups whose interests compete with those of some land claimants, and

●Shomang Investment Holdings including the South African Development Corporation, the United States-based Hampshire Hotels and Restaurants, Native American and Zone company, Hospitality Worldwide Services and the South African Casino Development Fund

Eskom commercialisation tops restructuring agenda

Christo Volschenk

ECONOMICS EDITOR

(232)

Cape Town — The government was considering only the commercialisation of Eskom, the R90 billion national electricity generator, and not its privatisation, the standing committee on public enterprises said yesterday

It told told businessmen at a public hearing on the Eskom Amendment Bill in Parliament that it had explored ways of creating competition between independent power stations inside Eskom to improve the efficiency of the parastatal

Afterwards Mzuyo Ndziba, a director in the ministry of public enterprises, told Reuters· "We are looking to bring competition into Eskom "

The parastatal was not on the list to be partly or completely privatised when the government published its so-called framework document for the restructuring of state assets in 1996.

But the first day's hearings were dominated by a debate about the way forward with restructuring The Afrikaanse Handelsinstituut (AHI) argued that the restructuring of Eskom should wait until a comprehensive policy for the energy sector had been finalised.

Members of the committee felt the Eskom Amendment Bill could safely pass through parliament without any "unintended consequences" to the restructuring process.

The AHI said transferring the assets of Eskom to the state before an energy policy had been finalised would be "unwise", since it would come down to "tinkering without a clear vision".

Eskom was technically not owned by the state. The bill before the committee provided for it to be transformed into a tax-and dividend-paying corporate entity and for its assets to be transferred to the state.

Since 1985 Eskom had been run by the Electrification Council

BD 16/4/98

□ ENERGY

CT (PR) 23/4/98 (232)

Sacob calls for Eskom Bill to be postponed

The South African Chamber of Business (Sacob) has called on the government to postpone the proposed Eskom Amendment Bill pending the finalisation of the green paper on energy In its submission to the parliamentary portfolio committee on public enterprises hearing, Sacob called for a "staged approach" to allow sufficient debate on the green paper and the implication of the possible change of Eskom's status

"The green paper should define what South Africa needs from its electricity supply industry and it is this definition which should guide decisions on the structure and ownership pattern for Eskom," Sacob said It supported "in principle" the transfer of Eskom to the state, on condition that Eskom would eventually be privatised and relieved of its obligation to finance the electrification programme once it began to pay dividends and taxes. — *Ncaba Hlophe, Johannesburg*

SAA privatisation hits a snag

CT (MR) 28/4/98 (269) (273)

Ncaba Hlophe

Johannesburg — The privatisation of embattled South African Airways (SAA) suffered another blow when management's initial turnaround business plan was rejected by labour and the Transnet board, labour sources said yesterday

The sources, who are involved in the restructuring process, said unions had been denied participation in the design of the original plan, which was supposed to have been completed by the beginning of the year

"It became glaringly apparent that this was a defective document," a labour source said

"We tabled a series of questions testing the assumptions underlying the document The Transnet board later rejected the plan, sending it back to SAA for further development"

The management of SAA have consequently engaged Roland Berger and Partners, an international airline consulting firm, to help craft the new business plan

However, Kennedy Memane, Transnet's restructuring adviser, said the Transnet board had not rejected the plan but had called on SAA to clarify budgetary matters

He said the engagement of new consultants was a normal business procedure

"There is nothing new about the engagement of the consultants and SAA has always done it," he said "The Transnet board had only sought clarification on certain assumptions of the SAA budget That does not mean they rejected the plan"

The corporatisation has been postponed from its due date on April 1, pending the finalisation of legalities governing the transfer of assets to the new corporate entity It is likely to take place in July

The move was further dented by a threat early last month by 10 Transnet-SAA unions to pull out of the restructuring exercise in a row over the funding of its advisers and management's refusal to transfer existing agreements to the new corporate entity

Memane said labour had always been involved in the restructuring process But he stressed that it was not possible for labour and management to develop a joint business plan

"A business plan is done by management and then shown to other stakeholders, such a labour, for comment," he said "We are currently redeveloping the plan as part of that strategy"

The business plan is expected to spell out short-, medium- and long-term strategies relating to SAA's current alliances, markets, fleet, physical operations and technical and financial matters

Obstacles loom for Sasol-AECI deal

([illegible]) ([illegible]) (232)

Amanda Vermeulen

BD 28/4/98

THE Competition Board is unlikely to approve energy producer Sasol's proposed takeover of chemicals group AECI without a formal investigation into the deal's effect on the fertiliser and explosives markets.

Besides the board, Sasol also faces the task of convincing AECI directors of the merits of the deal

Sasol's discussions have so far been confined to Anglo American Industrial Corporation (Amic), which owns 52,6% of AECI. Management of AECI is expected to balk at being taken over by Sasol and the deal could see the loss of more than 1 000 jobs, including some in the executive suite.

AECI's board has been criticised for the company's poor investment rating and financial performance.

Sasol's acquisition of AECI's businesses may result in the fertiliser and explosives businesses being rationalised with those of Sasol, leaving a limited role for AECI's current group executive.

Amic said in a cautionary notice last week that it was in talks to sell its AECI stake to Sasol for cash No price has yet been made public

By taking over AECI, Sasol would gain control of about 75% of the local fertiliser market and more than 80% of domestic explosives sales

The combination of Sasol and AECI's interests would test a Competition Board ruling in the early 1980s when it banned a deal between AECI and the Chamber of Mines giving the group an exclusive contract to supply explosive devices to mining companies.

Board chairman Pierre Brooks said the board had fielded a number of calls from parties concerned about the implications of a Sasol-AECI tie-up.

He said the board would probably have the final say on whether the transaction went ahead, and that a number of provisos could be attached to its approval These might include instructing Sasol to sell parts of its enlarged fertiliser and explosives businesses to third parties to enhance competitiveness.

US rate concerns send markets tumbling

LONDON — World bourses fell victim to concerns about US interest rates and Japan's economic package, sending shares tumbling yesterday.

Traders said the losses were triggered by Japan's ¥16,65-trillion economic package announced on Friday which failed to include permanent income tax cuts. The Nikkei index fell 361,29 points to 15 649,95.

Concerns over a possible rise in US interest rates at the next US Federal Reserve meeting were also sending investors scrambling for the sidelines. At 2 30pm in New York the Dow Jones industrial average was 207,51 points lower at 8 857,11 In London the FTSE 100 index shed 141,5 points, or 2,4% to 5 722,4 on US rates fears and profit-taking in the financial sector

The falling share prices helped gold, which had fallen to an afternoon fix in London of $309,65, down $3,50 from Friday's fix, on fund selling. It then recovered as share prices fell, closing at $311,15, down $1,80. — Dow Jones

Japan seeks backing: Page 7

Robert Tshabalala

Stella Sigcau *facing the prospect of missing yet another deadline*

PRIVATISATION

Why SAA is still stuck on the tarmac

(232)

Explanations for delay are not credible

FM 24/4/98

Government will be hard-pressed to sell 49% of loss-making SA Airways' shares before the end of its first term in office — despite the fact that the national airline was earmarked in December 1995 to be one of the first State assets to be sold

Kennedy Memani, an adviser to Public Enterprises Minister Stella Sigcau, admits that the partial privatisation, a deal once expected to be completed last year, "could slip over into 1999"

Memani recently joined Transnet, which owns SAA, at the request of Sigcau His brief was to speed up the restructuring of Transnet and SAA The airline is preparing for the sale of 49% of its shares to an international partner, employees and empowerment investors

But the restructuring has been held back by the fact that Transnet has debts exceeding R20bn About R8,5bn of the loans were raised to finance Transnet's pension fund deficit Government has yet to come up with a formula for unloading this debt and the remaining R3,2bn deficit on the pension fund

It has also emerged that there are other spanners in the wheel of restructuring Government has announced that the corporatisation of SAA — the process of cutting its legal ties with Transnet and becoming a separate business entity — has been postponed to later this year Sigcau's previous deadline was the end of March

This is the latest in a number of missed deadlines for SAA's partial privatisation In December 1995, government said SAA would be one of the first State assets to be privatised The process then stalled until late 1996, when UK-based investment bank SBC Warburg was appointed to value the airline

At the opening of parliament last year, Sigcau said the restructuring would be speeded up because of the airline's financial problems — it made a loss of R323m last year Later her advisers, HSBC Investment Bank, said the deal would be concluded by the third quarter of this year

Credible reasons for the delays are hard to find

Memani says "We are moving ahead with the restructuring process We have to first finalise a business plan for SAA and then issue a preliminary information memorandum for potential investors

"The corporatisation of SAA will come later during the restructuring process SAA has been incorporated as a separate company The only outstanding issue is to inject certain assets and liabilities into the new company"

This could be a tricky exercise At the end of March last year, SAA's balance sheet showed a R2bn interest-free loan from Transnet that was costing the airline about R13m/month There were foreign and domestic loans of R1,7bn and current liabilities of R2bn

SAA also has pension fund debentures of R260m and undisclosed liabilities to its pensioners, who were part of the old SA Transport Services (Sats), Transnet's predecessor

The need to tidy up the balance sheet mess could be the real reason for the delay in SAA's corporatisation

Memani offers another the need to consult Transnet lenders "Every time we raise debt, lenders look at our asset base Each time we sell an asset, there has to be an agreement with the lenders

"We need the consent of our lenders before we strip a big chunk of Transnet's assets out of its balance sheet"

Memani says SAA would be in a "saleable state" if a way were found to deal with the airline's portion of Transnet's debts and pension fund liabilities "SAA is a strong regional airline which is in a good position to be a hub for south-south air traffic It also has a number of very profitable routes," he says

However, exploiting these opportunities is just a dream until SAA is partially privatised Until then, the airline will continue to bleed It is expected to report another loss this year On average, its fleet is 12 years old SAA desperately needs more capital, technology and skills

Excuses from Sigcau's department for delays are spurious

Why doesn't the airline have a business plan? Why hasn't Transnet informed its lenders of plans to privatise some assets?

It is imperative that the debt issue be resolved While it cannot be wished away, it can be put elsewhere — such as in a special-purpose vehicle, as Transnet's MD has suggested — so that restructuring can proceed

Transnet is an important part of the economy, with a huge capex backlog frozen because of the impasse

"Our competitors are investing in the economy while we cannot," says Memani

Duma Gqubule

CT(MR) 29/4/98

Sappi and Mondi reject accusations

(232)

THABO LESHILO

BUSINESS EDITOR

Johannesburg — Sappi and Mondi, the two paper manufacturers, yesterday defended themselves against accusations of monopolistic behaviour, discriminating against small retailers and abusing anti-dumping regulations.

The allegations were made by Michael Bunting, the director of Randburg-based Atlantic Paper Supplies

Bunting said the two charged unreasonable prices on unfair terms, forcing him to import A4 photocopy paper, then shut his supply source by complaining to the government that Atlantic's Brazilian supplier was dumping paper on the local market.

Albert Lubbe, the managing director of Sappi Fine Paper, said his company had explained its trading policy to Atlantic Paper Supplies in terms of pricing and minimum quantity levels

He said Sappi had evidence that Brazil and Indonesia were in fact dumping

"The Board of Tariffs and Trade had itself indicated in the Government Gazette last week that there was enough evidence to justify an investigation of alleged dumping," said Lubbe.

John Barton, the general manager of Mondi Paper, said the company would supply paper to any company, including Atlantic Paper Supplies, "on the same terms and conditions as prevail with any of its current South African customers or merchants.

"Taking into account volumes, product range and the financial risk involved, we are more than happy to do so, and have already conveyed this to Atlantic Paper Supplies," Barton said

He said local production of uncoated woodfree papers, including A4 photocopy paper, was more than adequate to meet South African needs

Competition Board suspends investigation until new Act is passed

Reprieve for the liquor industry

ET (MR) 30/4/98 (232)

CHRISTO VOLSCHENK
ECONOMICS EDITOR

Cape Town — The Competition Board had put its investigation into the liquor industry and the affairs of the KWV on hold until the new Liquor Act had been passed, Lourens Jonker, the chairman of KWV, said at the body's annual general meeting yesterday.

"The new Liquor Act would possibly contain guidelines and prescriptions regarding competition which could affect the outcome of the investigation," he said

In the meantime, KWV had appointed expert legal counsel to prepare its submission to the Competition Board

The department of trade and industry was putting the final touches to a new liquor bill which would outlaw vertical integration in the industry with a three-tier licencing system

The new legislation could make an investigation into possible monopolistic behaviour by big players in the industry superfluous.

Jonker also told farmers at the meeting that the opportunity for former members of KWV to take up shares in KWV after it had converted to a company had lapsed on April 23.

About 14 million shares were not taken up by qualifying non-members who have now forfeited their right to purchase shares.

GOOD SPIRITS *Willem Barnard, left, the KWV managing director, and Lourens Jonker, the KWV chairman* PHOTO ANDREW BROWN

Too many white high-flyers

M+G 30/4-7/5/98 (232)

Lizeka Mda

The government may be laughing all the way to the bank after snagging R819-million from the Aeroporti di Roma for a 20% stake in the Airports Company, but some company employees are unhappy.

Black managers at the company say the strategic equity partner in the partial privatisation of the Airports Company was acquired at the expense of the company's transformation.

They charge that "there is a lack of transparency in the key appointments to senior management positions, and that white males keep getting appointed to key management positions understood to be earmarked for black appointments".

Many of the problems are articulated in a document prepared last November by Sipho Sithole, then assistant general manager for strategic planning and industrial relations, who headed the company's transformation committee

"The undermining of the transformation programme," charges Sithole in the document, "has been seen through in filling of key positions in the company with complete disregard for existence of [the transformation] committee as no proper consultation ever took place

"The continued lack of transparency with regard to these appointments is a display of outright undermining of the transformation programme. It is safe to say that there has never been any meaningful and genuine transformation at [the Airports Company]"

It is also alleged that these appointments have gone to friends of the managing director, Dirk Ackerman. The simmering anger of black managers boiled over when Justin Williamson was appointed finance general manager last October.

Williamson, a chartered accountant, had worked for Ackerman's father when he was chair of security group Chubb

Ackerman says Williamson was appointed after the company could not find a suitable black person for the position.

"[Williamson's appointment] was not made by myself," he says, "but by the human resources committee, a subcommittee of the board"

Black managers say Williamson's appointment is part of a pattern that undermines affirmative action at the Airports Company, and followed the appointment of Kevin Cockcroft, general manager, asset management; Jon Heeger, group manager, projects; Kevin Schroeder, group manager, retail; and Wimple van Aswagen, group manager, finance.

"There is a stated policy that the company has to meet certain affirmative action targets," responds Ackerman. "That policy was followed to the letter."

But he does not deny these positions were not advertised, or that all the managers are known to him

Sithole continues: "The recent spate of appointments has also seen the undermining of key managers who have, over the years, exerted a lot of energy and time to turn this company around — long before the new kids on the block came to chase shares at Airports Company."

The share option has increased tensions at the company. The government is going to sell 10% to empowerment investors, another 10% to the National Empowerment Fund and 9% to the company's 1 700 employees.

The steering committee of the Airports Company's restructuring committee, with representation from the transport and public enterprises departments, as well as labour and management, recommended the 9% be split 2,45·6,55 between senior management and staff.

The black managers say this is a perpetuation of discriminatory practices because only 63 of the 1 700 staff are senior managers, and more than 90% of those are white They say the shares should be shared equally among all staff.

"There are not enough blacks and females in the higher echelons," says a staff member "There is only one black general manager. We don't think the company is transformed enough for white males to benefit exclusively. They haven't done anything to deserve it Instead, they are the ones who do everything to frustrate the transformation of the company."

Ackerman says he is not aware of any dissent among black managers regarding the share split.

Khetso Gordhan, director general of the Department of Transport and co-chair of the steering committee of the Airports Company's restructuring committee, says if anyone is to be blamed for the split it is labour, because they came up with the proposal.

"Labour were much more generous than the government was willing to be," says Gordhan "One of their preconditions for the strategic equity partner was that the current management should be retained. They said they were very satisfied with the current management policies and philosophies."

A delegation of black managers took their concerns about the lack of transformation at the company to Gordhan late last year. He attended to their grievances immediately and brought in Minister of Transport Mac Maharaj and the board The transformation committee was disbanded and replaced by a subcommittee of the board.

The Department of Transport is happy with Ackerman. Since taking the company's reins in September 1995, profits have multiplied from around R60-million to about R370-million

"Dirk Ackerman is an extremely capable and energetic manager," says Gordhan "As far as the department is concerned, he does a bloody good job running the Airports Company of South Africa."

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Business, govt and labour narrow the gap at policy talks

(232) BD 4/9/98

John Dludlu

BUSINESS, government and labour negotiators have narrowed their differences over a revamped competition policy in the past weeks of talks, but some major sticking points still remain, say sources closer to the discussions at the National Economic, Development and Labour Council (Nedlac)

This emerged ahead of today's meeting between trade and industry minister Alec Erwin and business and labour to discuss the proposed competition law.

According to sources close to the Nedlac talks, the major outstanding issues related to "how and who will evaluate" mergers and acquisitions, as well as how to deal with vertical integration arrangements — for instance, a manufacturer also involved in distribution business — to ensure "that you catch the bad guys" but do not unnecessarily punish "innocent ones"

Business is understood to still be concerned about the ability of politicians to interfere in mergers and acquisitions

Regarding institutional arrangements, government's guidelines, which form the basis of the talks at Nedlac, say "the possibility of politically inspired intervention will also be removed (in the new law) by eliminating the exercise of ministerial discretion in the enforcement of competition law and by a more precise definition of both the mandate of the policy structure and its relationship to the Minister (of Trade and Industry) and government policy"

The next two weeks would be crucial in bridging the gap, a source said.

News of progress at the Nedlac talks, aimed at agreeing to principles of a new competition policy, is known to have been welcomed by Erwin.

Erwin will today meet business and labour representatives in Pretoria to discuss a draft competition bill.

In terms of the way forward, outlined in the government's guidelines, legal drafting of the competition law will run parallel to the Nedlac negotiations Government is, however, cautious not to overplay the relative smoothness of the process to date.

Themba Rubushe, the trade and industry department spokesman, confirmed Erwin's meeting today, but said state negotiators did not believe it would be "conclusive".

On his return from abroad yesterday, Jayendra Naidoo, the Nedlac executive director who chairs the competition policy task team, said yesterday, when "I left, it (negotiations) were looking pretty good" thanks to thorough preparations by delegations

Although Nedlac was not looking for a "100% consensus on every issue", Naidoo said he did not think there were major fundamental issues that could not be resolved

The main worry was the pending position of the National African Federated Chamber of Commerce Although part of the Nedlac business caucus, it has not endorsed the Business SA position on competition policy.

Official complains of monopolies and weak laws as trade gap narrows

SA is anti-competitive, says US

(232) CT(PR) 4/5/98

RICH MKHONDO

Washington, DC — Pretoria's trade deficit with the US narrowed slightly last year as its exports grew and sales to South Africa fell as anti-competitive practices prevailed in South Africa, Charlene Barshefsky, Washington's trade representative, said at the weekend

"Oligopolies and monopolies prevail in certain South African industries because of weak competition laws," Barshefsky said in her 1998 report on foreign trade barriers

"One glaring example is the beer industry South African Breweries controls almost 98 percent of the South African beer market," she said "When a leading US brewer reportedly investigated entering this market, it determined that the cost of entry was too high to proceed "

Barshefsky said leading US exports to South Africa were agricultural equipment, power generators and general industrial machinery, aircraft and motor vehicle parts, tractors and engines, and electrical and high technological equipment such as office machines, computers and software, and medical and telecommunications parts

Charlene Barshefsky

South Africa's leading exports to the US were metals, precious stones, non-ferrous metals, iron, steel, metalliferous ores and non-metallic mineral manufactures Exports of inorganic chemicals were increasing at a steady pace

"In 1997 the US trade surplus with South Africa was $500 million, a decrease of $284 million from the trade surplus of $784 million in 1986," Barshefsky said

"US merchandise exports to South Africa were $3 billion, a decrease of $106 million (3,4 percent) from the level of US exports to South Africa in 1996

"South Africa was the US's 36th largest export market in 1997 US imports from South Africa were $2,5 billion in 1997, an increase of $177 million (7,6 percent) from the level of imports in 1996 "

The stock of US foreign direct investment in South Africa at the end of 1996 was $1,6 billion, an increase of 12,7 percent from the level of a year earlier US foreign direct investment in South Africa is largely concentrated in the manufacturing, wholesale and service sectors

Most South African exports to the US came from the sale of platinum sponge, valued at $564 million The 1996 figure was $474 million

US tariff imports such as platinum and diamonds stood at $957 million, a $100 million increase from 1996 US imports of South African chemicals grew steadily, notching $154 million, a 36 percent jump on 1996

South African imports of US cereals declined substantially from $183 million in 1996 to $86 million last year

Barshefsky also complained about South Africa's standards, testing, labelling, certification and service barriers

"US exporters of poultry products recently petitioned South Africa to rescind its requirement that chicken products be shipped in refrigerated containers rather than in bulk," she said "This new requirement is sharply opposed by both domestic and international industry sources "

Barshefsky said "Although South Africa offered to end its monopoly of long distance, data, telex and fax and privately leased circuits services as of 2004, it committed to guarantee only one additional operator in these areas at that time "

South Africa and Nigeria together accounted for almost 63 percent of US exports to sub-Saharan Africa

Analysts say, on a global basis, sub-Saharan Africa remains a relatively insignificant destination for new US investment For example, in 1996, investment in sub-Saharan Africa was 0,6 percent of US worldwide investment, down from the 1992-96 period peak of 1,1 percent in 1993 — Independent Foreign Service

More meetings on competition

BD 5/5/98

John Dludlu

(232)

GOVERNMENT, business and labour negotiators have agreed to a series of meetings to iron out the remaining differences over the principles of the new competition law as government is preparing to publish a bill in weeks

After a day-long meeting in Pretoria yesterday, Alistair Ruiters, a chief director at the trade and industry department, said the parties had one more week to agree on the principles of the new competition policy A meeting was planned for later this week and further talks to finalise the principles would be held next week

However, several "major" issues remained to be resolved

Sources say business is chiefly concerned about who would evaluate mergers and acquisitions and how public interest would be used to determine mergers and acquisitions.

Labour, on the other hand, was worried about job losses following mergers, said sources closer to the process

Some sources felt yesterday's meeting had not achieved much, though Ruiters said he was "delighted with the progress" so far.

Part of yesterday's meeting was attended by Trade and Industry Minister Alec Erwin

Pick Safcol buyer with care, govt told

BD 5/5/98 (~~FORESTRY~~) (232)

Nicola Jenvey

DURBAN — Government could not sell the SA Forestry Company (Safcol) to anyone who would exploit the country by exporting logs and carrying out the value-adding processes elsewhere, Megacor Holdings chairman Phutuma Nhleko said in the company's annual report.

He said this "green gold" should be managed and controlled in a way that enabled labour and industry to maximise its long-term potential.

However, he said that the demise of the general export incentive scheme was a significant blow for exporters, who now operated in "a disadvantaged playing field".

This was particularly true in the timber industry, where several international competitors had access to government-subsidised timber and labour.

This meant that the role of Safcol was especially vital where companies like Megacor relied on accessing quality pine at competitive prices.

MD Tony Dixon said Megacor — which was formed through the amalgamation of six pine manufacturers and a low-cost housing specialist — had rationalised its marketing activities to ensure each subsidiary benefited from the enlarged export network.

This advantage was highlighted in the R60m US export order announced last year in which three divisions would manufacture and deliver a customised product over the next two years.

In the year to December, exports accounted for 62% of the total R186,9m turnover (pro forma: R167,6m). Export sales grew 17,2%.

Attributable profit of R10,4m — with earnings a share at 14,1c (30,4c) — was lower than expected and a 5c dividend was declared.

Megacor was severely affected by the earlier than expected closure of the general incentive export scheme, a firmer rand and tough market conditions.

Given the demands of his position as Worldwide Africa Investments MD, Nhleko announced his intention to retire as Megacor chairman at the next annual general meeting He believed it was in the best interests of the group to find a chairman who would do the position justice

SA NEWS DIGEST

LABOUR

(232) (2) ~~[illegible]~~

Official pleads for interests of 'bush' operators in Safcol privatisation

The department of water affairs and forestry was urged yesterday not to ignore the concerns of ordinary forestry workers in its haste to privatise its loss-making commercial forests.

Jeff Pierce the director of economic affairs in the Eastern Cape, said although the JSE was eagerly anticipating the privatisation of the South African Forestry Company (Safcol), "people on the ground are very fearful" about their future. The small, black-owned "bush" sawmill operators should "not have the forests sold from under them", he said.

CT (MR) 5/5/98

Pierce told the portfolio committee on agriculture that the small sawmill operators had played an important role in ensuring the supply of cheap building materials for the local market. To protect their interests, they had formed forestry forums to ensure they were involved in the privatisation process. For example, he said, a proposed R1,5 billion pulp mill at Ugie would create 600 new jobs while the small operators could create 3 000 jobs for a third of the price. — *Lynda Loxton, Cape Town*

French bid for water services irks Samwu

(232) [illegible]

FRANK NXUMALO, LABOUR EDITOR

CT (BR) 6/10/98

Johannesburg — The French multinational Société d'Amenagement Urbaine et Rural (SAUR) International was yesterday declared the "preferred bidder" for the R2 billion privatisation of water and sewerage for the Dolphin Coast municipality in KwaZulu Natal, the town council said.

But the South African Municipal Workers' Union (Samwu) immediately threatened to stop the deal, alleging that "privatisation initiatives at municipal level are often initiated by councillors for personal gain" It said it was determined to keep service delivery within the domain of the public sector

Francois Buck, the acting town clerk for the municipality, said the contract was for a period of 30 years and that the next phase was the negotiation of the final contract with the help of the Development Bank of Southern Africa He said rival bidders Lyonnaise des Eaux and Générales des Eaux, both French multinationals, had been invited to stay in the race for another 120 days pending finalisation of the negotiations.

Patrick Vincensini, the general manager of SAUR International for southern Africa, said. "We are glad of the opportunity to provide our services here, and consider this a significant step forward in the development of our South African activities"

Anna Weekes, a Samwu spokesman, said the union would take up the issue with the KwaZulu Natal provincial bargaining council to demand an immediate stop to the privatisation of Dolphin Coast's water and sewerage

"The initiative goes completely against the binding ruling of the South African Local Government Bargaining Council last year that the public sector is the preferred deliverer of services"

Families relinquish grip on Anglovaal

BD 12/5/98

(232)

Amanda Vermeulen

THE Hersov and Menell families will relinquish their 65-year grip on Anglovaal Ltd under a broad restructuring of the mining and industrial conglomerate

The shake-up, described yesterday by analysts as "a bold step", is designed to improve the liquidity of Anglovaal's shares and simplify the corporate structure with a view to boosting shareholder value The shares are trading at a substantial discount to net asset value.

Deputy chairman Rick Menell said the families' complex control structure had inhibited management's ability to focus on individual businesses and hence maximise their performance.

Anglovaal's interests range from fish and frozen food products and biscuits to construction, cement, mining and smelting Its mining assets include the Target gold property in the northern Free State, argued to be one of the world's lowest cost producers when it comes on stream next year.

The restructuring, due to be completed by year-end, will see the collapse of the Anglovaal Holdings (AVH) pyramid to create a leaner group The Menell and Hersov families currently exercise control through AVH, with equal stakes.

AVH will be unbundled to its shareholders, leaving a single holding company, Anglovaal Ltd (AVL). The loan stock in AVL will be redeemed at R32 a unit, eliminating nonvoting securities from the group's capital structure.

AVL's N-shares, which have low voting rights, will be converted into ordinary shares, with one vote a share This will consolidate five types of listed instruments in AVH and AVL into a single listed class of share in AVL.

AVL's industrial and mining interests will be split into two stand-alone entities: AVL, holding Anglovaal Industries, and AVL2 as the holding company for Avmin. This step will insulate each side of the business from the other and remove any perceived conflict in capital allocation

The Hersov and Menell families' 51% voting stake will initially be converted from AVH ordinary shares to a special class of unlisted, nonvoting preference shares in AVL. This will enable the families to retain control for up to three years These preference shares must be converted back to ordinary shares by June 30 2001, diluting the families' joint holding to 5%.

The conversion ratio will see a 1% dilution in the interests of the ordinary shareholders to compensate the families for relinquishing control.

AVL chairman Basil Hersov said the families needed to maintain control for the next three years to guide the implementation of changes already under way in AVI and Avmin.

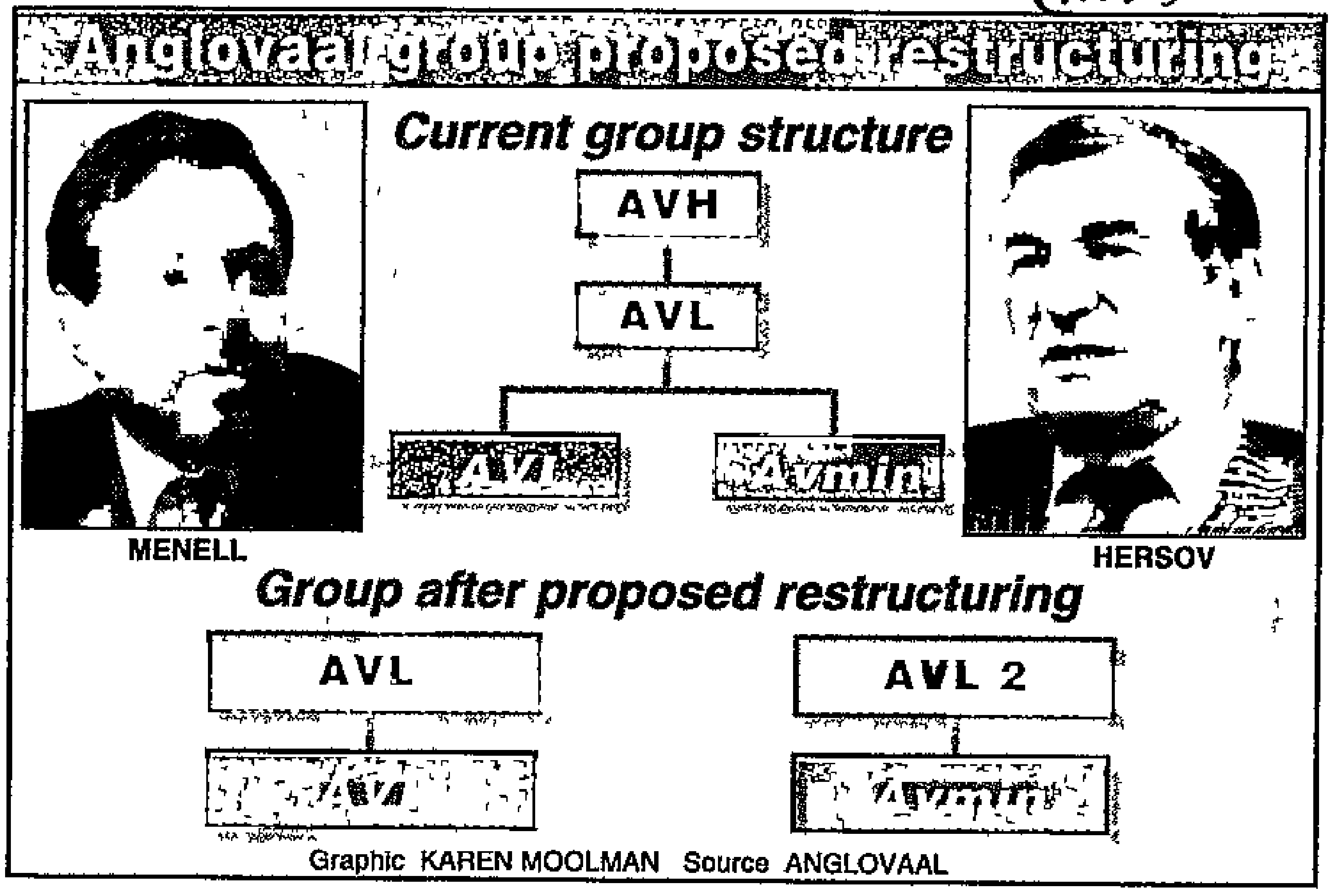
At the end of the three-year period, shareholders may be given the option to flatten the structure further, removing AVL and AVL2 as holding companies and leaving AVI and Avmin as the two main listed entities.

AVL head office will be disbanded with some functions devolved to the underlying operating companies

About 130 people would be retrenched at a cost of about R30m, Hersov said The new structure would allow AVL to unlock value for shareholders and focus on expanding both the industrial and mining arms

One analyst said there should be significant shareholder support for the proposals. It is understood Old Mutual and Sanlam, two of the biggest minority shareholders, have already thrown their support behind the plan. Old Mutual is expected to end up as the biggest single shareholder of the new group

The restructuring was well-received by the market, with AVH shares gaining 16,67% to close at R7.


Anglovaal group proposed restructuring
Current group structure
AVH
AVL
AVI
Avmin
MENELL
HERSOV
Group after proposed restructuring
AVL
AVL 2
AVI
Avmin

Graphic KAREN MOOLMAN Source ANGLOVAAL

Slow pace of privatisation necessary for it to be inclusive, says Mbeki

Robyn Chalmers (272) BD 13/5/98

DEPUTY President Thabo Mbeki deflected criticism of the slow pace of SA's privatisation programme yesterday, saying government was fully committed to the process but it had to be a negotiated undertaking

A report by the Presidential Review Commission recommending that the public enterprises ministry, which oversees privatisation, be scrapped was being assessed by cabinet ministers "No specific decision has yet been taken on any of the recommendations," Mbeki said

At a function where Italy's Aeroporti de Roma handed over an R819m cheque for 20% of the Airports Company, Mbeki said it was important to ensure all stakeholders were on board before a state asset was restructured "We do not want a situation where some parties resist restructuring "

Mbeki, who is also chairman of the interministerial cabinet committee which oversees the privatisation process, said it was wrong to assume that all those state assets targeted for restructuring were well run or were profitable A lot of work was required with some of the parastatals to ensure SA got the best value during privatisation

Among those which have encountered problems during restructuring were holiday resort company Aventura and transport utility Transnet, both of which reported losses last year

Mbeki said the restructuring of Transnet was "highly complex" due to its debt burden and pension fund obligations However, a decision had been taken to corporatise Transnet's various subsidiaries and privatise some, such as Autonet

Transport Minister Mac Maharaj said the choice of Aeroporti de Roma as the Airports Company's equity partner was not "just about money" Govt sought an experienced partner involved in human resource development and skills transfer He said government planned to offer up to 10% of the Airports Company's share capital to empowerment investors at the same price a share paid by Aeroporti de Roma Government's transaction advisers, Deutsche Morgan Grenfell, were helping prepare a prospectus and a road show was planned for next month.

Aeroporti de Roma MD Gaetano Galia said the investment was an important landmark in his company's development as an international operator. "Today's objectives, to privatise and list (the Airports Company) are identical to those pursued by Aeroporti de Roma last year "

Picture: Page 3

ANALYSIS

Low-key plan belies its impact on Anglovaal

The unbundling of Anglovaal will mean the end of one SA's largest family dynasties. But the families still have a lot of work to do in order to return the company to the investment community's good books, writes **Amanda Vermuelen** (332)

BD 13/5/98

ANGLOVAAL chairman Basil Hersov asked analysts this week for congratulations for the group's restructuring strategy, designed in conjunction with merchant bank Morgan Stanley

"We invented the nonvoting share Now we're doing away with it," he said

Hersov was referring to plans to collapse Anglovaal Holdings (AVH) — through which the Hersov and Menell families control the group — into Anglovaal Ltd (AVL) and do away with the five types of listed shares in AVL and AVH At the end of a complex process, Anglovaal will comprise two stand-alone entities in the industrial and mining sectors, with a single class of listed ordinary shares in each company

The key elements of the long-awaited restructuring plan for the beleaguered and convoluted conglomerate will have a fundamental impact on the nature of the Anglovaal group The Menell and Hersov families, which have dominated the company since its inception in the 1930s, will give up control, but only after a maximum of three years

Hersov's low-key presentation to the analysts on Monday belied the importance of this move — not only to the families concerned, but also because the restructuring represents SA's first unbundling of a family-controlled group

Dynastic empires in SA have been tightly controlled by the families, raising questions about corporate governance This week's announcement heralds a new era for Anglovaal It promotes a clearer management focus on the individual mining and industrial companies without the potential conflicts inherent in a family control structure

Anglovaal's controlling families have maintained a firm grip for over half a century and there is a belief that the decision to wait three more years before scaling down their dominance has as much to do with the emotional ties that Hersov has forged with the family company as with economic realities

The official rationale for the cooling down period is to allow the families to continue the value-unlocking process which has been taking place for some time in both the industrial and mining arms, Anglovaal Industries (AVI) and Avmin respectively

MENELL

HERSOV

Recently, both the industrial and the mining businesses have suffered the vagaries of the slow-down in consumer spending, high interest rates and a slide in commodity prices, especially bullion

AVI's food businesses, particularly National Brands, have been among the many victims But Hersov admitted this week that National Brand's problems could not be blamed solely on external factors

He said management did not pay enough attention to sorting out the business — a factor which did not go unnoticed by analysts New management is now in place and AVI said the company was back on track.

Hersov said there was room for the company to trim down further, which could mean a few more disposals were in the pipeline Last year it refocused Consol by selling the tyre, rubber and paper packaging operations, while Grinaker's electronics division was sold to black business

However, analysts said there was little logic in the business mix, citing fishing and construction as being somewhat incongruous in the same company There is also the likelihood of acquisitions at some stage, with Hersov saying that any deals done would enhance rather than diversify the range of companies in AVI New capital would be unnecessary, as AVI had "plenty of cash" at the centre, he said.

AVI is relying heavily on an improvement in gross domestic product in the next three years, coupled with the expected bounty flowing from the demutualisation of Sanlam and Old Mutual, to improve its fortunes It is not expecting manna from heaven, however — costs have been addressed and measures taken to make the company more efficient.

This is also the theme at work in Avmin, which was restructured in 1996 to create a separately listed gold company, Avgold Avmin has a number of underperforming mining assets which prompted it, in the wake of the downturn in commodity prices, to close or downscale some, such as Lorraine and Hartebeesfontein. Fortunately for Avmin, the shining light in this gloomy scenario is Free State gold mine Target

The only problem there, however, is that Avgold must raise close to R1bn to develop this property, which is rated one of the best gold resources on the planet, if not the best. Avgold appears to be jealously protecting Target, rebuffing approaches from the likes of Canadian mining group Placer Dome to enter into a joint venture

Avmin's plan is to reach critical mass to enable it to pursue the type of mining ventures it needs to smooth the effects of sharp downturns in commodity pricing Base metals are top of the list, but thus far it has not made much progress in this area. It narrowly failed in its bid for Consolidated Metallurgical Industries to help beef up its ferrous metals interests already in Associated Manganese and it is still trying to settle on a price, together with its consortium partners, in the privatisation of Zambian copper mines.

Over the next three years, Anglovaal, which has been trading substantially below its net asset value, has to meet the challenge of improving its operating companies and restoring a positive market rating If the Menells and Hersovs fail and when they cede control as planned, Anglovaal may be a prime target for a corporate raider to strip out its best assets

Hersov said the challenge was to make Anglovaal "too expensive" for a successful take-over attempt. But there is also another unknown factor Its two largest shareholders, outside of the families, are Old Mutual and Sanlam, which together own about 30% of the group

Both plan to demutualise and possibly list on the Johannesburg Stock Exchange This will put pressure on them to focus attention on the performance of their investments. If Anglovaal fails to meet expectations, the two families could find themselves facing major shareholders who are then likely to take a more proactive interest in the future of the group

Draft competition bill set to go to Parliament

Nicola Jenvey (23a) BD 13/5/98

RICHARDS BAY — The draft bill for SA's new competition law is to be released in Parliament later this month before being presented countrywide to business in a series of workshops.

However, trade and industry director-general Stef Naudé believed the impasse between business and government over the right for a ministerial intervention into potential mergers and business deals on the grounds of "public interest" would be solved only once one side moved position.

Naudé said at the National Industrial Chamber annual conference yesterday that business saw the minister's right to veto any proposed merger or buy-out without stating the reasons as an open door for political lobbying and bribery. Business remained committed to keeping politics out of the economy

The chamber is the industrial wing of the National African Federated Chamber of Commerce.

Johannesburg advocate Menzi Simelane, who represented government on the panel discussion, said laws were created for the benefit of the people. Government believed it should have the right to intervene "on behalf of the people" should the transaction have a wider social effect which outweighed the competitive elements.

He did not comment on the possibility that this step might provide both business and trade unions with a means to lobby its interests or bribe officials He said that the mechanism was rather "a safety catch" government could not use arbitrarily

Naudé said that when the discussion around SA's competition law policy had been launched in November, government had realised "big business was not necessarily bad business".

Fund plans to empower 300 000 blacks

(232)

BD 13/5/98

Linda Ensor

CAPE TOWN — The National Empowerment Fund plans to create 300 000 investors in the first year of its operation by assisting blacks to participate in privatisation.

The fund, expected to start operations in November, will buy shares in privatised utilities from government at a discount of between 10% and 20% to resell to blacks This will result in greater public participation in the equity market, as happened in the UK where participation rose from about 5% before privatisation to 36%.

Disclosing details of the fund for the first time, members of the interdepartmental steering committee overseeing its establishment told Parliament's standing committee on finance yesterday that it would start out with 10% of Telkom shares, 15% of Sun Air and 10% of the Airports Company Their market value was estimated at R2bn.

Programme director Sango Ntsaluba said government had agreed to allow deferred payments, possibly in the form of lay-bys, to ensure a broader spread of share ownership.

To limit the dangers of fronting and the enrichment of the few which had bedevilled Malaysia's privatisation exercise, a three- to five-year restriction period would be placed on the sale in a secondary market of shares bought by blacks from the fund

Shares could be redeemed during this period only with the fund on presentation of the original share certificate with identification Also, purchasers would have to sign an affidavit that they were not fronting for someone else and, if fronting was discovered, the shares would be forfeited.

Ntsaluba said the National Empowerment Fund Trust would be the holding company under which would fall the Lefa Investment Trust, the Portfolio Management Trust and the Equity Management Trust, with their own board of trustees and own target markets. Alternatively a second tier, the NEF Corporation, could be inserted to interact with the private sector.

The Lefa Trust, an investment trust, would build up a diversified investment portfolio of listed and unlisted shares in restructured parastatals. It would sell affordably priced shares to black individual unitholders.

