

THE CASE FOR  
**ECONOMIC**  
DEREGULATION & DECENTRALISATION



**AUTHOR - CHRISTOPH KLEIN**

FREE MARKET FOUNDATION

Impact Assessment of Government Regulation on SMEs

Study in support of the

Promotion of Economic Activity Bill

produced as a public service by the FMF

“To attain knowledge, add things every day.

To attain wisdom, remove things every day.”

Lao Tzu (604 BC - 531 BC), Chinese Taoist philosopher

First published in 2022 by the FREE MARKET FOUNDATION

© 2022 FREE MARKET FOUNDATION

All rights reserved

No part of this book may be reproduced or transmitted in any form or by any means, graphic, electronic, or mechanical, including photocopying, recording, taping, or by any information storage retrieval system, without the permission, in writing, from the publisher.

Free Market Foundation, Bryanston Gate, 170 Curzon Road, Bryanston, South Africa

[www.freemarketfoundation.com](http://www.freemarketfoundation.com)

ISBN 978-1-998955-91-6

Cover by Blacfox Enterprises

Author CHRISTOPH KLEIN

## **TABLE OF CONTENTS**

I.	EXECUTIVE SUMMARY .....	1
II.	Study of the Rationale to Remove Legal and Bureaucratic Restrictions on SMEs In South Africa .....	2
1.	Scope and Structure of the SME Study .....	2
2.	Regulation and Institutional Performance in South Africa .....	3
2.1.	REGULATION: A BRIEF OVERVIEW .....	3
2.2.	INSTITUTIONAL PERFORMANCE IN SOUTH AFRICA IN COMPARISON .....	4
2.3.	TAXATION AND ACCOUNTABILITY IN SOUTH AFRICA VS. OTHER COUNTRIES .....	5
3.	SMEs and Regulation .....	10
3.1.	WHAT IS AN SME? .....	10
3.2.	THE ECONOMIC IMPORTANCE OF SMES .....	10
3.3.	REGULATION AND SMES .....	11
3.4.	RED TAPE AND BUREAUCRACY: ARE SMES MORE VULNERABLE? .....	12
3.5.	DEREGULATION .....	13
3.6.	BEWARE OF HASTY DEREGULATION .....	15
3.7.	CONCLUDING REMARKS .....	15
4.	Case Studies .....	16
4.1.	THE ELECTRIFICATION OF CHINA AND SOUTH AFRICA'S ENERGY MARKET .....	16
4.2.	SOUTH AFRICAN POST OFFICE .....	19
4.3.	BURGER KING .....	20
4.4.	THE CASE OF BANKRUPT MALUTI-A-PHOFUNG MUNICIPALITY .....	20
5.	Policy Recommendations for Deregulation .....	22
5.1.	UNDERSTANDING THE SYSTEMIC LACK OF ACCOUNTABILITY .....	22
5.2.	GUIDING PRINCIPLES OF REGISTRATION AND LICENCING .....	23
5.3.	ON THE MISGUIDED IDEA THAT INFORMAL BUSINESSES SHOULD BE FORMALISED .....	24
5.4.	POSITIVE EXAMPLES OF MARKET LIBERALISATION AND DEREGULATION IN SOUTH AFRICA .....	26
5.5.	BETTER POLICY-MAKING THROUGH SEIAS AND RIAS? .....	26
5.6.	CONCRETE APPROACHES THAT HELP MUNICIPALITIES AND SMES .....	27
6.	The Way Forward: Conclusion of the SME Study .....	29
III.	ENDNOTES .....	31

## **LIST OF TABLES**

<b>TABLE 1:</b> TAX BURDEN OF SELECTED COUNTRIES .....	6
--	---

## **LIST OF FIGURES**

<b>FIGURE 1:</b> THE CONTINUUM OF SUBNATIONAL TAX AUTONOMY .....	7
<b>FIGURE 2:</b> DEGREE OF MUNICIPAL FINANCIAL AUTONOMY / DEPENDENCY .....	8

## I. EXECUTIVE SUMMARY

The SME study presented is concerned with small and medium-sized enterprises (SMEs) and whether the Promotion of Economic Activities Bill is supported by theoretical and empirical evidence that SMEs have suffered particularly over the last ten years or so. While the analysis tentatively agrees that SMEs may often be more vulnerable to regulation and red tape than enterprises with larger balance sheets, it is also argued that a closer look is required to understand what distinguishes an SME from a large enterprise and to tackle the question whether a simplistic look at firm size does justice to the complexities of today's economic systems.

When regulatory rules and red tape go off the rails, the entire economy takes a knock. Financially strong companies might have more resources to protect their operations, but this comes at costs which could have been employed more fruitfully, for instance to procure more services from SMEs. Likewise, when sectors become deregulated or governments cut down on bureaucracy, the entire economic system benefits.

As to firm size, it must be understood that most large enterprises are commercial constructs that mainly consist of many SMEs under one legal umbrella. Most bank branches of South Africa's top four banks employ far less than a hundred employees. Supermarket chains are a collection of local stores whereby procurement power is bundled and a national brand can be built. As employees or freelancers, we are all running our own SME. There is hardly an economic difference between being on the payroll of a large company and providing the same services as a subcontractor. In some industries, branches of large companies are based on franchise contracts. Legally-speaking, all McDonald's outlets are SMEs owned by franchisees.<sup>1</sup>

Perhaps, the essential premise of this study is that people always work and consume at a particular place. The effects of regulatory provisions and red tape, of failing public services and corruption, are always felt by flesh-and-blood people on the ground. It is in the nature of GDP numbers, labour market statistics, or national budgets that microeconomic results get lost in the aggregate. Yet, even when statisticians dig deeper, artificial distinctions along legal criteria rarely reveal the full picture. Is the loss of income in a small town run down by an incompetent city council bigger when a small branch of a large supermarket chain closes down as opposed to the independent grocer?

This study argues that an analysis of regulation and its harmful effects must be devoted to understanding municipal governance structures and the degree of financial autonomy. It must look at those services that are crucial for every business, in particular the core infrastructure services of electricity, water, sewerage, and telecommunication, the first three of which are provided by public monopolies. Expecting municipal representatives to be accountable to their citizens when they have no local tax revenues and, worse, have all their funds allocated as grants from the national government is either naïve or ignorant.

As to promoting higher economic growth of SMEs (as well as larger enterprises), the best deregulation policy is to allow people take matters into their own hands. As we speak, resident associations have taken over the operations of water and sewage infrastructure. Such "take-overs," it is argued, are the first steps to liberate South Africa's economic system from its destructive infrastructure monopolies. In sectors where the state has created a monopoly to provide affordable universal infrastructure services to all, such mandates can be defended—provided they succeed. If not, they must be abolished. The energy, water, railway, port, and postal sectors need competition in all areas of the value chain. Perhaps, some of these entities can emulate Telkom if private capital induces the necessary commercial discipline. If not, others will operate the assets that have been financed by taxpayers after all. What can be achieved is demonstrated in the telecommunication sector, not only by mobile carriers but also by other players in the industry, such as submarine cable, fibre, data centre and other providers.

The Promotion of Economic Activities Bill proposed by the Free Market Foundation is in fact a cure for the entire economy. The best way of removing legal and bureaucratic restrictions is to make market contestable and let consumers decide what are the best offerings. Not only do local entrepreneurs often understand better what their fellow citizens need; the fact that they are a part of the local social fabric also means that a firm's success depends on

treating consumers and its employee base well. When private citizens serve private citizens without escape mechanisms such as government bailouts and grant funding, a culture of true accountability can grow.

## **II. STUDY OF THE RATIONALE TO REMOVE LEGAL AND BUREAUCRATIC RESTRICTIONS ON SMES IN SOUTH AFRICA**

### **1. Scope and Structure of the SME Study**

The study presented supports the Promotion of Economic Activities Bill (the Bill) proposed by the Free Market Foundation (FMF) to unleash the entrepreneurial activities that will boost economic growth and job creation in the overburdened South African economy, especially from the perspective of small and medium enterprises (SMEs).

The Bill seeks to “empower the President to suspend provisions of laws or conditions, limitations, or obligations thereunder or to grant exemption therefrom, if he or she is satisfied that circumstances exist under which the application of or compliance with those laws, conditions, limitations or obligations unduly impedes economic development or competition in the economic field, or the creation of job opportunities; and to provide for incidental matters.”

The Bill states that the over-encumbrance of the economy with unnecessary and burdensome conditions, limitations, or obligations has slowed down inclusive economic growth, economic development, and job creation. Inclusive economic growth, economic development, and job creation are necessary for the realisation of the rights in the Bill of Rights in the Constitution. Any regulation legislated and executed by the state, whether through sovereign and sub-sovereign (municipal) organs or through the creation of non-market structures in the form of state-owned enterprises (SOEs), must be understood as an a priori interference with (entrepreneurial) freedom of choice.