The Portfolio Management Trust would buy assets in state enterprises from the fund and the private sector and resell them to small black groups such as stokvels or consortiums. It could also buy into the consortiums

The Equity Management Trust would be a venture capital company tasked with fast-tracking the creation of small and medium-sized enterprises. Initially it would have R100m in start-up capital from the IDC and R100m from government HSBC consultant Mxolisi Mbetse said 20% could be set aside for women and 20% for people with disabilities.

To assure it functions effectively, the fund will be exempt from legislation stipulating that state assets can not be disposed of without going out to tender, preventing government from transferring shares to the fund; requiring it to furnish security to the Master of the Supreme Court; and requiring the payment of certain levies

Chance for black investors as parastatals go private

(232) ARG 13/5/98

THABO MABASO
BUSINESS REPORTER

Hundreds of thousands of black South Africans, women and disabled people will soon be offered a stake in Telkom, Sun Air and the Airports Company through the R1-billion National Empowerment Fund.

Sango Ntsaluba, a member of the steering committee appointed by the Government to set up the fund, said the Government had promised to make available to the fund a 5% stake in Telkom, 15% of Sun Air and 10% of the Airports Company.

"The Government has also shown its willingness on the principle of deferred payment for these stakes," Mr Ntsaluba told the parliamentary committee on finance.

The fund is to be launched with R200-million from the Government and the Independent Development Corporation before the end of the year,

Mr Ntsaluba said the fund would control three trusts which would sell the shares. The steering committee estimated the assets of the fund at more than R1-billion and this value would increase as more state parastatals were restructured.

A total of 300 000 investors were expected to get a stake in the privatised state enterprises during the first year of its existence

But Mxolisi Mbetse from financial firm HSBC, who is acting as a consultant to the steering committee, warned that no-one should expect to become an instant millionaire through the scheme "The NEF is not a get rich quick scheme," he said.

He said that the NEF would launch a nationwide marketing campaign soon and it would try to encourage rural communities to invest in the scheme

Government keeps doors open on competition law

(232)

John Dludlu

BD 14/6/98

GOVERNMENT has signalled an intention to be flexible, allowing for the continuation of meetings after the publication of the competition bill to accommodate labour and business concerns on the proposed legislation

This emerged yesterday ahead of a final round of talks today by the leaders of the delegations to the National Economic, Development and Labour Council. Trade and industry department official Zelda van Heerden said government would allow public comment on the bill for 12 weeks, rather than the usual eight, while holding workshops for the public

The cabinet was briefed on the policy review yesterday. The bill would be released next Thursday, a government communications spokesman said

Van Heerden acknowledged there were still minor differences among parties and she said government had indicated its willingness to hold talks with business and labour after the bill's publication

Kenneth Creamer, of the Congress of SA Trade Unions said labour wanted greater protection for workers and for job losses resulting from mergers and acquisitions to be minimised.

He said labour also wanted the proposed law to "deal decisively" with the "historical concentrations (of corporate power) inherited from apartheid".

Creamer said labour also believed government should be given "policy space" or discretion in the new law to advance SA's interests

He said business was setting up a "straw man" in its complaints that the public-interest test would open competition policy to corruption

"We support the spirit of strengthening competition policy as an aspect of an overall industrial policy," he said

Stef Naudé, who led the business delegation, said today's meeting was crucial He, too, acknowledged that there remained some difficulties, but he would not elaborate

Previously business expressed concern about the evaluation of mergers and acquisitions.

Hersovs and Menells are in no hurry to yield control of Anglovaal

ST(BT) 17/5/98 1/89

JULIE WALKER

Looks at a dynasty that decided to bow out graciously

(222) ST(BT) 17/5/98

DONNY Gordon couldn't let go of his baby, Liberty Life, but the heirs of the Anglovaal founders Slip Menell and Joe Hersov have found it in their hearts to relinquish family control of the once great mining and industrial group — albeit not in a rush

This week, Anglovaal announced it would undo the protective holding structure whereby Hersov/Menell wield control over Anglovaal (equity and debentures worth R4 5-billion) with a 51% shareholding in Anglovaal Holdings, market capitalisation of R263-million and participating preference shares of R256-million

There are five classes of shares in the underlying Anglovaal, and the intention is to equalise voting rights and restructure all into one class of equity in Anglovaal (AVL)

The loan stock, trading at only R14 75 in March, is to be redeemed at R32 The Ns get full voting rights, but the controlling stake becomes a class of unlisted, convertible preference stock with special voting rights. When they convert, control is relinquished but until then, the block speaks for 51% of the vote in Anglovaal

Next, the board of AVL will invite more independent directors At present, Anglovaal Holdings lists three Hersovs, two Menells and a Kleynhans A structure will prevail until 2 001 to permit the controlling families to retain control even though the entire deal will be laid to rest by June 1999

Anglovaal will sell, redevelop or redeploy everything other than Anglovaal Industries and Avmin will maximise shareholder value Anglovaal will be split into separate holding companies, AVL (for Anglovaal Industries) and AVL2 for Avmin, each with a single class of shares

The Rosebank head office of 130 will go. Rick Menell will run Avmin from Anglovaal's original offices in Main Street, Johannesburg, and Richard Savage Anglovaal Industries from premises yet to be arranged The Rosebank block will be sold

Basil Hersov, chairman of the group and the most senior of either family, says his biggest regret is that loyal and long-serving staff will no longer have jobs "But I am 100% behind the rest of the process"

He says consultants who participated in the strategic review advised that the current structure was unsuitable for the future That was something he knew and many could have told him for free "We created it, and did what we wanted to do. Family control never stopped the group from growing There was never a financial constraint."

Taking this step only in 1998 seems to be several years too late More than 75% of the value of Anglovaal has been wiped from the JSE since the peak in January 1996 Rick Menell, who came to the group in 1993 after extensive international experience, probably arrived back when the group was already in decline, even if this was not manifest in the share price

"The Anglovaal patient was pretty poorly even then, but Hersov was not very accommodating of young Menell's ideas initially," says one insider

The two presented a more or less united front this week in announcing the dismantling of the families' control They concur that retaining control for three more years is in the interests of all shareholders, although the market finds this a little hard to swallow "They're just hanging in as long as they can," says one securities analyst

Hersov says he will retain his holding in Anglovaal's investments "I am very much looking forward to the increase in shareholder value that this unbundling should bring about. Usually, if the mining arm is down, the industrial contribution has compensated There have been many years when both arms have performed This year both were weak at the same time"

Menell says he will also stay aboard Are they disappointed that only one Hersov and two Menell grandchildren have executive involvement in the group? "More could have led to more confusion," says Hersov

Menell says special commitment is needed and a willingness to work and build Anglovaal "We are all here on merit"

He is running the mining arm in difficult circumstances, not the least being low commodity prices. Menell says Avgold's fund-raising efforts are well received offshore Some R600-million to R700-million is needed to develop the next stage of Target mine Menell believes the bulk can be secured as debt and possibly a small equity-raising exercise He says Avmin's priority is to find, develop and manage high-quality new projects and grow shareholder value

It is expanding production, reducing exploration costs and looking for greater cooperation with junior mining companies

Management urgently needs augmentation at AVI and new appointments have been made

AVI has been largely unable to adapt to the new rules of global competitiveness Packager Consol was delisted because of poor prospects and low share-tradeability Hersov says R800-million has been invested in plant improvements, and unit costs are being reduced The tyre, rubber and paper packaging divisions have been sold

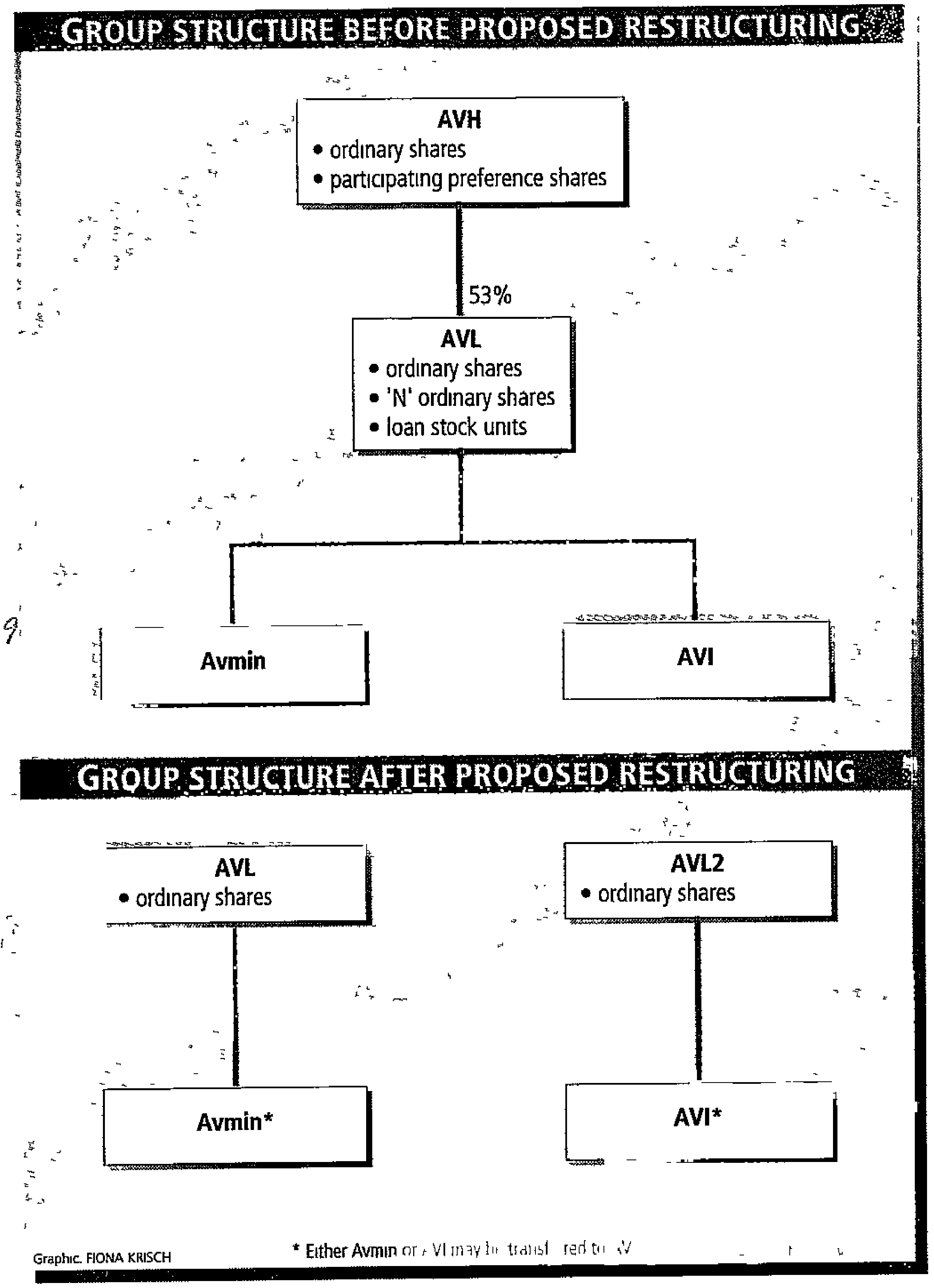
Grinaker has been unbundled, and the electronics division sold to black business and management Food group I&J has entered a joint venture with Simplot Australia. National Brands is focusing on big brands, market share and cost reduction

Hersov could be pleased Anglovaal did not buy Rainbow, the chicken group run so successfully by founder Stan Methven and so poorly by HL&H when Methven sold out and the company listed "We had lunch every year and discussed Anglovaal's purchase of Rainbow Every time we agreed on a price, Stan later rejected it because he thought it must be too low if we were prepared to pay it"

The Frame group is another share Anglovaal was lucky to miss. It is believed the cross-holding between Frame and Conframe was offered at net asset value of R30+ rather than market value of R18 Conframe has been to 40c and is now R9

Anglovaal did have an unprofitable foray into financial services with its investment in Crusader Life and Anglovaal Insurance, from which it walked away and left minority shareholders with a bitter taste and emptier pockets

Even that far back, Anglovaal destroyed the myth that the big daddy would support any dog merely to keep face



GROUP STRUCTURE BEFORE PROPOSED RESTRUCTURING

AVH
- ordinary shares
- participating preference shares

53%

AVL
- ordinary shares
- 'N' ordinary shares
- loan stock units

Avmin

AVI

GROUP STRUCTURE AFTER PROPOSED RESTRUCTURING

AVL
- ordinary shares

AVL2
- ordinary shares

Avmin*

AVI*

* Either Avmin or AVI may be transferred to AV

Graphic FIONA KRISCH

Picture ANDY KATZ

PATRIARCHS . . . Basil Hersov and Rick Menell at the helm until 2001

Business concerned about bill's ability to break up conglomerate

Greta Steyn (232) BD 19/5/98

BUSINESS is concerned about the wording in the new Competition Bill on the circumstances that could trigger the forced break-up of a conglomerate.

The bill, to be published this week, allowed for breaking up conglomerates if they continued abusing their dominant positions after being found guilty of doing so, or when it was regarded as the only solution to end the abuse, business sources said yesterday.

This was one of the issues worrying business after negotiations in the National Economic Development and Labour Council to forge a new competition policy. The negotiations have been completed and the result will be reflected in a report containing labour, business and government's views.

Business representatives said their main concern, however, was over the wide discretionary powers given to the trade and industry minister to decide about mergers and acquisitions. This would create a climate conducive to corruption and lobbying.

Breaking up conglomerates, or forced divestiture, was retained as a policy option. A source said the wording of the bill had come as a bit of a surprise and was somewhat worrying. It allowed for divestiture when it was found to be "the only feasible remedy" for abuse of a dominant position. It failed to set as a prerequisite the continued abuse of a dominant position after having been found guilty.

However, a source said his concerns were tempered by the fact that forced divestiture had to be approved by a special appeal court.

The chief business negotiator, Stef Naudé, said that if it was in the public interest, "the minister can prevent a merger from taking place even after the competition authority has found that it is not harmful to competition." He could also approve a merger vetoed by the authority. "We are totally opposed to this political intervention."

There were four grounds on which the minister could override a decision by the competition authority: the effect of the merger on a particular industry; the effect on employment; the effect on small and medium enterprises' and black business's competitiveness, and international competitiveness.

Naudé warned that unions and business would be tempted to lobby the minister, and that his discretionary power could invite bribes.

Government had argued that the minister might need to act if foreign companies bought SA companies with a view to closing them. However, business felt this should be dealt with in the legislation, not by the minister.

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Business accused of 'unrepentant arrogance'

BD 21/5/98 (232)

John Dludlu

THE Congress of SA Trade Unions (Cosatu) has fired a broadside at business over its stance on competition policy after a partial deal agreed to at the National Economic, Development and Labour Council (Nedlac).

In a statement due for release today, Cosatu accuses business of "unrepentant arrogance about SA's past". It says the position of business on the competition policy shows a "misunderstanding of the challenges our economy faces in the present and future".

The statement comes a day after reports that business is still concerned about ministerial discretion in policing mergers and acquisitions.

It is understood parties to the Nedlac process have agreed to a report recording areas of agreement and disagreement on the competition policy, as well as labour and business reservations about the proposed competition law. Cosatu says business's rejection of a ministerial review power shows its "insensitivity to SA's unemployment problem and their (businessmen's) misunderstanding of the types of mechanisms needed in order to protect SA interests in our engagement with the globalising world economy".

The tone of the labour statement underscores the differences in approach to competition policy and contrasts sharply with the calm mood of the debate at Nedlac to date.

After a Business SA meeting which approved the partial deal, Stef Naudé, the business chief negotiator at Nedlac, felt a response to the labour attack was unnecessary. He said all parties had conducted themselves responsibly during the Nedlac debate. Regarding the Nedlac "report", he said: "We have a vastly improved product" compared with the initial guidelines that formed the basis of the Nedlac talks.

Cosatu openly supports the provisions allowing for forced break-up of conglomerates that abuse their dominant position through high prices or limiting output.

The labour federation has called for this provision to be strengthened so that forced divestiture should be ordered unless the firm accused of abusive conduct is a first offender.

Cosatu says there should be an appropriate remedy for first offenders. It says competition policy should be informed by the need to break up "apartheid-era monopolies and concentrations, built up during a time of systematic exclusion and race privilege".

The labour negotiators at Nedlac have been concerned that the proposed bill makes no adequate provision for job losses which are caused by mergers and acquisitions. Apart from the matter of ministerial discretion, business is also concerned about secondary issues like penalties for abusive conduct.

Trade and Industry Minister Alec Erwin released the new Competition Policy Bill in Pretoria yesterday.

Unions slam business view

(232) Sowetan 22/5/98

By Isaac Moledi and Shadrack Mashalaba

THE Congress of South African Trade Unions rejected with contempt business complaints about the new competition legislation, saying the aim of legislation should be to regulate corporate power

"Business complains that the legislation will too easily trigger the breaking up of large business entities, which abuse their dominance

"Business' rejection of a role for ministerial discretion in the regulation of mergers, reveals both an unrepentant arrogance about South Africa's past and a marked misunderstanding of the challenges which our economy faces in the present and future," Cosatu said yesterday

Its rejection of the business position follows the release of a new Competition Policy Bill by Trade and Industry Minister Alec Erwin yesterday.

The Bill, drafted in consultation with all National Economic Development and Labour Council (Nedlac) social partners, is aimed at promoting and maintaining competition in the country

Erwin said at a press conference in Pretoria that the Bill would address issues of abuse and unfair mergers ,,

"Competition is a crucial dimension of modern economy," Erwin said

Cosatu's statement said the federation supported provisions in the draft law for the forced break-up of conglomerates abusing their dominant position in the market by, for example, charging excessive prices or limiting output or technological development

"Competition policy should be informed by the need to break up apartheid-era monopolies and concentrations, built up during a time of systematic exclusion and race privilege"

The federation said business' rejection of the minister's review powers – which enables the minister to block a merger on the basis of its employment implications or where it is necessary to protect national industry from predatory behaviour – was revealing

"It reveals business' insensitivity to South Africa's unemployment problem and their misunderstanding of the types of mechanisms which are needed to protect South African interests in our engagement with the globalising world economy," Cosatu said

Cosatu noted that even though the new legislation has been a long time coming, there had been a lot of pressure from Government over the past few months for a speedy resolution of issues at Nedlac

'It reveals business' insensitivity to unemployment'

usiness Day

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3374/6

Draft legislation designed to give SA's competition authorities teeth

Greta Steyn (232) BD 22/5/98

TRADE and Industry Minister Alec Erwin unveiled draft legislation yesterday designed to give SA's competition authorities teeth and bring them in line with international practice.

The bill, which was drafted at the same time as negotiations between government, business and labour, takes into account anti-competitive behaviour and size. It contains far-reaching proposals on mergers and acquisitions, including giving the minister the power to override decisions by the competition authority.

The bill provides for the establishment of a competition tribunal, inspectorate and appeal court which will have the status of a high court. The competition tribunal will have the power to impose stiff fines.

The bill says companies with a high turnover must notify the competition tribunal of a merger agreement or the acquisition of a controlling interest. The tribunal can prohibit a merger if it is likely to lessen competition substantially or prevent it altogether.

The bill's most controversial provision is the granting of power to the minister to override a tribunal decision on a merger on the grounds of public interest. He must base his decision on the effect of a merger on a particular industrial sector or region, employment, the ability of small firms or firms controlled by historically disadvantaged people to become competitive and the ability of national industries to compete in international markets. The tribunal, however, will not adjudicate on public interest grounds.

"In providing for limited public interest considerations in the legislation, SA is in keeping with international precedent," the explanatory memorandum to the bill says.

It quotes the World Trade Organisation as saying that competition policy should be linked to broader economic and social objectives.

It said the policy aimed to promote competition to underpin economic efficiency and adaptability, international competitiveness, the market access of small and medium enterprises, the diversification of ownership in favour of members of historically disadvantaged communities and the creation of employment opportunities.

The bill gives the tribunal the power to order companies to sell shares and other assets they have acquired if the merger is prohibited.

It can also order divestiture if a prohibited practice cannot be remedied in terms of the legislation or is effectively a repeat of conduct previously found to be anticompetitive.

Competition Act 'inappropriate, useless'

Erwin bill stamps on collusion

CT (POR) 22/5/98 (232)

Thabo Leshilo
BUSINESS EDITOR

Pretoria — Alec Erwin, the trade and industry minister, published a tough competition bill yesterday to eradicate collusive deals between large companies and the rampant abuse of market dominance by monopolies

Erwin said the competition bill would be enacted into law early next year It enjoys the consensus of government, business and labour in Nedlac

It would replace the Maintenance and Promotion of Competition Act, which Erwin described as "inappropriate and useless" The free trade deal with the European Union, which the government is negotiating, could not be completed under the current law

Acts prohibited by the new bill will include fixing prices, the abuse of market dominance and mergers that are likely to prevent or lessen competition The bill defines dominance as having more than 35 percent of market share

The bill proposes the establishment of a Competition Tribunal with powers to approve mergers, prevent harmful ones, and impose fines and even break up concentrations of power

Erwin said the bill was not an attempt to attack big companies "It is not a bill that deals with size per se. We are not trying to destroy large companies per se," he said

Jayendra Naidoo, the executive director of Nedlac, said "The Nedlac process has produced a modern competition policy which reflects international best practice while still addressing the specific needs of South Africa at this phase of our economic development "

Cleo Mtshali, a representative of the National African Federated Chamber of Commerce and Industry at Nedlac, said "There was great consensus but the discretion given to the minister to veto the competition authority on whether a merger will be allowed or not is a thorn in the flesh of business "

Stephan Malherbe, a member of the Business South Africa negotiating team, said "We feel it is a good bill; the negotiation process was very instructive for all parties We all learnt a lot It was Nedlac at its best "

Cosatu rejected "with contempt" business's complaints

Spokesman Nowetu Mpati said "Competition policy should be informed by the need to break up apartheid-era monopolies and concentrations, built up during a time of systematic exclusion and race privilege "

Erwin said the government would address the misgivings of business and labour during the parliamentary process. "This is a good law, and we are going to make it better."

He said it was naive to expect the government to ignore mergers whose sole aim was to close companies, causing unemployment and harming the economy

He said competition policy was "part and parcel" of economic policy He called it naive of business to expect the government not to intervene and stop "predatory mergers"

The public has until August 14 to make its submissions, after which the bill would be considered by the Cabinet and tabled before parliament this year

Erwin's new competition Bill gets the thumbs-up

(232)

A veto of mergers for reasons of 'public interest' has raised some eyebrows, writes SVEN LUNSCHE

ST(CM)24/5/98

TRADE and Industry Minister Alec Erwin's new Competition Act, released in draft form this week, has generally been well received in business and labour circles

It is a tough but reasonable Bill that was debated at length with business and trade unions over the last six months It puts emphasis on the abuse of corporate size, rather than size itself

However, it risks straying into interventionist territory by granting the ministry powers to veto the go-ahead of a corporate merger by the newly established Competition Tribunal on grounds of "public interest"

Public interest criteria in the Bill include job losses, adverse effects on black advancement, small business or on an industry or region

These are too vague, argue critics, allowing a minister less sensible than Erwin to meddle in what should be a business matter only

Erwin defends the clause "We would be foolish in these times of global economic change to ignore mergers whose sole aim is to close companies and cause massive joblessness," he said

Competition Board chairman Pierre Brooks points out that similar "public interest" vetoes are entrenched in French, German and EU competition policy

Erwin says the review procedure is meant to integrate competition into the government's broader economic and industrial policy It will not override the competition policy findings of the Competition Tribunal

He says he will not merely veto a merger but seek remedies to address the public interest requirements

The SA Chamber of Business on Friday broadly welcomed the Bill but said it would seek clarification on issues such as the ministerial review procedure

Cosatu on the other hand is seeking greater powers for the minister to interfere with business mergers

Changes to the Bill can be implemented only during the parliamentary process leading to its final submission to Parliament Erwin hopes the Bill will be passed before the end of the year

The competition policy aspects of the Bill were widely welcomed on Friday

Competition Board chairman Pierre Brooks says the new Bill replaces an inadequate law and takes SA competition policy a "considerable distance" forward

Brooks says he will leave the Board once the new dispensation is in place

Explaining the main aims of the Bill, Erwin says it provides for "the regulatory and institutional framework that will govern the concentrations of corporate power"

Two institutions will make up the new regulator an inspectorate division and the Competition Tribunal, which will have authority to enforce compliance as well as levy fines up to 10% of a company's annual sales

Erwin says it will be "effectively staffed" The current Competition Board has a mere six professionals, leading to long delays in investigations

The three main areas of business practice to be outlawed by the Bill are

□ Restrictive practices between businesses, or between businesses, their supplier(s) and customers which hinder competition Such practices include price-fixing, collusive tendering, restricting output and investment and market sharing

□ The abuse of a dominant position, which in the Bill is defined as market share of 35% or more The dominance threshold will be reviewed by the minister

Price fixing, or "excessive" pricing, and limiting output are defined as uncompetitive But refusal to allow competitors access to an "essential facility" and impeding entry into a market will also lead to scrutiny by regulators

Sacob says it will seek a clear definition of excessive pricing during the legislative process

In certain instances the tribunal can enforce the break-up of a dominant company, although business has insisted that this should be a measure of last resort only

□ Mergers will also have to be approved by the tribunal The Bill requires a notice period and insists on a rigorous economic analysis before the go-ahead is given A turnover threshold will be provided below which the merger provisions will not apply

Significantly, companies can apply to the tribunal for exemption from the new Act if they can prove that their actions promote exports, help grow small or black-owned businesses or prevent the decline of an industry

CONSULT, CONSULT . . . Alec Erwin's Bill has been debated with interested parties

‘Union undermines service to the people’

Pearl Sebolao ~~[illegible]~~ (222)

THE SA Municipal Workers’ Union’s opposition to the restructuring of service delivery and involvement of the private sector in local government was undermining government’s ability to give better services to the people, Provincial Affairs and Constitutional Development Minister Valli Moosa said

Speaking at the SA Local Government Association’s (Salga) second annual general meeting in Kempton Park at the weekend, Moosa said it was unacceptable for the union to oppose such moves without providing an alternative as to how local government would be able to increase delivery and mobilise resources for this.

BD 25/5/98

Moosa said the recently introduced projects in Nelspruit and Dolphin Coast would improve the municipalities’ capacity to extend services to communities who did not have proper water and sanitation by giving them access to new investment capital.

The projects would, at the same time, bring about efficiency and a better quality of service to residents at a cheaper price.

Government’s responsibility was to the poor, he said, and could not afford to “be held back by any group which simply takes an ideological position regardless of what happens to the poorest of the poor”.

Moosa said unless municipalities were enabled to explore alternative service delivery options, government would not succeed in implementing the reconstruction and development programme in the communities He urged Salga, as an employer organisation, to step in urgently and negotiate a more constructive approach to dealing with labour issues in these matters.

Namaqualanders may get share of Alexkor diamonds

([illegible]) (ABO) X(272)

ARG 26/5/98

POLITICAL CORRESPONDENT

Public Enterprises Minister Stella Sigcau says the Government will retain ownership of the offshore diamond mining parastatal Alexkor until the value of the company becomes clearer.

But it may allow the Namaqualand community to take a small shareholding.

The Government is to call for tenders from mining companies to bid for a management contract to run Alexkor, based in Alexander Bay, in the interim. At the end of the contract, the company will be able to exercise an option to acquire a significant shareholding in Alexkor

The state will continue to hold the mineral rights and will negotiate the mining rights with Alexkor.

In her budget speech to the National Assembly, Ms Sigcau said the privatisation process for Alexkor could not be divorced from the industry policy which would be adopted eventually for the diamond mining sector.

Alexkor had been downsized in the past year as part of its internal transformation.

She said the strategy was to build up economic activity not related to minerals so that the base of Namaqualand's economy could shift from minerals to renewable resources.

cause of the price at which the shares are issued and the upside potential they offer. The attraction is that they offer an advantage that was not there before. Though people must be made aware of the risk, it is important to limit the downside because new investors are always afraid of losing their money."

After an initial boost in the form of a State-sponsored discount, the fund must earn good returns — or, initially, show the potential to do so. It must be able to compete with — and offer potentially superior returns to — established unit trusts and other savings products. It cannot be a warehouse for all government assets, good or bad. Finally, it must have good management and be run by people with investment expertise.

Barnard says one difficulty is that such schemes are, by definition, complex. It is difficult for people with little experience in investment to understand them. "This raises a problem: that the most advantaged of the previously disadvantaged will take up the shares." But Ntsaluba says "this is not a fund for the very rich, there will be maximum investment limits."

Many refinements still have to be made. Ntsaluba warns that the NEF mustn't be regarded as a cure-all for unemployment and poverty. But it is one intervention that could give many South Africans a direct stake in the economy.

Duma Gqubule

COMPETITION POLICY (232) FM 29/5/98

WITH KID GLOVES, NOT A SLEDGEHAMMER

But business still uneasy about powers vested in the Minister

In a policy document published in 1990, when over 80% of shares traded on the JSE were in companies controlled by four powerful shareholders, the ANC pointed to "the extreme concentration of economic power in conglomerate hands".

It was a time when ANC politicians spoke, off the record, of "ripping those conglomerates limb from limb".

Much has changed since then — in the ANC, on the JSE, and in the country. The draft legislation on competition policy published last week recognises this and makes no attempt to carry out the earlier threats.

One of the main reasons is that market concentrations are not what they used to be. According to the *McGregor Index*, in the past three years, Anglo American's share of market capitalisation has dropped from 40,5% to 9,1%, Liberty Life's from 6% to 2,4%, Old Mutual's from 8,9% to 0,9% and Sanlam's from 12,8% to under 1%.

The opportunity to place funds abroad has encouraged investors to diversify geographically, the entry of foreigners has helped dilute former concentrations, and unbundling has taken place for purely commercial reasons.

Moreover, sharply reduced tariffs, in line with the World Trade Organisation, have exposed companies to unprecedented international competition.

For its part, the ANC is no longer a populist movement but a government aware of the dangers of destabilising the economy.

So the draft Competition Bill has unveiled no horrors for corporate SA. Anglo's Michael Spicer, who has "major and minor points of difference", nevertheless describes the draft Bill as "in the mainstream internationally".

The trigger for sanctions against companies will be abuses in the market, says Trade & Industry Minister Alec Erwin, "regardless of size". In other words, size in itself will not be a problem.

Certain agreements between companies,

→

More latitud

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or associations of companies, will be prohibited if they lead to practices such as price fixing or collusive tendering (see box)

However, further restrictions will apply to firms of a certain size that dominate the market The threshold, in terms of annual turnover, will be determined each year by the Minister And dominance is defined as at least 35% of the market or "having market power" A dominant company must not fix prices or limit production

At the same time government accepts that a company competing in the international market needs scale And there will be no move to dismantle existing conglomerates

Business's main disagreement with the proposals is over the discretionary powers the Bill confers on the Minister

Erwin defends these powers — which allow him to overrule the decisions of the Competition Tribunal on proposed mergers — on the grounds that they are narrowly based They will apply only to matters of public interest, defined as the effect of a merger on an industrial sector or a region, on employment, on the ability of small businesses, or businesses controlled or owned by black people, to become competitive, and the ability of industries to compete in international markets

In addition, he points out that the powers are considerably less than those under the existing Act

However, business has its reservations "Discretionary power is not something that exists in the developed world anywhere," says Conrad Strauss, chairman of Standard Bank Investment Corp

Business argues that the proposed draft leaves scope for wide interpretation

"The Bill allows the Minister to stop a merger if it has an effect on an industrial sector which is, of course, exactly what will occur in the normal course of events," says BSA negotiator Stephan Malherbe

Equally, he argues, most mergers have implications for employment as efficient use of resources is often a motive

In effect, says business, these are wide powers and much depends on how the incumbent Minister interprets his brief and whether he makes his decisions in a political or technocratic context

Erwin hopes to see the Bill through parliament before the end of the year And, if it is passed in its present form, it will set to rest most of the fears triggered by the radical rhetoric of those who oppose government from within the tripartite alliance

However, there will be plenty of opportunity for political grandstanding as the Bill is debated Pressures may build up on Erwin to dilute what is potentially an investor-friendly piece of legislation

The integrity of the final draft Bill, like the issue of the Reserve Bank's independence, will be an acid test of government's political will **Ethel Hazelhurst**

BANNED BY THE BILL

Restrictive practices

These include agreements

- to fix prices, directly or indirectly,
- to set production quotas,
- to restrict technical innovation or development,
- which avoid or restrict investment,
- which divide markets by allocating customers, suppliers, territories or specific types of goods or service, and collusive tendering,
- between parties in a vertical relationship (part of the same production and distribution chain) which "prevent or lessen competition in the market – unless any technological, efficiency or other pro-competitive gain outweighs" that effect

An agreement is presumed to exist between two or more firms if one of them owns a substantial holding in another, or they have at least one director in common

Abuse of dominant position

- Dominant means either having 35% of market or "market power"

WHAT TO EXPECT

Complaints will be heard by a Competition Tribunal governed by a Competition Management Board It will work with a Competition Inspectorate

The Tribunal's powers include

- authorising or prohibiting a merger,
- exempting a matter,
- imposing fines of up to 10% of annual turnover
- forcing parties to a merger to sell shares or other assets

Complaints can be initiated by a regulatory authority or a person prejudiced by a prohibited ractice

A Competition Appeal court can review Tribunal decisions Minister has the power to overturn Tribunal decisions on proposed gers where "public interest" can be invoked

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Aventura privatisation hits new obstacle

BD 29/5/98

(232)

Amanda Vermeulen

THE privatisation of resort company Aventura has been thrown into limbo after the interministerial cabinet committee failed yesterday to ratify a recommendation that Kopano Ke Matla, the investment company of trade union federation Cosatu, be named the preferred bidder

The advisers to the public enterprises ministry, merchant bank HSBC, selected Kopano's R88m bid for 100% of Aventura. Its recommendation was put before the cabinet committee yesterday for approval, but ministry spokesman Wandile Zote said no final decision was taken He said no explanation was given and he had not been able to contact Minister Stella Sigcau.

The privatisation of the resort company could be seriously hampered by this, the latest in a series of lengthy delays, as government's time frame for the bids, as set out in the tender process, expires today This could force the state to restart the entire bid process, allowing the five original contenders to submit new bids.

Last week it emerged that two contenders had made it through to the final round — Kopano and the Phalafala Leisure Corporation

Unconfirmed reports yesterday suggested Sigcau had indicated that Kopano and Phalafala should team up to present a combined bid. The two groups held tentative merger talks before submitting their bids 60 days ago which came to nothing Phalafala offered Kopano a stake in a combined bid and the option to buy Aventura resorts which catered for the bottom end of the market Phalafala's R80m plan focused on the middle-income market.

Although it is believed that Kopano and Phalafala are willing to restart negotiations, neither party could be reached for comment.

Members of various participating consortiums yesterday called into question the transparency of the privatisation process and attacked government for the delays despite the urgency of Aventura's financial position Aventura reported a 1997 loss of about R2m and has debt of about R40m

ANALYSIS

Competition bill sidelines consumers

(232)

The long-awaited competition bill does not serve the interests of South African consumers, argues **Saul Klein**

BD 29/6/98

THE long-awaited draft Competition Bill was released by Trade and Industry Minister Alec Erwin last week It was endorsed by participants in the National Economic, Development and Labour Council (Nedlac), expressing positive sentiments about the success of the Nedlac process

While the interests of labour, business and government may have been well-served by the process, I am concerned about the impact of the draft Bill on consumers

In the past, consumers were not well served in this country They paid the price for a lack of business competitiveness and protectionist government policies The new government came to power with a desire to rectify these and other injustices New legislation was promised that would enforce antitrust legislation

The hope was that policies would penalise businesses that acted against the interests of consumers Businesses would be prohibited from engaging in such anti-competitive practices as collusion and price-fixing, and consumers would see their interests put first

I am concerned that the draft bill will not maximise consumer welfare Its objectives are defined too broadly, and include too many considerations that may be incompatible with one another In addition to promoting efficiency and advancing consumer welfare, the bill aims to promote employment and advance social welfare It also encourages a greater spread of ownership, giving special attention to small- and medium-sized enterprises While these noneconomic objectives are valid, they do not belong in competition policy, and should be dealt with elsewhere

The problem with conflicting objectives in the bill is that trade-offs will have to be made I fear that the trade-offs will generally be made against the welfare of consumers, and in favour of more organised interest groups

Under the draft bill, the competition tribunal is responsible for adjudicating complaints, and will have to interpret the impact of any alleged anti-competitive activity

It is certain that those most directly affected by any investigation will make representations to the tribunal Business and labour will have common purpose in arguing the effects on employment, for example, but the voice of the consumer will not be heard

In any likely investigation, the impact of an anti-competitive practice on an individual consumer will be small, despite the fact that the impact on consumers in total will be large Under such circumstances, there is little motivation for individual consumers to argue their case before the tribunal The tribunal is likely to make its findings based on the merits of arguments that it hears, not on those that it does not

In trading off consumer welfare for other objectives, the tribunal will engage in decision-making that is inherently political This is not an appropriate task for an appointed body The task of the tribunal should be to adjudicate facts within a clearly defined and unambiguous context, not in balancing conflicting interests without clear direction as to their priorities

If the social and political objectives of the draft bill are promoted by businesses that compete efficiently, there is no need for special consideration If they are not, supporting them represents a tax on consumers, and reduces the efficient allocation of resources

If consumers want to pay a premium when supporting inefficient enterprises that is their prerogative, but it should not be their responsibility Consumers should not be forced to pay the price of economic restructuring, to pay a premium to assist small business, or to subsidise employment Such interests should be financed out of tax revenue if they are desirable outcomes

Government, business and labour should recognise the reason for their existence is to serve consumers

If government does this job well, it will be re-elected

If business does this job well, it will receive higher profits, and labour should benefit accordingly

Profits and employment are the rewards for good performance, they are not the reasons why business exists

I would recommend that all non-economic criteria be dropped from the Competition Bill, and the policy be returned to its original intent, with the singularly appropriate purpose of maximising consumer welfare To do so has the advantage of promoting economic efficiency and will ensure the global competitiveness of SA business To do otherwise, undermines the foundation of our market economy and disadvantages consumers

□ *Prof Klein is Professor of Marketing and International Business at Wits Business School in Johannesburg*

M+G 29/5 – 4/6/98

Sigcau flouts parliamentary procedure in Aventura bid

(232)

Ann Eveleth

Minister for Public Enterprises Stella Sigcau came under severe criticism this week for "acting beyond her authority" in the sale of tourism parastatal Aventura A senior government official and a member of one of four consortiums expected to lose the bid this week said Sigcau and her privatisation advisers, HSBC Investment Bank, had flouted the system of checks and balances required by legislation governing the parastatal.

Public enterprises adviser Kennedy Memani said he expected an announcement on the preferred bidder on Thursday, following a meeting of the interministerial Cabinet committee on privatisation

Predictions were that the Kopano ke Matla consortium headed by the Congress of South African Trade Unions's investment arm would win Aventura after bidding R88-million, R30-million of which would go to government.

Sources at Shomang Investment Holdings said this flew in the face of earlier reports that Kopano's bid was only R25-million, fuelling suspicions about the bid process

The Shomang source said it had bid a total of R161-million for 85% of the parastatal, with the remaining 15% to be purchased by the National Empowerment Fund This included R100-million to government, R21-million toward the cancellation of Aventura's debt and R40-million for improving the resort chain

A senior government official said Sigcau had flouted the requirements of the Overvaal Resorts Ltd Act of 1993 The Act said that she could only sell shares in Aventura "with the concurrence of the minister of finance and the approval of a resolution of Parliament.

"Parliament is not a rubber-stamp It must apply its mind to the process, to any complaints lodged and to the bids This has not happened, yet they are planning to announce the preferred bidder today [Thursday]," said the official

"The whole process was not done properly. The process of receiving the bids must involve people separate from the people who will adjudicate "

Sigcau had not responded to requests for comment at the time of going to press

State asset sell-off sparks bitter row

Cosatu group buys Aventura

ARG 3/6/98 (232)

PARLIAMENTARY BUREAU

There has been anger and dismay at the Government's handling of its first full privatisation of a state-owned asset – the sale of resorts company Aventura.

The company, which owns low-budget holiday resorts around the country and which has debts of about R22-million, was sold to a Cosatu-led consortium for R93-million even though other bidders, including a black empowerment consortium with significant backing from foreign financial and hotel groups, offered higher amounts

And the sale allegedly went through without State Enterprises Minister Stella Sigcau observing the Overvaal Resorts Act of 1993 which required her to obtain "approval by resolution of Parliament".

No such approval was obtained, say rival bidders for the company, and they and their foreign backers are demanding an explanation

One of the losing bidders, Shomang Investment Holdings, a black empowerment group, offered R100-million for 85% of Aventura's shares.

The winning consortium, led by Kopano Ke Matla, Cosatu's investment company, and a resort company owned by a Danish trade union group, put in a bid of only R93-million for the same number of shares

The Shomang consortium was backed by the Landauer investment company of New York and the Hampshire Hotel and Resorts group, which operates hotels and resorts in the US and Britain and which was committed to providing management expertise and marketing to the South African venture.

Under the Shomang bid, South African empowerment partners would have controlled 57% of the Aventura shares and American investors 43%.

Among Shomang shareholders are the Association for the Physically Disabled, the Umkhonto weSizwe Veterans' Association, the Nelson Mandela Children's Fund and the Katekani Women's Group

Ms Sigcau's office did not respond to requests for comment on the criticism levelled at the bid process, including a request for comment on her apparent failure to obtain approval for the privatisation deal from Parliament.

But in her statement announcing the sale to the Cosatu-led consortium, Ms Sigcau said concerns about the transparency of the bid selection process were unfounded.

"An evaluation committee of representatives of government, Aventura management and our privatisation advisors HSBC Simpson McKie applied the criteria and weightings assigned thereto as determined by the Ventura Restructuring Committee prior to the call for bids," Ms Sigcau said.

Factors such as a competent business plan, economic empowerment, ability to pay the price and willingness to engage in a constructive process, alongside government, on land claims were among the criteria.

"Once the bidders had been ranked, government, as the shareholder, called for certainty with regard to each of the leading proposals This was to ensure that delivery could be achieved."

Vincent Phaahla, chairman of Shomang Investment Holdings, said today his group and its US backers were not satisfied with the selection process and intended taking the matter further.

"We simply cannot see the reasons for the minister's choice, and we do not know why she did not seek a resolution from Parliament as she was required to do," he said

(232) MtG 5-11/6/98

Aventura sale: Sigcau under fire

Ann Eveleth

The highest bidder for resort parastatal Aventura instructed attorneys this week to force Minister of Public Enterprises Stella Sigcau to back down from her decision to choose the buyer before a parliamentary debate on the sale

Parliament's public enterprises portfolio committee this week also accused Sigcau of "pre-empting the activities of Parliament" and misreading the 1993 Act governing the state asset, which requires a "resolution of Parliament" to sanction the decision.

Shomang Investment Holdings, which topped the bids with an offer of R196,8-million for 85% of the resort chain, instructed attorney Muzi Msimang to interdict Sigcau to set aside the selection of Kopano ke Matla, a consortium led by the Congress of South African Trade Unions's investment arm, as the preferred bidder

Sigcau announced on May 29 that Kopano had been selected as the preferred bidder It made an offer of R93 million, R30-million of which would be paid to the government.

Shomang, which offered the government R100-million, claimed the process had not been transparent because Parliament and its portfolio committee had not been consulted While Shomang said this failure alone rendered the selection of Kopano "null and void", the consortium also complained about the constitution of the evaluation committee

Shomang chair Vincent Phaahla could not be reached for comment. But sources inside the consortium said they were unhappy about the role of Sigcau's privatisation advisers, HSBC Investment Bank, in the evaluation process

Shomang's attorneys notified Sigcau of its planned court action on Wednesday The company demanded reasons for Kopano's selection, access to all relevant tender documents and minutes of meetings on the sale, as well as proof that the decision had gained the support of the portfolio committee and a resolution of Parliament.

Sigcau said this week the matter would be sent to Parliament after Kopano completed negotiations with land claimants affecting the resorts. But portfolio committee chair Mandla Msomi said this was insufficient. "We will not simply rubber stamp what the executive has done The Act requires a resolution of Parliament In other words, Parliament must apply its mind It must evaluate the pre-bid criteria, the bidding criteria and the whole process, and come to its own, independent conclusion. Speaker after speaker will have to proclaim on whether the process was transparent."

Msomi said the portfolio committee decided on Monday that the Act "was not read properly by the executive" The committee had sought information from Sigcau's office and the matter would be on the agenda of another meeting next Monday

Other bidders also raised concerns about the selection process this week

Moses Molefe, chair of Boiketlong Investment Consortium, which offered the second highest bid with R160-million, including R45-million for the government, said "The process has not been transparent. We had a perfect vehicle for black empowerment. We brought on board six communities, five of which are land claimants on Aventura land Why are we going out to empower some union group in Denmark instead?"

He was referring to the Dansk Folkeferie, a Danish labour union holiday company which forms part of Kopano's bid, together with the consortium's primary financier, Malaysian tycoon Dato Samsudin's Samrand

The South African National Civic Organisation's New Adventure Investments backed down on its initial R250-million offer due to financing problems But its adjusted bid of R118 million, with R85-million for the government, was the third highest.

New Adventure representative Kalie de Lange said procedural mistakes were "apparent" and the consortium was consulting with other participants to determine future action "The question should be asked if the rush to get everything finalised is worth the loss of R55-million [the difference between New Adventure and Kopano's offers to the government] in external revenue to the state," he said.

The Phalafala Leisure Consortium, whose links to Deputy President Thabo Mbeki's wife, Zanele, raised alarm bells two months ago, emerged as a strong contender in the process, but put forward the lowest bid at R77 million

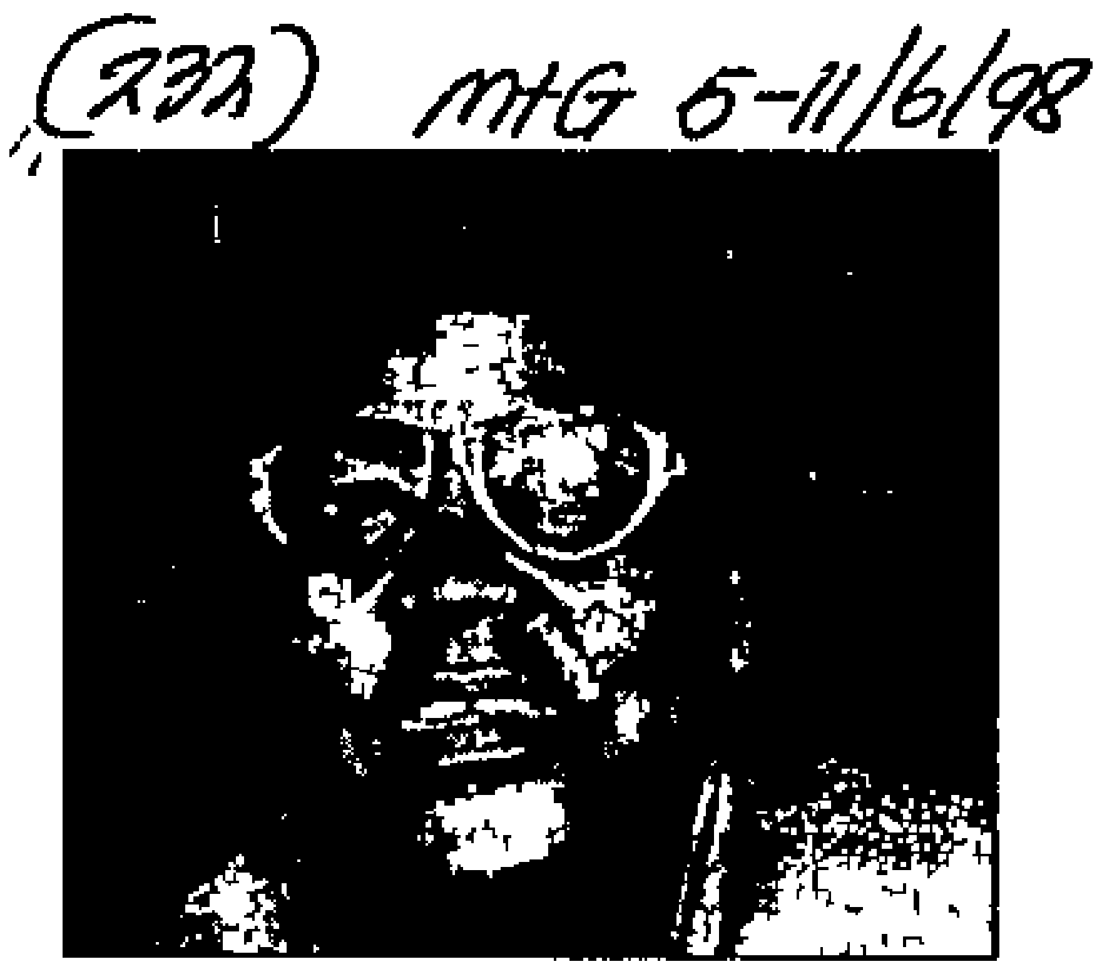
Phalafala representative Andre van Heerden said the process had been "handled shoddily we're not quite satisfied, but we accept that this is the new South Africa"

Kopano's bid was the second lowest But Sigcau stressed this week that price was not the sole selection criterion. Other criteria included the ability to run Aventura effectively; human resource development, proven ability to pay, undertaking to arrive at a workable land claims solution, meaningful economic empowerment of historically disadvantaged communities; and financial standing and market position

Sources inside Shomang, however, claimed their bid was augmented by the 57% share holding it proposed for previously disadvantaged groups, including the Umkhonto weSizwe Veteran's Association, the Nelson Mandela Children's Fund, the Association for the Physically Disabled, the Katekani women's group and Settapart Property Limited, the investment arm of the National Education, Health and Allied Workers' Union.

"Our Native American partners, who were financing 100% of the bid with foreign exchange, are also previously disadvantaged people who have learned how to run successful businesses And we planned to turn one of the loss-making resorts into a skills and social rehabilitation centre," the sources said.

Letters, PAGE 25



Court bid. Stella Sigcau has been accused of not dealing transparently in choosing a buyer for Aventura.
PHOTOGRAPH' RODGER BOSCH

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Competition board wants stricter rules for parastatals

(332)

CT(MN) 9/6/98

ROY COKAYNE

Pretoria — The role of all institutions directly or indirectly controlled by the state needed to be redefined and stricter guidelines drawn up regarding their competition with the private sector, the competition board reiterated in its annual report

The board said in its 1996 annual report "It is becoming increasingly clear that the board cannot adequately resolve complaints of this nature itself because of the inherent constraints of the act"

It added that in certain instances parastatals were acting within their statutory conferred rights when competing with the private sector

"In such instances, a review and even an amendment to the applicable legislation might be required"

During the year under review the competition board had received 11 complaints against the specific activities of parastatals of which nine were finalised

Robust competition will indirectly boost job creation

Competition Bill must ensure accountability

CT(MR)9/6/98 (232)

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town — Public pressure groups and lobbying would play an important role in offsetting the veto powers granted to Alec Erwin, the trade and industry minister, under the proposed Competition Bill, Dave Lewis, a government adviser, said yesterday

Briefing the portfolio committee on trade and industry on the bill, Lewis said the very fact that the minister would have to publicise his reasons for overturning any decision of the proposed competition commission would ensure transparency and accountability.

TRANSPARENT *Trade and Industry Minister Alec Erwin*

The veto power has been singled out as one of the most controversial points in the bill. Lewis said the veto could only be exercised on the public-interest grounds of the effect of the merger on a particular industry or region, on employment, on the ability of small or black-owned forms to become competitive, and on the ability of firms to compete internationally

Lewis said these were "large public-interest matters" that required political decisions which should not be left to the unelected members of the competition authority The minister would issue guidelines on how he intended to deal with public-interest matters, but indicated that both he and the commission would take a medium-to-long-term rather than a short-term view on issues such as the possible effect of mergers or acquisitions on employment.

An underlying philosophy would be that allowing robust competition would, in the medium to long term, spill over "in the form of a more competitive economy and therefore job creation". As a result, "the intention is not to allow for appeals or exemptions simply on the basis that particular jobs have been lost in a particular firm".

The bill provided for certain sanctions, including fines and divestiture rulings, against firms that abused their dominance in the market or engaged in prohibited practices. Lewis admitted that determining some of these could be a "fairly head-cracking" exercise, but they would be dealt with on a case-by-case basis He insisted careful guidelines had been set.

The review of competition policy had been made urgent by the "widespread and deep-seated corporate restructuring in South Africa. This includes the restructuring of state assets as state enterprises begin to participate in markets for the first time," Lewis said

"Also, as our economy is progressively opened up, our trading partners have been keen to ensure that we have a competition policy that accords with established international practice to ensure a level playing field on which our corporations participate in an equal sense with the corporations from other countries "

Battle lines drawn over Eskom

CT (MR) 11/6/98 (232)

FRANK NXUMALO AND THABO LESHILO

Johannesburg — A battle was looming between the government and Cosatu over the corporatisation of Eskom ahead of the matter being discussed by the parliamentary portfolio committee today, the National Union of Metalworkers of South Africa (Numsa) warned yesterday

The union said a delegation from Cosatu was scheduled to meet Stella Sigcau, the public enterprises minister, last night in a last-ditch effort to find common ground before the bill was submitted to the portfolio committee

"Eskom must remain in state hands We are bracing for a major battle with government over this issue

"Numsa rejects privatisation as the single answer to the problems of state assets Our priority is to identify and defend those state assets which are critical for the delivery process of basic services to the poor," said Numsa spokesman Dumisa Ntuli

But Wandile Zote, a spokesman for the ministry, said the bill would be tabled today as planned and expected it to be passed, without hassles, into law this year

"Contrary to what has been said, having Eskom pay a dividend will not have a negative effect on the electrification programme in terms of the reconstruction and development programme, but means more money into the fiscus," said Zote

Ntuli said assets already in state hands should be defended and "if not, they should be nationalised"

He said this meant a strategic withdrawal was possible in areas not critical to basic delivery

Cosatu is concerned that the corporatisation of the public utility will undermine its ability to provide electricity, especially to formerly disadvantaged communities

"Most disturbing is the possibility that the proposed legislation opts for this particular form of corporatisation in order to prepare the way for privatisation," Cosatu says in its submission to parliament

The National Electricity Regulator (NER) said in its submission that corporatisation would not have a negative effect on Eskom's ability to meet its target of electrifying 1,75 million homes by 2000

"The cost and dividend issue is not a cost driver What causes tariffs and costs to go up is the financial structure of the organisation," said Magate Sekonya, the head of the NER

Merger fever gripping SA banking, insurance giants

ARG 11/6/98 (232)

LLEWELLYN JONES
BUSINESS REPORTER

Some are calling it "merger mania".

Like other countries, South Africa's financial services sector is undergoing a radical change as banks and insurances companies sidle up to each other in marriages of convenience, creating "bancassurance" behemoths

Fedsure has bought Norwich Life; Southern Life is to merge with Momentum Life; BOE has merged with NBS-Boland

Market watchers are cooing about the benefits of all these tie-ups.

But who will benefit? Policyholders or shareholders?

The answer should be both. None of the mergers will affect the validity of policies or accounts held with any of these companies And, in time, if managers do their jobs properly, there could be huge cost savings through greater efficiency.

Whether this happens or not, and whether the benefits flow to shareholders, or policyholders or both, remains to be seen.

But all these tie-ups do not come without some pain as the newly merged groups cut back on costs by rationalising and restructuring operations

So far, the companies concerned have been pretty tight-lipped about job losses in areas of business where there is duplication. But the writing is on the wall jobs will be cut and a few plush head offices will have to go

Some of the mergers and takeovers have been on the cards for a long time because some of these groups, such as First National Bank (FNB) and Southern Life, or Standard Bank and Liberty Life, had cross shareholdings (in other words, each owned a stake in the other)

But the ball actually started rolling last year with Cape retail and banking magnate Christo Wiese eyeing the KwaZulu Natal-based NBS as an ideal partner for the Cape's own Boland Bank

Thus began an intricate web of deals which eventually saw Mr Wiese merge his banking interests with the Board of Executors (BOE), creating a R30-billion group hungry for still more acquisitions in banking and insurance

Tangled in this web is the rather sorry story of the rise and fall of Norwich Life

When Mr Wiese joined hands with NBS, Norwich sold its own stake in NBS and forced NBS to sell its stake in Norwich, setting Norwich "free" with no dominant shareholder.

Mr Wiese turned to BOE, his corporate bankers, to help finance the purchase of the NBS shares.

It turned out that Mr Wiese and BOE found they worked well together, and they decided to merge their financial services interests.

Unfortunately for Norwich, African Life – an insurance company in the Real Africa stable – launched a hostile takeover bid, which was fended off with the help of BOE and Johannesburg-based insurance company Fedsure

At first, BOE and Norwich made a fanfare of their tie-up, but in a surprise move last week Fedsure came back on the scene and took control of Norwich.

Next, and to the surprise of some, Anglo American announced in March the merger of its financial services interests (FNB and Southern Life) with Rand Merchant Bank (RMB) and its life insurance company, Momentum Life.

The deal stormed through to create the R59-billion giant, FirstRand, the biggest company on the Johannesburg Stock Exchange.

In terms of the deal, Southern Life and Momentum Life would merge their operations, and some of the banking operations of the two groups would merge, but FNB's network of retail banks would continue to operate as before

Not to be outdone, Standard Bank and Liberty Life announced they, too, were negotiating a merger between the two groups.

With their long-established ties and cross-shareholdings, the marriage promised to be an uncomplicated affair. In the end, it turned out to be more like a divorce.

In spite of the long-standing ties, the two groups could not agree on the respective valuations they placed on each other, and the merger seemed to be all but dead in the water.

Insiders also pointed to a clash of personalities among the boards of directors of the two companies as one reason for the failure to come to an agreement acceptable to both parties.

Liberty has since announced that it is "reviewing" its interest in Standard Bank, and Standard has said that it would sell off its stake in Liberty if Liberty sold its stake in Standard

As far as Sanlam and Absa go, a future tie-up is almost inevitable, once Sanlam's demutualisation is completed.

Sanlam, which already owns 25% of Absa, desperately needs Absa's national banking network to sell its products

In the meantime, Sanlam has merged its asset management operations with those of Genbel Securities in a R7-billion deal.

The merged company will have more than R180-billion in assets under management

Sanlam's rival, Old Mutual, also plans to demutualise and seek a JSE listing

Old Mutual, which already owns 51% of the Nedcor Group, is likely to seek closer and more formal ties with Nedcor in line with international trends.

Big deal: Western Cape banking magnate Christo Wiese

Parliament passes Eskom bill depite labour threats

(292) PD 12/6/98

Linda Ensor
and Reneé Grawitzky

CAPE TOWN — The Congress of SA Trade Unions' (Cosatu's) opposition to the corporatisation of Eskom and its threats of industrial action did little to stop Parliament adopting the Eskom Amendment Bill yesterday

All parties, except the Freedom Front, which saw it as nationalisation, supported the bill, which cleared up an anomaly in the existing legislation.

The passage of the bill could lead to a showdown between government and labour as Cosatu viewed the incorporation of Eskom under the Companies Act as the first step to privatisation.

The dispute declared against government will be referred to the National Economic, Development and Labour Council (Nedlac) for resolution and if that fails, national protest action will be embarked upon

Cosatu lashed out at government and Public Enterprises Minister Stella Sigcau for by-passing Nedlac in the drafting of bill and ignoring the existence of the tripartite alliance The passage of the bill could further strain the alliance

Finance Minister Trevor Manuel was accused of failing to participate in any discussions despite his central role in the process He allegedly handed instructions to Eskom to pay taxes from January 1999.

Sigcau said the bill settled the question of Eskom's ownership. It vested the ownership of Eskom's reserves and other assets valued at R90bn in the state and removed its exemption from the payment of income tax, stamp duty, levies or fees

She said steps had been taken to ensure that Eskom's liability for tax would not disrupt the electrification programme To those who feared job losses and a rise in electricity prices, Sigcau said the government was a people's government which would strive for the improvement in the conditions of the people.

MPs stressed that there had been wide consultation during public hearings on the bill. However, Democratic Party MP Mike Ellis said there was concern among most stakeholders that no study had been undertaken into the effects on pricing and electrification if Eskom paid tax.

National Union of Mineworkers general secretary Gwede Mantashe warned that the passage of the bill through parliament would usher in a long battle if Eskom became privatised. "There will be blood on the floor," he said

Sapa reports that Cosatu deputy secretary general Zwelinzima Vavi said the union had argued that Eskom should be registered under the Public Entities Reporting Act instead of the Company Act

He said that if Nedlac failed to resolve the dispute "we will take action to defend Eskom... The strike is looming."

ELECTRICITY *Eskom 'is ideal black empowerment vehicle'*

(232) ~~(240)~~

Wealth now 'within reach of the people'

Lynda Loxton

PARLIAMENTARY CORRESPONDENT

CT(BR) 12/6/98

Cape Town — The Eskom Amendment Bill was passed by the national assembly yesterday, with Stella Sigcau, the public enterprises minister, emphasising that although Eskom would have to pay tax and dividends under the new act, this would not affect its ability to continue delivering on mass electrification.

Sigcau said the government was committed to ensuring the bill would not lead to job losses or higher electricity costs. Instead, she said, it would ensure that Eskom was competitive on domestic and international markets.

She said the bill marked a "milestone in the transition of Eskom from a commission to a corporatised entity, vesting the ownership of Eskom's reserves and other assets in the state".

Most MPs backed her, adding that the corporatisation of the utility, with assets worth about R90 billion, could provide an ideal black empowerment vehicle through the National Empowerment Fund.

"Power to the people is hollow ... unless it is accompanied by control, management, economic decision-making and the change of ownership of economic resources," said Mandla Msomi, the chairman of the portfolio committee on public enterprises.

"This bill places wealth within the reach of the people"

He rejected Cosatu's claims that the bill should have gone to the Nedlac forum before being considered by parliament.

He said his committee had held extensive public hearings on the bill. Any suggestion that legislators did not realise "the profound effect this bill will have on the industrial development of our land ... (was) spurious."

The only dissenting voice was that of the Freedom Front, with MP Joseph Chiole calling the move outright nationalisation that would place extra financial burdens on the electricity utility, resulting in higher electricity tariffs. This, he said, could have severe implications for marginal gold mines and other large industries

The Democratic Party's Mike Ellis supported the bill but expressed concern that its implementation could be seriously hampered by union action. This, he warned, could cost the nation dearly

Stella Sigcau hails the new Eskom act PHOTO: JOHN WOODROOF

Labour in furore over utility's bill

Frank Nxumalo

LABOUR EDITOR

Johannesburg — Gwede Mantashe, general secretary of NUM, the miners' union, said yesterday there would "be blood on the floor if the state's intention was to privatise Eskom".

Tabling the Eskom Bill was the "biggest change of heart" from the government so far. It would put electricity prices "beyond the reach of the poor", Cosatu, Numsa and NUM said.

Cosatu is in dispute with the government on the issue and will be notifying negotiating forum Nedlac of its intention to embark on a strike

"The state will no longer provide electricity but will regulate or make the laws that govern electricity This we view as the biggest change of heart from government," said Zwelinzima Vavi, Cosatu deputy general secretary

Cosatu will also recommend that a programme of action be developed by its central committee meeting next week.

Mbuyiselo Ngwenda, the Numsa general secretary, said that the government seemed to be saying that by "milking the cow as much as possible" it could pay its debt and "hope the country's problems will be solved".

Labour wanted Eskom's board of directors made accountable to parliament and its reserves and assets to be directly owned by the state

Competition Board to probe AECI deal

BD 15/6/98 (272)

Amanda Vermeulen

THE Competition Board is to launch a formal investigation into Sasol's proposed takeover of chemicals and explosives group AECI from Anglo American Industrial Corporation (Amic).

Board chairman Pierre Brooks said at the weekend that the size of the transaction — roughly R4,6bn — combined with the competition implications and the nature and extent of some of the unsolicited submissions to date, had obliged the board to conduct a formal investigation

Sasol spokesman Alfonso Niemand said the group could make no comment until it had met the board on Wednesday to discuss the investigation. Amic also had no comment.

AECI MD Mike Smith said the news of the investigation was not unexpected, but he could not comment further as AECI still needed to examine the terms of the investigation when it was officially announced Should Sasol get the go-ahead to buy AECI it would control about 70% of the local fertiliser business and about 85% of the explosives industry.

Formal approval for the transaction from the Competition Board within a short timeframe was one of the conditions cited by the AECI board last week when it gave its support for the R30 a share offer made by Sasol to Amic

Brooks said the investigation would be gazetted in about two weeks' time, and the entire process should be completed within three months. The board had been considering the matter for some time, so the investigation was under way in an informal sense.

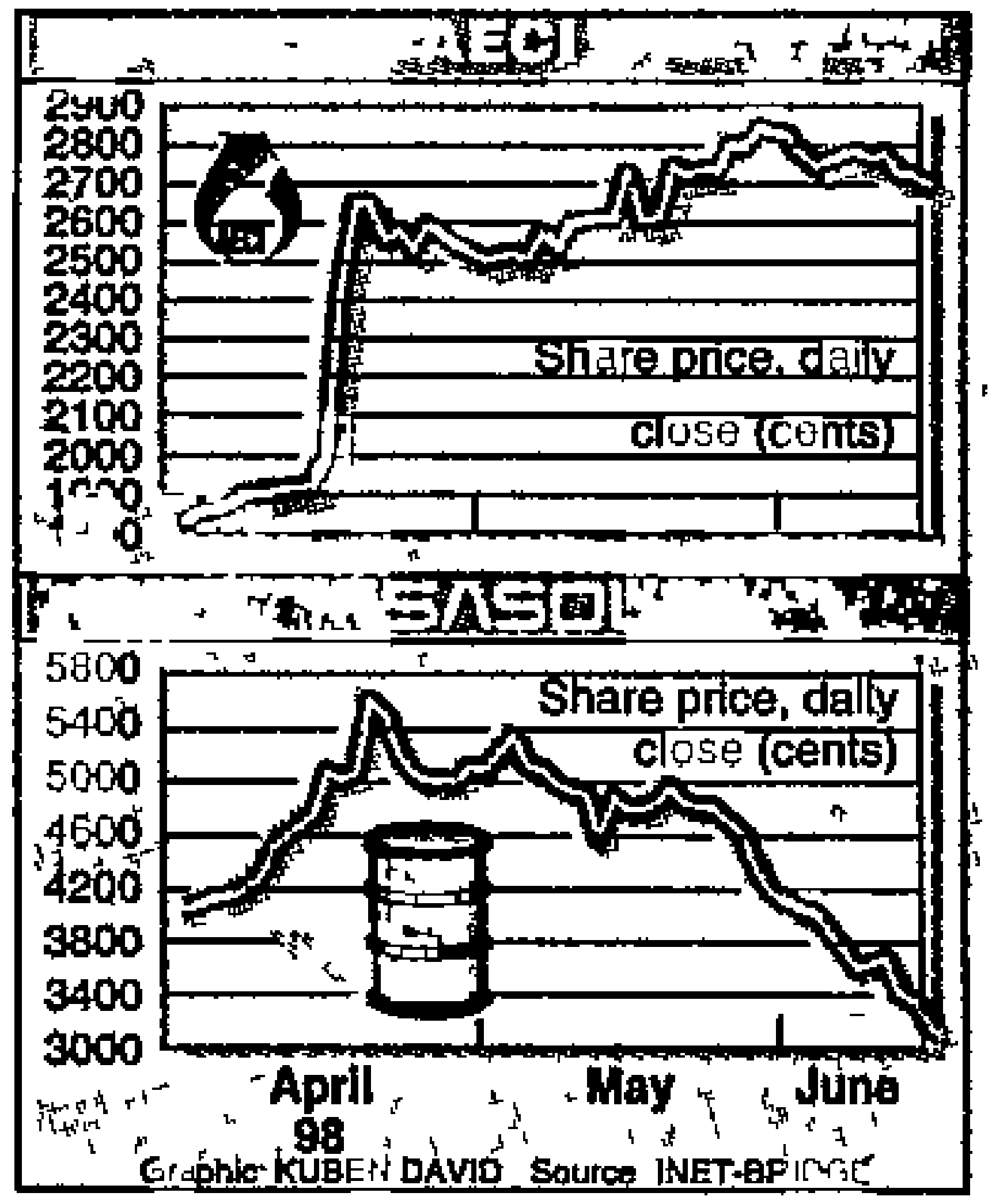
The formal enquiry should be wrapped up by mid-September, but it was "not an everyday, run-of-the-mill transaction". Should the investigation drag on, the AECI board would be allowed to proceed with its own alternative restructuring proposals, independent of the Sasol offer.

A number of parties have already made submissions to the board, including representatives of the mining industry, agriculture, chemical companies and the trade unions

The trade and industry department had also made a submission, a move considered unusual.

Although the contents of the submission has not yet been released, sources said the department had recommended speedy approval of the transaction to avoid further negative effects on AECI's business.

One of the reasons behind the AECI board's conditional support for the Sasol offer was the detrimental effects of the prolonged uncertainty over the deal on its business.



Graphic: KUBEN DAVID Source: INET-BRIDGE

AFRICA

Competition policy making gains in southern Africa

(232) BD 22/6/98

Martin Rushmere
and John Dludlu

HARARE — Governments in southern Africa are moving to clamp down on economic inefficiencies and anti-competitive corporate behaviour, it has emerged

At least two countries in the region, Botswana and Zimbabwe, have announced plans to formulate new competition laws

Botswana has said the competition law under consideration is aimed at maintaining "an open and competitive economy" as well as accelerating the diversification of the economy

The Zimbabwean bill, due out this year, is also expected to curb public sector monopolies The competition law is in line with the broader economic liberalisation plan in Zimbabwe

SA's Trade and Industry Minister Alec Erwin has published a competition bill aimed at improving economic efficiency and stamping out anti-competitive behaviour, such as abuse of dominance

Erwin has invited public comment on the bill, which was negotiated for months at the National Economic, Development and Labour Council

This development is taking place as competition policy gains prominence in the international arena Several European economies are reviewing their competition policies

Meanwhile, one of the oldest cartels in Zimbabwe has finally ended ahead of the proposed bill

The 25-year old cartel of cigarette makers Rothmans and BAT was created in response to sanctions against the former Rhodesia

The cigarette makers were forced to produce their own brands as tighter import controls were imposed by the government because of dwindling foreign exchange earnings and increased defence spending as the guerrilla war against African nationalists intensified.

As the situation degenerated, the cigarette manufacturers could no longer import the high quality packaging for international brands Rothmans and BAT said they would produce and market local brands and share costs and revenues, from which the cartel arose

The introduction of Kingsgate and Madison to replace brands such as Benson & Hedges and Peter Stuyvesant signalled that the economy was suffering in spite of repeated claims by the then ruling Rhodesian Front that it was winning.

At the time the two companies said the arrangement was only temporary, but it continued unaltered after independence in 1980.

This has now ended, and each company will be responsible for making and selling its own products Rothmans, of which Rembrandt indirectly owns 50%, has hinted it might reintroduce the international brands, saying it "is now in a position to fully exploit all of its trademarks and will be introducing new products to reinforce the existing brand portfolio".

CHANGE OF HEART *Sam Shilowa, the general secretary of Cosatu, and Zwelinzima Vavi, the deputy general secretary, at yesterday's central committee congress. They have urged members to adopt a resolution opposing demutualisation* PHOTO JOHN WOODROOF

Cosatu opposed to demutualisation

(232) CT(PR) 23/6/98

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — A four-day conference of Cosatu's central committee is ready to adopt a resolution opposing the demutualisation of financial services companies

This comes in the wake of weekend reports that Old Mutual was seeking a primary listing on the London Stock Exchange (LSE) and a secondary listing on the JSE

Analysts said yesterday there was a danger of the LSE move being interpreted as a political snub to South Africa

Sam Shilowa, the general secretary of Cosatu, said he had initially welcomed the demutualisation process, especially as some of the proceeds had been pledged to set up Umsobomvu, the employment creation fund for the unemployed youth of the country

However, he said the latest developments had made him "rethink" demutualisation He called on the conference to formally adopt a resolution against the process by the end of business on Thursday, because it was facilitating a flight of capital from the country

Shilowa also slammed the Reserve Bank for relaxing exchange controls and defending the rand at all costs

He said the strategy was choking economic growth and preventing the effective creation of jobs

In May the Reserve Bank is believed to have spent between R26 billion and R30 billion in defence of its policy of high interest rates and low inflation, he said

"Imagine what the country could have done with this amount of money had it been put to productive use; on top of this we are sitting with interest rates which are not only high in terms of international norms, but also as high as at least 13 years ago "

He said no credible reason had been given for this course of action except to blame speculators for attacking the rand

"The irony is that speculators borrow their money from the same South African banks It is clear that iron man (Reserve Bank governor Chris) Stals and his private sector governors have no vision beyond defending the rand and inflation."

Privatisation of SAA 'held up by Asian banks'

232

ARG 23/6/98

Hamburg – Asian banks are delaying the partial privatisation of loss-making South African Airways, Transnet managing director Saki Macozoma said today.

He said Transnet, the state transport corporation, would not be able to take on a strategic equity partner before the first quarter of next year.

The banks, which he declined to identify, were blocking the transfer of the airline's debt from owners Transnet Ltd to a corporatised airline company.

"Our original time to finalise a strategic partner was September this year, but there is no way we can make that. Now we hope that, all things being equal, we can finalise the process in the first quarter of next year," he said.

Mr Macozoma was in Hamburg for the annual Europe-South Africa Business and Finance Forum, where he met airline officials and port operators. – Reuters

‘Fast-track’ privatisation of airline to take longer than expected

BD 24/6/98

(232)

Tim Cohen

HAMBURG — Government has delayed the sale of a 49% stake of SAA from October to the first quarter of next year following delays in organising the financial affairs of the Transnet division.

Government had decided to fast-track SAA’s privatisation because of trends in the airline industry and the entity was due to be corporatised last month prior to taking on a strategic equity partner in October

Although government was still fully committed to the process, it had “presented us with some problems”, Public Enterprises Minister Stella Sigcau said yesterday

The date of corporatisation was being delayed until July, although the underlying work would continue unhindered, she said

The delay was caused by, among other things, difficulties in determining the pension requirements to be held by different divisions of Transnet

Transnet had recently completed a trip around the world to discuss its restructuring with its lenders, Sigcau said She denied, though, that the delay had anything to do with the Asian crisis or new management at SAA. The national airliner has just hired a new CE, Coleman Andrews

Due to its strength in thc region and in the domestic market, government believed that SAA would be a “good solid investment” A lot of work was being done to develop and turn the company around into profitability, she said

The sale of a 49% stake would include a proportion for black economic empowerment and for an employers’ stake

Speaking at the Europe-SA forum, Sigcau defended government’s record on the pace of privatisation by saying it was important for government to ensure that it was selling assets in a good position to fend for themselves and that all stake-holders were sufficiently involved

Sigcau went marginally further than government has stated previously when she said the total privatisation of Telkom would take place when Telkom was floated, which would enable the public to buy the remaining equity

In the case of Telkom, government had taken the strategic equity partner route because it was essential to put the company on international best practices footing and this required technological transfer as well as significant recapitalisation

“Government is not in the business of being in business,” she said

Cosatu's privatisation policy leads to heated debate

BD 25/6/98 (232)

Reneé Grawitzky

THERE was heated debate yesterday over the Congress of SA Trade Unions' (Cosatu's) privatisation policy when the National Union of Mineworkers (NUM) accused the federation of attempting to water down its own opposition to privatisation.

NUM's accusation was made at the federation's central committee meeting during a discussion on the adoption of a resolution calling for a moratorium on "wholesale privatisation"

NUM general secretary Gwede Mantashe said the adoption of this clause would "weaken our (Cosatu's) position on previous resolutions" It would create space for the partial privatisation of those sectors previously identified as "strategic sectors" which should not be privatised

Cosatu's leaders rejected the accusation and argued that Cosatu could not agree to privatisation in certain instances if the federation's stated policy was totally opposed to it.

Delegates eventually agreed that this issue would be referred back to Cosatu's resolutions committee to be reformulated.

Lengthy debate also took place over the adoption of a long-awaited policy on union investment companies and the development of a social sector intended to harness "social capital".

Delegates rejected out of hand the Chemical Workers' Industrial Union's proposal to oppose the establishment of union investment companies

One delegate was overheard saying he hoped the policy would also be binding on Cosatu's national office bearers and the federation's investment arm, Kopano ke Matla

Debate on the development of a social sector which would include, among others, union investment companies and co-operatives, led to heated arguments about whether this would lead to the dilution of the federation's "struggle for socialism". Cosatu general-secretary Mbazima Shilowa said empowerment companies would not form part of the social sector.

The committee also adopted a comprehensive trade and industrial policy which focused on industrial development zones, the role of black and small, medium and micro enterprises; cluster studies; pricing of raw materials and the importance of the provision for local content in final products produced.

In a significant move, delegates endorsed the setting up of a southern African Development, Labour and Economic Council which would serve as a forum to negotiate the terms of social and economic policies for the integration of the southern African region.

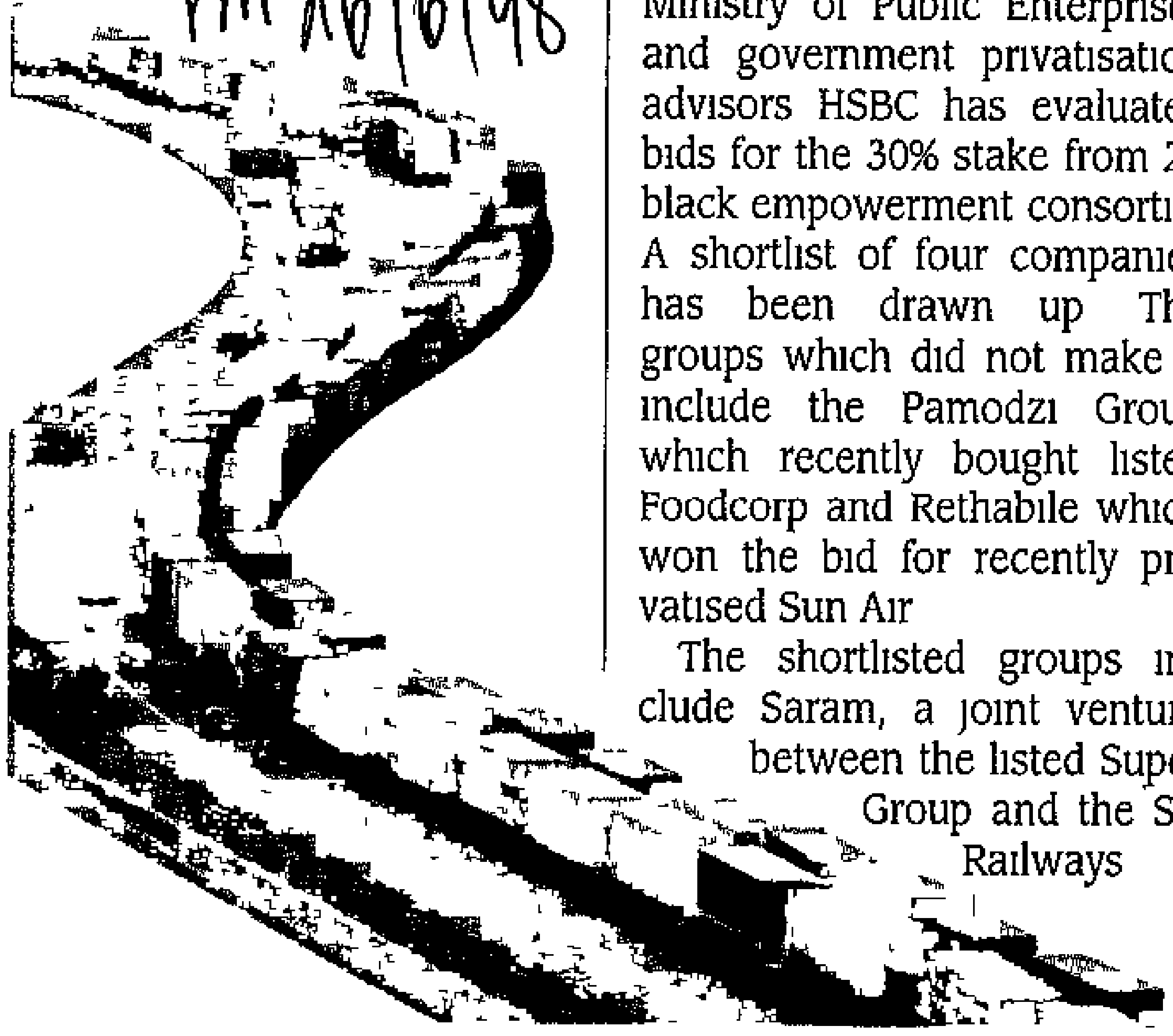
Shilowa warned that the process leading up to the presidential job summit would not be easy. The question of retrenchments in the private sector (as opposed to the public service) was more critical to Cosatu as the federation had no political leverage other than mass power, Shilowa said.

PRIVATISATION (292)

GETTING THE SHOW ON THE ROAD

(269)

FM 26/6/98



The partial privatisation of Transnet will start this month with the planned sale of a 30% stake in fleet management subsidiary Viamax Fleet Solutions to a black empowerment group

Viamax Fleet Solutions is a newly created management company which has been separated from Transnet subsidiary Viamax The company has contracts to manage certain fleets within the Transnet group and plans to eventually offer the full range of fleet services to government departments, public corporations and the private sector

A committee including representatives from Transnet, the Ministry of Public Enterprises and government privatisation advisors HSBC has evaluated bids for the 30% stake from 25 black empowerment consortia A shortlist of four companies has been drawn up The groups which did not make it include the Pamodzi Group which recently bought listed Foodcorp and Rethabile which won the bid for recently privatised Sun Air

The shortlisted groups include Saram, a joint venture between the listed Super Group and the SA Railways & Harbour Workers' Union Investment Company, a consortium including Imperial Holdings, Khaya Car Hire and Khwezi, Alisa, a joint venture between New Africa Investments (Nail) and Hertz, and a consortium including Kunene Motor Holdings and the Tlakula and Foster families

The partial privatisation was expected to be completed in March, but Public Enterprises Minister Stella Sigcau delayed the process She was not happy that Viamax management had gone ahead with the process without following established procedures of taking their privatisation proposals to the National Framework Agreement (NFA) subcommittee and the Interministerial Cabinet Committee (IMCC) which makes final decisions on privatisation The four consortia have conducted a due diligence exercise of Viamax's fleet operations and the winning group is expected to be announced this month However, the deal will be effective from next April, the start of Transnet's financial year, says a source

Duma Gqubule

State ‘should own SA’s mineral rights’

(232) ([illegible]) CT (PR) 30/6/98

ANDI SPICER

MINING AND RESOURCES EDITOR

Johannesburg — Mineral resources were the “common heritage” of all South Africans, and bringing mineral rights back into state ownership would return these to their rightful owners, Penuell Maduna, the minerals and energy minister, said yesterday

South Africa’s system of private ownership of mineral rights was “out of step with the rest of the world”, said a speech written by Maduna but read by Zola Skweyiya, the minister for public services and administration, at the African Mining Summit.

The government is about to release a green paper on mineral rights that will propose the dual ownership regime be replaced, with ownership passing to the government.

Measures would be introduced to discourage the “unproductive holding of prospecting and mining rights, and all prospecting data and information will be submitted to the state unless the prospector retains an interest in prospecting or mining”

The date would then be released to the public, he said.

“No single South African citizen or company can purport to have the exclusive right to own such rights other than the people of this country The state is the most appropriate body to hold these rights for and on behalf of its people.”

As a transitional arrangement to open access to all mineral rights, it was proposed that the right to prospect and mine would vest in the state, Skweyiya said. “This means that the ownership of mineral rights, the decision of who should prospect and mine in a certain area, will be the sole prerogative of the state ”

The change in the minerals regime would be lawful under the constitution because it instructed the state to take legislative and other measures to open up access to South Africa’s natural resources

Maduna stressed that he was aware that the changes could bring disruption. However, he said it would not be done “overnight” but would be gradual and “well organised”.

NEWS

Tribal authorities angry over Aventura

(232) CT(PR) 1/7/98

NCABA HLOPHE

Johannesburg — A showdown was looming between the government and seven tribal authorities in Mpumalanga, whose consortium leader was beaten in the race for the 100 percent stake in Aventura, the state-owned resorts group, it emerged yesterday

The Tribal Authorities Investment Holding Company (TAIHC), representing the authorities who joined forces with the Boiketlong consortium, felt cheated of a business opportunity in a resort their subjects had long supported

"The authorities decided in a meeting last Sunday to meet fire with fire for being sidelined by the government. An elephant will eat another elephant," a TAIHC spokesman said yesterday

However, the group had not decided what action it would take as it was still awaiting an approach from the government

The authorities include the Bantwane, Mbhuleni, Mogane, Mohlala and Manenzhe tribal authorities

The group is also bitter that the authorities' land claims were not being attended to their satisfaction as Kopano ke Matla, the preferred bidder, was negotiating with the two tribal authorities that had filed an interdict at the start of the year

'Kopano could be an ant that would be crushed when two elephants clash'

The deputy-president's office intervened to stop the privatisation from being derailed as the Mashilane and Molotele communities, assisted by the Legal Resources Centre, applied for the interdict against the process

In terms of the court settlement, the preferred bidder was obliged to negotiate for a settlement with these claimants within five weeks of being pronounced the winner of the bid, or the process would be thrown back to court

"Well, Kopano could be an ant that would be crushed as the two elephants clash There would be nothing we could do about that," the spokesman said

Advocate Mehroonishan Sheik of Kopano said two meetings had been held with the representatives of the communities who had submitted valid claims A third session was to take place next week

Louise du Plessis, an attorney at the Legal Resources Centre, said Kopano would negotiate with the claimants who were stipulated in the court order.