The superior courts of South Africa have repeatedly recognised the importance of freedom of choice in promoting the constitutional value and right to human dignity. Yet, freedom is never unrestricted. In fact, the idea of complete, unrestricted freedom of choice is not freedom because absolute freedom would necessarily violate the freedom of others. In modern societies whose constitutions rest on the acceptance of economic systems based on the division of labour, the scarcity principle alone is sufficient to impose cooperative action based on market participants’ voluntary agreements. Hence, the degree and limits of freedom depend on the constraints that the members of society place upon themselves. Such constraints are codified and non-codified institutions such as habits, customs, rules, laws, contracts, etc., which Geoffrey Hodgson (2006), defines as “the systems of established and prevalent social rules that structure social interaction.”<sup>3</sup>

Since individual people’s actions, however, are dedicated to one’s own betterment, the means to achieve one’s betterment are scarce and the understanding about how means should be employed to achieve betterment differ widely across people. The challenge is to find the structure of social interaction that is most conducive to what the members of society view as betterment while at the same time constraining or outlawing unwanted actions and results.

It was in the light of his experiences of the English Civil War (1642–1651) that Thomas Hobbes identified a brute situation of a state of nature (*Homo homini lupus*) that could be avoided only if the members of society grant absolute power to a sovereign entity on the basis of a social contract that provides the constitutional basis for such powers. For good reasons, however, Hobbes titled his book *Leviathan*, which in the Old Testament refers to a monster, into which even democratically elected governments such as the National Socialist German Workers’ Party (1933–1945) or alleged social revolutions such as those in Russia (Lenin, Stalin) or China (Mao) can easily degenerate. Following Jean-Jacques Rousseau’s idea of the *contrat social* (social contract), citizens in today’s constitutional democracies strive to create bodies of rules and laws that balance the forces of freedom of choice and the unwanted



undesirable side effects of “too much” freedom or the “wrong type” of freedom.

In the 21<sup>st</sup> century, there is widespread agreement that constitutional frameworks are to guarantee that fundamental human rights are upheld and human dignity prevails. South Africa’s liberation from the Apartheid regime in 1994 was a shining example of the power of democratic constitutionalism. While in the political sphere there seems to be widespread agreement on what is the basis of human freedom (albeit with many shades of grey), the case is less clear when one enters the economic sphere.

Put simply, it could be argued that it is the role of the sovereign to protect citizens from the forces of Adam Smith’s invisible hand, at least to some degree. Most citizens are concerned about and want to be guarded against the uncertainties that emanate from other citizens’ individual pursuits of prosperity or profit. However, the uncertainty that accompanies the pursuit of profit by entrepreneurs simultaneously generates the ideas and opportunities that ultimately lead to incremental productivity increases in the form of more knowledge, higher incomes, better education, and healthcare, which in turn create the income base and wealth on which all sovereign mandates are based.

It is the hallmark of modern economic life to embrace change. In an adaptive economic system, the “creative destruction” of existing production structures, the much-cited bon-mot by economist Joseph Schumpeter (1942), is in fact destructive only in the sense that it leads to resources, capital goods and skills being put to a new use. The intrinsic value of the production entity, Blackberry, may have fallen to zero, but the capabilities are anything but lost. On the contrary, the owners of the skills move on and use their knowledge for new purposes that people demand. To the extent that a political system, whether in its representations as incumbent government, administration, municipal bodies, or SOEs, naturally resists such changes, it cannot prevent them without harming its subjects themselves. For economic innovation and disruption—the ultimate sources of betterment—are ultimately always the result of changing consumer preferences.

Arguably, most people in today’s prosperous democracies support policy proposals that rein in “the market” or market forces so as not to create hardships or destabilising economic situations that threaten their socio-economic fabric. Such policies can be implemented in two fundamentally different ways: through income transfers via taxes or through regulatory measures and active intervention. This study looks at regulation and its impact on SMEs, and the effect that the proposed Promotion of Economic Activities Bill could have on that.

Chapter 2 gives a short introduction of what “regulation” is and then reviews the institutional performance of the South African government and its entities in comparison to other countries. Chapter 3 first discusses the impact of regulation on SMEs and whether SMEs are economically more vulnerable to red tape and overregulation, followed by a discussion of the opportunities and risks of deregulation. Chapter 4 presents four recent case studies that support the claims and recommendations of this study, followed by an overview in Chapter 5 of the various approaches to deregulating economic sectors that are hampered by inefficient and extractive government agencies. The study concludes with a short summary of the results and an outlook on the way forward.

## **2. Regulation and Institutional Performance in South Africa**

### **2.1. Regulation: A Brief Overview**

Government regulation (“regulation”) may be understood as the attempt to create the institutional framework within which economic activity and entrepreneurship flourish for the benefit of society.<sup>5</sup> Statically, institutions in the form of legal and regulatory frameworks serve as durable mechanisms to support economic exchange. For the purpose of this study, a distinction is made between two types of regulation and regulatory frameworks. The first type includes all regulatory frameworks that apply to the entire economy, such as labour law, occupational safety and health,

environmental law or licencing. This type of regulation gives the state the role of rule-maker and institution-builder, while the concrete economic outcome, e.g., market shares, prices, profits, is left to market competition, i.e., consumer choice and entrepreneurial innovation.

The second type of regulation applies to specific sectors, notably health, education and the network infrastructures road and railway, water, energy, and telecommunication. In these areas, government's role often turns from a rule-maker to a producer of services through state-owned enterprises and the public monopolisation of markets. In terms of the regulatory framework for specific sectors, the scope and role of regulators can vary significantly over time, space, and political systems. In some sectors, particularly those that have been privatised, regulators continue to exercise significant control over parts of the value chain of private market participants.<sup>6</sup>

The key difference is that the first type of regulation allows markets to be governed by price and profit signals based on private ownership and consumer choice. This is what we understand as competitive markets. Though onerous regulation and red tape can greatly constrain economic productivity and income creation, entrepreneurial success or failure still attribute to identifiable economic participants. An important implication is that non-performing entities can go bankrupt, with taxpayers' wealth not impaired by public bailouts. In a free market, there is only individual people that inject their own—that is, owned—funds to support firms in the expectation of returns. When the state runs a public monopoly, say, Eskom, the economic entity has no identifiable owner who injects her own funds. The consequence is that such entities cannot perform economic calculation as there is nobody who could formulate a return expectation. Of course, there is also nobody who could be held economically accountable for losses—the core problem of all economic activities by state entities.

The second implication is that markets regulated as public monopolies are not contestable. In other words, competition through market entry is prohibited, consumer choice is dysfunctional as there is no alternative. South Africa is a particularly gross example of the failure of SOEs that continue to burden people not only through continuous bailouts and rampant corruption. More importantly for the purposes of this study is the fact that entrepreneurial ingenuity and innovative business models introduced by new market entrants do not come to fruition. The results are foregone investments, productivity increases, and employment creation. Such counterfactual losses protect governments as they are nowhere recorded. Yet, the societal opportunity costs in the form of lower living standards and long-term productivity losses are enormous. In contrast, the mobile telecommunication sector shows what can be achieved when value chains are contestable.<sup>7</sup>

Before we go into the detail of concrete regulatory policies, which are either applicable to industry sectors (e.g., energy, mobile telecommunication, health, or education) or to subject areas (licensing, labor, finance, or land), an overview is given of how South Africa compares to other countries in respect of its institutional quality. As a next step, the structure of South Africa's tax system vis-à-vis other countries is analysed. It is argued that we can infer the quality of a country's institutions from the structure of the tax system and the degree of accountability of political and/or public representatives to citizens.

## 2.2. Institutional Performance in South Africa in Comparison

For the last ten years, South Africa's economic system has not performed well when compared to other countries in the same income group of upper-middle-income countries, often labelled as emerging markets. In fact, South Africa has failed to emerge. Productivity increases have been low or even negative if population growth is taken into account. Consequently, no progress has been made in the creation of more and better paying employment. Instead, public sector wage bills have ballooned, the economy is hamstrung by dysfunctional energy, postal, and railway SOEs, and bailouts are the norm. Save for a few, South Africa's municipalities are factually bankrupt and service delivery protests have been sharply increasing lately.

All of this consumes economic resources that are not available for value-generative purposes, thereby foregoing higher living standards and employment opportunities. Corruption and tenderpreneurship have permeated all public sectors, causing high sociopolitical costs beyond the economic damage in the form of widespread political discontent and loss of confidence in constitutional values—the foundation on which a hopeful and optimistic South Africa took off in 1994.

In their widely read monograph *Why Nations Fail – The Origins of Power, Prosperity, and Poverty*, Acemoglu and Huntington argue that “Nations fail when they have extractive economic institutions, supported by extractive political institutions that impede and even block economic growth.”<sup>9</sup> Combine rotten political regimes, self-serving public institutions with frail, centralised states (in the form of disempowered municipalities dependent on grants from the central government) and you have something close to a prescription for poverty, conflict, and public service failure. South Africa ticks these boxes. Acemoglu and Huntington discuss development of South Africa’s neighbor Botswana as a positive example that succeeded at building institutions that could produce prosperity.

If one looks at the fundamental rights, South Africa does relatively well. In the WJP Rule of Law Index 2020, South Africa achieves a good result in most of the categories ranking on 45<sup>th</sup> out of 128 countries, well ahead of Brazil (67<sup>th</sup>), China (88<sup>th</sup>) and India (69<sup>th</sup>).<sup>10</sup> The index’ eight core categories, with South Africa’s rank in brackets, are constraints on government powers (33), absence of corruption (58), open government (30), fundamental rights (41), order and security (110), regulatory enforcement (45), civil justice (41), and criminal justice (44). These good rankings are mostly a result of the soundness of South Africa’s constitution, the quality of its judiciary, and a strong civil society.

The picture worsens when considering indicators that are more reflective of the state’s ability to create an institutional environment that supports people in their quest to achieve prosperity. In 2008, in World Bank’s influential Ease of Doing Business (EoDB) report South Africa stood at 32<sup>nd</sup> on the list.<sup>11</sup> By 2020, South Africa has dropped to the 84<sup>th</sup> rank. The index rates countries on how well the regulatory environment promotes business operations and protects property rights. The sharp decline is in line with the general feeling among the South African public that bureaucracy has worsened and that service delivery has collapsed in many municipalities. In the 2020 Governance Efficiency Ranking, South Africa ranks 150<sup>th</sup> (Zimbabwe is 148<sup>th</sup>). South Africa’s BRICS peers, China, Russia, India, and Brazil rank at 38<sup>th</sup>, 55<sup>th</sup>, 79<sup>th</sup>, and 137<sup>th</sup> respectively.<sup>12</sup> A visit of one of Gauteng’s dysfunctional, chaotic home affairs branches is enough to back up this statistical data with facts.

### 2.3. Taxation and Accountability in South Africa vs. Other Countries

The discrepancy between the indices is only surprising on first sight because sound general constitutional rights go well together with inefficient government and overregulation, for which South Africa is a paramount example. A fundamental problem arises when large portions of individually earned income are siphoned off by the state. This does not only occur through taxes. In South Africa, it is a few million high-income earners that basically carry the entire state. Income is also distributed away from individuals through monopolising sectors in the form of SOEs and the attached increasing public wage bills.<sup>13</sup> In South Africa, public compensation spending went up from R154 billion in 2006/7 to R518 billion in 2018/19. Adjusting for inflation, the bill increased by 78% while the headcount “only” went up by 22%. This means that government awarded itself generous annual income increases at the expense of the general public.

Tax revenue as a percentage of GDP is exceptionally high. According to World Bank data, South Africa has the 7<sup>th</sup> highest tax burden worldwide. The table below illustrates that South Africa ignores the economic realities. Only countries with high productivity and equally high median incomes, such as Denmark or the members of the European Union can afford to redistribute away substantial resources from taxpayers to public services.



Table 1: Tax Burden in Selected Countries

Tax revenue (% of GDP)	2010	2011	2012	2013	2014	2015	2016	2017	2018
Denmark	32.74	32.75	33.45	33.82	36.50	33.92	33.30	33.40	32.17
New Zealand	26.13	25.63	26.90	26.72	26.91	27.51	27.37	27.48	28.00
<b>South Africa</b>	<b>25.04</b>	<b>25.18</b>	<b>25.59</b>	<b>26.04</b>	<b>26.54</b>	<b>27.34</b>	<b>27.11</b>	<b>26.23</b>	<b>26.51</b>
United Kingdom	25.36	25.84	25.07	25.07	24.89	25.04	25.41	25.62	25.59
Morocco	22.82	23.30	23.90	22.35	22.03	21.21	21.46	21.76	21.87
European Union	19.36	19.47	19.92	20.20	20.26	20.15	20.14	19.67	19.78
High income	14.68	15.07	15.28	15.66	15.81	15.90	15.84	16.19	15.66
Brazil	14.26	14.86	14.32	14.13	13.50	13.63	13.69	13.62	14.18
India	10.39	10.18	10.84	11.00	9.98	10.57	11.15	11.38	11.97
<b>Upper middle income</b>	<b>12.45</b>	<b>12.80</b>	<b>12.61</b>	<b>12.47</b>	<b>12.19</b>	<b>11.95</b>	<b>11.67</b>	<b>11.75</b>	<b>11.76</b>
Russian Federation	13.05	13.95	13.75	12.93	13.26	10.64	9.18	10.29	11.38
China	10.21	10.31	10.26	9.91	9.68	9.38	9.12	9.42	9.05

Source: World Bank Data

Self-evidently, the tax revenue ratio does not say anything about the quality of the services that the state produces with taxpayer money. In the case of South Africa, however, it is fair to say that in some of the key areas of public spending—education (20%), social protection (14%), general public services (14%, excl. debt payments) and health (12%)—the outcomes are all but satisfactory.

It is important to have a separate look at infrastructure, such as energy, water, and transport. Since Eskom, PRASA and the entities involved in water production and distribution are separate legal entities, only the cost of bailouts are included in the budget. Over and above taxes and higher indebtedness levels, people are burdened by service delivery collapses (PRASA), absurdly lengthy strikes (SAPO), widespread water supply failures (municipal level), lack of maintenance (sewerage), and enormous electricity tariff increases (Eskom). Also, the cost of regulatory spectrum withholding, and the failed digital migration (freeing up analogue broadcasting spectrum), have imposed costs of hundreds of billions of rands on South Africa's citizens over the last fifteen years.<sup>15</sup>

For governments and public administrations (incl. state-owned enterprises) to get away with high tax burdens and the associated high public spending, they must do a good job in order to justify their mandate. It would be unthinkable for a French or German citizen to accept the Eskom travesty of double-digit tariff increases and continuous bailouts while at the same time having to endure regular load-shedding. In order to understand the ingredients and mechanisms that are characteristic of healthy civil societies as opposed to failing ones, we need to look at where people live and get services: the municipality, the village, the suburb. People consume the largest part of key services such as power, water, and ICT connectivity where they live. For this reason, the scope and quality of infrastructure service provision must be based on local needs and people's incomes, not on development plans whose underlying universal service ideas sound good but miss economic realities badly.

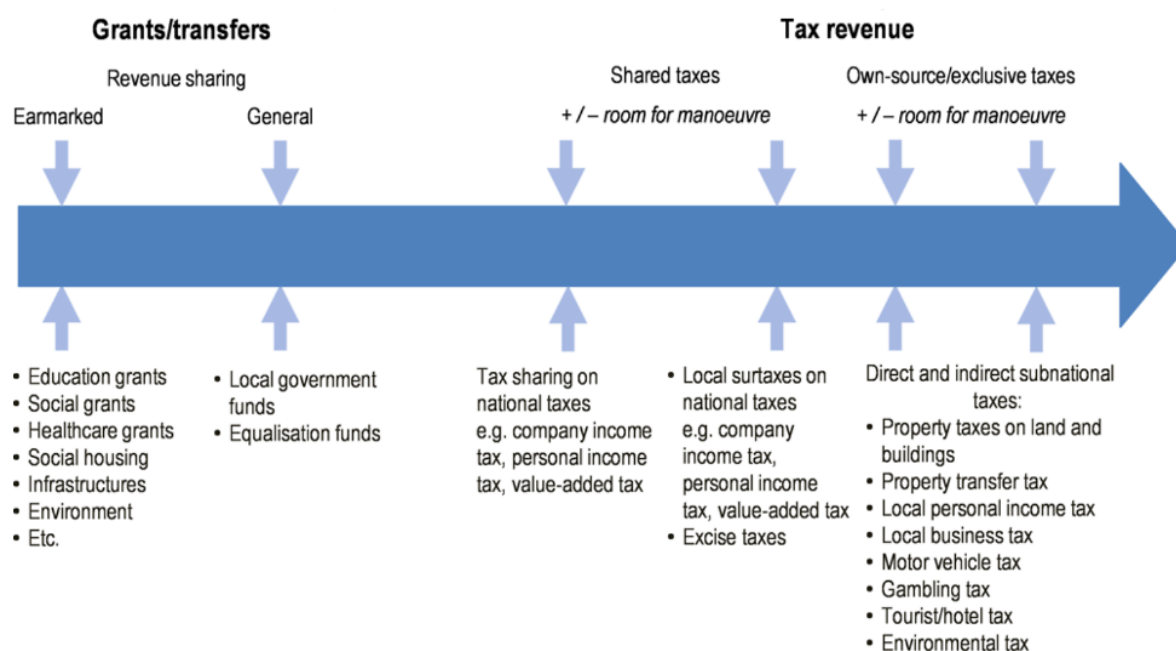
The idea to grant basic services to everybody across a state's diverse geographies and demographics is well-justifiable on ethical grounds. Alas, measures to turn such ideas into the delivery of financially viable services can only fruition to the extent that people's productivity and wealth are taken into account. Until the early 20<sup>th</sup> century, municipalities were autonomous financial entities that raised 90% of national taxes. More importantly, the municipal budget was almost entirely based on local taxes. This meant that local governments could only provide services that were underpinned by local tax income. The idea that central governments and SOEs provide universal services was born just before the Second World War. Before that time, the flow went from the bottom to the top. Local governments distributed income to central governments, for instance for military spending and administrative services.