"It's up to Kopano to extend the negotiations with surrounding communities, but they are not obliged to Again, the process deals with communities and families, not tribal authorities "

Dikje Gilfillan, the regional land claims commissioner, also said tribal jurisdiction was not a right for the restitution of land.

However, she said there were other claimants, such as the Manenzhe, whose claims had not been fully processed and would need to be attended to by Kopano

Union federation has variety of targets in an intensive campaign

CT (PR) 2/9/98

Cosatu plans series of mass action protests

(232)

Frank Nxumalo
Labour Editor

Johannesburg — Cosatu said yesterday that it would embark on a series of mass actions and campaigns from now until October against the Reserve Bank, the commercial banks, demutualisation, privatisation of local government services and the Eskom Bill, and in support of job creation and preservation, and the forthcoming general elections

It said the "campaign on business" would consist of "marches on Old Mutual and Sanlam to oppose the unilateral demutualisation process they have embarked on, and their use of workers' money to fund it"

The campaign would be extended to "action against the banks and the South African Reserve Bank to protest against their irresponsible handling of interest rates and monetary policy, excessive profiteering and abuse of consumers".

In the weeks leading to the jobs summit, Cosatu said there would be "marches of the employed and unemployed for job creation and in defence of our jobs" that will "culminate in a big march the day of the summit in the region in which it is held.

"These marches in different regions will collect demands of the employed and the unemployed," the federation said, which would be handed to the summit participants

In the action against the Eskom Bill, Cosatu said it would oppose "proposals for corporatisation and taxation, and to defend the public provision of affordable electricity to all.

"Similarly, action will be embarked on against the privatisation of municipal services, and other areas of unilateral privatisation, the proposed deregulation of the liquid fuels sector, and its implications for an effective state-led energy programme, as well as massive job losses," said Nowethu Mpati, the spokesman for Cosatu.

There would also be mass action against pharmaceutical companies which opposed measures to make medicines more affordable

Mpati said preparations for regional congresses to coordinate the planned mass action campaigns had already started.

Taking privatisation one slow step at a time

(222) ST(BT)5/7/98

THINK of Stella Sigcau, Minister of Public Enterprises, and the first thing that comes to mind is privatisation — more precisely, the lack of it

But Nomonde Mapetla, the department's new deputy director-general, begs to differ "We should not be rushed into decisions we may regret in a few years' time," she says

Only two entities have been privatised under Sigcau's ministry since Deputy President Thabo Mbeki first announced government's intention to sell state-owned assets in 1995 — Sun Air and Aventura, the resorts company Two other privatisations, the 30% sale of Telkom to SBC Communications and Telkom Malaysia, and 20% of the Airports Company to Aeroporti de Roma, were handled by the departments of communications and transport

"We should not privatise for the sake of privatising We need to take cognisance of the historical legacies of this country," says Mapetla "Yes, we should steam ahead with privatisation, but there are legacies, such as land claims, which will affect the process These have to be dealt with."

Mapetla is adamant that any sell-off should benefit blacks "Empowerment should not only bring money to the fiscus and improve efficiency, but should also benefit blacks who have been historically disadvantaged," she says

Mapetla's appointment, and those of a few others in the department, come in the wake of the Presidential Review Commission report, which recommended the scrapping of the ministry, along with a few others, and apportioning privatisation to the different line ministries A final decision is yet to be taken by the Cabinet

"We obviously hope the ministry is not closed down, because it has a specific role to play There is a need for a ministry of this type in view of state assets being restructured, and to monitor the post-privatisation process," says the soft-spoken Mapetla

Critics have charged that the line ministries could handle privatisation better than the enterprise ministry itself Mapetla argues that the department is neutral and, therefore, better placed to spearhead privatisation

"A privatisation ministry is not peculiar to South Africa The advantage of this ministry is that we are objective — after all that was our establishing mandate," Mapetla says

Try telling that to Shomang Investment Holdings, the consortium which lost a bid for Aventura, despite putting in what it claims was a higher bid (R196 8-million) than Kopano Ke Matla (R93-million), the Congress of South African Trade Unions-led consortium

It also emerged this week that the Rethabile group, which led a consortium comprising Comair and Co-ordinated Network Investments in acquiring Sun Air, will be divesting its 35 75% interest in the airline, raising fears that black empowerment groups may in future use such acquisitions as get-rich-quick schemes

Mapetla would not be drawn on the impact the Rethabile decision would have on the Sun Air transaction, especially on black business attempts to acquire the family silver The ministry is yet to be officially informed of Rethabile's decision

An economist by training, Mapetla reckons she has a lot to offer in her new position

"As an economist, I believe I am better placed to serve the ministry well But, in addition, I also believe it is the best placed department to truly empower blacks," she says.

Previously, Mapetla founded and headed both Eskom's small business and black empowerment unit

She has also worked for the International Federation of the Red Cross as co-ordinator of its economic projects in the Southern African Development Community region and for a range of other international organisations

Thabo Kobokoane

NOMONDE MAPETLA

▲ TITLE Deputy director-general, Ministry of Public Enterprises

▲ AGE Over 40

▲ EDUCATION St Theresa's High School, Swaziland, BCom, University of Lesotho, MA in Economics, Indiana University, US

▲ QUALITY TIME Tennis, aerobics, reading

Picture LORI WASELCHUK

EASY DOES IT . . . Nomonde Mapetla says black empowerment must be the key to privatisation

PERSONAL VIEW

New Competition Bill could curtail parastatals

(232) CT 8/7/98

ANTHONY NORTON & LISA THORNTON

The new Competition Bill, published for comment in May 1998,is aimed at anti-competitive practices, abuse of dominant positions and mergers and acquisitions It will replace the Maintenance and Promotion of Competition Act of 1979, which is widely regarded as ineffectual in regulating and enforcing competition policy in South Africa:

The question we wish to address is whether the provisions of the proposed legislation are applicable to parastatals, such as Telkom, Eskom and Denel, and, if so, the extent to which the bill will impact on their activities

The provisions of the bill apply to all economic activity in South Africa (save for two exceptions which are germane to the parastatals), and no distinction is drawn between public and private enterprises

Perhaps the most important aspect of the bill with regard to parastatals, are Sections 6 to 9, which pertain to "abuse of a dominant position"

Section 6 provides that firms with a turnover less than a threshold determined by the minister every year, will not be subject to the provisions detailing abuse of a dominant position.

It is a good assumption that the parastatals will exceed the threshold.

Section 7 sets out the criteria for determining if a firm that exceeds the threshold is dominant It provides that a firm is dominant in a market if it either has at least 35 percent of the market and cannot demonstrate that it does not have market power, or has less than 35 percent of that market but has market power.'

Market power is defined in the bill as the power of a firm to control prices, exclude competition or behave, to an appreciable extent, independently of its competitors and customers.

It is another good assumption that the parastatals will be considered dominant under the criteria

If our assumptions are correct, the various prohibitions contained in Section 8 of the bill will be applicable to parastatals These prohibitions include excessive pricing to the detriment of consumers, refusing to give a competitor access to an essential facility when it is economically feasible to do so, and engaging in an exclusionary act.

An exclusionary act includes requiring a supplier or customer not to deal with a competitor, as well as buying up a scarce supply of intermediate goods required by a competitor.

Although it is clear that the parastatals will be subject to the Competition Bill, what is not so clear is the overlapping jurisdiction with regulators, such as the South African Telecommunications Regulatory Authority with regard to Telkom and the Electricity Regulator vis-a-vis Eskom.

The question of overlapping jurisdiction will need to be resolved, as will the extent to which the statutory authority, and statutory monopoly in some cases, of certain parastatals exempts them from provisions of the Competition Bill

Section 45(1)(b) of the bill is of crucial importance to private sector competitors and to consumers. It provides that a person prejudiced by a prohibited practice and having a substantial legal interest in obtaining relief from the prohibition can file a complaint with the Competition Inspectorate. The Competition Inspectorate would then be obliged to launch an investigation of the alleged prohibited practice.

If the inspectorate decides a prohibited practice has been established, it must refer the matter to the Competition Tribunal, which has the authority to order a firm to do something or refrain from doing something. It can also order administrative fines Damages can be claimed in either magistrates or high courts.

In conclusion, the proposed competition legislation could offer the private sector and the public some form of redress against abuses of dominance by parastatals

It may also be the catalyst for moving forward the privatisation of those entities, which many would contend is long overdue.

□ Business Report and Hofmeyr, Herbstein, Gihwala & Cluver are hosting a conference on the new competition law on July 10 in Sandton, Johannesburg For booking details contact· Sonja Duvenage on (011) 286 1205.

FREE MARKETS

Wisdom of Solomon needed in competition law

(232) CT (BR) 15/7/98

ANN CROTTY

For all their public talk of the attraction of free markets, the most desirous condition for any company to operate in is one of dominance.

At the same time that they berate the government for doing something that undermines the working of free markets, many companies are indulging in the sort of activity that will in future be prohibited by vigorous competition law

Anglo American, the largest and most powerful corporate entity in this country and one of the main proponents of the free market, has spent much money and resources creating dominant positions in an unwieldy range of markets

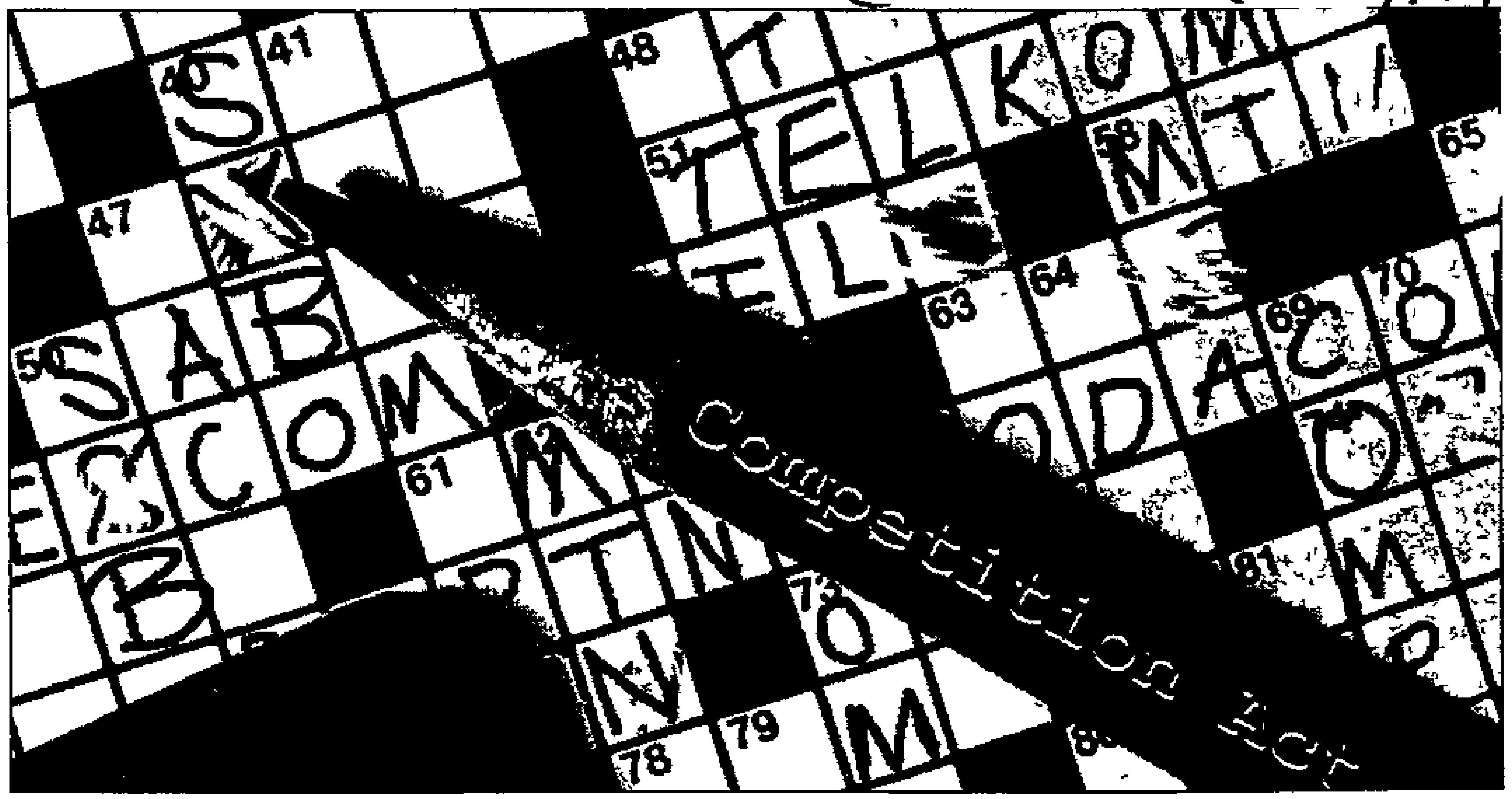
De Beers and its associate, the Central Selling Organisation, invest billions of dollars each year in controlling the supply of diamonds to consumers

Indeed, it goes one step further. By restricting the supply, it also perpetuates an artificial demand for diamonds And SAB has been known to indulge in some imaginative schemes to protect its position as "temporary sole supplier" of beer in this country

Having enjoyed duopoly status for a few years, which has allowed them to provide remarkably similarly priced services, MTN and Vodacom, the cellular network groups, are now aggressively lobbying against a third licence

Then there is the uncertain matter of the parastatals. Uncertain because at this early stage it is unclear to what extent the new competition legislation will apply to them.

At present, the Telecommunication Act and the Eskom Amendment Bill ensure that no matter how good or bad Telkom and Eskom are in delivering their services to the consumer, and therefore no matter how abusive they are with their monopoly position, they are protected against competition.



Look around. There are examples of market dominance wherever one looks in the South African economy

At a recent seminar on the Competition Bill, Anthony Norton of law firm Hofmeyr Herbstein Gihwala & Cluver, identified 12 industries in which a single firm commands at least 35 percent of market share.

These are carbonated soft drinks, beer, fertiliser, explosives, diamonds, steel, electricity, cell phones, cinema exhibition, cinema distribution, railways and satellite television This list is probably the tip of the iceberg In terms of the bill, a firm is regarded as dominant if it controls at least 35 percent of its market.

Look further. There are examples of market dominance wherever one looks in most economies.

It seems that one of the basic driving forces of a corporate executive anywhere in the world is destroying the competition and creating a dominant market position.

In an attempt to curb the negative effects of these basic instincts, most developed economies have some form of competition legislation. Some countries are more vigorous than others

If De Beers' executives enter the US, they risk being arrested for contravention of the US antitrust legislation, although South African analysts reckon this is more a reflection of vested interests at work in the US than a vigorous enforcement of competition legislation.

The big question is when is market dominance destructive to the overall good of the economy? And possibly more important who should determine the answer?

In the uncertain months before this year's implementation of the new Competition Act, one thing is certain. if it is strictly enforced, legislation based on the Competition Bill could bring corporate South Africa to a grinding halt.

Then there are the parastatals.

"No distinction is drawn in the bill between public and private enterprises. Accordingly, one should assume that the provisions of the bill will apply equally to private and state controlled entities," Norton said.

He added. "There are no specific clauses in the bill providing that parastatals are to be exempt from the proposed competition legislation. Accordingly, it is evident that failing any amendments to the bill, the proposed competition legislation will be applicable to state-controlled institutions"

David Lewis, a senior adviser to the department of trade and industry who was involved in drawing up the legislation, was keen to stress the preferential legal position enjoyed by regulatory authorities in the case of parastatals.

He had little doubt that such authorities and specific legislation such as the Telecommunication Act and the Eskom Bill superseded the authority of the Competition Act.

But Norton was not persuaded, and suggested that given what was at stake, there could be considerable legislation regarding the market dominance enjoyed by parastatals.

It would be difficult for the government to enforce vigorous competition in the private sector while at the same time cosseting inefficient parastatal operations. A compromise was likely to allow dominance for a limited period, such as that provided by the Telecommunication Act.

This would appeal to the trade union movement, which is keen to ensure the provision of essential services to the broader community

On a related matter, the prospect of vigorous implementation of competition legislation and the need to ensure open access to "essential facilities" would seem to have serious implications for the government's privatisation programme. A Portnet without statutory backing of its monopoly position would be considerably less attractive than a Portnet with that backing

To be effective the authorities will need the wisdom of Solomon to steer through the reams of arguments that will be presented by various parties with vested interests. They will have to balance the danger of deterring investment with the need to promote vigorous competition.

Breaking up companies that provide services or goods competitively merely because they are large and a so-called black company will benefit, is unlikely to be much use to South Africa. But similarly, Anglo might be much more competitive now if it had been prevented from establishing dominant positions in such a wide spread of markets.

Helping hand agenda slows down state sales

(232)

ST (BT) 19/7/98

DO PRIVATISATION and black empowerment make for good bedfellows? This is a question being increasingly asked as the government's four-year-old privatisation policy has produced a mixed bag of results

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There is little doubt that empowerment is the main priority in Sigcau's privatisation drive, a point recently emphasised by her new deputy director-general, Nomonde Mapetla "Privatisation should not only bring money to the fiscus and improve efficiencies, but should also benefit blacks, who have been historically disadvantaged"

In line with this philosophy Sigcau has bent over backwards to accommodate the trade unions, whom she has to consult before proceeding with any sale of public assets If nothing else, it certainly made a mess of privatisation timetables

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The Telkom and Acsa sales have their critics, particularly in view of Telkom's continued monopoly, but the processes have been lauded for their speed, transparency and fairness.

Deutsche Morgan Grenfell's Martin Kingston, who advised Acsa, believes the success was attributable to "a clearly designed process that set out objectives backed by management, government and labour Much of the credit has to go to the management style of the Transport Department," he says

There is a compelling case to be made for handing the responsibilities of privatisation to the line ministries Their primary concern is one of achieving an efficient, profitable and customer orientated company and the ministries will seek to find strategic equity partners that can add management, technical and financial value

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All this would not have been possible without the expertise of SBC and Telecom Malaysia, which are well aware that when Telkom's monopoly ends in less than five years time the utility needs to be ready for competition in the lucrative business market

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However, the black-owned consortia remain mostly passive shareholders with control firmly vested with management and their overseas equity partners

"It is government policy to broaden black ownership of the economy and it makes sense But the first priority of any privatisation has to be commercial and financial success Only this will ensure long-term benefits to the company, its staff and customers," says Pieter van Huysteen of PricewaterhouseCoopers

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SO FAR the government has had only to deal with the relatively soft privatisation targets of Sun Air, Aventura and the Airports Company

The task ahead is a daunting one as the complexity of the upcoming state enterprise sales are likely to test the already stretched resources of the Department of Public Enterprises

Here is a brief sketch of some of the key privatisations on Stella Sigcau's "To Do" list

Transnet. The transport giant is close to resolving the funding of its R12-billion pension and medical aid deficit through a special funding vehicle housed in a separate legal entity that will not affect the group's operational results This will take the debt off Transnet's books and relieve it of annual payments totalling R1 4-billion

Sigcau has promised the sale of Autonet and SAA by the end of the year Transnet has ruled out the sale of its largest division, Spoornet, as well as Portnet and Petronet, but is likely to sell off smaller divisions such as loss-making PX, rolling-stock manufacturer Transwerk and fleet management subsidiary Viamax.

Eskom: Eskom, SA's largest public sector company, was recently transformed by law into a commercial company that has to pay dividends and taxes for the first time The details still have to be worked out with the Finance Department, but it is inevitable that it will have an impact on Eskom's electrification programme as well as its ability to keep prices low

Denel: After three years of dithering, Sigcau earlier this year finally gave the go-ahead for an internal restructuring exercise to take place at the diversified arms manufacturer The company has many non-core operations which could easily be sold off but to date only a minority stake in Sybase SA has been privatised The proposed sale of IT arm Ariel was put on hold earlier this year amid plans to restructure Denel around two core operations, IT and defence

Alexkor: The mining company, which operates onshore and offshore around Oranjemund, has been run to the ground by mismanagement, theft and Sigcau's indecision about future ownership structures Its privatisation is inevitable, but it will require input from rival diamond operators to put the group back on track. Trans-Hex, Benguela Concessions, Ocean Diamond Mining and Namibian Minerals Corporation have all expressed an interest in acquiring Alexkor.

Safcol: Another parastatal whose value has been adversely affected by government's indecisiveness. Earlier this year the government put up 100% of the company for sale and asked interested parties to make proposals The options are to acquire the company in its entirety, or to make separate offers for its forests and its sawmilling operations.

Over the past 12 months SA's privatisation process has taken some significant steps forward, but the bulk of the country's parastatals remain in public-sector hands. SVEN LUNSCHE looks at what has been done and the long road ahead

Red tape and dogma cost SA dearly

ST (BT) 19/7/98 (233)

AFTER the 1999 election the complete history of Stella Sigcau's Ministry of Public Enterprises could well be written The Presidential Review Commission has recommended that her department be scrapped next year, a proposal being considered by Cabinet

The history would be brief — a mere five years — and it would be one that is short on real achievement

But it is a history that would illustrate the dilemma faced by the ANC government as it attempts to match the demands of a modern globally-orientated economy with its inherent scepticism of the free market

Sigcau has tried to match the two but, by and large, she has failed Having put black empowerment at the centre of privatisation, her attempts at social engineering have often condemned the sale of a parastatal to failure

To date, six sales have raised well over R7-billion (see chart)

However the three largest — Telkom, Airports Company and six SABC radio stations — have been conducted by the Departments of Communications and Transport

The three falling under Sigcau's aegis — Aventura, Sun Air and Denel subsidiary Sybase SA — have been plagued by controversy

More worrying is the long list of companies whose privatisations have dragged on interminably

SAA, Autonet, Alexkor and the SA Forestry Company (Safcol) were due to be sold this year but more delays can be expected as the elections dampen the government's appetite for privatisation

If government implements the findings of the Presidential Commission Sigcau will not even be tasked with the big-ticket items on the privatisation and restructuring schedule — Transnet, Eskom and Denel

Some of the delays in the privatisation process have been necessary Sigcau has achieved a measure of success in getting various stakeholders to buy into the process A regulatory framework had to be established in many sectors before privatisation could even be considered

This has been achieved in telecommunications and transport and is being considered by the electricity industry

Yet the majority of the delays were avoidable By bending over backwards to the trade unions, Sigcau has delayed crucial decisions on a number of issues The delays have cost Safcol, Alexkor and SAA, in particular, dearly

Foreign investors are beginning to lose heart with the "interventionist" approach adopted by the SA government

Writing recently in the Financial Mail, Andrew Couch, of the UK-based Guiness Flight Global Privatisation Fund, was asked if he looked at investing in privatising SA firms "We don't like the SA market because the framework is not attractive

"It is not that different from France which was reluctant to let its corporations shed jobs to improve shareholder value," Couch says

In contrast to SA, its neighbours have adopted a far more laissez-faire approach, by selling as much as they can without setting any major conditions This approach has attracted investors from Europe, the Far East and SA

In SA, on the other hand, investors have to find black empowerment partners, reach agreement with the unions, support affirmative action, in many cases live with the government as a minority partner and they are limited in their ability to shed jobs

The National Party spokesman on public enterprises, MP John Gogotya, says the temptation of the ANC government "will always be to continue the control of various business activities that should be left to the private sector"

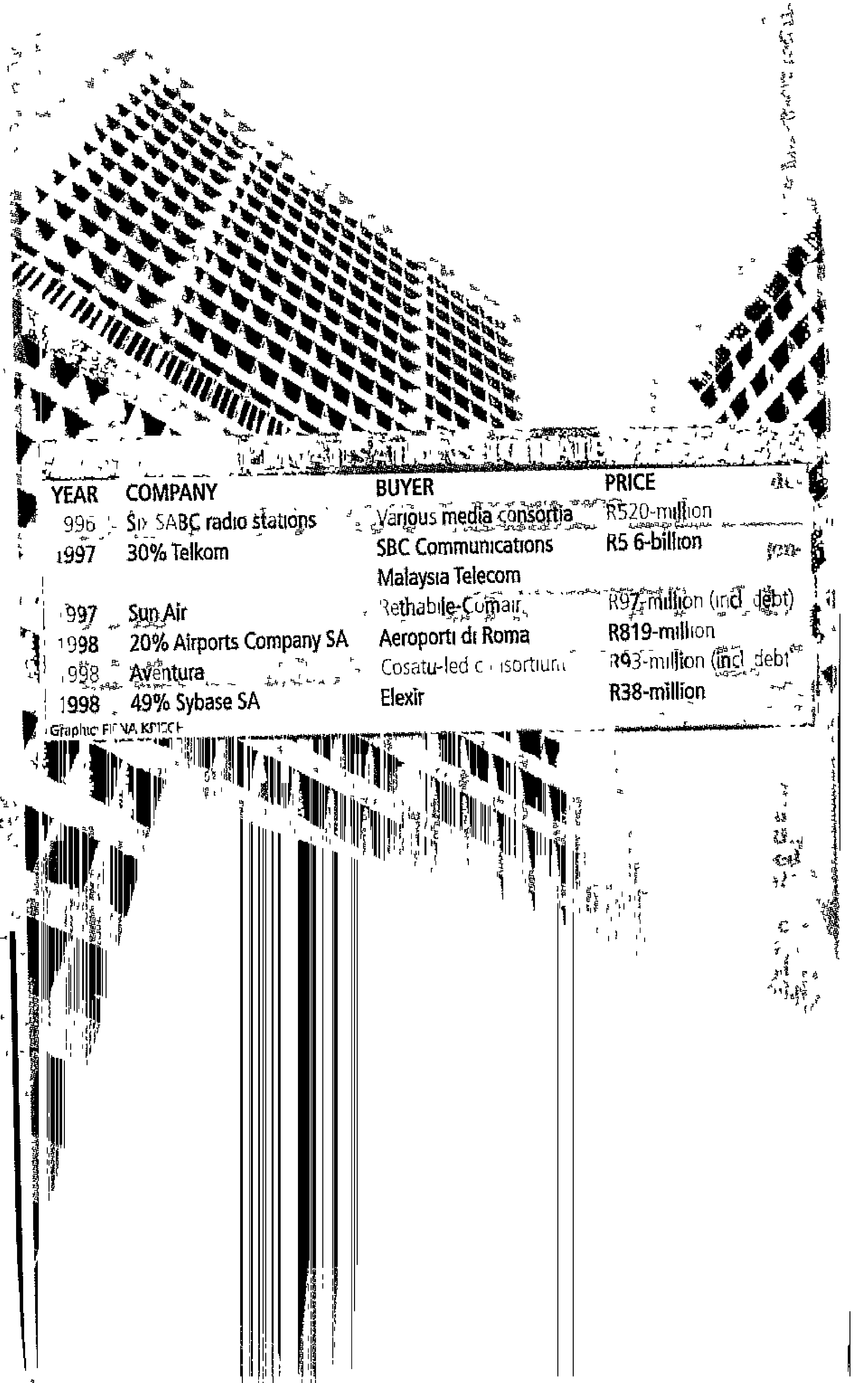
During its 45 years in power the NP did not exactly push privatisation but the criticism has some merit

Sigcau argues that she wants a slow pace to restructure state enterprises and thus extract maximum value

But she has had four years to do that job and, in the main, has not achieved that In the current economic crisis an accelerated privatisation programme could be a major ingredient to restore long-term investor confidence and undercut the speculators.

Not only is such a move highly symbolic, it has a great measure of fiscal benefits by improving the flow to the fiscus and reduce dependence on short-term capital flows

However, Sigcau's history to date suggests that such common sense will not prevail as government appears intent on following its own privatisation course



YEAR	COMPANY	BUYER	PRICE
1996	Six SABC radio stations	Various media consortia	R520-million
1997	30% Telkom	SBC Communications Malaysia Telecom	R5 6-billion
1997	Sun Air	Rethabile-Comair	R97-million (incl debt)
1998	20% Airports Company SA	Aeroporti di Roma	R819-million
1998	Aventura	Cosatu-led consortium	R93-million (incl debt
1998	49% Sybase SA	Elexir	R38-million

Graphic FIONA KRISCH

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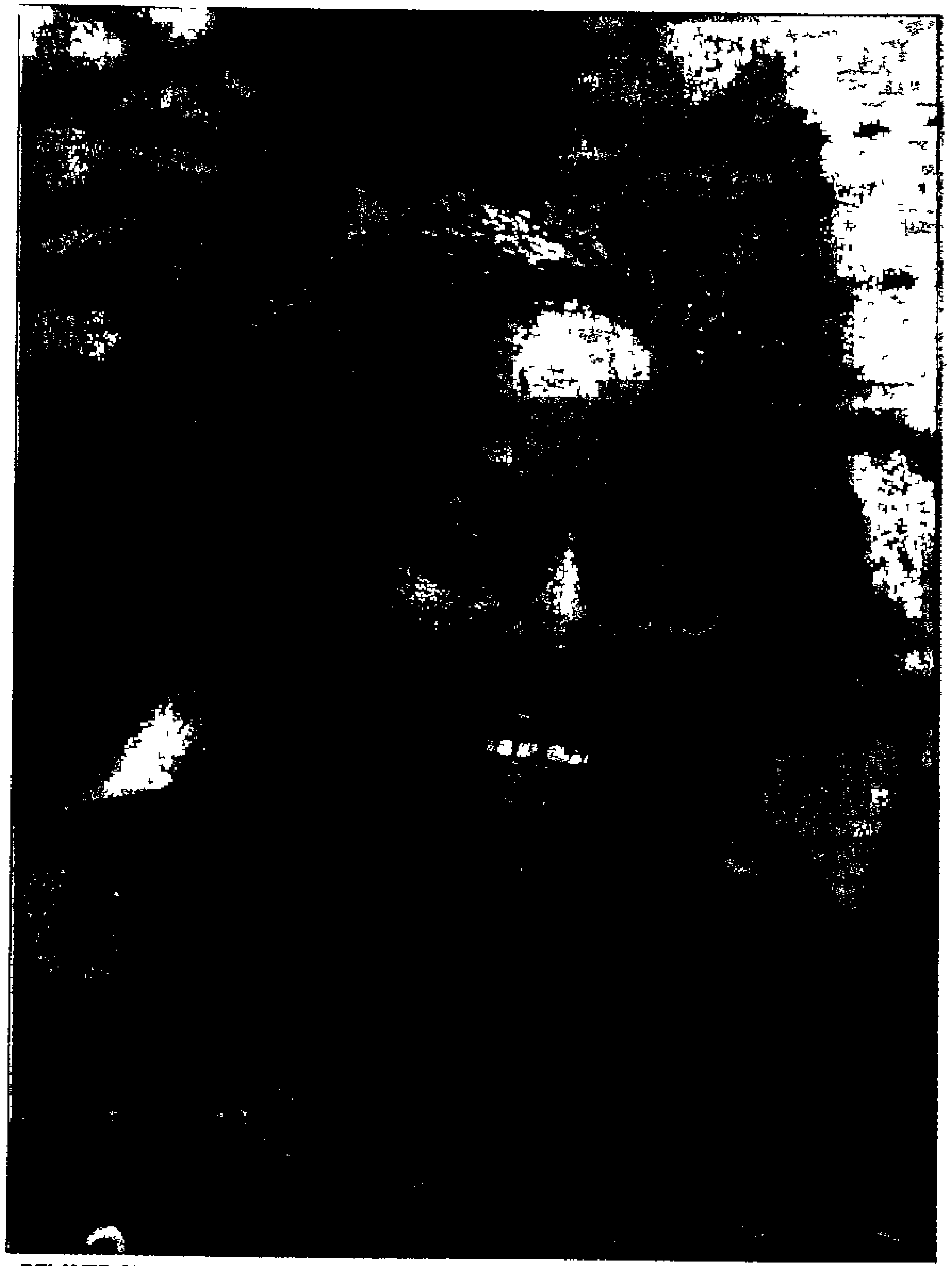

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Joint body to look at demutualisation

Reneé Grawitzky BD 21/7/98 (232)

OLD Mutual and the Congress of SA Trade Unions (Cosatu) agreed yesterday to set up a joint subcommittee to investigate the implications of demutualisation, a union source said.

This emerged during a meeting involving the senior leadership of Cosatu and an Old Mutual delegation led by MD Gerhard van Niekerk to discuss the federation's growing opposition to the demutualisation process

Cosatu and Old Mutual remained tight lipped about the outcome of the meeting which occurred ahead of the parliamentary debate this week on the demutualisation bill.

Old Mutual spokesman Stephen Bowey confirmed that the meeting had taken place, but refused to divulge any details save to say it "formed part of the ongoing relationship with Cosatu"

Old Mutual said the meeting was "constructive" and that a range of issues had been discussed, including demutualisation Union sources said, however, that the parties were unable to agree on the concept of demutualisation and had therefore agreed to set up a joint subcommittee, which would meet next week.

The move occurs in the wake of a decision by the federation's central committee meeting last month to challenge the demutualisation process.

The central committee meeting coincided with reports that Old Mutual planned to make its primary listing on the London Stock Exchange, not in SA, when it demutualises next year.

In the wake of this report, Cosatu general secretary Mbhazima Shilowa urged delegates to adopt a resolution rejecting demutualisation if it would lead to capital flight out of the country.

SHILOWA

Record highs

Continued from Page 1

acerbates the volatility until a point is reached where people start pulling back It looks like the bond market has entered that phase now," said Nedcor Investment Bank treasury director Peter Lane.

Bond yields traded in a wide range yesterday but volumes were thin.

The yield on the benchmark bond R150 ended the day at 16,21% from a worst level of 16,70% and a close on Friday of 16,45%.

Reserve Bank figures showed that total transactions in the currency market soared to $8,9bn in May — when the currency crisis started — from less than $4bn in January

The rand started the day badly yesterday, but recovered enough to end the day stronger than Friday's closing level. The rand reached a weakest level of R6,47 to the dollar from Friday's close of R6,3498. But profit-taking pushed the embattled currency back to close at R6,28.

COMPETITION BILL

Beefier monopoly laws may silence the cynics

ET (MR) 22/7/98 (232)

ANN CROTTY

The initial period in the life of the new competition legislation will be extremely important in determining its long-term efficacy At present there seems a pervasive sense of cynicism about the ability or commitment of the government to enforce vigorous competition legislation — a cynicism that feeds off an environment that proliferates with dominant firms

For the parties tasked with enforcement of the proposed new legislation, which should be in place by the end of the year, the good news is that they appear to have considerably stronger legislative backing

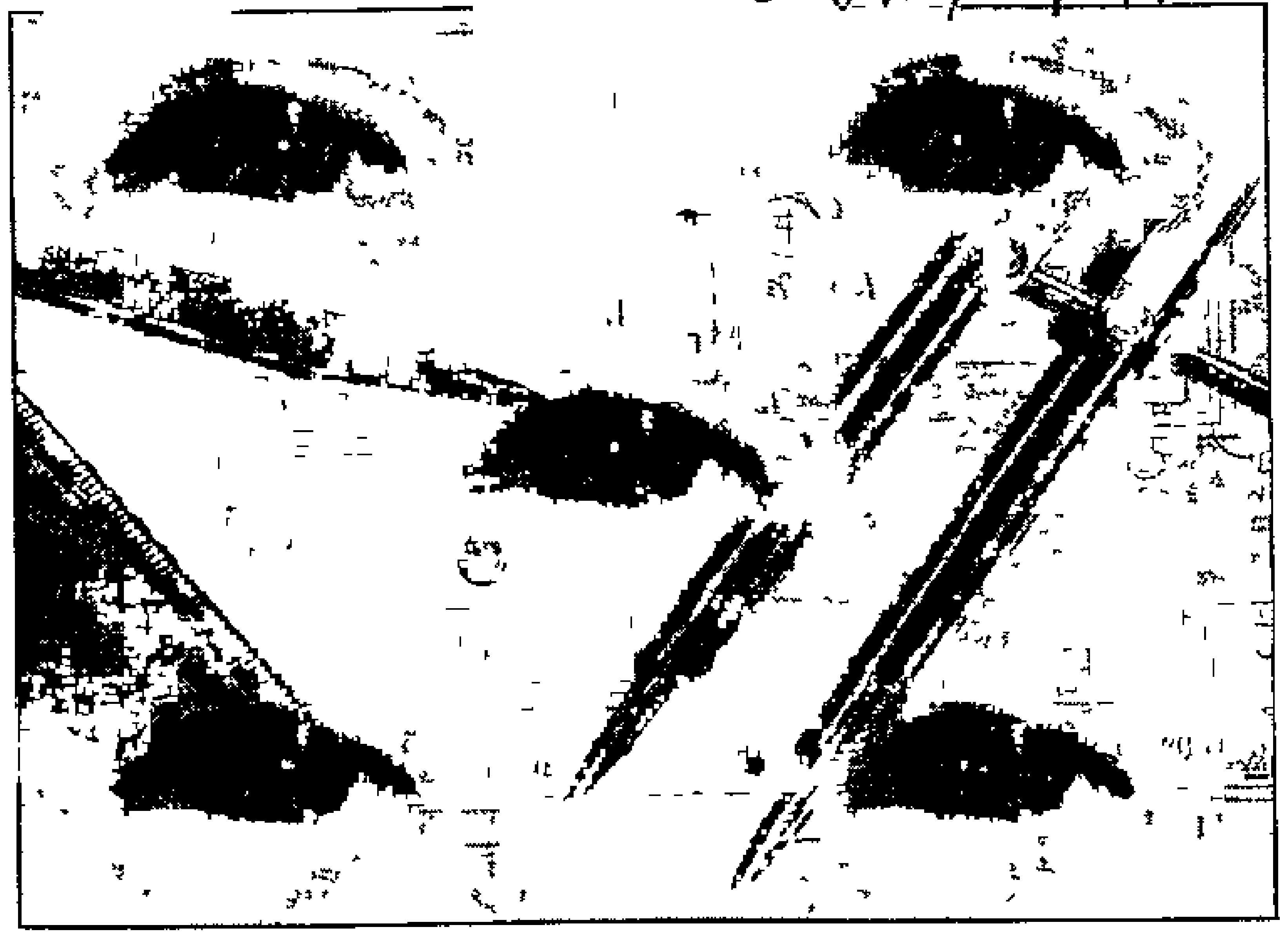
Indeed, the backing is strong enough for Harry Schwarz, a partner at law firm Hofmeyr Herbstein Gihwala & Cluver, to suggest that some of the powers of the Competition Tribunal, to be set up under the new legislation, run the risk of contravening basic human rights guaranteed by the constitution

For instance, in the process of a tribunal investigation an appointed person "who does not have a warrant may enter and search premises other than a private dwelling to attach and remove an article or document"

In addition, "an entry and search without a warrant must be carried out during the day, unless doing it at night is justifiable and necessary" Further "A person who is entitled to enter and search premises" . may overcome any resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises"

Although these seem fairly onerous powers, the view of a number of lawyers is that the bill is basically in line with legislation in place in a number of major Western economies.

No doubt it is in the enforcement of the legislation that will determine whether South Africa's corporate environment develops into a police state ruled into rigidity by agents of the competition legislation. But not even the most vociferous opponents of the government are suggesting that this could prove to be the case.



As Schwarz and a number of speakers pointed out at the conference, whatever its pre-election promises/threats, the ANC in government has proved to be as pragmatic as most mainstream political parties

For good reason Competition Board chairman Pierre Brooks has warned companies that a "thorough review of all existing contracts would be prudent" Some of these contracts could form the basis of corporate activities that will be deemed to be prohibited practices under the new legislation

It is these prohibited practices that lie at the heart of the new legislation and could have agents of the Competition Tribunal banging down your door in the middle of the night.

According to the Competition Bill. "A complaint against a prohibited practice by a firm may be initiated by — a regulatory authority, or a person prejudiced by that practice and having a substantial legal interest in obtaining relief from the prohibited practice."

Chapter two in the bill refers to the extensive list of prohibited practices. They fall into four main categories certain restrictive horizontal practices, certain restrictive vertical practices, the abuse of dominance, and price discrimination by a dominant firm.

With regard to horizontal practices it is significant that an agreement to engage in a prohibited practice is presumed to exist between two or more firms if "any one of them owns a substantial shareholding, interest or similar right in the other, or they have at least one director in common".

The horizontal practices that are prohibited include directly or indirectly fixing a purchase or selling price or any other trading conditions, and restricting production, technical innovation, or investment.

Under restrictive vertical practices "an agreement is prohibited if it is between parties in a vertical relationship and it has the effect of substantially preventing, or lessening, competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs that effect." And, there's a bit of a sting in the tail — the practice of resale price maintenance is prohibited.

With regard to prohibited activities by dominant firms, it is significant that the bill defines a firm as dominant if it is the leading firm in that market, and "it has at least 35 percent of that market, unless it can demonstrate that it does not have market power; or it has less than 35 percent of that market, but has market power"

Here are just some things dominant firms are prohibited from doing — charge an excessive price to the detriment of consumers, refuse to give a competitor access to an essential facility when it is economically feasible to do so; engage in an action that impedes a competitor's entry into or expansion in the market.

It's a long list, and again a significant issue is that, as with horizontal and vertical practices, the burden of proof is on the company under scrutiny

Of course a problem in implementation of the bill, as Anthony Norton of Hofmeyr Herbstein Gihwala & Cluver has pointed out, relates to definitions of key words

For example what would be considered excessive? Norton refers to the European Commission suggestion that "charging a price which has no reasonable relation to the economic value of the product supplied" would be considered excessive. But he added. "Most of us tend to feel this way about most bills we receive."

One hopes the effectiveness of the legislation will not be dulled by legal battle over definitions. As Brooks pointed out, under current legislation firms with little chance of success on the merits of a case have in the past frequently chosen to rely on procedural points.