The natural idea that political representation, and with this taxation and public spending, should always go to the lowest political unit is known in the literature as the subsidiarity principle. Subsidiarity refers to the primacy of local autonomy, as defined by the Oxford English Dictionary as "the principle that a central authority should have a

subsidiary function, performing only those tasks which cannot be performed at a more local level.” The absolutely crucial point of the subsidiarity principle is that it is not linked to any specific goal of society but to the principles governing its organisation. And typically, people on the ground know best what they want, what they can afford, and how to realise their ambitions taking into account their productive capabilities and resource endowments.

The more economic decisions about the use of resources are shifted to the central levels of government, the greater the risk that public service delivery will become disconnected from local needs, which are always closely tied to people’s income and productivity. The problem is more pronounced the higher the proportion of taxes levied at the central government level as opposed to local taxes, and the higher the proportion of expenditure that passes through the hands of central government and SOEs. The below graph illustrates the degree of tax autonomy:

Figure 1: The Continuum of Subnational Tax Autonomy



Source: OECD (2018)<sup>16</sup>

Total fiscal autonomy refers to a fiscal structure in which 100% of subnational government (SNG) revenue is raised on a local level. In contrast, total fiscal dependency is given when 100% of SNG revenue is levied at the central government level (on the left), which are then redistributed to SNGs in the form of central government grants for schooling, health, infrastructure, and so on. What the latter scenario does is to entirely destroy local financial autonomy. All socialist forms of government rely heavily on the centralisation of taxation and economic resource allocation as a very effective means of maintaining political power. The lack of local financial autonomy is the main reason for the systemic (economic) non-accountability of local government institutions. Since most municipalities are totally dependent on central government grants, a culture of accountability cannot develop.

The citizen who goes to the town hall and complains about the lack of infrastructure services is likely to be told that the municipality has not received enough subsidies from central government. The official can absolve himself from being responsible. In any case, since the civil servant is employed in the public service, he is not economically accountable. This creates the perverse situation that people may pay high taxes but receive no services in return because the central government’s decision about how to allocate these taxes is decoupled from what people contribute. As a consequence, people are effectively taxed twice in many instances: they pay taxes for insufficient or costly services, e.g., security and electricity, and they pay market prices to avoid public offerings, e.g., by hiring ADT and installing roof-top solar panels.

Of course, civil servants at the municipal level face pressure, not only from citizens who expect a certain minimum service, but also from higher levels of government who expect them to find—often short-term and nonviable—solutions. One way to achieve this is to procure bulk services from SOEs, resell them locally at a margin with which municipalities subsidise other services. The mark-up on wholesale electricity is perhaps the most important revenue source of municipalities. Over the last ten years, the gap between rapidly rising municipal wage bills and wasteful expenditure, on the one side, and low growth of overall productivity and taxes, on the other, began to widen to today’s unsustainable extent. As a quick fix, many local governments stopped paying SOEs, the negative economic consequences of which then reverberate through the economic system in the form of national tariff increases, bailouts, service failure, and increasing central government debt for which everybody pays or stands in.

The more central government policies ignore the causal economic link between local economic strength (which determines the taxable income base) and local public service delivery (represented by the quality and price of services) rendered to taxpaying citizens, the higher the likelihood of misalignment of resources and bad governance. In contrast, a financially autonomous municipality comes with two benefits. First, local governments are directly accountable to their citizens. They cannot point to central governments for not having received sufficient grant money to undertake the maintenance of water pipes or the sewer system. Second, the possibility of municipal bankruptcy protects the wealth of citizens in other municipalities from being forcibly impaired through central government bailouts.

The divergence between local tax revenues and local government expenditure is the clear symptom of an ailing economic system. It is in the municipalities where citizens experience first-hand governance failures and nonviable economic plans. Only recently have political commentators and economists turned their attention to municipalities in search of reasons for South Africa’s decline. Yet, they have not yet recognised that the nature of the problem is systemic. Structural non-accountability cannot be healed by introducing better plans, better governance, better education, better IT-systems, etcetera. The financially non-autonomous nature of South Africa’s municipalities is structural.

The below table shows the degree of financial autonomy of SNGs, which comprise all federal/provincial and municipal government levels. The left column depicts how much of a country’s collected taxes is allocated to SNG levels whereas the middle column shows how much of the revenue available to sub-national entities—either federal/provincial units or municipalities—is raised on the respective sub-national government level. The left column illustrates the SNG units’ dependency on grants and subsidies which they receive from the central government.

**Figure 2: Degree of Municipal Financial Autonomy / Dependency**

	Total tax revenue allocated to SNG (% of total government revenue)	Tax revenue raised on SNG level (% of total government tax revenue)	Grants & subsidies (% of total SNG tax revenue)
China	71.96	49.63	43.94
India	70.83	60.09	20.57
Russia	63.17	49.1	52.27
Switzerland	61.03	53.59	24.65
Brazil	58.61	43.99	39.68
United States	52.57	44.61	23.69
South Africa	50.22	4.84	70.26
United Kingdom	25.16	5.84	67.01
Kenya	20.59	0.9	88.75
Tanzania	18.87	1.6	89.72
Morocco	14.73	4.33	63.91

Source: World Observatory on Subnational Government Finance and Investment (2019)<sup>17</sup>

In the case of South Africa, 50% of total tax revenue goes to municipal entities which speaks to the economic structure and demography within a country. Countries with a low share of total taxes consumed by municipalities tend to be strongly centralised with economic power sitting in the capital or a few economic centres. It is perhaps not surprising that in vast countries such as China or India a high share of total tax revenue goes to SNGs. It is surprising, though, that the share of taxes raised on the Chinese and Indian sub-national levels reach 50 and 60% respectively, which seems to contradict the general perception of these countries' political systems as rather centralist. To the degree that this might be correct, it cannot be inferred from this to the degree of financial fiscal autonomy and accountability of municipal state authorities. In the case of China, it would have been impossible to realise the developmental leaps without a significant degree of financial room to manoeuvre on the local level.

Countries where SNGs account for a high degree of total government expenditure but have a very low local tax base, SNGs are politically dependent on central government and thus lack financial autonomy. South Africa's municipalities only raise 4.8% of their revenues through local taxes, which means that basically all expenditures are allocated to SNG by central government. While heavy financial dependency on central government contradicts the principle of subsidiarity and tilts the balance of power heavily towards the nationally governing administration, it is even more concerning when revenue receipts are paid out mainly in the form of grants and subsidies. Receiving 70% as grants and subsidies, as it the case for South Africa's municipalities, turns local administrations into political supplicants that can be easily disciplined by ruling governments, which does not further the health of democratic systems. Moreover, meeting municipal budget requirements through centrally managed grant allocation schemes are determined by political criteria rather than by economic scarcity and performance.

It is here where the invocations of more local autonomy, better governance, and accountability clashes against the wall of human realities. One must ask the question on which basis a municipal employee should be practically accountable to citizens when 95% of all revenues come from central government. Again, we do not need to imply bad intentions on the part of public servants and political representatives. What is implied in countries such as South Africa, however, is systemic non-accountability as a very result of the fiscal structure. What distinguishes sound civil societies from failing ones is a minimum degree of local fiscal autonomy. To repeat, where the economic link between the income of local people and the consumption of public services is severed, there cannot be economic accountability.

In his lucid historical account of the electricity market in the United States, Craig Roach (2017, 148–49) describes the phase when big, centralised states began to take over the planning of infrastructure through megaprojects as the Age of Big. And he is well aware of the danger of central planning and its inevitable standardisation:

“America is a big, diverse nation, and diversity is a strength. The future is uncertain and different states have different views on how to mitigate risk. Much like a diversified portfolio of stocks, a diverse set of state policies assure America as a whole that someone will try all the options and that, out of this variety and innovation, the best options will emerge. Diversity also allows actions to be tailored to local needs and opportunities. There are concern that federalization may undermine the strengths of diversity.”<sup>18</sup>

This is a lesson the South African government has yet to learn. In the case of mobile telecommunication spectrum, a study conducted by the Free Market Foundation (FMF 2021) argues that the government's ideology of centralised power leading to top-down oriented policy frameworks is at the core of South Africa's demise.

It is not the contention of this study that the government's policy-making is devoid of good intent and the wish to improve people's prosperity. It is also not argued that corruption is a problem endemic to South Africa's government. Where there is government, there is corruption.

The argument, instead, is that government has no trust in people's abilities of knowing best how to employ their means as they deem fit. The policy stance of the ANC is a remnant of the ideas that underpinned the socialist and communist systems attached to the Soviet Union until the point in time when the Berlin Wall revealed the economic

(and human) destructiveness of such regimes. Socialist political ideology is always characterised by a strongly centralised political institutions that tends to patronise people paired with a disgust of entrepreneurship and private property.

While in countries such as China, central political control is surely strong, it is often not sufficiently distinguished between political and economic power. China's success is first and foremost a result of having embraced entrepreneurship and decentral economic activity. The electrification of Chinese rural areas, as discussed in Case Study 4.1, trusted in people on the ground to find the best ways to generate their energy based on the resources locally available—mostly hydro. Following Mao's central planning era of economic havoc and human tragedy, chairman Deng Xiaoping understood that the desire for prosperity creates the local entrepreneurs who find the business models that best fit the needs and incomes of their communities.<sup>19</sup>

In this section, it has been argued that the institutional quality of governments is closely linked to their fiscal structure. In countries where municipalities dispose of significant own tax resources, local political representatives are more autonomous in their decision-making, implying that they are more accountable to local citizens. If local taxes are virtually non-existent, as is the case in South Africa, a better alignment between local government representatives (or public employees) and citizens can be reached the more SNGs can execute regulatory provisions or define their own set of policies within the bounds of regulatory law legislated by central government.

Generally, for the sake of fostering the economic diversity that comes when local entrepreneurs exploit local market opportunities crucial economic sectors should not be run as national public monopolies. Putting the entire electricity generation and transmission business in the hands of a state-owned company, for example, means excluding sub-national markets from value creation. The prohibition for municipalities to purchase electricity from players other than Eskom creates economic dependency and moral hazard on the part of the national monopolist. Decreeing the same national minimum wage across all provinces means to disregard widely varying income and productivity levels.

### **3. SMEs and Regulation**

#### **3.1. What is an SME?**

The OECD defines SMEs as non-subsidiary, independent firms which employ fewer than a given number of employees, most frequently fewer than 250 employees. This is also the threshold applied by the European Union. In 2015, enterprises employing fewer than 250 persons represented 99% of all enterprises in the EU, of which 94% were deemed independent (or autonomous).<sup>20</sup> It is estimated that these SMEs account for 60-70% of employment across all OECD countries.

According to this definition, however, branches of large retailers, petrol stations, or banks do not belong to the group of SMEs. Hence, a Spar outlet in Mthatha, an Absa branch in Ladybrand, or a Caltex gas station in Hopetown are excluded from the group of SMEs due to their legal affiliation with a larger group of SMEs.

In fact, Spar, Absa, and Caltex are nothing more than associations of businesses under one legal umbrella with the difference that counting all employees puts them into the large enterprises group. Such legalistic definitions ignore the economic fact that the DNA of these associations is deeply SME simply because all of such companies' branches are managed as profit centres. In other words, if financials do not render a Spar outlet profitable, it will cease to operate.

#### **3.2. The economic importance of SMEs**

According to the Small Business Institute (SBI 2021), an NGO that promotes the economic and business interest of



all employing firms in the country employed fewer than 250 people and 66% are micro businesses with ten or fewer employees. Despite their role as the “engine room” of South Africa’s (and all other countries’) economy, the SBI feels that SMEs are treated as an economic widget by government and big business. For reasons of political rent-seeking, regulatory actions are indeed often oriented towards big business. Their large compliance departments, however, are also better equipped to fight encroachments on commercial liberty. SMEs do not have the resources to fight for their rights all the way up to the highest constitutional levels.

To the extent that this might be true, there is nothing to gain by policies that end up hamstringing larger enterprises through a flurry of local content obligations or by making business more expensive by prohibiting price differentiation when selling small quantities of goods to SMEs. It is one of the first lessons every commerce student learns that it is less costly to sell bigger quantities. The new price discrimination and buyer power provisions of the Competition Act introduced in 2020 are more likely to stop larger enterprises from selling to SMEs than foregoing margins.<sup>21</sup> It is one of the many examples of policies introduced by the government that might be well-meaning but end up overburdening economic activity in a flurry of regulations and red tape.

While eager to invent new regulatory provisions with dubious benefits, the government has been failing in possibly the key area of economic policy-making: the provision of basic infrastructure services on municipal level. Sharp increases in energy prices, continuous power and water outages, and dysfunctional local governments have much stronger adverse effects on SMEs than large enterprises charging market prices.

Finally, it does not matter for the local economy whether it is the Spar outlet that closes its doors or the independent grocer. First, there is nothing in economic theory to support the claim that SMEs are somehow more important—whatever “important” means—to an economic system than non-SMEs. Second, as discussed above, regulatory policies based on legalistic constructs run the risk of succumbing to untenable economic conclusions and promoting poor policy designs.

### 3.3. Regulation and SMEs

If regulatory policies and red tape erect costly barriers, both small and large companies will hesitate to expand. This is what happened in South Africa during the last ten years. Real GDP grew an average of 1.37% from 2010 (R2.75 trillion) to 2019 (R3.15 trillion), which turns into zero growth when the population growth rate of 1.36% on average over the same period is taken into account.<sup>22</sup> In comparison, world GDP measured in US\$ grew by an average of 2.52%, while world population growth was 1.06% per annum.

On the face of it, one could be led to conclude that at least the situation did not deteriorate. This is wrong and at the same time illustrates the danger of economic thinking in terms of economic aggregates. During the last ten years, the government’s fiscal appetite and failing SOEs impaired the wealth of all South Africans through redistributive measures that on balance were destructive of value. The financial state of South Africa’s SOEs and municipalities alone are enough to support the claim.

To determine whether an economic system is moving in the right direction, two indicators are revealing.

First, in 2018/19 spending on state employees accounted for a whopping 35.4% of consolidated national expenditure according to an article on News24.<sup>23</sup> As a percentage of GDP, government wages were at 14%, compared to a global average of 10%. Public sector employees have received an average salary increase of 8% since 2010, which are even higher than those in the private sector. In an economic state of average zero per capita growth, somebody has to pay for such public splurges. In South Africa, unemployment rose from 24.7% to 28.5% between 2010 and 2019. During the same time, debt-to-GDP rose from 35% to 62% thereby impairing the wealth of South Africa’s taxpayer through decreasing credit ratings, depreciating rand value, and fiscal constraints due to high interest payments.

Second, gross fixed capital formation in South Africa has dropped from 21.5% to 17.9% of GDP between 2009 and 2019. In comparison, South Africa's peers in the upper-middle-income group realised an average capital formation of 29.4% (and lower-middle-income group of 25.4%) in 2019. The fact that economic participants invest such a low (and declining) share of their income in long-term undertakings is a direct result of an unusually high tax burden and a generally adverse economic-regulatory environment. Low capital formation is particularly worrying because it is an indicator of mistrust in a country's future. Investments in long-term value generation, which would be necessary to combat the extremely high unemployment in South Africa, especially among the younger population, are simply not materialising.

Whether more SMEs or larger enterprises fail as a result of poor economic conditions and an unfavourable institutional environment, as discussed in chapter 2, does not matter to the bigger picture. Whether three branches from large enterprises close in a small town or three SMEs of the same size, both result in less income flowing through the local economy, which has a direct impact on unemployment. Indirectly, the supply chain also takes a knock, from the delivery of basic materials such as stationary and basic building materials services to income not spent in the tertiary sector of the local economy, e.g., cleaning, security, or janitorial services. In economics, these positive feedback loops are referred to as multiplier effects.

A key difference between individual SMEs and larger companies, the latter of which can be understood as a conglomeration of many individual branches and projects linked together and led by a management centre, is that they usually have a balance sheet that can withstand economic downturns for longer. Management and administrative staff of a larger legal unit are not as economically vulnerable as the owner of a local building business or the local spaza shop, at least not in the short-term. Also, larger enterprises are indeed able to exert more lobbying power and fight their way through the legal system. Yet, all of this consumes resources that could be better spent producing goods and providing services to the community. The fact that such businesses survive or win court cases should not obscure the fact that the loss of income and economic opportunity has the same (or even greater) negative multiplier effects as the closure of SMEs.

### 3.4. Red tape and bureaucracy: Are SMEs more vulnerable?

For the purposes of this study, red tape—or more generally public bureaucracy—is defined as regulation that does not fulfil its purpose and consequently imposes unnecessary costs on those economic participants that are subject to such failed regulation. Given that all regulation imposes costs on the economy, it is generally understood that the benefits of regulation outweigh the costs of administering it. There is no way of calculating such costs or the balance of costs and benefits. Indicators such as GDP growth (adjusted for population growth), government debt, unemployment rates, and capital accumulation, measured over longer periods of time, at least roughly represent what millions of individual economic agents perceive as an increase in the quality of life and good economic prospects. If that were not the case, such indicators would be of little use. In South Africa, the depressing state of all these indicators seems to correlate positively with the average citizen's general feeling that the situation has deteriorated.

Do SMEs suffer more from red tape and bureaucracy? Again, the answer to this question is not clear cut. If we look at the economic damage caused by red tape, it might well be the case that the investments that fail to materialise because large companies consider the regulatory environment as too onerous cause greater economic damage in terms of lost income and jobs due to the multiplier effect that reverberates through the wider economic system. And the wider economic system is the local employee and the supply chain that provide myriads of nitty-gritty local services to a newly erected production plant or a new office building.