Delays 'scaring off foreign investors'

(232)

Madeleine van Niekerk

THE slow pace of privatisation in SA has caused foreign investors to lose interest in it, says Mark Breedon, senior vice-president of US-based Alliance Capital Management

He said international investors were now less inclined to invest in the Southern African Fund Investment in the fund was down 4% in dollar terms compared to an increase in investment of 30% in dollar terms, three months ago

Alliance Capital is one of the largest privatisation funds in the world with investments of almost $1bn. Breedon jointly manages the $250bn Southern Africa Fund for Alliance Capital, which is the third largest listed asset manager in the US.

"We started talks with the government four or five years ago about privatisation, and despite many promises very little has happened. This is disappointing news for our investors," said Breedon.

All the former communist states had put government-controlled assets out for tender.

The fact that exchange controls still were not completely abolished was a problem. Investors were also concerned about "positive discrimination" or affirmative action that did not necessarily take merit into consideration for promotion.

This policy had the potential to cause the quality of business to deteriorate, Breedon said.

The privatisation of Telkom and the Airports Company had been handled relatively effectively in the line ministries — where the actual heads (ministers) of the departments handled it — compared with the privatisations handled by the ministry of public enterprises. Government was legislating more and perceived to be intervening in business.

BD 24/7/98

8 000 protesters to march on Union Buildings today

(232) ~~(212)~~ Sowetan 24/7/98

By Mziwakhe Hlangani

MORE than 8 000 mine and motor industry workers will march on the Union Buildings in Pretoria today to protest against the Eskom Amendment Bill which incorporates the public utility into the Companies Act of 1973.

National Union of Metalworkers of South Africa (Numsa) spokesman Mr Dumisa Ntuli said yesterday the demonstration had been jointly organised by Numsa and the National Union of Mineworkers (NUM).

He said the Bill would lead to the privatisation of Eskom and thus weaken the Government's hold on the parastatal since the Companies Act is meant to govern privately-owned companies and not state-owned enterprises.

Ntuli said the privatisation of Eskom had been the subject of negotiations between the union and Eskom management in terms of the National Framework Agreement and there was no agreement on the incorporation of Eskom into the Companies Act.

Numsa believed that the incorporation of Eskom into the Companies Act would have a detrimental impact on the social and economic lives of poverty-stricken regions countrywide.

It said the price of electricity would go up beyond the reach of the poor, meaning that services would be available only to those who would afford.

"This is really a change of heart on the Government, which has promised to electrify 1,75 million houses by the year 2000.

"We feel the Government is reneging on its responsibility to provide services to the disadvantaged communities," added Stephen Nhlapo, Eskom national sector coordinator.

Competition Board awaits druggists

CT (PR) 27/9/98 ([illegible]) (232)

ADELE SHEVEL

Johannesburg — The Competition Board was awaiting a response from several major drug manufacturers who had been accused of anticompetitive behaviour by drug wholesalers and pharmacists, Pierre Brooks, the board chairman, said last week.

The complaints are aimed at manufacturers who have or intend establishing direct distribution channels which intrude on the wholesalers' traditional domain

The direct distributors are International Healthcare Distributors, jointly owned by nine major international drug manufacturers; and Project Nasa, the direct distribution mechanism being developed by five multinational companies and Pharmacare, a division of SA Druggists

"They say the combination of pharmaceutical manufacturers into a single distribution channel has a strong anti-competitive effect, especially with regard to certain pharmaceutical products," said Brooks

He said the voluminous complaints would first have to be evaluated and a response received from the direct distributors before the board could decide if an investigation was necessary

The complaint document was substantial and Brooks said he expected the response to be equally voluminous.

Chemists and wholesalers voiced concern last week that direct marketing mechanisms would remove wholesalers from the distribution loop, leaving retailers in a weaker position to negotiate prices with major drug producers.

But industry players believe some wholesalers' days are numbered anyway, as a rationalisation through amalgamations is expected in the industry because there are too few products available for the current number of wholesalers plying the market

They say emerging market forces require new strategies and ground rules to ensure the industry remains healthy

Brooks said the healthcare industry was in a state of flux, with different nuances, players and schemes coming into the market.

He said the Competition Board was already involved in a long-term investigation into the medical schemes arena, to assess the interface between medical schemes and service providers

The Government Gazette said in November last year that the Competition Board would investigate whether the scale of benefits laid down by the Representative Association of Medical Schemes were restrictive.

Benefits of demutualisation 'would be slow to show'

CT (BR) 28/7/98 (232)

Christo Volschenk
FCONOMICS EDITOR

Cape Town — The full effect of demutualisation would only hit the local economy many months after the fact in 2000, according to an econometric model built by the team of economists at Investec, the group said yesterday

The Investec model suggested real growth would be pushed up by 1,5 percentage points from 2,9 percent to 4,4 percent in 2000

Until now researchers had said the positive effect of demutualisation on growth would be pretty immediate

The team of economists at Old Mutual even suggested demutualisation could boost consumer spending before it actually happened — with consumers spending money they knew they would be able to lay their hands on some time in the future

In contrast, Investec expected demutualisation to add almost nothing to real growth this year, 0,6 percentage points next year, 1,5 percentage points in 2000 and 0,3 percentage points in 2001

Most of the fill-up would come from higher consumer spending on durable and semi-durable goods Spending on services would be mostly unaffected by demutualisation, Investec said

In 2000 real spending on durable goods would grow 6,5 percent, which is 4,7 percentage points higher than the 1,8 percent real growth which would have been registered without demutualisation

Demutualisation would push real spending growth on semi-durable goods in the same year from 2,4 percent to 4,9 percent Non-durable spending growth would jump from 2,3 percent to 4,3 percent, Investec said

"The boost to consumption spending had conservatively been estimated by us at between R14 billion and R22 billion," said one economist at Investec.

These numbers were based on the assumptions that only 25 percent of Sanlam policy holders and 35 percent of Old Mutual policy holders would sell their shares

Investec assumed that low-income households would sell their shares and spend the windfall, while middle-income households would use the proceeds of the sale of shares to settle debt It was assumed high net worth individuals would retain their shares, said Galloway

Benefits of demutualisation 'would be slow to show'

CT (PR) 28/7/98 (232)

Christo Volschenk

ECONOMICS EDITOR

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PermPerf

Government puts final touches to business plan

(232) BD 31/7/98

John Dludlu

GOVERNMENT is finalising a business plan that will be the basis of a revamped competition policy to deal with anticompetitive corporate behaviour, says Alistair Ruiters, main author of the bill

Ruiters, chief director at the trade and industry department in charge of business regulation and consumer affairs, pledged yesterday to resume talks with business and labour in mid-August to narrow the differences on the proposed legislation

Business's chief concern about the bill has been the review powers it gives the trade minister to rethink decisions by the proposed competition tribunal on the basis of public interest — such as concerns on employment resulting from a merger, a merger's effect on small business and black-owned enterprises, or the ability of SA business to compete in global markets

Government's advisers, including Ruiters, Cape Town University academic Dave Lewis and drafters Norman Manoim and Menzi Simelane, are meeting next week to evaluate the amendments to the competition bill, incorporating suggestions made during the public comment stage of the process The bill, aimed at strengthening significantly government's ability to deal with restrictive horizontal practices and abuse of dominant position, is due to be presented for parliamentary consideration next week

Ruiters signalled government's readiness to spend as much as was required to set up an effective institutional framework, including a competition tribunal, commission and an appeals court

Apart from Pretoria's financial resources, international donors would be approached for assistance

Ruiters said he would reopen talks with business and labour as government refined its thinking on institutions The evaluation of mergers and acquisitions had been among concerns raised by business in debate leading to the agreement on the policy at the National Economic, Development and Labour Council

BD 3/8/98

Denel board backs Sigcau

(232)

Business Day Reporters

(964)

DENEL's board of directors defended Public Enterprises Minister Stella Sigcau's record on privatisation last night in the wake of allegations surrounding Friday's resignation of Denel CE Seshi Chonco.

Reports yesterday alleged Sigcau had admonished Chonco for moving too fast on Denel's privatisation.

Denel's board defended her, saying privatisation was a function of the cabinet and not of an individual minister.

Reports also noted a possible a conflict of interest in Chonco's involvement with Elexir Technologies.

A Denel group executive director, Flip Botha, has been appointed acting CE.

Danisa Baloyi, the board's acting chairman, also said an unsigned statement purporting to be issued on behalf of Sigcau did not emanate from the minister or her office.

Cosatu steps up crusade on Old Mutual, Sanlam

[illegible] 272

FRANK NXUMALO

CT (MR) 3/8/98

LABOUR EDITOR

Johannesburg — The Congress of South African Trade Unions (Cosatu) fight against the demutualisation of financial services companies, including Old Mutual and Sanlam, gained momentum last week when the National Economic Development and Labour Council (Nedlac) management committee agreed to put it on its agenda of issues for this year.

More than 1,8 million Cosatu members are expected to march on the two financial services companies on August 25 and 26.

The effect of Cosatu's marches on the Umsobomvu Trust, a youth employment creation fund that is to be set up with 2,5 percent of free reserves at the time of the listing of the demutualised companies, is not clear.

An Old Mutual spokesman said the company was in discussions with the labour federation over the issue but details were still confidential.

Nedlac said it would set up a task team to "look at concerns raised by labour on demutualisation" including a proposed primary listing on the London Stock Exchange.

Competition Bill confused by SA ideology

(232) BD 4/8/98

Defects in the competition legislation, before Parliament, threaten to make it unworkable, argues **Peter Leon**

WHEN Parliament rises in October, life for SA business will be fundamentally altered, not so much by the raft of controversial labour legislation that will have been passed, but by a somewhat revanchist Competition Bill

Although the bill has already been introduced to Parliament and is due to undergo public scrutiny before the trade and industry portfolio committee from mid-month, outside the controversial ministerial override for merger control, the legislation has received little media attention and even less critical analysis

It is a truism that SA competition law is functionally and institutionally weak This, together with international pressure for SA to bring its competition law regime into line with what one may call Group of Seven standards, is driving the new legislation An additional ideological factor is government's perception there is an excessive concentration of economic power in SA, which necessitates, as the bill calls it, "the transfer of economic ownership in the public interest" The leitmotif of breaking up the heights of the economy is given special meaning in the bill by the inclusion of noneconomic standards and the power to divest errant firms of their assets

Formally, the bill appears to follow mainstream European Union (EU) and, to an extent, US competition law, by prohibiting restrictive practices, whether vertical (between firm, supplier or customer) or horizontal (between firms) and abuses of dominance by dominant firms.

Much of Chapter 2 of the bill is broadly based on Articles 85 and 86 of the 1957 Treaty of Rome, under which the EU was established

The bill also borrows from US competition law by incorporating, in shorthand form the 1936 Robinson-Patman Act that prohibits price discrimination This law, enacted at the height of the Depression, is no longer enforced in the US as it is seen as unworkable and detrimental to competition

In dealing with exemptions, the bill superficially mirrors Article 85(3) While the bill appears to follow EU competition law in providing for administrative fines to be levied by an independent competition tribunal of up to 10% of a firm's annual turnover and exports, it veers towards US jurisprudence by criminalising contraventions of Competition Tribunal or Competition Appeal Court decisions It likewise borrows selectively from the Sherman Act of 1890, in providing for the divestiture of a firm

It is, however, in the substance of the bill that its reliance on comparative competition law is overlaid by a peculiarly SA ideology Competition law, of course, is concerned with promoting consumer welfare through economic efficiency, or what Justice Robert Bork describes as improving "allocative efficiency without impairing productive efficiency so greatly as to produce either no gain or a net loss in consumer welfare"

The preamble and objects of the bill reveal, however, that it has underlying social, as well as economic, objectives including "a greater spread of ownership . to increase the ownership stakes of members of historically disadvantaged communities" This is reinforced by the exemption provisions of the bill, which provide that restrictive agreements may be exempted if, inter alia, they promote "ability of firms owned by historically disadvantaged persons to become competitive" If the purpose of competition law is to promote economic efficiency, these social objectives, however laudable, have no place in the bill

While the bill appears to follow Article 85 in prohibiting horizontal restrictive practices, the language of clause 4 seems to cover unilateral acts by a firm, a concept not only economically illogical, but unknown to EU law More worryingly, a collusive agreement between firms is presumed if they either have one director in common or a "substantial" shareholding in each other This requires the firms to prove a negative, an evidentially awesome burden, which may well be unconstitutional

In prohibiting vertical restrictive practices in clause 5, the bill again selectively borrows from EU law, without reflecting any of its troubled history or subtlety. On the face of it, every exclusive distribution or purchase agreement, joint venture and licence of intellectual property in SA will become illegal unless justified or exempted by the Competition Tribunal As this is the basis of much commercial life, it is not clear whether the bill's drafters fully considered its implications To avoid such problems, the European Commission has granted block exemptions for exclusive distribution or purchasing agreements and is considering wider exemptions

The bill's treatment of abuse of dominance, a central feature of EU competition law, is also at variance with its progenitor Clause 6 allows the trade and industry minister to determine annually, by edict, the threshold of annual turnover at which the provisions relating to dominance will apply to a firm. This may amount to unconstitutional ministerial law making.

Although the bill's basic test for dominance (35% of the market) is formally based on US merger jurisprudence, unlike US law, it requires the presumably dominant firm to establish that it does not have market power In describing what amounts to abuse of dominance, difficult notions of EU jurisprudence, such as unfair pricing, and of US law, such as essential facilities, have been borrowed, without an important jurisprudential caveat· the defence of normal commercial justification

Although the difficulties inherent in the bill could be tempered by making reasonable provision for exemptions, the bill, unlike Article 85(3), does not do this Clause 10 of the bill lacks any of the flexibility inherent in Article 85(3), which allows the European Commission to assess the merits of each case. The grounds for obtaining exemption under clause 10 (export promotion, economic affirmative action or a declining industry) are extremely narrow and apparently confined to restrictive agreements. Restrictive practices appear to be absolutely incapable of exemption under the bill. Unlike EU competition law which imposes no time limits, exemptions themselves are only available for five years.

Institutionally, while the Competition Commission (consisting of a commission management board, a competition inspectorate and a competition tribunal) is legally independent, the bill provides no objective criteria for the appointment of the competition commissioner or members of the competition tribunal

Although the Competition Appeal Court must have a High Court judge as its president, the qualifications of the remaining members are also vague A further problem is that the bill purports to vest exclusive powers of appeal and judicial review in the Competition Appeal Court, which is probably unconstitutional

Finally, the divestiture provisions of the bill, for repeated abuses of dominance, have no counterpart in EU law. Insofar as they are reflected in UK or US law, they are tempered by substantial procedural safeguards in those legal systems, which are not to be found in the bill. In the UK, a divestiture recommendation by the Monopolies and Mergers Commission requires the approval of the trade and industry secretary and the positive approval of parliament As an equitable remedy in US law, divestiture requires a weighing of all affected interests, including proof of irreparable harm and the absence of any other remedy

In stark contrast, the bill will allow the competition tribunal to break up any "dominant" firm that has, for example, limited production to the detriment of consumers more than once

While the case against a new Competition Act is difficult to mount, the defects in the Competition Bill, both structural and institutional, outweigh its merits. Much closer attention should have been given to comparative competition law before borrowing so freely from it, while a combination of per se prohibitions, coupled with an inadequate exemption regime, threaten to make the bill unworkable from its inception

Most worryingly, the bill could, in the hands of a populist competition tribunal, destroy — not improve — the market economy

□ *Leon is a member of the Gauteng legislature and a partner with law firm Webber Wentzel Bowens which, in conjunction with the Centre for Applied Legal Studies, will be holding a seminar on the bill on August 13.*

Demutualisation could bring government R5bn

(232) BD 4/8/98

Linda Ensor

CAPE TOWN — Government could benefit from a windfall gain of about R5bn over the next two years as a result of the demutualisation of Old Mutual and Sanlam, Sanlam chief economist Jac Laubscher said yesterday

A finance spokesman said the R5bn — or part of it — had not been included in this year's revenue projections outlined in the March budget

Laubscher said the R5bn would come from additional revenue from VAT and import duties (about R1,5bn) and higher company tax generated as the newly-created shareholders spent the proceeds of the sale of their free shares.

This amount excluded the approximately R1bn which would flow into the Umsobomvu Fund for job creation, derived from a 2,5% levy on the value of the free reserves of the two life assurers at the time of their listings. The reserves of Sanlam and Old Mutual are estimated to be about R10bn and R30bn respectively.

Laubscher expected R12bn — equal to 8% of 1997 retail sales and 4,5% of personal consumption expenditure (excluding services) — to be spent over a period of 18 to 24 months as a result of the two demutualisations

Addressing the National Council of Provinces' select committee on finance on the demutualisation of Sanlam, Laubscher said the economic effect of the two demutualisations would be experienced mainly next year and in 2000 Growth in gross domestic expenditure over the two-year period would be 1,5% higher than it would otherwise have been, and growth in gross domestic product about 1% higher

As a large part of the spending will be on durable and imported goods, it could have a negative effect on the balance of payments However, Laubscher said, this would be more than offset by the inflow of capital as foreigners bought shares and as foreign institutions adjusted the weighting of SA in the indices.

He said stability appeared to have returned to the rand It was encouraging to see differences of opinion emerging among large institutional players in the market as to whether it was over- or undervalued The currency was trading in a range of between R6-R6,50 to the dollar and could fall below R6 again as portfolio investments began to flow back into the country

High interest rates would knock consumer spending this year and the current account on the balance of payments could be in surplus by the fourth quarter, creating an environment for a decline in interest rates during the first half of next year Laubscher forecast a repo rate of 18% by year-end.

While he was confident about a continuity of economic policy after the elections, a concern about this would probably restrain foreign investors from committing more funds and a further cut in interest rates might have to await the second half of the year. However, another 2%-4% drop in rates by the end of next year was possible.

Laubscher predicted a growth in gross domestic product of less than 1% this year and between 2%-2,5% next year. Headline inflation figures were likely to rise on the back of the sharp increase in mortgage bond rates, hitting 7% next month and 9% by the end of the year. They would drop back rapidly to below 5% by the end of next year.

Sanlam chairman Marinus Daling raised the possibility yesterday that the life assurer would raise capital at the same time that it demutualised and listed on the Johannesburg and Namibian stock exchanges, possibly before the end of the year

A final decision would depend on the state of the market, he said.

A roadshow in Europe, the UK and the US was planned for November to introduce foreign investors to the life assurer, and to invite them to buy shares should a decision to issue shares be taken by then

The primary listing would be on the JSE, but to make it easier for foreign shareholders to trade in their shares, american depository receipts might be issued in the US

Sigcau wants a new agency to propel privatisation

(232)

ST (BT) 9/8/98

STATE ENTERPRISES

BY THABO KOBOKOANE

PUBLIC Enterprises Minister Stella Sigcau plans to launch a new agency or dedicated directorate to fast-track the sale of state-owned assets amid criticism of the slow pace of privatisation

Sigcau told a media briefing in Parliament on Friday that she would approach her Cabinet colleagues and other partners with the idea of a dedicated agency or directorate to drive the privatisation of state-owned entities "It is an idea that has still to be sold, but I will move high and low to sell it," she said

The agency would be similar to the Zambia Privatisation Agency which has been responsible for massive sell-offs of parastatals in Zambia

Sigcau said the agency officials would do nothing but focus on the sale of state assets, a move which would enable other ministry officials to concentrate on administrative tasks

Sigcau conceded that government was well aware of demands to expedite the restructuring process

Only two entities have been privatised under Sigcau since Deputy President Thabo Mbeki first stated government's intention to sell state-owned assets in 1995 — Sun Air and resorts company Aventura Two others — the 30% sale of Telkom to SBC Communications and Telkom Malaysia and 20% of the Airports Company to Aeroporti de Roma — were handled by the departments of communications and transport respectively

Sigcau defended her privatisation track record "The groups under the ministry of enterprises have been carrying huge debt burdens and they face serious inherent structural challenges It is a critical task to address these issues and enhance the market value of the companies before exposing them to the assessment of international analysts and investment experts"

The delay in privatisation had been caused by consulting as many stakeholders as possible, achieving consensus over goals, and working sector by sector on consensus

Many will perceive the proposed agency as just another bureaucratic structure, and questions will be raised over its relationship with the National Framework Agreement and the inter-ministerial Cabinet committee on the restructuring of state assets

On the privatisation of Denel, Sigcau said some rationalisation was necessary This could involve regrouping twenty diverse companies into five subsidiaries aviation, artillery, civilian products, Information Technology and property

Other options included merging Denel Aviation's maintenance arm with that of SAA Government had agreed to speed up the privatisation of Ariel Technology and to set up a new state-owned information company (Sita)

She said Denel management had compiled a master-plan for restructuring and privatisation which would be reviewed by a ministerial subcommittee, along with advisers HSBC.

Sigcau said there no longer appeared to be a place for a broad-based, small national aerospace and defence company, given globalisation and consolidation of the industry internationally

Transnet's privatisation is being hampered by its pension and medical aid deficit, estimated at R12-billion. The parastatal pays about R1 4-billion of its profit into the fund each year A final decisions on how to deal with the debt is expected this week

The corporatisation of SAA has been delayed in order to resolve certain technical issues arising from Transnet's debt agreements with banks and bondholders Privatisation of Autonet and Abakor is proceeding well and Safcol should be sold off by December this year

Four-member team will animate privatisation

Star 10/8/98 (232)

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town — Stella Sigcau, the minister of public enterprises, last week defended the government's privatisation record and said a new directorate would be established to drive the process

Briefing the media and diplomats, Sigcau said criticism of the privatisation programme was "superficial and misleading"

Stella Sigcau

She said it was futile to compare the privatisation process in South Africa with that undertaken in Britain

It took time and patience to reach consensus between the different parties involved, but progress had been made in Sun Air, Aventura, Telkom and the Airports Company, Sigcau said Safcol, the forestry company, should be sold off by December

But to step up the programme, "four key people" had been appointed to a directorate of restructuring within the ministry

She said Denel, the arms conglomerate that had been the subject of mixed signals in recent weeks, could be regrouped into five subsidiaries covering aviation, artillery, civilian products, information technology (IT) and property Discussions were already being held on the privatisation of its IT and aviation divisions The aviation maintenance subsidiary could be merged with SAA

A master plan was now being developed for Denel and a focused team had been asked to examine the high-tech parastatal in the context of global trends

"There will not be a sustainable, attractive future role for a broad-based, small, national aerospace and defence companies," she said

As a result, Denel would have to focus on activities where demand was robust and in which it could make the most use of its strengths

Elexir buys up software developer Frontier Systems

RENÉE BONORCHIS

Johannesburg — Elexir Technology Holdings, the listed development capital company, had formed an offshore trading operation and clinched three local deals, it said at the weekend

Locally, Elexir acquired Frontier Systems for R3 million in cash and R22 million in Elexir shares at a value of R2,50 each

Frontier's software product, which is gaining international attention, is a human resources intranet application that allows a company's employees to access various personnel functions from anywhere in the world It also allows the company to market tailor-made products to the client base

The product is used by Old Mutual, with another two of the country's high-profile corporates looking to get involved

Once this has taken place, the companies would be able to market products and services leveraging each other's client bases, which would make this into the biggest virtual private network structure in South Africa

Don Gray, the chairman and spokesman of Frontier, said "We are turning human resources on its head — HR will become a virtual system "

Frontier is also negotiating a significant local acquisition that will boost the client base by 4 million users An offshore contract has been signed with an international telecommunications company at a minimal cost of R1,25 million This new channel will market and support the intranet software developed by Frontier's local teams

Neil Hobbs, the financial director of Elexir, said "We expect that within 18 months the bulk of Frontier's income will be foreign sourced "

Gray confirmed that Frontier developed software locally because of the better cost structures, but said the company also had a UK office

Elexir is considering the acquisition of other overseas software houses, and more announcements are expected in the next few weeks

(232) BD 11/8/98

German hand of privatisation holds true for SA

Germany's blitzkrieg privatisation drive had its good points, but there were others SA should avoid, writes **Tim Cohen** from London

LONDON — Privatisation is tough and no one knows this better than Birgit Breuel, the former president of Germany's Treuhand which privatised east German industry after reunification She knows because her predecessor was shot dead by leftwing terrorists.

She also knows what everyone else who has ever been connected with privatisation will tell you it is not for the weak-willed, because inevitably not only workers but management struggle to resist being tossed out into the cold hurly burly of the markets

Often the public also opposes seeing their "national champions" undermined, or they have ideological objections, as did the Red Army Faction terrorists who murdered Breuel's predecessor Detlev Rohwedder

However against all these objections, steel-willed Breuel persevered, leaving in her wake more than 13 000 new companies, pledges of investment of DM112bn — and the destruction of half of eastern Germany's 3-million manufacturing jobs

At the height of the Treuhand's activities it was privatising hundreds of businesses every day, ranging from small-shops to huge communist-era manufacturing companies

Against the speed of the Treuhand, SA's privatisation effort is agonisingly slow Against the dedicated single mindedness of the Treuhand's belief in a market economy, SA's effort is hedged by frantic efforts to satisfy a broad range of interests, including black empowerment groups and the desire for technology transfer However Public Enterprises Minister Stella Sigcau announced last week that a new agency would be launched to fast track the sale of state-owned assets The agency will be modelled loosely on the Treuhand

Of course, the historical and economic situations of the two countries are also hopelessly different

Germany could use its enormous riches to blunt the blow of privatisation, spending about DM700 000 to save each job at a shipbuilding plant, for example. It could spread its abundant management prowess And it tugged at the patriotism of west Germans and the emotions of the moment in its efforts to encourage investment in the east, leaving 90% of the privatised firms in German hands.

SA has none of these luxuries The huge rate of unemployment in SA makes any job lost a personal tragedy and management skills are scarce Government's links with the trade union movement also complicate the political environment

What SA can take from the Treuhand's experience mainly concerns its method of operation rather than its functioning. Firstly and most importantly, it had a free hand It was structured as a company, and the whole of east German industry was placed in its care In addition to the broad mandate to privatise, it was required to be guided in managing this huge portfolio by market principles

This had the virtue of placing the organisation out of reach of meddling politicians who could foul a privatisation effort by being greedy or by championing one or another group involved in the entity

At the same time, it shielded government from the political fallout, which was huge And most importantly, its decision to save or close businesses was made on the basis only of whether it could survive in a free market

Secondly, because the Treuhand's mandate was precisely to privatise, the company always chose speedy privatisation over profit

The third was speed The Treuhand could not have worked if it had not worked quickly, getting the job done before the political opposition overwhelmed it

The Treuhand experience holds another hard lesson for privatisers all over the world and that is the need to have realistic expectations

Early in the process, Rohwedder confidently predicted that the Treuhand would return about DM600bn to the German exchequer Instead, with the competitiveness of east German industry devastated by the one-for-one exchange rate of the eastern and western mark and after having to clean up the complete catastrophe that was communist industrial practice, it left a debt burden of DM275bn

There are aspects of the Treuhand not worthy of emulation

The most common criticism is that its overzealous privatisation drive led to the loss of jobs that could have been saved But if it broke all speed records in getting to the finishing line, at least it arrived at its destination

SIGCAU

Government to review procurement contracts

Linda Ensor

CAPE TOWN — Long-term contracts between parastatals and traditional suppliers would be reviewed as part of government's proposed procurement policy, which would be used as an instrument of black economic empowerment, Public Enterprises Minister Stella Sigcau said at the weekend.

Addressing a parliamentary media briefing, Sigcau said it would be recommended that parastatals reach a compact with government on job creation and economic empowerment

"Part of core business requirements can be sourced from the historically disadvantaged through appropriately structured black empowerment schemes Lifetime/long-term contracts with traditional suppliers are to be reviewed In a new cross-border and international business development initiative, joint ventures with emerging business are to be established," she said She said labour would be invited to invest in these ventures

Transparency in parastatal tendering and procurement would be a requirement, with incentives such as tax rebates being introduced for progressive parastatals

Sigcau said a focused team had been convened to look at the strategic future of arms manufacturer Denel It would identify its competencies and elements critical to its future role in SA International partners would be selected on the basis of these competencies

"The globalisation and consolidation of both demand and supply implies that there will not be a sustainable, attractive future role for broad-based, small, national aerospace and defence companies Given this fundamental assumption, Denel will need to focus its resources on activities where demand is robust and in which it can utilise its areas of strength "

The survival and growth of the aerospace and defence industry went to the heart of SA's independence as a nation and was at the forefront of technological innovation in the economy

Denel management had been asked to restructure the enterprise, and it was possible it could be organised into aviation, artillery, civilian products, information technology and property divisions A subcommittee of cabinet ministers was considering this issue

Sigcau expressed strong support for the idea of a dedicated agency to drive the privatisation process This could be built on the existing directorate in the department

SAA's privatisation gets a boost with nod from Japanese banks

(232) BD 13/8/98

Robyn Chalmers

JAPANESE banks carrying SA Airways loans are understood to have withdrawn key objections surrounding the transfer of the airline's debt from transport utility Transnet to a corporatised airline company

This will boost the delayed partial privatisation of SAA, which is set to gain further momentum today when details of a plan to deal with the airline's loans and pension fund deficit are presented at an interministerial cabinet committee meeting.

Although talks are being held with other banks holding SAA loans, the Japanese banks were the most cautious when it came to restructuring SAA's debt, due mainly to their currency crisis. Their objections were a key reason behind government having to delay the separation of SAA from Transnet to form a separate legal entity. The move was originally set for March this year with a strategic equity partner to be identified by September. The deadline for taking on such a partner is now May next year.

Government and airline industry officials said yesterday SAA's balance sheet had been separated from Transnet's, giving a clearer picture of the airline's assets and liabilities. The airline's portion of Transnet's R12bn pension and medical aid fund debts had also been calculated. This would be presented at today's meeting

The move is the first practical step taken by Transnet to sort out its pension fund deficit which has hampered its privatisation process and forced it to pay about R1,4bn of its profits into the fund each year.

The separation of SAA's balance sheet from Transnet's will also allow government to move ahead with its plans to establish the airline as a separate legal entity. Industry officials indicated that SAA's long-awaited business plan would be made public later this month.

Transnet MD Saki Macozoma said recently there was general agreement that a special purpose vehicle should be created to house Transnet's total debt of R22bn. Income streams, and possibly privatisation proceeds, could be used to service the debt

The finance ministry has been cautious in its attitude towards setting up a special purpose vehicle, and Macozoma said clarity was still needed on the practical implications

However, government officials said it had been agreed that this route would be adopted in a piecemeal fashion, starting with SAA. Government has indicated that between 20% and 25% will be sold to an equity partner.

Cosatu postpones Mpumalanga antiwater privatisation strike

(232) BD 13/8/98

The decision to go on strike in Mpumalanga was taken following a dispute which arose between the SA Municipal Workers' Union and the council which was determined to go ahead with privatising water despite an existing agreement in the Local Government National Bargaining Council that the public sector was the preferred deliverer of services.

tise water on a 30-year contract to British multinational Biwater.

Cosatu said yesterday that if the strike had gone ahead, workers would not have been protected in terms of the Labour Relations Act because 14-days notice had not been given to the National Economic Development and Labour Council (Nedlac).

Under the act protest action linked to socio-economic interests could be protected if certain requirements were met, including a notice to Nedlac and attempts to resolve the matter in Nedlac.

Union sources said Cosatu head office was told last week to submit a notice to Nedlac of the planned action It appeared that this had not occurred.

Cosatu's media spokesman Nowetu Mpati said the Mpumalanga region had not discussed the date of the strike with the national leadership

Mpati said Cosatu's leadership would consolidate all dates for mass action proposed by the federation's regional congresses in recent weeks so that it could submit notices to Nedlac.

Summit to look at privatisation

(332)

Sowetan 14/8/98

By Isaac Moledi

THE restructuring of state-owned enterprises will once again occupy the centre stage at the second Pan-African Investment summit to be held in this country next month

Entitled "Privatisation in Practice", the three-day summit, to be held at the Hilton Hotel in Sandton from September 10, follows the first successful conference held here last year

Its focus will be on the restructuring of state-owned enterprises in Africa and the delegates will debate and develop practical solutions to subjects linked to privatisation and how the economies of African countries will benefit

Business in Africa magazine publishers Goldcity Communications have organised the conference

As was the case last year, Public Enterprises Minister Stella Sigcau will deliver a keynote address on privatisation in South Africa

Besides African heads of state, ministers, chief executives of major public and private corporations, bankers, financial analysts and consultants, other speakers will include key speakers such as Ghana Ecobank managing director Jean Aka and Standard Merchant Bank head of African Consulting Services Charles Krafkoff

More than 200 delegates from 30 countries will include fund and investment managers, trade union representatives and international and African traders

The summit will afford those attending the opportunity to network, and talk about joint ventures, says *Business in Africa* regional director Sharon Stocks

She says the summit will open with a special South Africa Day on September 9, when local privatisation efforts will be outlined

Case studies and debates around the benefits of privatisation particular to the economy of South Africa will be discussed

"The forum will bring a wide range of high-level distinguished speakers who will pool a wealth of experience and expertise on privatisation They will provide a clear perspective and bring more insight into this widely-debated issue," says *Business in Africa* group managing director Everest Ekong

Other issues to be discussed include exchange control, local consulting opportunities, labour issues, communication policies, social safety nets, immigration policy, investment and land issues

Ekong says more than R25 billion has been realised from sales of state assets in Africa and various African countries have used privatisation as a mechanism for securing external support

"Sometimes governments shy away from the difficult issues that privatisation brings The summit will tackle those issues," he adds

Cosatu call for bills to be delayed is ignored

(232)

BD 19/8/98

Linda Ensor

CAPE TOWN — Two demutualisation-related bills were adopted by Parliament's finance committee yesterday despite calls by the Congress of Trade Unions (Cosatu) for the process to be delayed pending the outcome of a thorough investigation into its effects on policy holders and the economy.

Cosatu called on Parliament to facilitate a public debate on the question of demutualisation, and to ensure that the public was given access to "unbiased information".

Cosatu's parliamentary research co-ordinator Kenneth Creamer submitted that Parliament should not endorse a scheme without knowing its full implications, and should rather delay the demutualisations while Cosatu, Old Mutual and Sanlam negotiated on the issue.

However, the committee decided that opportunities existed at a later stage to stop or delay the process, for instance when policy holders voted on the proposals and when the scheme of arrangement was submitted to the high court for approval The passage of the Demutualisation Levy Bill and the Insurance Second Amendment Bill through Parliament was not the correct time for this, members believed.

The committee did agree to keep a watch over the looming demutualisation of life assurers Sanlam and Old Mutual.

Finance director-general Maria Ramos highlighted the fact that the demutualisations were commercial transactions which could be halted in the high court. Financial Services Board legal director Francois Jooste said the insurance bill was not creating a new enabling environment but merely strengthened an existing one.

Sanlam CEO Marinus Daling expressed concern over the cost of any possible delays. Once a formula for the allocation of free shares had been made public, the debate on the advantages or disadvantages of demutualisation and who would benefit could commence.

He disagreed with Cosatu that only the wealthy would benefit. The fact that a fixed percentage of free shares — typically 25% — would be distributed to all policy holders equally regardless of the value of their policies, in exchange for them forfeiting their rights, would benefit small policy holders.

Daling and Old Mutual CE Gerhard van Niekerk noted that the voting power of pension funds would rise from the current 0,25% to 25% after the demutualisation. As a result they would have more power, rather than less, as Cosatu claimed.

Creamer submitted that the demutualisation of the life assurers would further entrench the power of existing management and undermine the power of policy holders over investment decisions.

He called for an inquiry into the redistributive impact of demutualisation and its effect on investment flows and job creation, as well as an investigation into ways to ensure "the resources of the multibillion-rand retirement industry are used in a more socially responsible, developmental and job creating manner". One such option would be the reintroduction of prescribed asset requirements.

Jooste said that while it was not necessary for a demutualisation to take place, the Insurance Second Amendment Bill would secure the regulation and legal certainty of the process which would end with the high court approval of the scheme of arrangement It allowed for the conversion of mutuals into public companies.

The bill allows for an insurance subsidiary to hold shares in its holding company to ensure that pension funds had a proper weighting in their portfolios.

Billion-rand share bonanza a step closer

ARG 19/8/98

Ramos overrules labour

(272)

BUSINESS EDITOR

The demutualisation of giant life assurers Sanlam and Old Mutual, which will put shares worth billions of rands into the hands of policyholders, came a step closer yesterday in spite of strong objections from the labour movement.

Parliament's portfolio committee on finance gave the green light to a bill which will streamline the process of transforming the mutual life assurers into companies owned by shareholders and listed on the Johannesburg Stock Exchange

If policyholders and the courts approve the process, Sanlam will demutualise later this year and Old Mutual next year. The demutualisation will put huge amounts of money in the form of shares into the hands of policyholders. Estimates of the reserves to be distributed by the mutuals as shares vary from R50-billion to R30-billion.

Claims by the labour movement that the rights of policyholders would be harmed by demutualisation were quashed in yesterday's hearing by Finance Director-General Maria Ramos and by Francois Jooste of the Financial Services Board, which is watching over the process.

In a submission to the committee Cosatu representative Kenneth Creamer said the federation was opposed to demutualisation. Much of the money accumulated by the mutuals was the savings of workers through retirement funds, he said.

Cosatu was concerned that demutualisation would "strip these policyholders of their rights".

There was also a danger that when the shares were issued, many new shareholders would sell their shares and control of the companies would stay in the hands of a few.

Ms Ramos said policyholders' rights would not be affected by demutualisation. "There is a legal process to see that policyholders' rights are not affected. We must not give workers the impression that their pensions will be detrimentally affected."

The Financial Services Board has appointed international actuaries to help oversee the demutualisation process If the legislation is passed, the mutuals will draw up a scheme of arrangement, in liaison with the board. The scheme must be approved by policyholders at a special meeting and also by the High Court.

A bill authorising a levy of 2,5% of the value of shares to be distributed by the mutuals, to finance job creation through the new Umsobomvu Fund, also got the nod from the committee

Time to comment on bill 'too short'

C232) BD 20/8/98

John Dludlu

THE Democratic Party (DP) has expressed concern at the extremely short period allowed by the parliamentary committee on trade and industry for the public to make written submissions on the new competition bill

This follows a newspaper advertisement placed by the committee on Tuesday inviting submissions on the bill ahead of next week's public hearings by "no later than" today, giving interested parties only 48 hours.

Collin Eglin, the DP representative on the committee, said yesterday he had written to committee chairman Rob Davies of the African National Congress on the issue. By late last night no comment had been received

Alistair Ruiters, the chief director for business regulation and consumer affairs at the trade department and government's chief negotiator on the bill, said amendments would be presented next Wednesday. It was not unusual for government departments to come to parliamentary committees with amendments, he said, adding that government had no sinister motives. Ruiters said the public was constantly informed of the amendments in public seminars addressed by the department's representatives.

Government representatives would discuss amendments on the competition policy proposals tomorrow at the National Economic, Development and Labour Council (Nedlac), Ruiters said.

A source close to business expressed concern yesterday that interested parties would have to make their submissions to the committee without having seen government's amendments following more than a month of public comment. He said commenting on the bill without seeing the amendments would be like "shooting in the dark".

Although attempts to reach Stef Naudé, the leader of the business team of negotiators on the issue, were unsuccessful yesterday, one team member said it would meet today to discuss "the latest version of the bill" It is unclear whether Business SA has seen a copy of an amended version.

S'bu Mngadi, communications director at Coca-Cola Southern Africa, said the organisation had made written submissions to the trade and industry department and the parliamentary committee. SA Breweries' beer division also said it had made written submissions, and both companies will be making oral submissions at the parliamentary committee's hearings, which start on August 26.

Government first released guidelines on the bill last November. Formal negotiations began early this year at Nedlac, and a bill was published for public comment in May

‘It’s not fair, Brew’

M+G 14/- 20/8/98 ~~(360)~~ (232)

A war is brewing over alleged favouritism in the SABC’s commissioning procedures, writes **Ferial Haffajee**

Man on the move: Zwelakhe Sisulu left the SABC to take charge of Nail’s media, entertainment and telecommunications interests. PHOTOGRAPH: STEVE HILTON-BARBER

Independent television producers believe that the SABC secretly gave a multi-million-rand contract for breakfast television to a favoured firm while pretending to be taking submissions from its rivals

Questions are being asked about the role played in the deal by the SABC’s former chief executive, Zwelakhe Sisulu

The contract was awarded to Urban Brew, a production house which is co-owned by New Africa Investments Limited (Nail) — the corporation Sisulu left the SABC to join as an executive director with responsibility for its media, entertainment and telecommunications interests

The decision has angered many broadcasters inside and outside the SABC who charge that Urban Brew knew it had bagged the breakfast television contract long before it was officially announced on Friday, August 7

Rival production houses are particularly incensed by the suspicion that the SABC invited them in for a second round of interviews, on Thursday, August 6, knowing they were a charade Television companies bidding for breakfast television spent tens of thousands of rands making their “pitches” for the contract

Urban Brew has won more than R40-million worth of work from the SABC in the past three years, far outstripping its rivals

The SABC’s highly regarded programme director, Mandla Langa, has questioned the favoured status which companies like Urban Brew enjoy at the SABC

The granting of the breakfast TV contract flies in the face of Langa’s efforts to overhaul commissioning procedures so that more producers get an opportunity to air their work An SABC contract is coveted in a country where there is so little local television work

There were a number of indications Urban Brew had advance knowledge that it was going to be given the contract The company had already hired a producer when the award was announced

Shooting for *AM2DAY* — the new-look breakfast programme which starts on October 1 — reportedly began last Saturday, the day after the contract was awarded

Urban Brew is bringing R9-million in sponsorships to the programme The brains behind Urban Brew is Danie Ferreira, who used to work with the Democratic Turnhalle Alliance — a South African government front in Namibia during the apartheid era

‘If you talk to any black producer, there’s bitterness. Every time you’re told doors are opening, they shut in your face’

Ferreira would not discuss his background this week and his partner, Barney Cohen, objected to the questions “I don’t see the relevance,” said the visibly riled Cohen, a former nightclub owner and past editor of *Drum* and *True Love* magazines

“As soon as Zwelakhe [Sisulu] announced the buy-out of Urban Brew, it answered many questions for us,” charged a member of the Black Filmmakers’ Forum

“If you talk to any black producer, there’s bitterness Every time you’re told doors are opening, they shut in your face ”

SABC representative Enoch Sithole said there was no conflict of interest in Sisulu’s company being granted the contract, which was negotiated while Sisulu was working half-time for the SABC and the other half for Nail

“Urban Brew is an old, established company I can leave the SABC today, form a company and tender for work tomorrow,” said Sithole

He also insisted there was no problem with the number of concurrent contracts held by Urban Brew Producers who complained they have not been allowed to have more than one SABC contract at a time had been “misinformed” by commissioning editors

“You can’t make the decision on the basis of giving everybody work It’s got to do with what is good-quality television for our audiences,” Sithole said

Cohen and Ferreira were at pains to stress there was no hanky-panky or “favoured-nation status” for their company

“We work within the SABC’s budgets,” said Cohen Urban Brew was willing to accept commissions for less than other producers, did not draw high percentages as profit and “work bloody hard”, he said

The politically connected businessman added “Our programmes are finding favour with the market, and the SABC can rest assured that we will deliver at the budgets they set Our only inside track at the SABC is that we knock on their doors and we keep knocking every day ”

Urban Brew is being dubbed by television insiders as the “Barney and Danie” show Ferreira is said to be the wily ideas man, while Cohen is cast as the wheeler-dealer who is on social terms with SABC honchos By this Wednesday they had already had mugs printed featuring the *AM2DAY* logo

At Urban Brew’s hi-tech and colourful headquarters in Johannesburg it was all systems go this week, where glamorous stars and bright young things from *Win ’n Spin*, *Woza Weekend* and Yo-TV strutted the corridors

No short cuts on competition bill

BD 21/8/98

(232)

John Dludlu

THE parliamentary committee on trade and industry has backed down from its earlier position on the Competition Bill which called for written comments to be made within a significantly reduced timeframe.