In fact, large companies have an advantage that is particularly helpful in spurring economic growth that is rarely discussed, but should be considered by certain factions within the government and bureaucratic system in South Africa that often display a hostile attitude toward such companies. This advantage is a large company's balance sheet.

Principally, more financial resources go hand in hand with greater economic opportunities. The size of the balance sheet matters. Moreover, the crucial point in the course of this discussion is that SMEs supplying to larger companies greatly benefit from their financial strength and reputation. Having generally much less financial flexibility and slimmer capital endowments, owners of SMEs mitigate entrepreneurial risk by partnering with large enterprises and thus are much more willing to commit the financial resources required to produce goods and services.

It is a feature of today's economic systems based on the division of labour that their various participants are involved in such complex exchange relationships, that attempts to isolate economic effects or even to make statements about the economic importance of individual industries or classes of companies, are doomed to fail from the outset. But what we can possibly say is that SMEs are more vulnerable to red tape in various respects. For example, if a large company's commercial team doesn't get approval to move forward with an important project, the team members may be upset, but they still get paid. Their company's financial prospects may not look so rosy, but rarely are large companies knocked out by isolated incidents of onerous regulation and bureaucracy. Moreover, large firms usually have an equally large legal team and the financial resources to challenge regulatory decisions or even litigate against them publicly.

In the mundane world of SMEs, the failure to obtain a specific permit is an existential threat. SMEs do not have dozens of projects. Their make-or-break often hinges on the success of the one project that constitutes their very business. When this business fails or does not come on there is no financial base from which to pay (their own) salary. All of this happens unnoticed by the public that only reads the news of the next mine being shut down, SAA being bailed out the nth time, or MTN litigating against a bad regulatory scheme. SMEs do rarely have the means to engage in lengthy, costly litigation exercises. The owners and their employees have no public voice, not because they have no constitutional rights but because the notion of "having a right" is irrelevant in relation to the reality of their lives. And the reality is that they have to move on and feed their families.

### 3.5. Deregulation

As part of the Washington Consensus that comprise a loose set of policy principles to allow for more competitive markets and less state intervention, deregulation was the twin term of privatisation. Deregulation meant privatising core industries such as telecommunication, energy, railway, and postal services that have accumulated enormous economic losses over the decades after the Second World War. In low- and middle-income countries, deregulation also meant to abstain from price regulation and open the economic system to foreign investments and imports.

In the context of the regulatory policies treated in this study, the term deregulation is exceedingly vague. It could refer to very distinct (de)regulatory actions:

- (i) to remove specific regulatory rules, for example, the need to obtain a liquor licence;
- (ii) to improve the quality of specific regulations, say, by repealing the need for an established whisky seller to obtain a liquor licence for each new venue;
- (iii) to lessen the scope of regulatory rules, for example, to exclude beer and wine from the liquor licence regime because beer and wine contain low quantities of alcohol;
- (iv) to improve the "quality" of regulation by fine-tuning its scope, e.g., by granting exemptions from the rule in specific cases;
- (v) to improve the process of regulatory decision-making, for example, by hiring more civil servants to process liquor licence applications faster, e.g., in less than a year;
- (vi) to improve the internal processes of the liquor licencing authority by buying modern IT equipment and training its staff;
- (vii) to improve the quality of the regulatory department's governance by conducting audits and setting up projects to introduce best-practice governance mechanisms;

- (viii) to outsource the administrative process of issuing licences to a private agency which might have an incentive to process applications in a timely manner and have (functioning) IT equipment;
- (ix) to decentralise the practical process of liquor licencing by entrusting municipalities (local governments) to deal with issuing licences;
- (x) to decentralise the regulation of liquor altogether by letting local governments come up with the licence regime (or absence thereof) they deem fit.

To make it short, in all but a few exotic cases solution (i) is not going to happen. The regulatory equivalent of a going concern is described in item (iv). The reason is that once a regulatory domain is established, it has enormous staying power. If a specific sectoral regulation is to lose its destructive effect, then it usually happens when the very industry or product to which regulation applies ceases to exist<sup>25</sup> or when an industry changes fundamentally. Yet, in the latter case it happens that regulatory provisions that appeared to have been backed by some reason in fading industries are reapplied to a new industry because it happens to fall under the same sectoral definition. For South Africa's mobile telecommunication providers (MNOs), in fact for all ICT providers, ICASA prescribes the types of equipment, electronic communications facilities, and radio apparatuses for which the user does not have to obtain a permit for use.<sup>26</sup>

In the current world of frantic technological change in all areas of the mobile telecommunication domain it would be far more practical to give users the benefit of the doubt of knowing what equipment to implement and having no ulterior motive to use equipment that harms third parties. Equipment regulation may in fact have had some meaning in a world of public landline monopolies where national regulators were concerned with safeguarding the integrity of the network. Note that until the early 1990s, switching equipment was the telecommunication network's only crucial active component that mattered. The industry's hope that its justified criticism of the too broad scope of equipment regulation would lead to sensible regulation in a changed world was in vain.

To the contrary, in their 2017 Type Approval Exemption Notice, ICASA makes clear that under no circumstances will they consider granting the participants in the industry some autonomy of which equipment to use. The response to the industry's appeal was: (i) "There will not be any upfront exemptions granted on the basis of types of equipment at this stage"; (ii) "ICASA will, in the future, be developing a framework for the exemption of equipment operating under certain circumstances"; and (iii) "ICASA will review its current type approval regulatory framework".<sup>27</sup>

These three answers constitute the holy trinity of regulators' anti-deregulation defence mechanism:

- Deregulation is out of the question! But we're working on a better framework.
- In the meantime, we tell you what we want to do to make regulation better. In their notice, ICASA lists some of such "certain circumstances" in 15 bullets (stressing that this is not a closed list).
- Your regulator will review its own regulation (from time to time).

All the above does is to retain or even increase regulatory complexity. In general, one would assume that the goal of any government regulation is to create an institutional environment conducive to economic growth while keeping harm away from citizens through regulatory intervention in well-justified cases. The path proposed by ICASA in relation to licencing of equipment is an example of pointless bureaucracy. It is regulation for regulation's sake that destroys economic value and thus employment.

In the overwhelming majority of cases that concern onerous regulation, red tape, bad governance, and non-accountability to citizens, the appeal for deregulation is followed by the actions listed in items (iv) to (vii). The countless appeals for less regulation and red tape in the various economic domains clash against the wall of "good intentions," mostly in the form of naïve proposals to introduce "best practice". After all, who would argue against precise regulation, appropriately staffed departments, modern IT equipment, more training, regular audits, and the introduction of (this time) best-in-its-class governance mechanisms? The problem with these—on the face of it—meaningful requests is that the private industries to which regulatory measures apply are always operating on a higher quality level. This is not because they have smarter people but because it is simply what private companies

do to remain profitable: using modern technology, employing business processes of their industry peers, and introducing new governance mechanisms.

The conclusion is that it is natural that public administrations lag behind. The lagging-behind in terms of IT, staff, or governance is also not problem because such shortcomings are easily rectifiable in the course of ordinary business when governments understand and do their job. In contrast, in all cases of fundamental regulatory failure, the problem lies in the structure of regulation itself. Such structural failures are always due to the same three causes. First, the regulatory subject has moved on, for instance, a change of technology or new commercial models, so as to render existing regulatory rules inapplicable and thus harmful. Second, because the structure of a specific industry varies widely across a country's economic geography, regulatory measures that might be useful in Gauteng are harmful in Limpopo. Third, and related to the second cause, regulatory decision-makers, and in particular the administrative staff charged with enforcing regulatory rules, live in the abstract world of regulatory la-la-land. In this country, although procedurally they might meet the accountability criteria set by their regulator, practically they are not accountable because they are not economically affected by the outcomes of their decisions.

### 3.6. Beware of hasty deregulation

It can be counter-productive to abolish regulations even if they should not have been introduced in the first place. The reason is that economic participants factor in such rules in their commercial plans. In some cases, the structure of whole industries is determined by the regulatory framework or specific rules. An extreme case of a regulatory framework is the creation of a public monopoly such as Eskom. While even the staunchest supporter of public monopolies will concede that the current situation is unsustainable, solutions will have to be very carefully devised.

Often the survival of entire industries hinges on individual regulatory measures. Tariffs levied on imported products, say, poultry or textiles, give local producers an undue advantage over their foreign competitors. Tariffs are a subsidy imposed on local consumers. Once introduced, however, (sudden) removal can threaten the survival of entire industries, as their productivity levels and cost structures (in particular wages) are not competitive without subsidies. Removing such protective measures without giving industries the chance to adjust over a defined period of time will destroy employment.

There are some cases in which regulatory measures such as non-tariff obligations, import duties, or even import bans can be deemed fair. For example, if technical equipment and machinery do not meet the safety and quality regulations to which local producers are subject, it would be unfair to allow importers to circumvent such regulations. Similarly, an import tariff may be justified if governments in some countries or custom unions heavily subsidise certain products, such as agricultural products in the European Union, to create a level playing field for local industry.

### 3.7. Concluding remarks

There is no measure of what good regulation is, like a quantitative number or a quality index. Ultimately, rules serve to protect society from negative externalities caused by the actions of individuals or firms, the costs of which are borne by third parties. Speed limits, for example, laws prohibiting the discharge of chemical waste into rivers, or regulations governing the maximum driving time of truck drivers, are sensible regulations that are passive in nature and protect the health and property rights of the general public.

Very often, however, the scope of regulation amounts to active intervention in economic exchange under a patronising guise. Policies that apparently promote SMEs, for instance through local content obligations, are likely to inflict more harm than they do good, not least due to the fact that the process to fulfill such obligations takes time, is costly to implement, increases the cost base of enterprises, and consumes significant public resources to be paid by taxpayers.



Even if well-intentioned, this is a high price to pay for policies that always run the risk of being implemented for the sake of implementation, thus destroying economic value creation, while the impact on economic equality, if any, is only cosmetic. There is little evidence that the South African government's highly interventionist stance is helping to improve the economic prospects of the average South African.

The following chapter provides an overview of specific cases in South Africa where the existing regulatory framework and the failure to deregulate impose high cost on South Africans in their economic roles as consumer, taxpayer, and entrepreneur.

## **4. Case Studies**

### **4.1. The electrification of china and South Africa's energy market**

An analysis of rural electrification in China from 1979 to 1997 provides an important lesson. Whereas in developing countries the usual approach to achieve rural electrification has been grid extension, a different path was pursued in China when a major reform of the rural power-management system was launched. As a result, the public energy policy was transformed from central planning to a market-oriented framework, giving counties and local authorities more autonomy in investment decisions (Zhaohong and Yanling 2015).<sup>28</sup> In only 30% of the 2,400 rural counties does energy provision come from the grid owned and operated by the state's national power company. In the rest of China, energy provision is based on distributed self-production from local resources rather than large-scale energy companies. In 27% of counties, at least 70% of power provision relies on local generation capacity.

According to Zhaohong and Yanling (2015, 47), the decentralised power companies at the township, county, or village level not only own the distribution business but also run subtransmission systems and generation plants: "The bottom-up approach is recognized as a unique feature and a significant contributor to the overall rural electrification story." This achievement is particularly noteworthy considering that in the 1980s, when the implementation was underway, the large majority of Chinese people lived below the poverty line. The per capita income of China's rural inhabitants was at the same level as those of the poorest low-income countries. According to Lu et al. (2019), the incidence of poverty in rural China dropped from 97.5% in 1978 to 4.5% in 2016, whereas per capita income increased tenfold.<sup>29</sup>

The example of China illustrates that even under a regulatory framework with a nationally operated public (transmission) utility, local entrepreneurship and funding can be harnessed. In the end, plans to achieve economically viable energy solutions are unlikely to succeed if they do not rest on local entrepreneurial activity and are detached from the purchasing power of local populations. The national electrification efforts of governments—with the assistance of national development finance institutions (e.g., Development Bank of Southern Africa and the Industrial Development Corporation), multilateral development banks (e.g., International Finance Corporation and the African Development Bank), and the manifold programmes of development assistance—whose focus is on electrification as such and not on viable commercial models are doomed to fail. The even bigger harm is that all these efforts undermine local initiative and entrepreneurship. In fact, the likelihood is high that current utilities, regulators, and ministries will make the average citizen in these countries worse off. Klein (2021) conducted a study for a group of sixty-six lower-income countries with the result that there is little hope that the current institutional frameworks governing national energy sectors will do anything to improve people's situation.

#### **(i) South Africa's Energy Regulation**

Although the Eskom monopoly has long become a millstone around government's neck, both financially and politically, it has defended the energy monopoly tooth and nail. Yet, in the light of Eskom's constant failures to generate sufficient power to support economic growth, government has finally embraced private power producers to feed electricity into

the public transmission grid. The problem with this is that the state has to provide IPPs with a public guarantee as they cannot sell their generated energy to any other company. This creates contingent liabilities for which all South Africans vouch with their wealth. In addition, private-public partnership structures are attractive to government administrations to circumvent short-term taxation and debt-raising constraints by shifting liabilities in the future. The accumulation of such liabilities on the public balance sheet impairs the financial rating of the sovereign, the cost of which, again, is borne by all society.

On the generation side, the regulator continues to deny municipalities the right to source power freely. In a way, the Renewable Energy Independent Power Producer Programme (REIPPP), which is widely regarded as a successful example of a public-private partnership, continues command-and-control politics by assigning production rights to selected private investors at predetermined prices and quantities for which taxpayers vouch for twenty or more years. Apart from technical failure, there is no entrepreneurial risk borne by these investors. Economically-speaking, the moment wind farms or solar parks begin to generate the planned capacity, they become units of Eskom because the state guarantees the owners and operators of wind and solar production facilities a guaranteed return on equity and shields them from any risk that in private markets emanate from competition and consumer choice. This is not a model that can succeed in the long term. One reason is that exactly the same technologies, in particular solar power in combination with battery storage, will reduce or even obviate the need to consume power generated in remote regions carried over hundreds of kilometers of (public) transmission infrastructure to cities.

The technological solutions and business models of decentralised energy generation and provision via local distribution (or even peer-to-peer models) are developing as we speak. Certainly, energy is as important as telecommunication for human prosperity. In the 1980s still, it would have been preposterous claim to argue in front of regulators that telecommunication transmission networks should be open to competition. Twenty years later, there was hardly a global market where the provision of metropolitan and long-distance fibre networks, in particular submarine fibre cables, was not subject to competition. Likewise, all mobile markets are competitive and most carriers are in private hands. The internet revolution and explosion of technological progress would have been impossible without private investments in fibre and mobile infrastructure and their intermediation based on competition.

For the purposes of people's prosperity and the creation of employment, the forces of entrepreneurial creativity and consumer choice in the energy sector have to be harnessed the same way. Whatever the argument that supports the split of the current energy market into a competitive generation market, a municipally-owned distribution grid and a transmission grid that continues to be regulated as a public monopoly, this structure is doomed to fail. There cannot be competition in energy markets when private power producers are forced to use public transmission and distribution infrastructure.

As an argument against private energy markets it is often held that such technological progress will allow the wealthy to go off the grid while the incumbent, Eskom, is left to serve the urban poor and rural regions. In the current market structure, this is exactly what will happen. The problem, however, is not that 10% of people move off the grid. The problem is that 90% of the people continue to be served by a monopolist. Why would technological progress and entrepreneurs not create the solutions and commercial models that serve 90% of the market? After all, it was mobile prepaid technology that led to the breakthrough of mobile voice as a mass market service of what was considered to be a luxury product reserved to a wealthy elite until the mid-1990s.

Pederson et al. (2017, 39) makes an important point about the role of new technologies:

“Rural electrification as a market place for private mini-grid developers and the emergence of private mini-grid firms in Kenya within the past five to six years have been highly reliant and conditioned by the digital transformation that has happened in the country within the past decade. High penetration rates of mobile phones, mobile payment solutions (M-PESA) and high-quality mobile coverage in rural areas, combined

with technological advances in solar PV technologies and cost reductions, are the main drivers behind these new business models.”

It is a feature of all services subject to mass-market demand—and electricity certainly is—that it creates the entrepreneurial dynamics required to realize economies of scale. Decentralised generation and local grid technology have the potential to create such economies of scale required to create affordable and reliable services suited to the needs and income levels of lower-income population.

## (ii) Policy implications:

The key point made in this section is that technology solutions and new business models are not a phenomenon of large public companies. Such companies might come up with the technological innovations and produce the equipment shipped worldwide. The implementation and/or operation of such technology is largely done on a local basis by small or medium-sized enterprises that understand the local markets they operate in. In the case of installations of solar panels and battery storage solutions, an enormously diversified market of SMEs have already emerged despite the regulatory shackle that limits the generative capacity. Only photovoltaic plants smaller than 1MW supplying to a single customer or owner of the generation facility (or for self-consumption on the same property on which the generation facility is located) are exempted from the requirement to seek a license from the regulator.<sup>31</sup>

For on-grid PV plants, for instance, those that deliver to power consumers via municipal distribution grid, the same 1MW threshold applies. The economic damage of this threshold cannot be overestimated as it essentially destroys any possibility to achieve scale economies.