Rob Davies, the African National Congress MP chairing the committee, said yesterday a final schedule for the hearings had yet to be finalised.

In an advertisement placed in Business Day on Tuesday, the committee called for written comments to the bill to be made by no later than yesterday — effectively giving interested parties 48 hours. Parliamentary hearings on the proposed law start next week.

This prompted protests from the Democratic Party and some business representatives and fuelled suspicions that the committee was trying to rush the bill through unscrutinised. Business complained that making written comments without seeing the amendments proposed by government would undermine their contribution.

Davies said: "In view of the later date when hearings will now have to be held, submissions and requests received by 2pm on Friday August 28 will still be considered." Earlier yesterday, he promised that the committee would do its utmost to "accommodate everybody so that we properly process the bill". He said there was no intention to take "short cuts".

RULES FOR PRIVATISATION

(232)

Lessons from experience

FM 21/8/98

Privatisation can transform inefficient State-owned enterprises and boost economies But it's a complex business and each country has to determine the approach that best suits its circumstances

Economic Reform Today, a Centre for International Private Enterprise publication, lists some lessons from countries that have been through the process Adam Smith Institute president Madsen Pirie contends that

❑ Policymakers should clearly understand their primary goal the transfer of State-owned enterprises (SOEs) to the private sector. Results like paying off foreign debt, better competition and wider ownership are important, but they are beneficial byproducts and not an end in themselves,

❑ Governments should learn to relinquish control after the sale of SOEs "If the new owners remain subject to detailed rules of central planners, no benefits of privatisation will be realised",

❑ "While price is a critical consideration, it is not the only one" For example, selling an intact monopoly to a single buyer might achieve a higher price, but it might be at the expense of competition, consumer wellbeing or broad-based ownership,

❑ A controversial one do not restructure before privatising "Since State companies tend to be outdated, inefficient and overstaffed, practices must be modernised, costs trimmed and the labour force reduced But it's better to let the new owners make these commercial decisions than to attempt to make the decisions for them",

❑ Identify groups affected by privatisation — like workers and customers — "and when politically necessary incorporate special measures to elicit their support",

❑ Competition should be introduced as part of the privatisation process wherever possible "All benefits of privatisation are enhanced when accompanied by market forces The sale of an intact monopoly often brings in more money initially, but causes more problems in the long term",

❑ Total privatisation is preferable to joint ventures between State and private entrepreneurs, and

❑ Every privatisation transaction should encourage wider share ownership wherever possible ■

Sowetan 24/3/98

(332)

Parties agree as Demutualisation Bill sails through Parliament

Competition Bill still fails to appease

BD 25/8/98 (232)

John Dludlu

GOVERNMENT has introduced far-reaching changes to the Competition Bill ahead of this week's parliamentary hearings, but has failed to appease business and labour

The changes relate to the institutional framework, the relationship of the public to the private sector and ministerial reviewpowers.

Although business has welcomed some of the suggested amendments, Business SA believes some of the changes are unacceptable and may be unconstitutional.

Labour has said it will go to Parliament to seek guarantees for job retention during corporate mergers

The changes were announced last Friday at the past session of the National Economic, Development and Labour Council.

Dave Lewis, one of government's chief negotiators, said government's drafters were working to "clean up" the wording of the clause granting ministerial review powers, to avoid the possibility of companies or parties playing the competition authorities against the trade minister.

As the bill stands, the competition authority will make its decisions based on competition grounds and the minister can review the decision on the grounds of public interest.

On Friday, government canvassed a proposal through which parties could go to the minister as a last resort — in effect to appeal the Appeal Court's decisions to the minister. An option would be to allow the competition authority to balance public interest and competition issues on mergers.

Stef Naudé, business's chief negotiator, called for this provision, which he said was probably unconstitutional, to be scrapped.

Business said the clause would politicise the competition process, discourage investment and encourage bad governance.

Although government was willing to make the ministerial review provision "administratively efficient and constitutional", Alistair Ruiters, the chief director leading the government team, said the principle of ministerial review would not be abandoned.

However, government signalled a willingness to further clarify provisions dealing with block exemptions, though Lewis felt this was already permitted.

Naudé said the bill should clearly give the competition tribunal flexibility to exempt beneficial practices such as joint ventures, know-how licences and exclusive purchasing or distribution agreements.

Government has also suggested changes to the bill that will separate the operations — including the determination of budgets — of the competition inspectorate and the tribunal to strengthen the independence of the two bodies.

However, Ruiters and Lewis said no changes would be proposed on the 35% test used in determining dominance, given the concentration of the SA economy The provision was drawn up after studying economies like SA's, the government negotiators said.

Business wants this threshold raised.

Slow pace of Aventura sale worries Kopano

BD 26/8/98 (332)

Linda Ensor
and Robyn Chalmers

CAPE TOWN — Government delays in finalising the Aventura sale to Kopano Ke Matla was causing anxiety to members of the consortium who were concerned about possible diminution of the value of the asset, a parliamentary committee heard yesterday

Andile Nkuhlu, director of restructuring in the public enterprises department, told the public enterprises committee that the resignation of the Aventura CEO and other managers was the source of the concern to Kopano, Cosatu's investment arm

He said the consortium wanted to take over the business as soon as possible so the value was not diminished The sale has to be ratified first by the committee and then by the House of Assembly — which could take several weeks.

Discussions were being held with Public Enterprises Minister Stella Sigcau on how to manage in the interim

Sigcau yesterday defended the sale process, saying a resolution was being prepared which would soon be before Parliament. Public funds were at stake and it was not an issue which could be rushed

Sigcau said the process had been complicated after rival bidder Shomang Investment Holdings initiated legal proceedings when Kopano won the bid Shomang claimed its bid for 100% of Aventura was higher at R161m than Kopano's R93m winning bid

She said Shomang had now withdrawn its case.

Nkuhlu also notified committee members that further land claims had been submitted by chiefs though he could not identify the area offhand

However, he did not foresee any major problems arising as structures had been put in place by an out-of ,court settlement reached in respect of a previous land claim In terms of the settlement, the community would continue to own the land which would be held in trust and leased to Kopano Ke Matla for 99 years

Justifying the choice of Kopano Ke Matla, Nkuhlu said it was the only bidder which could provide financial guarantees Shomang could not raise all the finance

Govt fund to spread benefits of privatisation

BD 26/8/98

(232)

**Robyn Chalmers
and Patrick Wadula**

THE imminent launch of the National Empowerment Fund would bolster government's efforts to spread the benefits of its privatisation policy to the people, Public Enterprises Minister Stella Sigcau said yesterday.

Sigcau told an empowerment conference that privatisation provided an opportunity to disperse ownership more widely among South Africans and particularly among the previously disadvantaged

The fund will buy shares in privatised utilities from government at a discount of up to 20% to resell to previously disadvantaged people It will start out with about R2bn from 10% of Telkom shares, 15% of Sun Air and 10% of the Airports Company.

The fund is set to receive 1,5% of cellular phone company MTN, valued at R570m, and 5% of the national lottery, estimated at R150m to R250m

Sigcau said these shares needed to be sold on to a diversity of people, rather than the same select groupings "We seem to see the same faces over again. My plea is that as many people as possible are identified to share in the wealth that government is trying to distribute," she said

Local government came under attack at the conference for not taking an interest in the development of small, medium and micro-enterprises Gauteng economic affairs spokesman Hester Obisi said local government was the engine of local economic development and the true implementer of the national small business strategy

"Local authorities could assist small businesses in their areas through the provision of low cost industrial and business premises and trading facilities at public places," she said

She called on local authorities to review bylaws that hindered the development of small business.

She said residential rates for small businesses operating from home had to be revised and unused buildings made available to small business Banks had to be persuaded to reorientate their practices to serve small business.

Competition Bill holds underlying realities

(232) BD 26/8/98

Peter Leon looks at the new Competition Bill which goes before Parliament today

ON THE face of it, SA's new Competition Bill represents a welcome break from the current ministerially dominated Competition Board, which has suffered from a crisis of credibility since its inception in 1980.

Formally, at least, the bill creates a new competition agency armed with powers and sanctions which look like the best there is internationally The reality, though, is somewhat different.

Thus, while the bill formally echoes section 181 of the 1996 constitution by providing for the independence and impartiality of the competition commission and its three constituent parts — the competition commissioner, the competition inspectorate and the competition tribunal — it fails to follow through on this at a substantive level. The independence of the commission could be compromised by several aspects of the bill.

The bill provides no criteria for the appointment of the commissioner and a deputy.

The competition tribunal, the key institution of enforcement under the bill, must simply be composed of persons with "experience and expertise" relevant to the tribunal's functions

While the Competition Appeal Court comprises a high court judge as chairman, the remaining members simply need to have the same limited qualifications as tribunal members.

Although appointments to the tribunal are made by the president, on the advice of the minister and, in the case of the Competition Appeal Court, by the president alone, neither the president nor the minister have to consult anyone. This allows scope for political appointments.

While, formally, tribunal members will have some security of tenure, the president may, on the minister's recommendation, dismiss any tribunal member for engaging in any activity that may undermine its integrity. This discretionary catch-all might impede rather than promote independence.

Although the commissioner must furnish an annual report to the minister for onward transmission to Parliament, outside certain financial data, the contents of this report are to be determined by the minister. Again, this is at variance with the position internationally, where transparency in reporting requirements is paramount.

At a constitutional level, the institutional and enforcement aspects of the bill give rise to other problems.

Although the logic of creating a specialist court is unassailable, a number of its features are worrying. Unlike the position in the European Union (EU) or US, there is no appeal from the decision of this court to any higher court.

The provisions of the bill in relation to search and seizure are similarly concerning constitutionally. A search warrant may be issued if there are reasonable grounds to believe "anything connected with an investigation" is either on the premises or under the possession or control of anyone on those premises. It is hard to think of a broader licence to search and seize.

The remedies and enforcement provisions of the bill also reflect the legislation's mixed ancestry. The bill is formally European in its approach to administrative penalties, and superficially North American in providing both for the divestiture of a repeatedly errant firm and criminal penalties.

While it could be argued that the bill takes the best from both systems, the converse is also true.

Clause 62 of the bill follows EU regulation 17 in permitting the tribunal to impose administrative fines of up to 10% of a firm's annual turnover in SA and exports in the preceding financial year. Unlike the position under regulation 17, it does not provide for periodic penalty payments for noncompliance with a tribunal decision, but simply criminalises such conduct.

This is at odds with the statement in the explanatory memorandum that the bill seeks to deal with breaches of prohibited practices "without recourse to the criminal law".

A novel feature of the bill is that a party may not institute a civil action for damages until the tribunal has found that there has been a prohibited practice. The civil court is left with deciding the issue of quantum only.

Perhaps the bill's most contentious feature is the provision in clause 63(2) for divestiture of a firm's assets and, it would seem, any shareholder's shares in a firm, not simply in the case of an unlawful merger, but in the event of a repeated abuse of dominance.

A court in the US will only order divestiture if: no other effective remedy exists; there is irreparable harm; the balance of the parties' private interests and the public interest weigh in favour of divestiture; the defendant cannot raise equitable defences; and the firm's constituent parts can be unravelled without causing undue hardship.

The contrast with the bill is startling and seems to indicate its true intention may well be to break up existing dominant firms to "promote a greater spread of ownership ... to ... members of historically disadvantaged communities", as stated in clause one.

If competition law is concerned with economic efficiency and thus consumer welfare, that should stay the bill's only yardstick. Unluckily, the intrusion of social policy, and importation of rigid EU and to some extent US standards, without any of their flexibility, indicates the extent to which the bill has selectively borrowed from other developed jurisdictions, without considering how well market economies flourish in those jurisdictions under a competition regime of managed flexibility.

□ *Leon is a member of the Gauteng provincial legislature and a partner in law firm Webber Wentzel Bowens.*

Wednesday August 26 1998 SOWETAN

Cosatu will fight privatisation

Sowetan 26/8/98 (232)

By Mzwakhe Hlangani
Labour Reporter

THE Congress of South African Trade Unions (Cosatu) is gearing up for a major fight against the Government's proposed privatisation of water and municipal services, the union's deputy general secretary Zwelinzima Vavi said yesterday

Cosatu has advised the National Economic Development and Labour Council (Nedlac) of possible protest action against the privatisation of municipal services in areas such as Mpumalanga where the Nelspruit council is ready to sign a 30-year-contract with a private British company

Privatisation of municipal services will negatively affect the socio-economic interests of workers because it would make these services less affordable and less accessible to workers and the poor, Vavi said

Cosatu's planned protest action includes a one-day work stoppage in Mpumalanga and marches, pickets and demonstrations in other provinces on September 1, he said

Nedlac has tabled Cosatu's notice for discussion, said Nedlac spokeswoman Jennifer Wilson

It was agreed that Nedlac would convene a meeting as a matter of urgency between Minister of Provincial Affairs and Constitutional Development Valli Moosa, Cosatu and Nedlac management committee members, Wilson said

● The Airports Company of SA (ACSA) and two trade unions which threatened to start striking last week were nearing a solution in their wage negotiations, a joint statement has said

Representatives of Airports Company, the National Education, Health and Allied Workers Union and the Transport and General Workers Union negotiated for more than five hours on Monday night in an effort to avert industrial action – *SA Press Association*

Competition bill is open to debate

BD 27/8/98 (232)

Wyndham Hartley

CAPE TOWN — The Department of Trade and Industry has set the scene for intense exchanges in public hearings on the Competition Bill by tabling amendments which, while favourable to both business and labour, leave some key areas of disagreement

Alistair Ruiters, chief director for business regulation in the department, said yesterday that discussions at the National Economic Development and Labour Council (Nedlac) had removed all but two areas where business and labour had reservations

Ruiters was addressing the parliamentary trade and industry committee He said the anomalous situation of the bill and amendments to it being tabled virtually at the same time was because there were parallel discussions in Nedlac and with other stakeholders taking place

A possible area of disagreement was the extent to which the minister will be able to exercise powers of review over decisions of the competitions authority on the grounds of public interest

The Nedlac report says business is opposed to some of government's suggestions for a public interest mandate for the minister

The tabled amendments also suggest that the threshold in the bill which determines what constitutes a "dominant" position in any business sector should be established every three years rather than annually

Norman Manoim, representing the department, told the committee that the original provision, which categorised a firm with a 35% share of the market as being dominant or able to exert power in the industry, remained in the bill

However, the thresholds would not be determined each year but during a minimum period of every three years

The amendment goes some way towards addressing the concerns of business on the matter but does not increase the threshold as was desired

Cosatu, Moosa in bid to defuse privatisation row

Reneé Grawitzky (272)

BD 27/8/98

THE Congress of SA Trade Unions (Cosatu) will meet Provincial Affairs and Constitutional Development Minister Valli Moosa tomorrow to try to resolve a dispute over the privatisation of municipal services that could lead to protest action.

Cosatu served notice on the National Economic, Development and Labour Council (Nedlac) last week, advising it about possible protest action against the privatisation of municipal services, including that of provision of water

The notice was served ahead of the federation's two-month programme of mass action, which starts next month with protests against demutualisation and privatisation

Countrywide marches will be held on September 23

Cosatu's central executive committee endorsed the programme last week after the federation's Mpumalanga branch called for a 24-hour strike on August 19 in support of the SA Municipal Workers' Union's (Samwu's) stand against the privatisation of water supply

Labour sources believed that Cosatu wanted to dilute Samwu's original programme of action, which was not intended to be a once-off event and had a long-term, mass-based focus

However, Samwu general secretary Roger Ronnie said Samwu's task would be to ensure the anti-privatisation campaign remained at centre stage within Cosatu

NEW

UNFAIR PRACTICES *Many amendments added, but they 'don't affect Nedlac principles'*

Trade department stands firm on Competition Bill

CT(MR) 27/8/98 (222)

Lynda Loxton
Parliamentary Correspondent

Cape Town — The department of trade and industry yesterday tabled extensive amendments to the Competition Bill The department indicated it might stick to its guns about giving Alec Erwin, the minister, sole power to review mergers that could affect the public interest

It also said the criteria against which mergers would be judged would be widened They would include whether any lessening of competition would be compensated for by a gain in technological efficiency

Two new definitions of mergers were added so that smaller mergers could be processed more quickly

Alistair Ruiters, the chief director of business regulations, said that, despite opposition by business, the intention now was that the minister would retain his power to review mergers Additionally, the competition commission would only consider those factors that dealt with the economics of the merger

Ruiters said, however, that this decision was "not cast in stone" and would be reviewed after the public hearings on the bill, scheduled for next week

He introduced 48 pages of proposed amendments to the bill to the portfolio committee on trade and industry yesterday He added that the principles did not differ substantially from those agreed to in Nedlac

Ruiters said the amendments were aimed at providing greater certainty to business and labour, and also tightening up the administration of the legislation

Some controversial aspects of the bill, such as the ban on selling goods at different prices to clients and at different times, have been retained, but the extent of the ban has been lessened to take commercial conditions into account

The amendments streamline the structure of the planned competition authority to a commission (investigative arm), a tribunal and an appeal court The appeal court will have three judges and two assessors rather than only the one judge originally envisaged

Alec Erwin

The department now wants to widen the conditions on which firms can apply for bloc exemptions from the ban on prohibited practices These include restrictive trading or abuse of monopolies for up to five years

The conditions were that the firms must promote exports or small business or prevent an industry from dying It has been decided, however, to give the minister the power to set any other conditions which contribute to economic growth or economic stability in any industry

Other amendments include extending the categories of entities that fall outside the powers of the act to include "acts subject to or authorised by public regulation" such as the petrol price or television stations They also protect intellectual property rights as long as they are not abused and close loopholes on definitions on restrictive practices

The threshold on turnover to determine whether firms hold a dominant position will be set every three years instead of every year Minimum resale prices will be prohibited, and it will no longer be an offence to limit output and increase prices

CT(BR) 31/8/98

Cosatu puts Nelspruit water sell-off on hold

(232)

Frank Nxumalo

Cosatu spokesman Nowethu Mpati

Johannesburg — The Nelspruit local authority had agreed to delay the signing of a water privatisation contract with Bi-Water as previously announced, pending the resolution of a Labour Relations Act section 77 notice to the National Economic Development and Labour Council (Nedlac) by Cosatu, the labour federation, Cosatu said on Friday.

Bi-Water, the British multinational, is the preferred bidder, for the contract, which the South African Municipal Workers Union believe is valued at R12 billion over 30 years

Cosatu is threatening to embark on an indefinite rolling mass action unless its demands on the privatisation of water and other local government services are met

On Friday, Nedlac convened a meeting concerning the notice, at which Cosatu tabled six demands

Nowethu Mpati, the Cosatu spokesman, said Cosatu demanded an immediate halt to all privatisation of basic services and the immediate reversal of all privatisation processes in Nelspruit and Tygerberg and on the Dolphin Coast

Further, Cosatu also demanded that the government consult labour and the communities in implementing public sector service delivery, improve co-ordination between government ministries to ensure there was no undermining of legislation and policies, honour all collective bargaining agreements, and review local government funding to ensure increased service delivery

Nedlac scheduled an additional meeting for next month to allow parties an opportunity to consider Cosatu's demands

In the interim, the negotiation forum appealed to all parties to "take steps to create a climate conducive to resolving the matter"

Cosatu believed the privatisation of local government services would negatively affect the socio-economic interests of workers as well as the formerly disadvantaged communities, as privatisation would put these services beyond their reach

Govt proposes amendments to bill

John Dludlu (232)

GOVERNMENT has proposed amendments to the Competition Bill that will effectively give parastatals exemption from the law's provisions, state negotiators have said.

Dave Lewis, one of government's key negotiators, said the significantly strengthened Competition Bill — now being considered by the legislature — would not apply to parastatals and companies operating within a public licence

In effect, state-owned companies like Eskom, the Industrial Development Corporation, Transnet and Telkom will not be covered by the proposed law.

However, should these parastatals and companies operating within a public licence deviate from the mandates by competing with the private sector or by abusing their dominance, they would be dealt with by the competition law, according to Lewis and Alistair Ruiters, the chief government negotiator on competition policy

In terms of this approach, the competition authorities may not lower or raise standards — specified in their mandates — for such entities.

Previously, private transport operators expressed concern at the unfair competition they experienced from Transnet, the transport parastatal.

To ensure effective application of the law and avoid duplication, the trade and industry department has proposed amendments, providing for co-operation agreements between the soon to be established competition authorities and other regulators such as the SA Telecommunications Regulatory Authority (Satra) and the National Electricity Regulator.

Changes to laws dealing with other regulators might have to be made to provide for this co-operation relationship.

The suggested amendments, which could eliminate industry confusion and prevent firms playing one authority against the other, have the backing of some regulators.

In a recent workshop with other regulators, Satra said in cases where the competition law was stronger, Satra could forward these matters to the competition tribunal, although costs could be a problem.

Already, the bill provides for exemptions to a range of professional associations, including engineers, attorneys, estate agents, architects and accountants.

Part C of chapter 2 of the bill, unveiled in May, provides for exemptions to agreements that contribute to the promotion of exports; buoy small business development or assist firms that are owned by previously disadvantaged people to become competitive, or assist in stopping the decline of an industry.

BD 31/8/98

Demutualisations 'not likely to live up to expectation'

(232)

Paul Vecchiatto BD 1/9/98

THE pending demutualisation of life insurers Sanlam and Old Mutual may not provide the boost in consumer spending and gross domestic product (GDP) growth that is expected, according to a report released by stockbrokerage Mathison & Hollidge

Sanlam and Old Mutual are to demutualise at the end of this year and the middle of next year respectively Analysts have said this could release shares totalling about R70bn to policyholders, of which about R30bn was expected to be cashed in and spent on durable and semidurable goods.

At the beginning of the year the announcement of the pending demutualisations was hailed as an "economic kickstart", along with the likelihood of interest rate cuts

However, interest rates have since rocketed to record levels as the rand became caught up in the turmoil of the world financial crisis.

Mathison & Hollidge research head Henry Flint said receiving a "windfall" in good times would probably result in spending, but during times of uncertainty it would more likely go to the bank to reduce debt

Flint's report focuses on the Australian experience with the demutualisation and listing of AMP, and the lessons this may hold for SA.

Before AMP's listing, speculation was rife of the impact on the Australian and New Zealand economies with private consumption expenditure, GDP growth and the exchange rate expected to benefit most. Although AMP's share price has traded well above the base level of A$16, the impact on the economies was limited.

Economists expected the listing to contribute between 0,5% and 0,75% to GDP growth. These forecasts were based on the belief that a sizeable portion of the public shares would be sold, adding about A$2bn to consumer spending. While it is still too early to see a trend, this did not appear to be showing up in the latest Australian retail sales figures. Retail sales declined in June, the month AMP listed.

Half of the AMP shares were allocated to institutions, which were expected to sell them on to foreign counterparts and thereby strengthen the local currency While this did happen initially, the Asian currency crisis hit the Australian dollar and trade figures, weakening both the currency and cutting GDP growth.

The Australian dollar was approaching record lows against the US dollar before the AMP listing.

Should Sanlam's demutualisation go ahead at the end of the year as planned, the windfall to policyholders would almost certainly be used to consolidate debt "In Sanlam's case we may initially experience a greater selloff than Old Mutual shares, as it will be the first sizeable demutualisation Inexperienced shareholders may be uncertain about the future performance of Sanlam's share price," Flint said

Denel privatisation gains momentum

BD 1/9/98 (232)

Robyn Chalmers

PLANS for the privatisation of arms maker Denel are gaining momentum with the start of a restructuring plan which will see the number of divisions reduced to five from 20.

Public Enterprises Minister Stella Sigcau said rationalisation was necessary before the organisation could be privatised. A government team has been set up to look at Denel's privatisation.

"We must first of all not leap blindfolded into an industry privatisation process believing that we can secure a successful future in this one simple step. The issues are complex," she said.

Sigcau said Denel's restructuring plan had been presented to her department and a ministerial subcommittee assisted by government's privatisation adviser, HSBC, had been set up to review the plan.

She said Denel could be regrouped into five subsidiaries comprising aviation, artillery, civilian products, information technology (IT) and property. Discussions were already being held on the privatisation of Denel Aviation and the IT division.

Denel's aviation maintenance subsidiary could be merged with SA Airways, which falls under Transnet. Government has agreed to fast track the privatisation of Ariel, Denel's IT arm, in conjunction with the establishment of a new state-owned information technology company owned by the State IT Agency.

Sigcau said the globalisation and consolidation of demand and supply implied that there would not be a sustainable future role for broad-based, small, national aerospace and defence companies.

"Given this fundamental assumption, Denel will need to focus its resources on activities where demand is robust and in which it can utilise its areas of strength."

Denel's proposed privatisation has been fraught with problems which culminated in the resignation in late July of former CE Seshi Chonco.

Chonco claimed a lack of clear political direction had hampered the sale of Ariel and Denel Aviation. At the time of Chonco's resignation, it was estimated that Denel would declare a loss of R320m in the year to March 1998, from a profit of R82m in financial 1996/97. The loss was understood to relate to R200m in development costs from the Rooivalk helicopter project and R120m marketing costs from the ill-fated deal to sell arms to Saudi Arabia.

Bill assuming guilt dismays business

BD 1/9/98 (232)

Wyndham Hartley

CAPE TOWN — The Competition Bill came under fire in Parliament yesterday for presuming business guilty of uncompetitive behaviour until it had proved otherwise, in defiance of the constitution

Pick 'n Pay and the American Chamber of Commerce (AmCham), in oral submissions to the trade and industry committee, complained that the competition bill in all cases placed the onus on business to prove it was not being anticompetitive

However, The SA Chamber of Business said in its submission that uncertainties in the legislation would lead to many years of legal action.

Statutory regulators of the telecommunications and electricity supply industries wanted clauses exempting them from the provisions of competition policy to be strengthened

Consumer protection organisations criticised the trade and industry department for failing to consult them fully This was despite the fact that the competition bill was designed to protect consumers.

Pick 'n Pay deputy chairman Gareth Ackerman said in his submission that "it is a well-established aspect of our common law that there is a presumption of innocence, until guilt has been proved The bill reverses this presumption, and business is presumed to be guilty until it can prove its innocence. In all cases the onus is on business to show that it is not indulging in anticompetitive behaviour "

He said the onus in the bill should be shifted so that the burden of proof fell on the person or business accusing a competitor of anticompetitive behaviour.

This view was echoed by AmCham, which said the bill "totally reversed" customary legal principles by shifting the burden of proof from the complainant to the firm.

Sacob said that the threshold defining a business as "dominant", which the legislation sets at 35%, should be increased to 45% This was the share of a market used in the European Union to define dominance

Sacob senior economist Bill Lacey said the low threshold had led members to think "they are going to be 'fingered' by the competition commission".

He restated the business complaint about the power of the minister to interfere in mergers on grounds of public interest. Lacey said it was Sacob's view this provision should be reviewed Granting the minister this power "juxtaposes two different principles — competition-lessening and public interest".

The four-month period in which the minister could complete his review would create uncertainty where mergers were being considered Sacob felt, too, some of the penalties available to force divestiture should be reviewed

TRADE *Portfolio committee told Competition Bill could harm commerce*

Keep law simple, says Ackerman

CT(PM) 1/9/98 (232)

Lynda Loxton
Parliamentary Correspondent

Cape Town — Raymond Ackerman, the executive chairman of Pick 'n Pay, yesterday warned the portfolio committee on trade and industry against being tempted to put too much into the Competition Bill

Business representatives criticised the bill for lacking definition on key issues while consumer bodies said they had not been consulted on pricing issues

"The purpose of the Competition Bill should be to prevent the abuses but not to curb the normal flow of business," he said

If the bill contained details of what could and could not be done with franchise operations, for example, this fast-growing sector would be crippled

Ackerman also appealed to the committee not to consider banning the discounts stores negotiated with their suppliers This could channel up to R4 billion into major suppliers and hurt small businesses wanting to negotiate favourable deals

HYPERCRITICAL *Raymond Ackerman says the Competition Bill should not aim to curb the normal flow of business*

"Leave us alone to negotiate, whether we are small or large," he said "Legislation will only help the suppliers and not the consumers of this country

"With interest rates where they are now, the last thing we should do is anything that will raise prices"

He said a competition bill that concentrated on price fixing, cartels and monopolies would be welcomed, "but please try and avoid putting too much legislation that could affect the way commerce runs"

Internationally, he said, legislation like the Sherman Act and the Robertson/Patman Act to create greater equality in the market place by fixing prices had led to abuses, such as bribes

Bill Lacey, Sacob's chief economist, told the committee the bill was vague about "excessive profits" and could lead to "an incredible amount of litigation"

He said the 35 percent level for defining a dominant firm should be raised to the European norm of 45 percent given the small local market Sacob said the bill went into too much detail on some issues This could make it difficult to implement and result in "institutional overload"

Aynon Doyle of the Consumer Institute criticised the trade and industry department for its lack of consultation with consumer bodies, and said the bill appeared to focus on the issue of competitive pricing to the exclusion of everything else

□ Business Watch, Page 2

Sacob raises concern over uncertainty on Bill

(232)

Sowetan 1/9/98

THE South African Chamber of Business (Sacob) said yesterday it was concerned that draft competition legislation would result in uncertainty and mountains of business-stifling litigation

Sacob senior economist Bill Lacey told Parliament's trade and industry committee that business wanted legislation to promote competition, but said the draft Competition Bill before the legislature was too onerous and lacked certainty

"The market has to be disciplined," Lacey said

"We welcome this bit of legislation and we want to see it is effective

"However, new competition legislation should not create uncertainty as this discourages the local and foreign direct investment which South Africa needs for growth and job creation," Sacob said in a written submission to the committee

Lacey said the bill ran the risk of overloading the Competition Commission it proposed to set up

"We are opening the way for an excessive amount of litigation with this legislation," he said "There is a danger of institutional overload"

The time limit of up to 90 days proposed for the body to rule on potential mergers was too long, adding that by the time the decision has been taken you can kiss goodbye to a merger," he said

Lacey said the fines and potential seizure of property envisaged in the bill were "excessively harsh" and said he was also concerned about ministerial discretion to rule on mergers

The trade and industry committee is hearing submissions on the bill for the whole week and will then consider potential amendments before the draft legislation goes to parliament for debate and final approval — *Reuters*

Law violates constitution, says SAB, De Beers

Wyndham Hartley (232)

BD 2/9/98

CAPE TOWN — SA Breweries (SAB) and De Beers — corporations with huge power in their respective markets — have criticised the Competition Bill as unconstitutional and urged Parliament's trade and industry committee to change the legislation.

SAB beer division MD Norman Adami told the committee yesterday that the onus imposed on business to prove its innocence was probably unconstitutional.

This was echoed by Peter Leon, appearing for De Beers. He said the bill's provisions for a firm to be declared dominant on the basis of a 35% share of the market was unconstitutional and suggested that the definition of dominance should be based on whether a firm exerted "market power".

Leon said De Beers also considered the provision which gave the competition appeal court exclusive and final jurisdiction over competition matters unconstitutional because it violated the fairness provisions in the constitution. The granting of "final" jurisdiction stopped both the Supreme Court of Appeal and the Constitutional Court from exercising jurisdiction. The Constitutional Court should be the final court of appeal.

Leon said the dominance clause placed an onus on firms with more than 35% of the market to establish "on a balance of probabilities, the absence of any conceivable basis on which it could be regarded as having market power. A firm is therefore required to prove a negative and this is extremely difficult." Leon said proving a negative had long been considered unfair and violated the constitutional guarantee of a fair public hearing.

David Unterhalter, for SAB, said the issue of business being required to prove its innocence, rather than complainants proving that a firm was guilty of anti-competitive behaviour, "is a critical issue, particularly because the penalties in the bill are so harsh".

COMPETITION *SAB and De Beers challenge constitutionality*

Bill is 'potentially harmful'

CT(BR)2|9|98 (232)

LEGAL COUNSEL *Peter Leon says the bill attempts to delegate law making powers to the trade and industry minister*

Lynda Loxton
PARLIAMENTARY CORRESPONDENT

Cape Town — The Competition Bill, cribbed selectively from European and US competition law, could be open to constitutional challenge, the portfolio committee on trade and industry heard yesterday

SAB and De Beers both said the onus the bill placed on firms to prove that they were not engaged in prohibitive practices was "irrational and potentially harmful" The bill also confused horizontal and vertical constraints, they said

Norman Adami, the managing director of SAB's beer division, said that the bill's threshold quantifying market dominance, 35 percent of market share, was too low and should be raised to 50 percent in order not to penalise firms which were large by South African standards but small internationally

Peter Leon, the legal counsel for De Beers, also objected to the 35 percent threshold It would be difficult for firms to prove that their market share was less, he said

Leon criticised the fact that the bill gave the trade and industry minister the power to add grounds on which exemptions on restrictive practices could be obtained He said that parliament could not delegate its law making powers

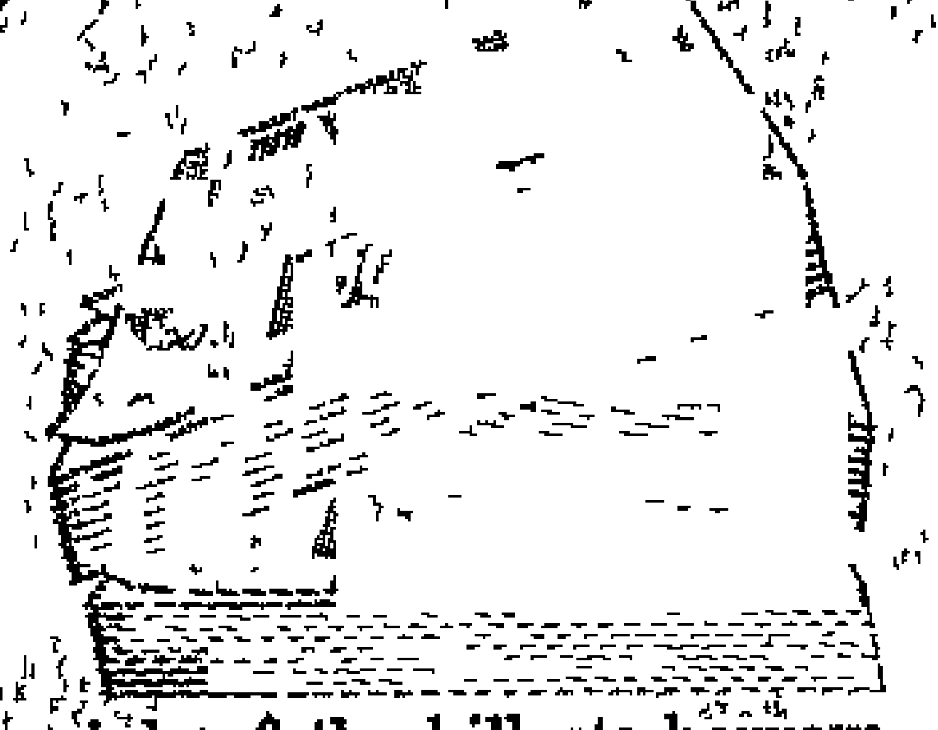
He suggested a new, specific ground for exemption should be added to advance "the ability of firms to compete effectively in international markets"

Saul Klein of the Wits Business School said the bill was vague on definitions of "excessive pricing" penalising efficient firms

SAB and De Beers expressed concern about the review powers granted to the minister and the "onerous penalties" for abuses

De Beers objects to Competition Bill

(232) Star 2/9/98



Cape Town – The way the Competition Bill dealt with firms' market dominance was unconstitutional, the De Beers corporation told parliamentary hearings on the bill yesterday.

In a presentation on behalf of the diamond giant, lawyer Peter Leon argued that a clause saying a company with a 35% market share would be regarded as dominant, unless it could show it did not have market power, put an unfair onus on that firm to "prove a negative".

"It will be almost impossible to prove you don't have market dominance," he told the trade and industry portfolio committee "You might even have to lead evidence from your competitors "

This infringed the constitutional right to have a matter decided in a fair hearing, and should be replaced by a clause reading simply: "A firm is dominant in a market if it has market power".

If the bill is passed, a dominant firm would be prohibited from charging excessive prices, may be obliged to give competitors access to certain resources, and could be barred from trying to prevent other firms entering the market.

Leon said that while De Beers supported the principle of the bill, its borrowings from European and United States laws were selective and omitted important safeguards.

Norman Adami, managing director of South African Breweries' beer division, said the threshold for market dominance should be raised from 35% to the more relevant and appropriate 50%. This was the figure used in the European Union in the prohibition of vertical restraints

SAB legal representative Saul Klein said South Africa was a small economy, and the 35% figure would penalise firms for being large by local standards, even though they might be small internationally It would undermine the companies' ability to compete globally, he said.

Klein told the committee that the "excessive pricing" referred to in the bill was difficult to define in practice, and that it made no sense to implement a clearly unworkable rule – Sapa

The Star 0652

Consensus focuses mainly on 'weaknesses'

Business and labour divided on unbundling

ET(MR) 3/9/98 (232)

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town — Business and labour remained sharply divided on whether firms that abuse their market dominance should be forced to unbundle, the portfolio committee on trade and industry heard yesterday

But the two sides agreed that the proposed competition tribunal should consider public interest issues in mergers as well as purely commercial issues Cosatu, however, saw the minister playing a much more "hands-on" role to take political decisions on mergers than business would like

Herbert Mkhize, Cosatu's trade and industry negotiator, said the main focus of the bill should be to create and maintain jobs But Stef Naude, the trade and industry negotiator at Nedlac for Business South Africa (BSA), said such a focus was inappropriate and should be left to the various labour laws

Dealing with job creation in the bill could, in fact, prevent jobs from being created by holding up or interfering with mergers, he said He added that the Competition Bill still contained "weaknesses that are pretty serious"

The clauses prohibiting collusion, for example, were totally unacceptable as they banned "substantial" cross-shareholdings between companies

Giving the minister discretion in approving or rejecting mergers could seriously affect investment, he said

Cosatu objected to the fact that ministerial discretion was limited to large mergers, saying that it should apply to all of them

BSA was also concerned that the bill gave the minister discretion to create further grounds for exempting firms from the ban on anti-competitive behaviour This point would create great uncertainty for business, Naude said

"We are unaware of any reason why there should be ministerial discretion," he said

Cosatu also said the bill contained weaknesses, as it concentrated on preventing anti-competitive conduct rather than dealing with the anti-competitive structure of the economy

Kenneth Creamer, a Cosatu economist, said divestiture provisions in the bill should be strengthened by making it clear that forced unbundling was "the preferred remedy for firms abusing their dominance"

It should not be limited to just repeat offenders, as suggested by BSA, nor to the leading firm in any sector, as there might be several dominant firms, Creamer said

He also said territorial constraints, such as those found in franchise agreements, should be banned But committee members pointed out that several small and medium-sized enterprises had objected to this ban as it could severely affect their businesses

Full steam ahead for Transnet privatisation

ST (BT.) 6/9/98

(232)

RESTRUCTURING

By SHERILEE BRIDGE

TRANSNET disclosed this week it would sell 40 companies within the next 24 months, a move that should help dampen fears that the parastatal is dragging its feet on privatisation.

An announcement on the first privatisation step at Transnet is expected next week when Viamax Fleet Solutions, a minor subsidiary, announces the winning black empowerment bidder for the 30% stake up for sale in its partial privatisation

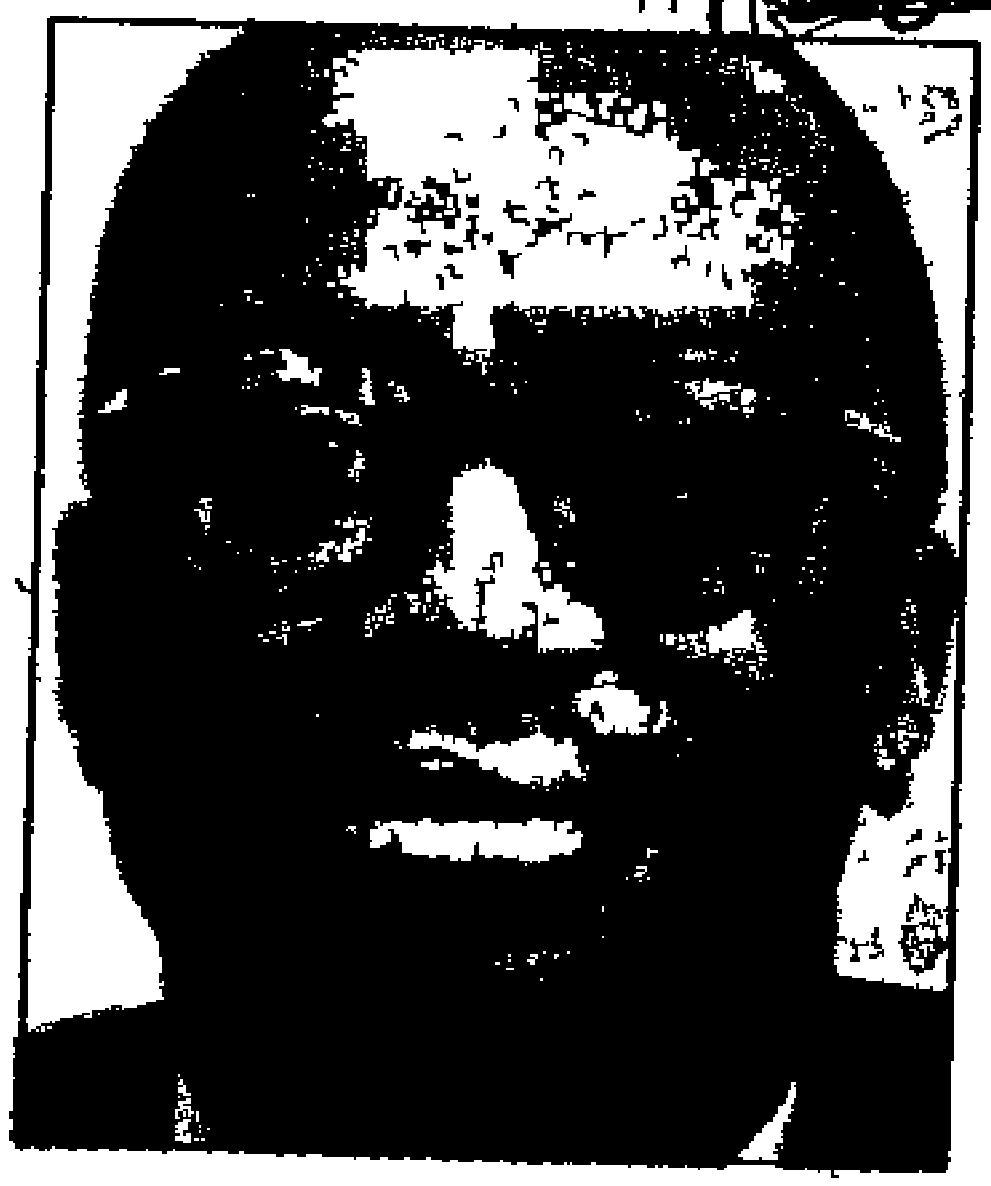
Deputy MD Mafika Mkwananzi says Viamax Fleet Solutions will be used as the acid test

Viamax Fleet Solutions is a recently created management company which has been separated from Transnet subsidiary Viamax.

Mkwananzi says the success of this deal will determine which companies are fully or partially privatised

Interest in the Viamax deal attracted 25 black empowerment companies. This fell to 10 before a selection of two contenders for the stake was chosen.

One of the two bidders on the final list is the SA Railways & Harbour Workers' Union Investment Company, which has enjoyed other commercial business with Transnet.



MAFIKE MKWANANZI

Among shortlisted groups are Alisa, a joint venture between Nail and Hertz; a consortium including Kunene Motor Holdings and the Tlakula and Foster families; and a consortium including Imperial Holdings, Khaya Car Hire and Khwezi.

Mkwananzi is confident that restructuring and privatisation plans will follow soon after the deal is closed. Transnet subsidiaries next up for full or partial privatisation include SA Airways (SAA), road transport subsidiary Autonet, and PX, a package distribution and mini-container services company.

Mkwananzi says SAA's privatisation is proceeding slowly but is expected to meet its deadline for taking a strategic equity partner by May next year. Its privatisation has been held back by a pension fund and medical aid deficit of R12-billion.

Because of complicated vertical and horizontal linkages between Transnet's divisions, it is difficult to separate out Transnet companies with pension and medical fund debts.

But Mkwananzi says government and Transnet are close to finding a solution. Among options are the establishment of a special debt entity to take the debt off Transnet's books and ensure government is not responsible for the burden.

Income streams and proceeds from the privatisation could be used to service the debt

Transnet says it is not possible to proceed piecemeal or dismantle the parastatal overnight.

Public Enterprises Minister Stella Sigcau says privatisation of Transnet is not going to be easy, as is typical of "giants" of this size.

But the transformation process has already begun to pay off with Transnet this year declaring its first profit (of R278-million) in four years.

INSIDE PARLIAMENT

Too many patches in competition quilt

(222) CT(MR) 7/9/98

LYNDA LOXTON

The many and varied submissions made in parliament last week about the Competition Bill covered far more issues than could ever be accommodated in any one piece of legislation As a result, the final mix the portfolio committee on trade and industry comes up with this week will be unlikely to please all parties

The problem is that the bill aims to deal with the very structure of the South African economy That structure is complex, contrary, dominated by large firms, inefficient in many ways and badly in need of reform

Since 1994, the government has been trying to deal with this unwieldy monster in a number of ways cutting back on high tariff walls, launching export promotion drives and initiating studies on clusters of industries that could work together

This strategy has started to pay off Unbundling, mergers and acquisitions have dramatically changed the face of corporate South Africa Some really competitive exporters have emerged

The control boards that strangled agriculture for so many years have been dismantled, and food price inflation is the lowest it has been for years

But in the process, many jobs have been lost, mainly because of mechanisation, business closures and mergers

Small business, which is seen by many as the answer to unemployment, has been hobbled by bad legislation, lack of access to finance and the inability to compete with increased imports or large local companies

Against this background, the department of trade and industry has fashioned the Competition Bill to "promote economic efficiency, ease of entry of SMMEs (small, medium and micro enterprises), diversification of ownership and creation of new employment opportunities "

But the provisions of the bill have generally been met with howls of protest from both business and labour, for different reasons, of course While most of the objectives centre on technical definitions and constitutionality, the bill's attempt to address socioeconomic issues has probably been most problematic

"The purpose of competition law should be the efficient functioning of the economy and the maximisation of consumer welfare," said SAB in its submission last week

"To do so has the advantage of promoting economic efficiency and will ensure the global competitiveness of South African business To do otherwise undermines the foundations of a market economy and disadvantages those consumers whom the bill should protect "

SAB, Business South Africa, the South African Chamber of Commerce and others repeatedly stressed that, for example, the powers of the minister to halt mergers "in the public interest" created too many business uncertainties and could inhibit investment

In a major concession, the department announced on Friday that this power would now be held by the competition authority instead

Cosatu, on the other hand, believes the bill does not go far enough in meeting "developmental" goals The law should play a more proactive role in restructuring the economy rather than merely trying to address price fixing or collusion

The Small Business Project said the bill was "a melting pot of diverse opinion and approaches The extent to which this may be its downfall, time will tell "

It said competition policy was "but one of an array of policy instruments that need to be implemented" to support the growth of the SMME sector

For example, it argued for a closer match between trade and industrial policy and competition policy, possibly through establishment of a "commission" to oversee both

Namibian Breweries added another dimension to the problem on Friday by calling for the competition authority to have powers to prevent unfair competition by South African firms against those from neighbouring states

That move will probably have to wait for completion of the Southern African Development Community's free trade deal

Competition Bill has more changes on way

(232) CT(BR) 7/9/98

LYNDA LOXTON

Cape Town — The department of trade and industry is expected to start tabling further changes to the Competition Bill today to provide greater certainty to business and deal with potentially unconstitutional provisions

This move comes after a major change announced at the weekend, affecting the power of the minister of trade and industry to accept or reject proposed mergers on grounds of public interest. This issue had been one of the most vehemently opposed clauses in the bill during last week's parliamentary hearings

Alistair Ruiters, the chief director of business regulations, and Norman Manoim, a legal adviser, told the portfolio committee on trade and industry that it had been decided to change the bill so that public interest issues would instead be considered by the competition authority

"The minister will not be a decision-making party but is going to be entitled to intervene in the proceedings of the tribunal, commission and appeal court," Manoim said

Ruiters said the department would go through the bill again with the committee this week, suggesting amendments on a line-by-line basis

The changes will fall into three categories One would be technical and the other would be where there were constitutional uncertainties, Ruiters said

"The third category will be where we felt that we could make for certainty by changing and improving the language," he said

Amendments to Competition Bill tabled

(222)

Wyndham Hartley

CAPE TOWN — The trade and industry department has softened its position on what constitutes a dominant position in a market in a list of amendments to the Competition Bill tabled before a parliamentary committee yesterday.

The amendments arise from submissions made during a series of public hearings last week Business SA said the 35% market share used as a definition was too low and that the threshold should be 45% It was also suggested that "market power" should be the determining factor.

In the amendments tabled yesterday the department said a firm was dominant "if it has at least 45% of that market". It would also be considered dominant if it had between 35% and 45% unless it could demonstrate that it did not have market power If it had less than 35% of the market, it would be dominant if it definitely had market power

The bill defines market power as the power of a firm to control prices or to exclude competition or to behave, to an appreciable extent, independently of its competitors, customers or suppliers.

The committee deliberated until late last night and there was no clarity on which amendments had been accepted.

March to council offices likely to disrupt services

(232)

Pearl Sebolao
and Reneé Grawitzky

BD 8/9/98

A MARCH by more than 20 000 municipal workers against privatisation is expected to disrupt service delivery in greater Johannesburg's five municipalities today, with the bus service and refuse collection the hardest hit

Members of the SA Municipal Workers' Union (Samwu) and Independent Municipal and Allied Trade Union will march to the council offices in Braamfontein to protest against privatisation, Samwu branch chairman Mbongeni Mabaso said

The protest will also focus on the organisational review, which is seen as paving the way for a single municipality popularly known as a megacity

The organisational review comes after costly duplications of functions between the city's five councils were identified as having contributed to Johannesburg's liquidity crisis late last year.

Leon van Tonder, greater Johannesburg metropolitan council's labour relations executive officer, said although there would be disruptions, contingency plans had been put in place and emergency services would not be affected.

The unions had been granted permission to stage a march in terms of the Gatherings Act, but the councils had not granted permission for the workers to leave their work stations

Meanwhile, the Airports Company of SA and the SA Railway and Harbours Workers' Union (Sarhwu) came closer to reaching agreement after a new proposal was tabled by the company during wage negotiations last night, Sarhwu spokesman Evan Abrahamse said.

The proposal, which could end the five-day strike by Sarhwu members at the company, would be taken to members today for a final decision

The week-long wage strike by about 2 000 members of the National Union of Mineworkers at Ingwe's Middelburg coal mine in Mpumalanga was resolved yesterday Workers are expected to return to work today

The strike stemmed from differences over union demands for increases ranging between 13% and 10%, the merger of job categories and the separation of negotiations on the introduction of a new shift system from the main wage talks.

The introduction of a new four-shift system was intended to allow the mine to comply with the new Basic Conditions of Employment Act without incurring additional costs

Ingwe spokesman Fleur Plimmer-Honeywill said parties had agreed to wage increases ranging between 7,75% and 7,6% The agreement also provided for the conversion to a continuous four-shift operation from the end of this month and increases to the living-out allowance

Agreement on wages was also reached between the union and Rotek to provide for a 9,5% increase for the lowest paid, 8,5% for general workers and 7,3% for the rest of the work force

Minister is denied power over mergers

(232) BD 9/9/98

Wyndham Hartley

CAPE TOWN — The national assembly's trade and industry committee has accepted amendments to the competition bill which will deny the minister the power to rule on business mergers on the grounds of public interest

During public hearings last week, the committee was warned that allowing the minister the power to decide the fate of mergers would politicise merger control and discourage investment.

The committee was told that it was an open invitation to create fertile ground for "bad governance".

The decision by the committee to accept the late amendments is a setback for the Congress of SA Trade Unions, which welcomed the ministerial powers in its submission to the committee and argued that they should be further strengthened.

It proposed that the minister should be empowered to outlaw any merger which involved a loss of existing jobs

The committee approved the department's amendments, which suggested that all public interest interventions in mergers should be on conditions established by the competition tribunal and the competition commission. If the bill is passed in its amended form, the minister will only be allowed to "participate as a party in any merger proceedings"

The department's amendments insist that when determining whether a merger can be justified on public interest grounds, "the competition commission and the competition tribunal must consider the effect the merger will have on a particular industry or sector, employment and the ability of small businesses to be controlled or owned by previously disadvantaged persons"

This amendment removes the power of public interest objection to mergers from the politicians and places it with the experts appointed to the commission and the tribunal

The committee has spent the past two days in intense discussions among members and with officials of the trade and industry department

It has now informally agreed to the provisions in the competition bill and will formally vote on the bill on Friday The bill will then go to the National Assembly and the National Council of Provinces for their approval.

Unions poised for SA-wide protest

BD 9/9/98

(232)

Reneé Grawitzky

THE Congress of SA Trade Unions (Cosatu) will proceed with countrywide protests against the privatisation of municipal services later this week after the federation and government failed to resolve, their differences during lengthy talks in the National Economic, Development and Labour Council (Nedlac) yesterday.

The federation first notified Nedlac of possible protest action against privatisation of municipal services after its central executive committee meeting last month

A Cosatu official said a second notice would be served on Nedlac to ensure the protests were protected in terms of the Labour Relations Act The protests, to start on Saturday, will culminate in national marches on September 23

Privatisation summit learns from programmes worldwide

BD 9/9/98 (232)

Robyn Chalmers

GOVERNMENTS embarking on privatisation initiatives have to put a number of building blocks in place as well as remove red tape if their programmes are to succeed.

This was one of the messages emerging from the Pan African Privatisation Summit that kicked off yesterday with 220 participants from 31 countries around the world.

Oldemiro Baloi, Mozambique's minister of industry, commerce and tourism, said when entities were privatised, government had to empower the private sector by removing bureaucratic practices and corruption.

Baloi said the state should create a macroeconomic environment and vision that gave the private sector some certainty about the future direction of a particular country. A high degree of stability was needed during privatisation initiatives

Nomonde Mapetla, SA's deputy director-general of public enterprises, warned that privatisation was not the panacea of SA's economic and social ills It was necessary to learn from privatisation initiatives successfully undertaken in other countries, she said.

Nick Allen, director of consulting and corporate finance at PricewaterhouseCoopers in Zambia, said privatisation was a growing phenomenon worldwide. In the first six months of this year, global revenues from privatisation sales amounted to $45bn.

Allen said a number of studies undertaken by the World Bank and other organisations showed that there were positive benefits from privatisation. These included increased investment in privatised enterprises, improved productivity and efficiency gains.

However, privatisation was a major change process which required careful monitoring. A number of building blocks were evident in highly successful privatisation exercises. These were political commitment from the highest level in government; a well-defined strategy, a clear set of policy objectives; popular support; sufficient resources; a clearly defined implementation process and the right legal and institutional framework

SA urged to gear up for global tourism rivalry

BD 9/9/98

Janet Parker

SA WOULD have to work hard to remain internationally competitive in the global travel and tourism markets, and to capitalise on its potential to create jobs and foreign exchange earnings.

Geoffery Lipman, president of the World Travel & Tourism Council said if SA "got it right, this industry could create more than half a million new jobs across the economy in the next 12 years, provided that issues like infrastructure, training and safety are tackled in a robust way".

Lipman was speaking at the launch of a report yesterday on the direct and indirect effect of tourism on SA's economy. The study, commissioned by the council and environmental affairs and tourism department, made recommendations to optimise SA's tourism potential.

These included giving strategic economic and employment priority to the industry, taxing it intelligently, recognising its employment creation potential, enhancing tourism promotion, investing in human resources and expanding the infrastructure.

Environmental Affairs and Tourism Minister Pallo Jordan said the report showed the scale and diversity of SA's travel and tourism industry was immense. It currently provided jobs to more than 750 000 people, directly in the industry and throughout the wider economy.

"Travel and tourism is also closely reliant on our cultural and natural environment and with proper management can assist in promoting the conservation of these assets," he said The department had finalised strategies and implemented plans for an action programme to develop and promote tourism.

TODAY'S WEATHER

by other Transnet business units

The Moving SA study said the sustainability of SA Airways (SAA) was also muddied by its potential ... mestic airline sector was still profitable enough to sustain itself, but this was not the case for SAA's international operations.

strategic equity investor or an international alliance partner.

Ambitious plan: Page 15

ost Cuts Cost Live

Protesting council workers carry a coffin to symbolise the effects of the privatisation of municipal services during a march in Johannesburg yesterday.

Picture ROBERT BOTHA

Thousands of council workers march

(232) BD 9/9/98

Pearl Sebolao
and Reneé Grawitzky

THOUSANDS of council workers took to the streets yesterday to protest against the privatisation of municipal services and the greater Johannesburg metropolitan council's failure to collect service charges from big business.

At the same time, the National Union of Metalworkers of SA alleged that striking workers in the motor industry were assaulted by members of the SA Police Services yesterday. It has written to Safety and Security Minister Sydney Mufamadi asking him to intervene in the "assault, harassment and arrest of striking workers".

Services in Johannesburg's five municipalities were disrupted as members of the SA Municipal Workers' Union and the Independent Municipal and Allied Trade Union embarked on a joint march through the city.

Bus service executive officer Fouch Fouche said the service virtually came to a standstill during the march but most services returned to normal in the afternoon.

Refuse removal and cleaning services were the most affected. There were also a few delays in maintenance work.

Johannesburg mayor Isaac Mogase had to receive the protesters' memorandum after workers waited almost two hours for executive council chairman Colin Matjila.

The six-day-old wage strike at the Airports Company of SA was finally resolved yesterday after an agreement was struck with the SA Railway and Harbour Workers' Union with the parties agreeing on a 10% increase.

Sapa reports the National Education Health and Allied Workers' Union had declared a dispute with Parliament's management for allegedly breaching a 1995 agreement on staff appointments.

Both parties had agreed to outside mediation by the Independent Mediation Service of SA.

R2000 shares for all Sanlam policyholders

ARG 9/9/98 (232)

ED WEST AND ALIDE DASNOIS

Sanlam's more than 2 million policy holders could each get a free share bonanza of at least R2 000 when it lists on the stock exchange at the end of the year.

The exact value of each policy holder's share will depend on the value of Sanlam's free assets on the day of listing and also on how big the policy is and how long it has been held

Sanlam's executive chairman, Marinus Daling, said today each policy holder would receive at least 300 shares. If the shares had been listed on 31July, for example, they would have been worth R7 and R9 a share, or R14-billion in total

The actual share price when Sanlam lists late in November or early December may fall below this range Since July 31 the Johannesburg Stock Exchange, along with stock exchanges across the world, has taken a tumble in the wake of the Asian and Russian economic crisis

Outlining the first details of Sanlam's demutualisation proposal, Mr Daling said policy holders would qualify for free shares if they had bought policies before March 31 this year, and they had not let the policies lapse or surrendered them by October 15

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TOMORROW

What's in it for you

ON SATURDAY

A Personal Finance special report on the Sanlam listing

On that day, the plan to convert from a mutual association owned by policy holders to a company owned by shareholders will be put to a vote of Sanlam policy holders at an extraordinary meeting

If approved, the plan will go before the High Court a week later, and the shares will be listed on the JSE later this year

Mr Daling said the new shareholders would make a huge difference on the JSE, since there were only 500 000 to 750 000 existing shareholders on the stock market

One of the reasons for Sanlam's decision to list on the stock exchange is to raise money for expansion through the issue of new shares

Mr Daling said Sanlam would raise up to R5-billion in new capital and the new shareholders would be given a chance to buy additional shares at a discount

Further details on this would be released closer to the listing

He forecast the listing would have a big impact on the economy

"The impact comes through the spending loop," he said

Although many policy holders might hold on to their shares waiting for the stock market to improve, some would sell them and use the money to redeem debt, or simply spend it, Mr Daling said

Parliament gave the green light for Sanlam's demutualisation yesterday when the National Council of Provinces approved legislation opening the way for the life assurer and its rival Old Mutual to go ahead

But the Congress of South African Trade Unions (Cosatu), which is hostile to the process, has warned it will launch a campaign of mass action in protest.

Cosatu fears the listing will enrich Sanlam management at the expense of policyholders and argues that it is not the right way to ensure that the assets of the vast retirement industry are used for economic development

Late concessions in Competition Bill

(232) ET (BR) 9/9/98

LYNDA LOXTON

Cape Town — The portfolio committee on trade and industry yesterday tightened up divestiture rules in the Competition Bill as it completed its extensive review of various clauses in the bill

It will vote on Friday on the bill, which will go for its second reading in the national assembly on September 21

Alistair Ruiters, the chief director of business regulations, said he was relieved the bulk of the work on the bill had been completed He said the aim would be to have the various institutions envisaged in the bill up and running by mid-1999

The current Competition Board would remain in force until then, he said

Yesterday, the committee decided the competition tribunal should be able to impose divestiture on a firm in the case of repeated offences The trade and industry department had only wanted this power if there was no other way to halt the abuses

The portfolio committee also decided that co-operatives should be included under the provisions of the act Co-operatives were previously exempted The department has bowed to pressure to increase the bill's market share definition of a dominant firm from 35 percent to 45 percent But a firm with less than 35 percent market share could also be considered dominant if it had market power Business groups argued last week that 35 percent was too low, given the small size of the South African market

But the department has refused to budge on its insistence that it will be up to firms to prove they are not abusing a dominant position, which many businesses have claimed is unconstitutional

The national council of provinces yesterday gave the final go-ahead for the Employment Equity Bill and the Demutualisation Bill, which will pave the way for the demutualisation of insurers Sanlam and Old Mutual.

As expected, the Employment Equity Bill was opposed by most opposition parties, while the Demutualisation Bill was not debated, even though it has been opposed by Cosatu

Cosatu said it was dismayed by the decision to pass the legislation "We believe that all South Africans, particularly the policy holders, need to be told of the implications of the proposed demutualisation and listing on the broader question of transforming the South African economy," Cosatu said.

Adcock Ingram in talks to sidestep probe objections

BD 10/9/98 ([illegible]) (232)

Amanda Vermeulen

ADCOCK Ingram is in talks to sell SA Druggists' (SAD's) intravenous business to satisfy possible objections the Competition Board may have to Adcock's proposed acquisition of SAD.

An Adcock spokesman confirmed yesterday that the group, which could have a significant share of the critical care market after the deal with SAD, has initiated talks to sell Intramed, the business which produces intravenous drips, ahead of the expected Competition Board probe

The proposed dismantling of SAD — announced this week — could see Adcock buy SAD's Pharmacare business from Fedsure, after Fedsure buys 100% of SAD Some members of the SAD board warned, however, that there was a possibility that the Competition Board, which must still investigate the transaction, might not sanction the deal

Analysts said this week that although the combined Adcock-SAD entity would probably have between 37% and 40% of the local pharmaceutical market on a volume basis, on a value basis the merger was likely to have only a 25% combined market share.

An analyst said that Adcock's deal to bring black empowerment group Sekunjalo into the enlarged entity would go a long way towards satisfying any qualms the Competition Board might have about the deal.

The warning that some members of the SAD board sounded about the proposed deal prompted analysts to say yesterday that SAD management was opposed to the merger on "emotional" grounds A number cited speculation about a failed management buy-out, which they said had soured SAD management's perceptions of Adcock.

SAD financial director Tom Hein said yesterday there had been no talk of a management buy-out of SAD, but there were discussions earlier this year to bring a black empowerment partner into the group. Sources said one of the parties believed to have been involved was Real Africa.

As part of the deal, which would also have included 30% shareholder Fedsure, management would have participated in the restructured entity. The discussions were not fruitful, he said

Analysts across the board agreed that the Fedsure/Adcock deal to dismantle SAD would be good for Druggist's shareholders, based on their valuations of the company Many said Fedsure was definitely receiving the better bargain, picking up the health care operations "a little on the cheap side".

An analyst said Adcock would pay a fair price, particularly as the deal would include one new drug, with good earnings potential, currently waiting for US approval

Sanlam listing to pay for demutualisation

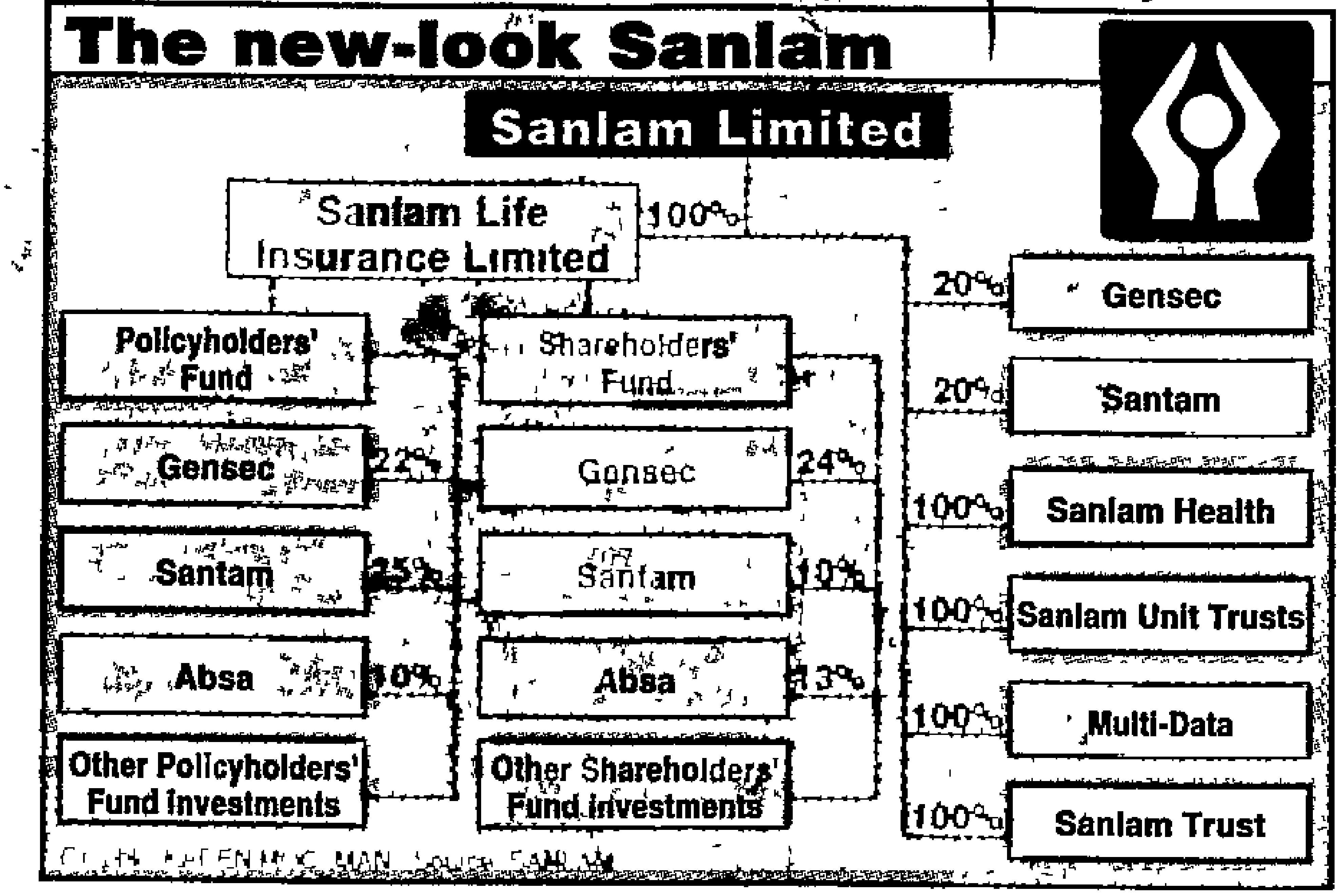
BD 10/9/98 (232)

Samantha Sharpe

CAPE TOWN — Lıfe group Sanlam hopes to raıse R4bn to R5bn when it lısts on the Johannesburg Stock Exchange (JSE) to cover corporate restructurıng charges and the costs of its demutualısatıon.

Sanlam announced ıts intention to demutualise earlıer this year, which, ıf accepted by 75% of its members, wıll result ın ıts conversion from a polıcyholder-owned mutual company into a shareholder-owned company.

Announcıng long-awaıted detaıls of the demutualısatıon proposal, Sanlam ındıcated yesterday that at least 300 free shares would be allocated to each of its more than 2-millıon polıcyholders, executive chaırman Marinus Dalıng cautioned that the expected R4bn-R5bn to be raised ın new equıty was based on market condıtıons at the end of July Since then the JSE's all share ındex has fallen by 30%.



The Sanlam board wıll review the targeted amount closer to the time of listıng and depending on market condıtions and "other factors", Daling said. Commenting on what the group planned to do wıth the capıtal, Daling said it would go towards the corporate restructuring and the costs of demutualısation — estimated at R550m.

As part of the demutualisatıon proposal Sanlam planned to restructure to further its strategy of becoming a broadly based financıal services group. Thıs included the creatıon of Sanlam Lıfe (the present Sanlam) and the partial transfer of strategıc assets to a holding company, Sanlam Limited.

Sanlam owns a number of operatıng companies, businesses and ınvestments ın companies ıncludıng Gensec (66%), Santam (55%) and Absa (23%). "In terms of the restructurıng, 20% each of Gensec and Santam, together with the shares in the Sanlam Health group of companies, Sanlam Unit Trusts, Multi-Data and Sanlam Trust, are being transferred from Sanlam Life to Sanlam Ltd."

In addition to these transfers, 5% of Santam and 10% of Absa will be transferred from the policyholders' fund to the shareholders' fund of Sanlam Life. The reason for these transfers is to allow greater diversification of investment in the policyholders' fund.

"Sanlam Limited will use the proceeds of the capital raising to pay, in whole or in part, for these companies and ınvestments Sanlam Life will invest the cash .. from these sales to diversify its investments, thereby increasıng policyholder security.

"The total ınvestments held by the Sanlam group in Gensec, Santam and Absa will not change as a result of the restructuring, whıle Sanlam Ltd will be able to undertake further corporate transactions without affecting policyholders' interests."

Some market commentators said they were disappointed that the extra funds would not be used to further the group's earlier intentions to become a global player. Daling said the group planned to get its home base in order before looking offshore. In the ınterim, internationalisation would continue through Gensec Asset Management.

He said that as part of the capital raising exercise policyholders would be gıven the opportunity to buy additional shares ın Sanlam at a discount to other ınvestors, wıth further details to be dısclosed in November

Free shares: Page 17

Business Day

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Transnet privatisation plan to see noncore assets sold over 18 months

(232) BD 10/9/98

Robyn Chalmers

TRANSNET will sell more than 12 noncore assets, including the Blue Train, baggage handler Apron Services and parcel carrier PX, within 18 months in terms of a privatisation programme announced yesterday.

Concessions or joint venture partners will be introduced to strategic businesses such as Spoornet, commuter rail operator Metrorail, and Portnet, while an equity- or joint-venture partner will be found for Petronet.

Plans are to be finalised by next year

Analysts said this would bolster SA's much-criticised privatisation programme. Transnet has about R40bn in assets and one analyst said the overall programme would help raise billions of rands to cut state debt and to reinvest in an ageing transport infrastructure.

A government official said a decision had been made on the preferred empowerment bidder for a 30% equity stake in Viamax Fleet Solutions, which manages part of Transnet's fleet

The SA Railway & Harbours Workers' Union Investment Company, possibly in a joint venture with Super Group, is believed to have won the bid An announcement is expected soon, kickstarting Transnet's privatisation initiative

Transnet restructuring GM Kennedy Memani said at the Pan African Investment Summit that Transnet had to restructure and privatise as it was hampered by its pension fund deficit and debt burden

Transnet held debt of R23bn against equity of R12bn and was not a viable concern.

"If we do not privatise soon, we will have to start closing units down. We are talking to labour about all the privatisation initiatives," he said.

In the year to March 1997, Transnet recorded a profit of R278m, net debt of R20,4bn and had a capital expenditure budget of R2,8bn which was "very low", said Memani.

Government and Transnet have broadly agreed to hive off company's R12bn pension and medical aid deficit into separate legal entities.

The debt has to date blocked the privatisation initiative. Several international banks carrying Transnet loans recently withdrew objections to this agreement.

The pension fund deficit and debt is now being divided among the various entities. In one scenario, Spoornet would be apportioned R7,67bn, SA Airways (SAA) R4,7bn, parcel carrier PX R1,13bn and Portnet R740m. However, SAA, up for partial privatisation by

Continued on Page 2

Transnet

(232)

Continued from Page 1

BD 10/9/98

next April, could not absorb R4,7bn of debt and still be viable, so ways to manage the debt were being discussed.

Noncore assets to be privatised include road transporter Autonet, travel company Connex, data processing unit Datavia, equipment manufacturer Transwerk, parcel carrier PX, and telecoms subsidiary Transtel.

Printer Production House, engineering subsidiary Protekon, the chemical services division, Transnet Housing and the medical aid division were also up for sale.

Public Enterprises Minister Stella Sigcau said several new privatisation initiatives — including government's crippled abattoir company, Abakor — would be announced within two weeks.

State to fast-track sell-offs

et (ma) 10/9/98 (332)

Charlene Smith

Johannesburg — Government will announce privatisation opportunities in 14 non-core Transnet businesses in the next fortnight It will also begin fast-tracking privatisation in Denel's information technology and aviation holdings, Stella Sigcau, the state enterprises minister, told a privatisation conference in Sandton yesterday

Sigcau said, apart from South African Airways (SAA) and Autonet, government was looking at privatising businesses such as Connex, and the Apron Services, as well as non-Transnet state assets like Denel, the arms manufacturer, and Abacor, the abattoir parastatal

"We initially thought we would have a full privatisation with Alexkor (the state-owned diamond mine), but we have had to tread with care and are currently looking at a management contract," she said

Sigcau said Transnet had also made a bid with Spoornet on Tuesday as part of rail privatisation processes in Mozambique

She noted that the privatisation of Aventura, the state-owned resort company, was close to conclusion

CONVERT *Stella Sigcau, state enterprises minister*

Taking subtle sideswipes at US dominance of the arms industry, Sigcau said Denel was being eroded by foreign countries poaching key staff, "offering them five times more than we can afford to pay"

"A developing country like South Africa needs credible partners if it is to sell its wares — with the Rooivalk we needed just one part, and our major competitor diplomatically made it difficult for other suppliers to provide it, so we fell flat at the bidding table," she said

Sigcau, who noted there were now 30 countries in Africa involved in privatisation, told the Business in Africa conference of some 300 people from across Africa "We can't focus blindly on outright disposal — a trend that gives the impression that all we are doing is a bargain-basement sale We have adopted strategic equity partners, and were, (for) example, happy with the heavy bidding for stakes in Telkom and the Airports Company

"We have already noticed a marked improvement in services from Telkom flowing from its partial privatisation"

Sigcau said SAA privatisation was still being hampered by a huge pension deficit and loans that had to be serviced

In a frank admission Sigcau said, "three years ago I was a sceptic about privatisation, but through Telkom, the Airports Company, Sun Air, Aventura, and soon Safco we are beginning to see the light"

In response to a question from a member of Sudan's privatisation committee, who asked whether privatisation was not just a "new form of colonialisation that led to retrenchment, a reduction of state control and the sovereignty of state", Sigcau said, "the best weapon of any state is to make sure there is a regulatory regime that ensures government still exercises some power"

Cash bonanza to boost economy

Star 10/9/98

Sanlam's listing on stock exchange expected to see spending spree from policyholders given free shares

(222)

By Ryan Cresswell

A windfall of billions of rands worth of shares, which would be released to Sanlam policyholders if plans to turn the mutual association into a company are successful, could be a Christmas present for the economy when it needs it most this year

If policyholders and the High Court approve the process, Sanlam will change from a mutual society owned by policyholders into a massive company listed on the Johannesburg and other stock exchanges, and owned by shareholders

The demutualisation process is expected to inject more than R7-billion into the economy which economists and business leaders fear is heading into a recession

The life assurer announced plans to demutualise yesterday, just a day after the National Council of Provinces passed legislation giving the go-ahead

Another mutual association, Old Mutual, plans to take advantage of the new legislation next year – a process that will again unlock billions of rands.

Sanlam members are being asked to vote on the move and, if it is approved, eligible policyholders will receive free shares in Sanlam Limited, the new holding company

The High Court will also have to approve the process

As a shareholder-owned company, Sanlam Limited will have access to external sources of capital making it easier to continue growing It has been limited in the past by having to rely solely on internally generated capital.

The sale of further shares would ra[illegible] R[illegible] billion for the new company

Requisec economist Dawie Roodt predicts that about R6-billion to R7-billion – or half the R14-billion worth of shares involved – will be cashed in towards the end of the year He predicts that up to half this sum will be spent on consumer goods, and the other half will be used to pay off debts.

Roodt says the amount spent will give a short boost to the economy towards the end of the year, and it will place the country on a slightly higher growth path in the long term

When Sanlam is listed on stock exchanges it will, as a blue-chip company, attract foreign investment and give cash reserves a lift, he adds

Nico Czypionka, chief executive of Economic Dynamics, says Sanlam's demutualising will be a Christmas present for the economy, but the boost will not be nearly as good as had been expected earlier this year

Roodt says shares will probably be worth only half of what they would have been in a stronger economy Because interest rates are high, many people will cash in and redeem debt rather than spend.

Roodt adds it is unfortunate that Sanlam is demutualising at a low point in the economy, and that even a small consumer spree could raise inflation "But overall this is a very positive move"

The Congress of South African Trade Unions, however, is sceptical about demutualisation, and is prepared to turn to mass action

Spokesperson Kim Jurgensen says the legislation allowing demutualisation is "premature" because Cosatu is still debating the issue with the ANC and both life assurers

She says Cosatu wants Sanlam and Old Mutual to launch a campaign outlining both the pros and cons of demutualisation

➤ Full story

TV producers call for SABC3 to be privatised

Star 10/9/98 (232)

Cape Town – The Independent Producers Organisation (IPO) yesterday called for the immediate privatisation of SABC TV3, subject to a review of the timing and phasing in of strategic equity partners.

In a submission to the communications portfolio committee, which is holding hearings on the Broadcasting Bill, IPO chairperson Mfundi Vundla said proceeds from the sale of SABC3 should be transferred to the SABC's production agency

The money should then be made available for local programme content on all five free-to-air stations.

"To transfer the proceeds of selling SABC3 to the national revenue fund (as suggested in the bill), would only serve to impoverish SABC TV further

"This would be short-sighted because there is a high – often tangible – value to the role which broadcast communications media can play in building social cohesion, fostering a sense of place, national community and pride," he said.

Vundla recommended that Bop TV be transferred to the Education Department as an education and youth channel

SABC TV should be reduced to two channels – SABC1 and 2

He urged that these channels' ability to compete for audiences – taking into account their public service mandate, as well as local content regulations – should not be reduced

Radio Islam, in its submission, said religious broadcasters saw themselves being threatened by antagonism.

Spokesperson Yusuf Docrat said· "If the bill, in its present form, is introduced . does the legislature not run the risk of undermining the very objective of the act . to create the unity we so desperately seek?"

The bill in its current form would alienate sectors of the religious community, Docrat said He recommended the retaining of a community-of-interests concept, but with limitations on the allocation of broadcasting resources

This would mean limiting the number or type of interest-based communities that could be served by a broadcasting network – which was lacking in the draft legislation

"Radio Islam seeks the right, as a religious community, to apply for a licence, and make itself subject to the IBA Act – on the basis that it is a community-of-interests broadcaster, and its right to broadcast will not infringe on the rights of others," he said

The hearing will continue tomorrow – Sapa

Monopolisation ruled out

The Government had no intention of monopolising the airwaves The African National Congress Government had facilitated a rise in the number of community radio stations from none to 100, and this would soon increase to 190

Broadcasting Minister Jay Naidoo during an interpellation debate yesterday.

Moosa rebukes unions for opposing outsourcing

(222) BD 11/9/98

Linda Ensor

CAPE TOWN — The tendency of African National Congress (ANC) leaders to deliver sharp rebukes to wayward elements within the party's constituency continued yesterday when Provincial Affairs and Constitutional Development Minister Valli Moosa criticised union attempts to derail the "privatisation" of municipal services.

His swipe at the Congress of SA Trade Unions (Cosatu) and the SA Municipal Workers' Union (Samwu) followed ANC president Thabo Mbeki's recent attacks on undisciplined teachers and university students.

Moosa castigated the unions for their "self-centred" approach, appealed to them to put the interests of the poor and oppressed first and warned that the transformation of the state and society would be prolonged if the labour movement was obstructive.

He noted at a media briefing yesterday that in the past few weeks Cosatu and Samwu had either threatened strike action or had embarked on sporadic actions against what they considered to be privatisation.

"As government we believe that Cosatu's actions are not only unhelpful in implementing the ideals of the RDP (reconstruction and development programme), but are illegal considering that the services rendered by municipal workers to the community are considered as essential services," Moosa said.

He said the real issue was how to overcome apartheid backlogs and lack of finances to provide basic municipal services to all South Africans at affordable levels. The way to do this was to encourage private sector investment in social infrastructure, but Samwu opposed this strategy.

"One of the most important ways of gearing private investment into projects, as well as getting greater efficiency (and hence cheaper services), is through tendering out services for a fixed period, and awarding contracts to private operators that offer the best deal," Moosa said

Samwu's opposition to this transformation of local government was purely ideological and based on the erroneous belief that it threatened workers' interests, he said.

However, rather than losing their jobs, workers received training and better pay from these projects because the private sector was obliged to commit itself to capacity-building as well as profit.

Samwu's adherence to public sector delivery as the only acceptable form of delivery was out of touch with developments in the rest of the world, where municipalities had appointed service providers, Moosa said.

Provincial Affairs and Constitutional Development Minister Valli Moosa addressed a news briefing in Cape Town yesterday at which he criticised trade union attempts to derail the privatisation of municipal services. Moosa appealed to the unions to put the interests of the poor first and warned that transformation would be prolonged if the labour movement was obstructive. Picture TYRONE ARTHUR

bid 'futile'

ovincial cabinets. The NP walked out abinets in 1996, except in the Westpe, where it holds the majority.

ever, Schutte said yesterday the anted inclusive government at both l and provincial levels after next lections.

KwaZulu-Natal spokesman Blessed pointed out that a provincial constiwas rejected by the Constitutional fter being drafted in 1996.

ould be far better to focus energies on d to amend the national constitution a federal dispensation could emerge, said.

nwhile, NP KwaZulu-Natal caucus an Tino Volker said his party wantlegislature to adopt a code requiring ial MPs and public servants to disheir financial interests in order to tee a clean and transparent adminn in the province

and public servants should disclose ares and financial interests in pubrivate companies, paid employment government; property owned; and s and sponsorships they received.

ne in the profession.

PARLIAMENT & POLITICS

CLAIM ILLOGICAL — SAMWU

'Leftists behind strike'

(332) CT 11/9/98

THE PLANNED one-day strike by Samwu is illegal and the work of a few ultra-leftists, claims Constitutional Affairs Minister Mohammed Valli Moosa. **KERRY CULLINAN** reports.

CONSTITUTIONAL Affairs Minister Mohammed Valli Moosa says Cosatu's planned one-day strike over the privatisation of municipal services will hamper transformation and is motivated by ultra-leftists in the SA Municipal Union (Samwu).

In one of the government's most direct attacks yet on Cosatu, Moosa described the federation's protests as "not only unhelpful in implementing the ideals of the RDP, but illegal, as services rendered by municipal workers to the community are essential services"

Cosatu's protests and possible strike would "block the extension of services to poor communities without consulting them"

He disputed that services were being privatised, but said local councils that did not have the capacity to extend their services had put delivery out to private contractors.

His department told councils that entered agreements with the private sector that these should not result in job losses, a reduction in the conditions of municipal workers, or more expensive tariffs

Moosa identified the Cosatu-affiliated Samwu as a specific problem.

"Samwu is refusing to co-operate with the government in the redistribution of resources to disadvantaged areas. When councils tried to transfer staff from formerly white areas to townships, Samwu objected, saying it was a change in the workers' conditions of service.

"This is a typical ultra-leftist approach that is a strong trend in Samwu."

"Cosatu supports the RDP and it is not opposed to public-private partnerships," said Moosa.

Samwu media officer Anna Weekes described the charge that her union's opposition to privatisation was the work of a few leaders for ideological reasons as "illogical".

"Cosatu and Samwu members have been passing congress resolutions for years now rejecting privatisation, during which time the leadership has changed several times," said Weekes.

"Cosatu declared a dispute with the government around privatisation for socio-economic reasons, and National Economic, Development and Labour Council negotiations deadlocked two days ago."

Weekes added that the local councils that had opted for private partnerships had not followed the Department's guidelines, but were simply "doing as they please".

Cosatu to oppose privatisation plan

(232)

By Mzwakhe Hlangani
Labour Reporter

A MAJOR confrontation is looming between the Congress of South African Trade Unions (Cosatu) and the Government after the protracted talks over the planned privatisation of water provision and municipal services reached a stalemate this week

Cosatu has filed a notice to the National Economic Development and Labour Council (Nedlac) of its intention to proceed with a nationwide work stayaway on September 24 in protest against privatisation, spokeswoman Ms Anna Weekes said

The planned protest action includes picket demonstrations

Cosatu and its affiliate, the South African Municipal Workers Union, Nedlac management and the directors-general of Constitutional Development and Water Affairs have been engaged in lengthy discussions since last August.

"The parties agreed, however, that the matter had been properly considered by Nedlac, which is the requirement of the Labour Relations Act," Nedlac spokeswoman Ms Jennifer Wilson said

Demands forwarded by Cosatu include an immediate end to all privatisation of basic services and the reversal of all privatisation processes in Nelspruit, Dolphin Coast and Tygerberg in Cape Town

The Government was also urged to consult labour and communities in regard to the implementation of the public service delivery plan

Weekes said resistance to the privatisation initiative had been mounting since May last year when the Dolphin Coast municipality in KwaZulu-Natal announced it was privatising water and that a French multi-national, SAUR, was the winning bidder

In Nelspruit a British transnational, Biwater, is the preferred bidder for a 30-year water contract, while the Cape Metropolitan Council Tygerberg decided to privatise refuse removals for Khayelitsha last November

Sowetan 11/9/98

Govt lashes out at Cosatu threat to embark on strike

Sowetan 11/9/98 (778)

THE Government has lashed out at the Congress of South African Trade Unions for its threat to embark on what may culminate in a nationwide strike against what the federation sees as the privatisation of basic municipal services like water

Yesterday an angry Minister of Provincial Affairs and Constitutional Development Mr Valli Moosa accused Cosatu and its affiliate, the South African Municipality Workers Union (Samwu), of adopting an "ultra-leftist, which is in reality, a rightwing position"

He said such a position went against the gram of the Reconstruction and Development Programme and Government's drive to transform the municipality services

"I am quite upset because the unions, especially Cosatu, know about the measures we have taken to transform the local governments against vociferous resistance from "Sandtonites" - who were opposed to us extending essential service to the previously excluded areas

"Frankly, I have an expectation to be supported by the unions"

Moosa said he was "puzzled" by Cosatu's decision and indicated that the matter would be referred to the tripartite alliance

"We will be pursuing the matter at an alliance level through the African National Congress and the South African Communist Party because we believe a strike is not the best option to resolve the issue"

This follows Cosatu's statement this week in which it accused the Government of "abdicating" its responsibility and arguing that international experience has shown that privatisation always leads to an increase in tariffs, making services unaffordable to the majority"

Moosa rejected Cosatu's claim that the Government was privatising municipality services, saying local government-private sector partnerships were aimed at extending services to the previously excluded communities because the Government did not have the capacity to do so

"Because of the massive backlogs we had to look at creative ways of extending the services to those communities," he said

Moosa also claimed that when such partnerships were established care was taken that there would be no job losses and increase in tariffs that would render such services unaffordable - *Sowetan*

Moosa raps Cosatu for privatisation-strike plan

Star 11/9/98 (232)

By Kerry Cullinan
Cape Town

Constitutional Affairs Minister Mohammed Valli Moosa says Cosatu's planned one-day strike over the privatisation of municipal services will hamper transformation and is motivated by "ultra-leftists" in the SA Municipal Workers' Union (Samwu).

In one of the Government's most direct attacks yet on Cosatu, Moosa yesterday described the federation's protests as "not only unhelpful in implementing the ideals of the Reconstruction and Development Programme, but also illegal, as services rendered by municipal workers to the community are essential services".

He said the "real debate" was how basic services could be delivered to black communities who were denied services under apartheid.

Cosatu's protests and a possible strike would "block the extension of services to poor communities without consulting these communities"

Moosa denied that services were being privatised Local councils which did not have the capacity to extend their services had tendered out delivery to private contractors, he said.

His department had told councils which entered agreements with the private sector that the contracts should not result in job losses, less favourable conditions for municipal workers or more expensive tariffs.

On offensive ... Constitutional Affairs Minister Valli Moosa.

Moosa identified the Cosatu-affiliated Samwu as a specific problem. "Samwu is refusing to co-operate with Government in the redistribution of resources to disadvantaged areas.

"When councils try to transfer staff from formerly white areas to townships, Samwu will oppose this, saying it is a change in the workers' conditions of service. So, in the name of workers' rights, they are in reality opposing transformation

"This is a typical ultra-leftist approach that is a strong trend in Samwu."

Moosa said he did not understand the planned protests, which had arisen after the Government and Cosatu had deadlocked on the matter in the National Economic Development and Labour Council (Nedlac).

"Cosatu supports the RDP and it is not opposed to public/private partnerships," said Moosa, adding he would take up the matter at a political level through alliance structures.

Samwu media officer Anna Weekes described Moosa's charge, that her union's opposition to privatisation was the work of a few leaders for ideological reasons, as "illogical".

"Cosatu and Samwu members have been passing congress resolutions for years now rejecting privatisation, during which time the leadership has changed several times," said Weekes.

"Cosatu declared a dispute with the Government around privatisation for socio-economic reasons, and Nedlac negotiations deadlocked two days ago.

"There will be a day of nationwide protest action by the entire federation later this month."

Weekes added that not one of the local councils which had opted for private partnerships had followed the Department of Constitutional Affairs' guidelines, but were simply "doing as they please".

She also said the Commission for Conciliation, Mediation and Arbitration had recently ruled that the privatisation of waste disposal in Khayelitsha was an unfair labour practice.

"The contractors had employed workers on daily contracts, only paid them R3 per bag of rubbish, and the service they delivered was inadequate," said Weekes. – Parliamentary Bureau

RESTRUCTURING TIME FRAME: THE BIG SEVEN

	1998	1999	2000	2001	END STATE
SAA		• [illegible] • [illegible]			• SAA partially owned by Transnet/Govt
Portnet	• Internal restructuring* • [illegible] tions • Develop port policy*	• Corporatisation [illegible]	Ownership arrangements of port operations [illegible]		• Different ownership arrangements for port operations (0%) • Port authority retained by Transnet/Govt (100%)
Petronet	[illegible] trational [illegible]	[illegible] isation	[illegible] ig up [illegible]	[illegible] strategy	• [illegible] remains a public utility with external involvement (49%)
Autonet		• [illegible] • [illegible]			[illegible]
PX		• [illegible] tisation [illegible]			[illegible]
Spoornet	• [illegible] mpleted	[illegible]	[illegible] (SEP) Orex (SEP)*		• [illegible] es a state controlled [illegible] with private sector involvement in its specialised businesses
Metrorail	[illegible]		To fix the problem, MLPs concessioning* Concessioning of activities by SARCC		• Remain with Transnet • Partial concessioning

* denotes completed

Graphic FIONA KRISCH Source TRANSNET

ST(BT) 13/9/98 (232)

Privatisation finally picks up speed

STATE ENTERPRISES

By THABO KOBOKOANE

AFTER initial glitches, the privatisation of state assets finally appears to be gaining speed despite labour flexing its muscles against the process

Cosatu this week announced it would lead marches, picketing and demonstrations on September 30 against the planned privatisation of municipal services and to demand a moratorium on the sale of parastatals

Cosatu's moves come at a time when the Minister of Public Enterprises, Stella Sigcau, appears more eager to press on with the sale of state enterprises She admitted this week that privatisation had not moved fast enough, and said "I would like to see a number of entities in the first half of 1999 being privatised "

Addressing delegates at the Second Pan African Privatisation conference, Sigcau said about 12 non-core Transnet business units would be sold in the new year Government would also fast-track the privatisation of Ariel Technology and Denel Aviation (respectively, Denel's information technology and aviation arms), forestry company Safcol, diamond mining company Alexkor, and Abakor, the abattoir company

Kennedy Memani, special adviser to the ministry and Transnet, gave details of mass privatisation and partial privatisation of core and non-core Transnet business units and subsidiaries within the next 18 months.

He said non-core businesses such as Transwerk, Connex, Datavia, Production House, Chemical Services, Transmed, Blue Train, Protekon, Housing and Apron Services would be sold outright within 18 months

Memani also spelled out a timetable for restructuring Transnet's seven divisions

Until then, only details of SAA and Autonet are public (corporatising SAA and introducing a strategic equity partner (SEP) to take up to 49% equity and fully privatising Autonet)

Up to 49% of Petronet, the liquid petroleum gas and pipeline network, would be offered to an SEP, with the state retaining the balance Its corporatisation would also commence next year, Memani said

Portnet, the authority which controls and manages the seven SA ports, would commence next year, and ownership arrangements of the ports operation would be sorted out by 2001 The proposals envisage government or Transnet retaining port authority

Parcel distributor PX would be fully privatised, while Metrorail and Spoornet would either have concessions or else joint venture partners

But those familiar with the process are all too aware that such pronouncements have been made before

So what has changed?

First, a solution appears to be in sight on the Transnet debt and pension fund deficit, which would remove a critical stumbling block to privatisation

Second and most important is Sigcau's announcement last month of a new agency or a dedicated directorate to fast-track the sale of state-owned assets This agency will be similar to the Zambian Privatisation Agency, which was responsible for mass sell-offs of parastatals

Although Sigcau has presented proposals to cabinet colleagues, details are not yet available Her success depends on two things freedom from political interference and available resources But much depends on how she deals with labour

ANALYSIS

Demand for basic services versus resistance to privatisation

(272) BD 15/9/98

Efforts by government to promote public-private partnerships to improve service delivery have sparked fierce resistance from trade unions, which argue that the partnerships pose a threat to the provision of basic services, writes **Deborah Fine**

IMATU
SAVE OUR CITY

Municipal workers at a demonstration last month to protest against numerous issues, including privatisation

IT HAS been said that one of the greatest threats to democracy under SA's new political order is the high level of grassroots expectations regarding service delivery and the inability of government to meet those expectations

It is acknowledged that democracy will prove meaningless unless it is able to improve the quality of life of the majority of South Africans through basic access to water, energy, housing, transport and communications

Yet more than four years after the African National Congress came to power, millions of people still live in shacks with no access to piped water, sanitation or electricity

Heated debate over services provision has recently culminated in widespread protest marches by trade unions — in particular the SA Municipal Workers Union (Samwu) — as government and labour disagree over the means of injecting desperately needed capital and expertise into the cash-strapped municipal sector to boost delivery

An estimated R90bn is needed to provide essential services over the next 10 years

Government, including local authorities, finds itself increasingly constrained by, among other factors, limited public-sector resources, continued nonpayment for municipal services and the Finance Ministry's dogged commitment to fiscal discipline and the containment of public-sector debt.

It is in this context that municipalities, backed by the constitutional development ministry, are exploring joint ventures with the private sector — known as public-private sector partnerships — as a means of supplementing public sector spending and ensuring the broadest possible services coverage in the shortest possible time

Other options also being investigated include public-public partnerships (with Water Boards, for example) and partnerships with nongovernmental and community-based organisations

Public-private partnerships may involve the outsourcing of municipal services whereby private operators enter into contractual agreements to carry out services delivery on behalf of municipalities, usually in return for the right to collect tariffs or portions thereof at monitored profit levels Municipalities remain accountable for services provision and serve as regulatory agents

Privatisation, including public-private partnerships, has been embraced by the Democratic Party which says studies by the Freemarket Foundation indicate that municipalities in Johannesburg, Maritzburg and on Gauteng's East Rand could jointly save more than R1,6bn in operating costs over a five-year period through private sector participation in the delivery of services The savings could then be diverted to address other socio-economic backlogs

Underlying such claims is the view that the private sector, driven by business principles of cost-minimisation/profit maximisation, is able to outperform local authorities which are unavoidably hamstrung by cumbersome municipal procedure, social responsibilities and political considerations

A measure of the seriousness with which government intends exploring public-private partnerships to inject capital, management and technical expertise into the municipal arena is shown by the recent establishment of the Municipal Infrastructure Investment Unit

The unit has been allocated R20m to help municipalities research and set up partnerships and is currently sponsoring 15 public-private partnership pilot projects countrywide involving the provision of transport, water, solid waste and sanitation services to more than 5,2-million people

While most of the projects are still in the feasibility-study stage, the Nelspruit town council in Mpumalanga is negotiating a 30-year water and sanitation concession with local consortium Metsi-A-Sechaba and British firm Biwater

Municipalities on the Dolphin Coast, in KwaZulu-Natal, recently announced French multinational SAUR as the preferred bidder in a similar concession.

Reasonable time

Nelspruit chief executive Roelf Kotze has hailed the concession as the only means of extending services costing an estimated R350m to all Nelspruit residents within a reasonable time With an annual capital budget of about R20m, he says it would take the council "decades" to do what the private sector — with greater access to resources — could achieve in a far shorter period.

Not all municipal stakeholders, however, share his enthusiasm

Samwu, backed by the Congress of SA Trade Unions and the SA Communist Party, has made several attempts to derail the process in Nelspruit and has called for a moratorium on partnerships involving the private sector amid threats of national protest action.

Insisting that service delivery should remain a public sector function, Samwu has asserted that public-private partnerships undermine democracy by linking constitutionally guaranteed basic services to profit motives and that private organisations are responsible more to shareholders than to citizens.

International experience has shown that private sector participation inevitably leads to job-losses and huge increases in services tariffs, while a tendency by private operators to "cherry-pick" or concentrate on serving affluent areas to the detriment of poor communities, would soon put paid to universal coverage and perpetuate apartheid inequalities

Critics of Samwu, including government, have accused the union of being "misinformed" and "stuck" in outdated ideologies

While it may be tempting to dismiss Samwu's argument as ideological, given union literature describing public-private partnerships as "neo-liberal" capitalist plots to secure "safe" municipal investments in the face of declining global profits, the union also provides reams of examples gathered by the International Labour Research and Information Group which show that charges to consumers have, in many cases, steeply increased following contracts with the private sector

And in Britain alone, nearly 300 000 jobs were lost following private sector entry into gas, water and electricity utilities, the waste sector, refuse collection, cleaning, sports and leisure management and education catering

A report compiled by Public Services International claims that the socio-economic costs of unemployment and tariff increases caused by privatisation far outweighs any savings accrued through outsourcing Public Services International, a global federation of public sector workers, is driving an international campaign to stop the privatisation of services

Government has responded to Samwu's concerns with the argument that "unscrupulous profiteering" can be controlled through carefully constructed contracts which prevent cherry picking and regulate tariff increases Municipalities would be legally entitled to sever contracts if private companies did not meet their terms

Moreover, SA could not be compared with other countries where public-private partnerships were often used to maintain existing services rather than expand them The local services backlog was so great that any expansion of services into the vast areas previously denied access was likely to create jobs rather than destroy them

Government was also drafting a new regulatory framework to guide all municipal services partnerships to ensure proper protection for consumers and workers

Samwu, however, has countered that the private sector will refuse to enter into partnerships if the framework proves too restrictive on profit. Contracts will have to allow some leeway, opening up the possibility of loopholes which could be manipulated by private operators to cut corners and increase profit at the expense of communities and workers

The union has threatened to intensify its anti-privatisation campaign should government and local authorities fail to honour an agreement reached in the national local government bargaining chamber last year in terms of which the public sector was declared the "preferred deliverer of services".

Samwu believes the solution lies in enabling municipalities to deliver services themselves through increased funding from the national purse and to explore partnerships only once all public-sector delivery options have been exhausted. Government, however, is unlikely to heed Samwu's calls and has confirmed its commitment to partnerships, confident that careful precautions and contracts can smooth a path pitted with potential dangers

Real power is economic

SA 'must balance its privatisation'

(232) ~~ET~~ Sowetan 15/9/98

BRITISH trade and industry secretary Peter Mandelson has urged South Africa to implement its privatisation programme in a way that balances the dictates of market forces with the country's social demands

Mandelson said Britain, South Africa's largest trading partner, wanted to share its experience with Southern Africa as it pushed ahead with its privatisation to ensure that it maintained investment inflows while also protecting employees and consumers

"You've got to make sure investment continues to take place rather than shareholders benefiting excessively Profits have to be ploughed back into the industry," Mandelson told Reuters in an interview

The British minister arrived in South Africa – his first overseas visit since his appointment to the post in July – for a two-day visit during which he is scheduled to speak at a Government and business symposium focusing on public-private partnerships and privatisation

Local and foreign economic analysts have been urging South Africa to speed up the sale and restructuring of firms to raise cash for reinvestment to stimulate growth

'I think SA is approaching this in a sensible way'

It has so far taken only small steps to off-load huge state firms, with the Government saying it was wary of going too quickly as there was too much at stake

Earlier this year the Government sold 20 percent of the Airports Company of South Africa to Aeroporti diRoma for R819 million (at current exchange rates)

This followed Telkom's sale last year of a 30 percent equity stake to foreign partners SBC Communications and Telekom Malaysia for about R6 billion

But huge organisations are still waiting in the wings, including electrical utility Eskom and transport giant Transet – grouping roads, ports, railways and South African Airways – and state arms contractor Denel

Mandelson backed the South African initiatives, applauding the Government's "open mind" and conviction to ensure that the process also introduced financial and commercial discipline

"I think South Africa is approaching this in a sensible and realistic way," Mandelson said

He said Britain was well qualified to help South Africa with its programme, following its privatisation years under Margaret Thatcher

"The keenness to privatise (under Thatcher) sometimes pushed aside the need to continue to regulate those companies and individuals in a way that gave protection to consumers," he said

"You have to get those things right There's no point in saying the rest will look after itself"

Underlining Britain's commitment to expand its investments in South Africa, Mandelson said the country's growth prospects were good, despite the recent upheavals in emerging markets which have hit the rand and forced the central bank to hike interest rates to their highest levels in over a decade

"I want to deepen the partnership, promote more investment and want greater trade to take place between our two countries"

Britain is the largest foreign investor in South Africa, with direct investment estimated to be worth more than R80 billion in the country

Reuters

Competition board to decide on AECI, Sasol merger

(232)

BD 16/9/98

Amanda Vermeulen

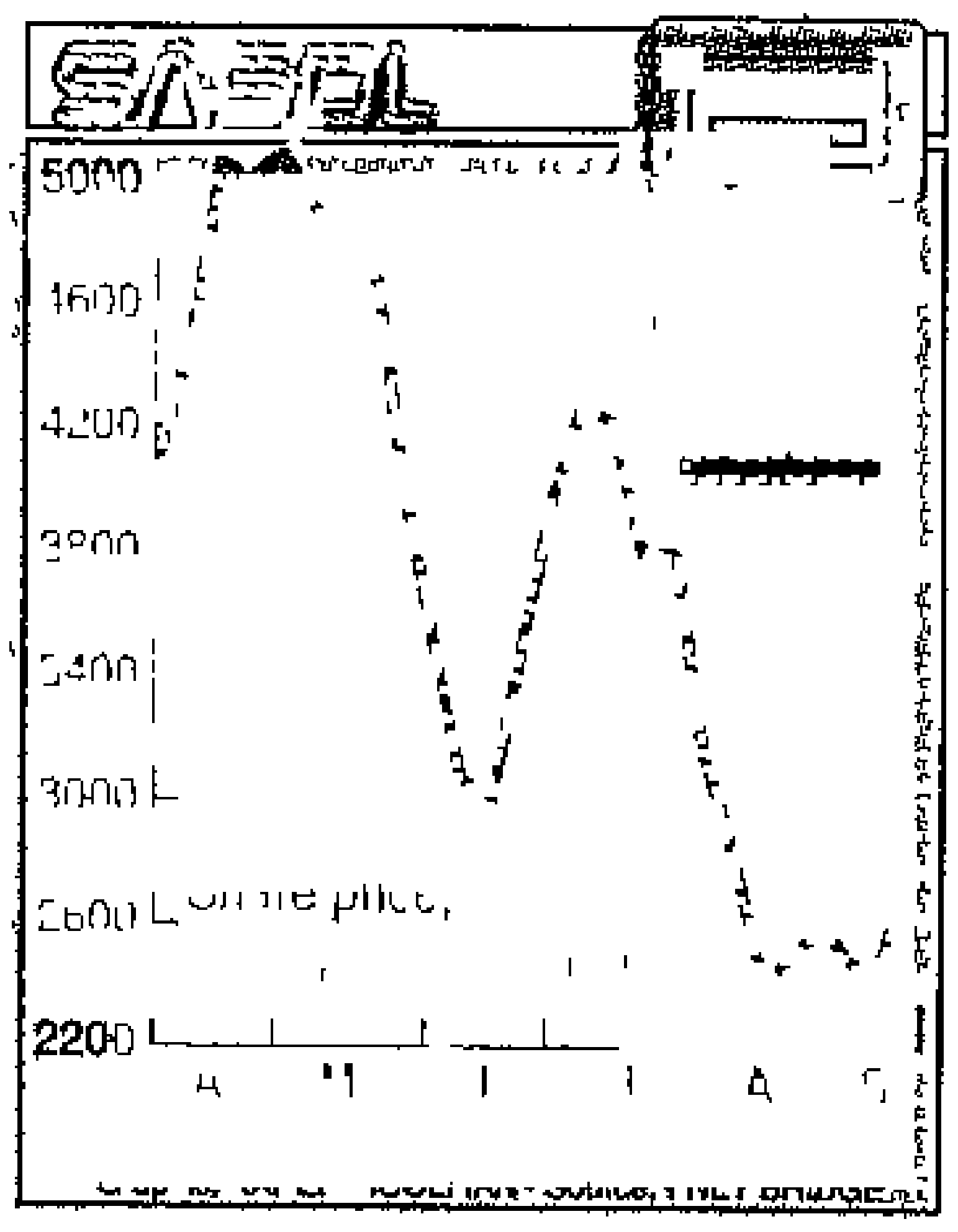
THE Competition Board will meet tomorrow to consider the investigation into the proposed R4,6bn acquisition of AECI by rival Sasol, and will deliver its final findings to Trade and Industry Minister Alec Erwin and all the involved parties soon after.

Competition Board chairman Pierre Brooks said yesterday that the final report should be published next week, after all the parties had had a few days to consider the board's findings

Although Brooks would not comment on the contents of the report, industry analysts agree that the board is likely to give conditional approval for the transaction

It is expected that recommendations will include selling off some of the assets of the merger between the two chemicals and explosives companies to black empowerment players

Other conditions could include guaranteeing certain feedstocks to smaller explosives companies such as Omnia, as the combined AECI/Sasol entity would have more than three-quarters of the local explosives market



One of the uncertainties surrounding the deal is whether Sasol might not use the board's conditions as an excuse to walk away from a deal that has become very expensive Sasol's share price has taken a hammering in the past year, dropping from levels of about R66 a year ago to about R26. The Sasol offer was R30 a share to AECI shareholders

One analyst said Sasol would walk if the board insisted it sold significant portions of its explosives business Sasol is pinning its global expansion plans on gaining critical mass in the explosives arena.

Sasol will publish its year-end results today, with earnings widely expected to be in the R2bn range.

In June the company published a profit warning saying earnings would be about 20% below forecasts

The investment community's consensus view is earnings a share (EPS) of 310c-320c

Looking ahead, many analysts expect a big uptick in Sasol's 1999 figures, with the consensus EPS being about 445c However, other analysts are more bullish, saying that number would be even higher — as much as 520c

One factor that would eat into Sasol's 1999 number is the effect of the AECI acquisition

One analyst said the deal — which will cost Sasol almost R6bn if the cash price and about R1,5bn in debt are added together — will cost Sasol about R1,4bn in interest costs alone, based on an average interest rate of 22%.

Several other unknown variables make Sasol's 1999 performance difficult to gauge.

Analysts said it was expected that chemicals would continue to feel pricing pressures due to the rand/dollar exchange rate uncertainty

CT 16/9/98 (BR)

Control bill 'could affect privatisations'

(223)

Lynda Loxton

PARLIAMENTARY COFFESPONDENT

Cape Town — Transnet yesterday warned that plans to apply the Treasury Control Bill to parastatals could affect its privatisation and ability to attract equity partners.

In a letter tabled before the portfolio committee on finance yesterday, Nelson Ndimisa, the senior manager in charge of government and parliamentary liaison, said this would be "a step in the wrong direction" when the government had said it wanted to reduce its involvement in the economy

Trevor Manuel, the finance minister, yesterday acknowledged that some parastatals were opposed to falling under the bill, but said this "goes against the grain" of what the bill was trying to do

The committee is due to hold public hearings on the bill next month and has already started receiving submissions

Ndimisa said that in terms of the bill, the Transnet board's borrowing powers would be removed, while the fact that the proposed national treasury could prescribe a framework for effective cash and debt management as well as investment policies would create uncertainty

He said that Transnet had its own policy and control manual and was unlikely to benefit from the prescribed uniform norms and standards being developed for provincial and local governments.

"Again, if the national treasury has the power to prescribe but does not do it, it will create uncertainty with potential equity partners and debt providers," Ndimisa said.

The same applied to the buying systems that the national treasury could prescribe.

The national treasury would also have the power to investigate "any system of financial management and internal control instituted by the board".

Ndimisa said that it seemed "a bit superfluous" to appoint a board of directors and auditors and then empower another body to investigate financial management and internal control.

In addition, the treasury would insist on different types of accounting practices than those now in use in terms of the Companies Act.

"Transnet believes in effective control mechanisms by the shareholder, but not to the extent that these effectively usurp the normal powers of the board such as to create a cloud of doubt around whether or not the company is truly committed to good governance practices," he said

Policyholders urged not to demutualise

BD 18/9/98 (232)

Nomavenda Mathiane

CAPE TOWN — Sanlam and Old Mutual policy holders were yesterday urged to vote against demutualisation by Congress of SA Trade Unions' (Cosatu's) vice-president Connie September.

September was addressing the SA NGO Coalition's four-day conference on "The economics of poverty and inequality" in Cape Town. The theme was motivated by the recent poverty hearings which found that the majority of South Africans lived in poverty.

September said SA could overcome the legacy of apartheid and poverty only by creating wealth and jobs. "This could not be done through demutualisation."

Cosatu thought transformation of public and private sectors was the key to the redistribution of wealth, she said.

September said a proactive government was needed to tackle these sectors to create the right environment for change.

She commended the coalition on its submission to the National Economic, Development and Labour Council on poverty, saying the issue of poverty was now on the public agenda. Cosatu was waiting for the council's response.

Indian economist Devaki Jain told the conference that poverty was linked to inequality and that it was a political problem which needed political weapons to be overcome.

Public Works Minister Jeff Radebe said government policy on poverty alleviation was based on reducing unemployment, providing training, developing infrastructure and building the community's capacity to become self-sustaining and self-governing.

Commenting on debt relief, Radebe said President Nelson Mandela would deal with the problem in a measured way which would serve the interests of the developing world.

Hanekom threatens KWV with court action

WINE (232)

AGRICULTURE Minister Derek Hanekom yesterday threatened wine and spirit giant KWV with court action if an agreement was not reached soon on setting up a new industry trust

"It has to happen in the next two weeks," Hanekom told a parliamentary news briefing "If there is no agreement, the matter will have to be referred to court"

Hanekom last year signed an agreement with KWV – which for decades had been the statutory regulator of the wine industry – to allow the former cooperative to convert into a public company This ended a legal dispute in which Hanekom obtained a court order blocking KWV's application to become a company

Under the accord, a wine industry trust was to be established which would invest in research and development, export promotion and in easing the entry of black farmers into the industry Hanekom said at the time that among other things, some of the assets which would be distributed to shareholders rightfully belonged to the state

KWV would pay nearly R500 million into the trust over 10 years and a new board would take over its regulatory functions Wine exports have soared since 1994 Last year, they surged by 10 percent to 110 6 million litres – *Reuters*

Sowetan 18/9/98

MOSSGAS

MONEY THAT MAY NEVER BE SEEN

Proposed privatisation envisages debt write-off

There is a real danger that taxpayers might be deprived of the opportunity to recover a substantial proportion of the nearly R12bn sunk into Mossgas by P W Botha's government

Whether they do or not depends on which of two things happens

The first possibility is that Mossgas is privatised within two years as part of a proposed black-owned energy consortium However, this would require the State to write off R9,4bn of the synfuel plant's capital costs

The alternative is that the State retains its ownership in the hope of recovering at least some of the plant's R11,4bn capital costs from the expected proceeds of a new gas search costing US$300m

The issue of Mossgas's future has resurfaced since the recent signing of a R2,2bn alliance agreement between Mossgas and UK-based Dresser-Kellogg Energy Services, a division of US$7bn NYSE-listed Dresser Enterprises The contract involves developing the EM gasfield and its satellites over three to four years

With the existing FA field's gas reserves expiring in 2001 and EM expected to yield sufficient gas to see the plant through only until 2006, Mossgas CE David Day hopes that the search will yield more than just a six-year extension of life for the synfuel-from-gas plant, based in Mossel Bay

"By the first quarter of 2000 we should know whether Dresser has struck enough gas to guarantee profitable operations over the following 20 years This would allow Mossgas to diversify into far more lucrative downstream production of petrochemical derivatives "

Studies have shown that the company has substantial potential for the production of ethylene, propylene and butylene

But, while the EM project alone should save SA about R7,5bn in forex on imported fuels, Day says the time is also ripe to start considering privatisation

"Soekor has already proven gas in six wells in the EM field Hopefully, Dresser will prove more than the estimated 506bn cubic feet of gas reserves in this field Should reserves of about 3 trillion cubic feet be proven within the next four years, this would make Mossgas an economically feasible proposition for eventual privatisation," says Day

A privatised and profitable Mossgas has been mooted to form part of a proposed new black-owned energy consortium, with State-owned Soekor and the Central Energy Fund (CEF)'s Strategic Fuel Fund as other potential candidates for the venture

But, says Day, another stumbling block remains Mossgas's R11,4bn capital cost debt is still being carried in the CEF books and this issue needs to be resolved "Based on its profitable, historic operating earnings record alone, Mossgas could be given a R2bn capital value," he suggests Mossgas generated net operating income of R1,1bn over the past two years alone, and the low rand should push this year's net operating profit to a further R750m

"And, by writing off about R9,4bn of the CEF book debt, the privatised group would be left with an equivalent R2bn accumulated tax loss on the books The company could then write off this book asset against future taxable earnings over a three-year period "

But Day's positive sentiments on privatising Mossgas are not shared by SG Frankel Pollak analyst Mark Ingham

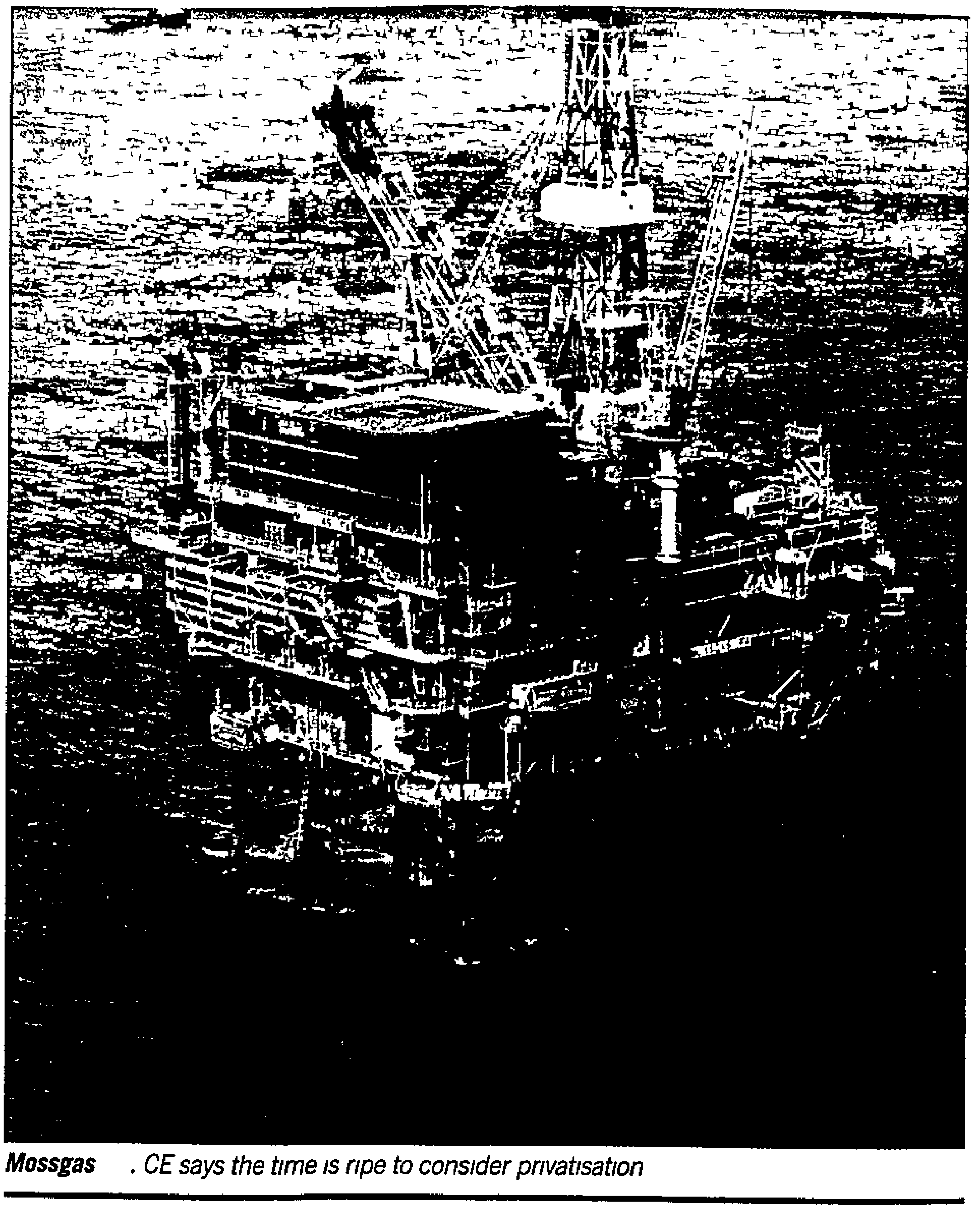
"Why should taxpayers underwrite this exercise to the tune of R9,4bn? The better option, in my opinion, would be for the State to retain its ownership of Mossgas The R11,4bn debt should then be transformed into equity, with dividends paid to the State from net operating income — rather than charging ever-accumulating interest on the debt," says Ingham

Privatisation could entail the injection of new capital into a "technically sound" venture with a specific capital value and good prospects for future net operating profits But "why should taxpayers be expected to forfeit R9,4bn? After all, conventional accounting would require the cost of historic debt to be shown in the company's books — in which case it is probably not making any profits "

Rather than writing off historic debts that are owed to taxpayers, the State, as 100% equity owner for the equivalent amount, would then have a vested interest in recovering as much of its invested capital as a "commercially viable" project would allow, says Ingham

Everything, of course, will depend on Dresser finding sufficient, additional gas reserves Day says the Dresser contract allows Mossgas "a tremendous opportunity to establish the true potential of the Bredasdorp basin and to identify the long-term feedstock supply position for Mossgas Once the $300m capex is expended, operating costs will be less than R3m/year " Drilling will start in November and Day hopes for "positive results within the next 18 months"

Arnold van Huyssteen



Mossgas . CE says the time is ripe to consider privatisation

Competition Bill 'will have bite'

CT (BR) 23/9/98 (232)

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town — The government's new competition authority would not be a "bulldog with rubber teeth", Alec Erwin, the trade and industry minister, insisted in parliament yesterday

Erwin said the inclusion of socio-economic dimensions in the Competition Bill reflected new international trends

"(The bill) is one of the new generations of competition (policies that include socio-economic issues)", he said

In the debate on the bill in an extended public committee in the national assembly, Phumzile Mlambo-Ngcuka, Erwin's deputy, rejected claims by David Graaff, the National Party MP, that the authority would add to South Africa's "institutional overload" and might not be effective

Erwin said the new competition policy was not the product of blind ideological belief in the efficiency of markets but was rather based on an analysis of markets

He said as a result of the limited powers of the Competition Board, South Africa had been through two decades of increasingly concentrated economic power and abuse New legislation had thus become necessary

He said the competition authorities would be given widespread and punitive powers

"Gone are the days when a dominant firm could, with impunity, by fair means or foul, wipe out its opposition while the competition law meandered along its ineffective course," Erwin said

The government's attitude was not "big is, per se, bad", he said It recognised that "big is sometimes necessary, whether to provide basic necessities like electricity or telephones or penetrate international markets"

The government wanted "robust rivalry" between firms to ensure efficiency and adaptability, which were essential if South Africa was to survive in the global economy, Erwin said

On the government's original insistence that the minister should have veto powers, Erwin said there had been concern that some of the side effects of mergers could be serious and might need intervention

It was decided after the public hearings that the minister would be made an interested party in any merger investigation, with the right to make representations

Privatisation seen as urgent

Dustin Chick BD 28/9/98 (232)

RAPID steps needed to be taken to privatise both licence payments and emergency services in Gauteng in order to provide a more cost-effective and efficient service, Democratic Party (DP) provincial spokesman Jack Bloom said at the weekend.

He was reacting to comments by Gauteng Health MEC Mondli Gungubele, who told the provincial legislature last week that the Greater Johannesburg Metropolitan Council was claiming R41m from the province for the underfunding of emergency services.

The provincial health department is disputing the claim on the grounds that a local authority was not entitled to money purely on the basis of its own assessed need It should rather be based on prior arrangement with the province Bloom said this illustrated "monumental miscommunication" in a key area which had already "deteriorated alarmingly".

Bloom said it was disturbing that the metropolitan council had appeared to offset its claim for payment for emergency services by withholding payment to the province for vehicle licence fees

Bloom said effective action was needed to break the impasse He said it was a continual source of tension, caused by bad budgeting practices, between the province and its largest city.

Privatisation has a bad reputation too

Sowetan 30/4/98 (232)

Evidence linking corruption to privatisation of basic services is mounting in different countries throughout the world. Roger Ronnie argues that by ignoring these warning signals, the Government is setting South-African communities up for disaster.

By Roger Ronnie

IN line with the Growth, Employment and Redistribution strategy (Gear), Government departments have embraced privatisation as a panacea to the problems of service delivery Municipalities across the country have been outsourcing various departments to a host of local and international companies

But international experience has shown that promised improved services do not always materialise One of the reasons for this is the high incidence of corruption in privatised services

The French Audit Court recently published a scathing report on the activities of French water transnationals, citing widespread financial irregularities and corruption

The very same companies are trying desperately to get a foot in the door of South Africa's as-yet unprivatised water sector.

An executive of Lyonnaise des Eaux – the French transnational that bid for the water of Nelspruit and Dolphin Coast – was convicted of corruption and given a prison sentence for bribing the mayor of Grenoble in an effort to get a water contract

Two executives of Generale des Eaux pleaded guilty to bribing the mayor of St Denis to obtain the water concession The company that won the Dolphin Coast tender – Saur – is the water subsidiary of the family-owned French transnational Bouygues

Both Saur and Bouygues executives have been dogged for years by corruption charges In September last year Jacques Sennepin, the director general of Saur, was questioned about alleged "misuse of corporate assets" and issuing false invoices

Bouygues executives are even more unscrupulous Chairman Martin Bouygues, who has suffered arrests and nights spent in French prisons, is currently under formal investigation on suspicion of misusing company funds

Former Bouygues vice president Jacques Dupuydauby currently languishes in jail after being convicted of invoice forgeries amounting to over R20 million

Corruption is not unique to French privatisation and it is not prevented by having a national agency controlling all privatisation

Last month in Uganda, a probe into alleged corruption in the country's privatisation unit was launched The probe came in the wake of allegations that prominent political figures have been intervening in privatisation deals in order to have contracts awarded to friends Our own Minister of Public Enterprises Stella Sigcau has expressed strong support for a privatisation agency that would ultimately be run by the private sector

This is a similar strategy to that taken in Bulgaria, where consultants have been contracted to take responsibility for the privatisation of 22 percent of all fixed assets

However, the agency has already run into problems in attempting to privatise state-owned resorts

It is alleged that various Mafia groups linked to local politicians are attempting to buy up the resorts to be used for future money-laundering operations

There is no logical reason to assume that privatising the privatisation process would meet with any more success in South Africa

The circumstances surrounding attempts to privatise refuse removal in the small Western Cape town of Montagu, where an alleged family-run company linked to the mayor has won the tender, are under investigation by the South African Municipal Workers Union (Samwu)

Deputy Director of the Department of Constitutional Development Crispian Olver told Samwu that although this seemed fishy there were no department guidelines ruling out privatisations of this kind

It is clear that the Government needs to give a lot more thought to issues of corruption before jumping head first down the well of privatisation

(The writer, Roger Ronnie, is general secretary of the South African Municipal Workers Union)

Call to stop privatisation

By Mokgadi Pela 232

A CONFERENCE of the Workers Organisation for Socialist Action (Wosa) has called on the Government to stop privatising public resources and retrenchments in the public service

The conference, which was held at the National Union of Mineworkers Training Centre in Johannesburg this week, also urged the Government to refuse to pay the "apartheid debt"

Instead, Wosa said, "resources should be directed at the root causes of crime, namely, poverty and unemployment"

The 200 delegates at the conference also appealed to all socialists and "radical democrats" to convene an All-workers Conference to initiate a movement for a mass workers' party as one of the means to put an end to the Growth, Employment and Redistribution Strategy (Gear)

They said Gear had impoverished the urban and rural poor and turned Southern Africa into a region of no hope for the majority of people.

Wosa also had harsh words for the role of the South African National Defence Force in Lesotho as part of the peace keeping forces

"This action demonstrates that elements of the apartheid old guard and the present officeholders will combine to suppress any challenge to their power

Sowetan 30/9/98