In 2019, energy minister Gwede Mantashe gave permission for the regulatory body, the National Energy Regulator of South Africa (Nersa), to licence 500MW of small-scale embedded generation (SSEG) projects, sized between 1MW and 10MW, without the need for ministerial sign-off. This was a first step in the right direction. However, it has been immediately recognised that the 10MW cap is technologically arbitrary and economically pointless because it excludes exactly those projects that could have the potential to alleviate the constraints of the current dysfunctional and costly energy monopoly. Only after a period of embarrassingly irrational attempts to defend the 10MW cap, government finally gave in. In the end, it was President Ramaphosa who in 10 June 2021 announced the increase of the embedded generation threshold from 1MW to 100MW.<sup>32</sup>

But here’s the rub: Licence exemptions only apply to production facilities that do not involve local government (provinces and municipalities) or supply to local government. While it was confirmed that any plants developed to power mines, factories and office buildings would also be allowed to wheel electricity through municipal and Eskom transmission and distribution networks and sell surplus electricity to nonrelated buyers, generation projects would still need to obtain a grid-connection permit to be agreed with Eskom and municipal authorities and register with Nersa. According to Ramaphosa, those permits will be much quicker to obtain than licenses.<sup>33</sup>

The obvious threat of a need for obtaining permits is that Eskom and municipalities loyal to government could block projects that compete with Eskom’s offerings on the retail and wholesale level in municipal markets. Note that the energy ministry hindered municipalities in the Western Cape to procure power from IPPs despite having the financial and technical capability to do so. This amounts to the national government forcing Western Cape citizens to pay expensive tariffs for unreliable electricity, although they could receive better services.<sup>34</sup> Perhaps in anticipation of such economically harmful and immoral policies, Ramaphosa stated: “Municipalities will have discretion to approve grid-connection applications in their networks, based on an assessment of the impact on their grid.”

This statement perhaps reflects the central point of good government policy, namely standing up for “the right thing,” which at the same time sets the scene for the policy support that private producers and public entities, in particular municipalities which is where people live and work, can expect before they commit to investment projects to create functional and competitive energy markets. Laws and regulatory codes are smoke and mirrors if there is no concrete

determination on the part of government to open up investment opportunities for private market participants and to enable public entities to procure services from private producers on a competitive basis.

It appears that those factions in the government that are concerned with raising the living standards of people succeeded to convince investors and progressive municipalities that they will help to keep the genie of “bureaucracy and petty power politics”<sup>35</sup> in the bottle. A few weeks after Ramaphosa’s announcement, the eThekweni municipality (Durban) became the first in the country to release a request for information for the supply of 400MW of private power generation.<sup>36</sup> Cape Town and Johannesburg have since announced similar plans. It is likely that smaller municipalities will follow suit. After all, a dynamic market of private power generation combined with the establishment of decentralised local grids and innovative energy distribution models hold the key to unleash innovation and free up resources currently wasted to support a dysfunctional Eskom. Municipal consumers and SMEs in particular will benefit from such liberated markets.

## 4.2. South African Post Office

The good thing about free markets is that entrepreneurs can exploit opportunities driven by their profit motive. A public mandate cannot replace the innovation drive and creativity of entrepreneurship. Quite often, private entrepreneurs step in the light of failing public entities as is the case with the South African Post Office (SAPO). SAPO has notoriously unreliable and bad quality service paired with shabby offices where IT-system downtimes as its norm. Extended periods of strikes and bailouts by default are just two cherries on the top. Since reliable postal services are a key requirement for all economic systems, the failure of the public monopoly meant that private entities step in. Sometimes the sheer need for a service creates such strong entrepreneurial incentives that a sizable private sector emerges, either without adjustments to the prevailing regulatory framework or even in contradiction to the existing regulatory rules. Consumers of such services benefit greatly, but firms are at risk of having their business wiped out by lawmakers using the regulatory framework.

Private couriers in South Africa currently face this threat. The SAPO has announced its intention to head to court to block courier companies from delivering packages weighing 1 kg and less. In terms of the Postal Services Act 124 of 1998, SAPO has the exclusive right to provide delivery services for all letters, postcards, printed matter, small parcels, and other postal articles up to and including 1 kg. This would mean that iPhones and medications had to be delivered by SAPO (which in practice might lead to the result that all parcels delivered through private couriers would exceed 1 kg, for instance by buying a stone in which the iPhone serial number is engraved).

In a ruling in 2019, ICASA found that PostNet had contravened the Postal Services Act by transporting and delivering such packages. However, private courier PostNet approached the Gauteng High Court for interim relief against ICASA’s desist order, arguing that that stopping the delivery of packages under 1 kg will cause significant and irreparable harm to their business and to South African consumers. This is one of the many examples where South African consumers need judges to protect them against the harmful consequences of regulation.

In fact, one has to ask why SAPO does not succeed in delivering packages at the same quality and price levels. In many other countries, former postal monopolies coexist on competitive terms with private industry while at the same time fulfilling a universal service mandate. Mostly, this mandate consists of ensuring a minimum degree of postal services in rural regions. In Germany, for example, courier DHL has been bought by incumbent Deutsche Post AG. However, for such entrepreneurial drive to unfold public industries first need to be privatised. To prevent a widespread cliché, the privatisation of a former public monopoly does not mean that the state immediately ceases all economic interest or would be unable to implement universal service mandates. Telkom is an example of how a run-down SOE can be transformed into a stable going concern. The South African government and the Public Investment Corporation still hold slightly above 50% of the shares which they could sell in the future.

Irrespective of such considerations and the economic need for reliable postal services, ICASA spokesperson Paseka Maleka made clear in a letter to the editor of Business Day (4 May 2021) that “ICASA’s mandate is to implement

what the law requires, and we are doing exactly that.” This is reminiscent of what the protagonist Josek K. experiences in Franz Kafka’s novel *The Trial*, who tries in vain to find out why he was sentenced to death while the bureaucratic machinery takes its merciless course, ending with his execution. The role of Franz K. in the SAPO-case is assumed by the South African consumer who plays no role in the legislator’s zeal to execute regulatory law for the sake of it. The hope, however, is that South African judges will continue to step into the breach in their role as guardians of ordinary consumers and small businesses.

### 4.3. Burger King

The Competition Commission has recently prohibited private equity investment fund ECP Africa’s proposed acquisition of Burger King South Africa and Grand Foods Meat Plant from Grand Parade Investments (GPI, an empowerment entity listed on the JSE). It stated that the merger would lead to a significant reduction in the shareholding of historically disadvantaged persons (HDPs) in the target firm, from more than 68% to 0%.

”The commission is, therefore, concerned that the proposed merger will have a substantial negative effect on the promotion of greater spread of ownership, in particular to increase the levels of ownership by HDPs in firms in the market as contemplated in the Competition Act. Thus, the proposed merger cannot be justified on substantial public interest grounds.”

This decision is ludicrous for various reasons. First, shareholdings are not indicative of value but of legal participation rights. Many of the BEE vehicles created may show high ownership level of HDPs but in most cases their shares have no or negative economic value. In the case at hand, however, the former HDPs have the chance to sell their interest. This leads us to the second reason. The decision is patronising and self-serving. Notwithstanding that GPI’s shareholders might have very good ideas about what to do with the proceeds of the sale, the government prefers to lock them up in their status as historically disadvantaged. They cannot get rid of their history, but must remain disadvantaged for the sake of political cosmetics. This is disempowerment.

Third, the decision destroys economic value-creation and employment. The business case that supported the request for the merger’s approval included investments of at least R500 million for the establishment of new Burger King stores throughout South Africa and an increase of the number of permanent employees by 1,250 HDPs. This together with a range of other commitments, such as procurements from BBBEE-accredited suppliers and the implementation of a BBBEE ownership share scheme, did not convince the Competition Commission. Business Unity South Africa (Busa) commented that the commission has implicitly favoured ownership criteria over job creation and growth.<sup>37</sup> It appears that the extremely high unemployment numbers and the very low investment levels must reach ever more threatening levels before the South African government will consider leaving BEE-la-la land.<sup>38</sup>

### 4.4. The case of bankrupt Maluti-a-Phofung Municipality

In the end, consumption and employment are always local. Our life-critical services are consumed physically at a specific location. This holds even for virtual data services. Without a broadband connection, Netflix or Facebook do not work. The two services that are most instrumental to achieving economic prosperity and human dignity are reliable and affordable access to water and electricity. It is sad that the South African government and its local representatives fail their citizens in a particularly gross fashion on delivering both these services. In an article in *The Economist* (5 June, 2021), the correspondent described his difficulties in finding the right words for the graft in South Africa as follows:

“At times it can be hard to find the right metaphor for the dysfunction of the South African state. But then, on a recent morning, your correspondent found himself in the middle of a broken sewage works, knee-deep in excrement.”

The article chose the Maluti-a-Phofung Municipality which incorporates Kestel, Harrismith, and Qwaqwa. The structure



of failure can be found most of South Africa's other municipalities. Yet, this particular locality boasts the highest debt owing by any municipality in South Africa to Eskom, currently standing at R5,57 billion as of 1 December 2020.<sup>39</sup> On the homepage of the city of Harrismith, the situation is described as follows:

The FF Plus says that the Maluti-a-Phofung local municipality in the Free State is one of the biggest failures in the province, and serves as proof that the ANC is not capable of governing any municipality sustainably.

The party says the municipal manager, Futhuli Mothamaha, increased the chief financial officer, Jeremiah Baleni-Mazinyo's, as well as his own salary by R440 000 and R 563 000 per year respectively within the first month of service. About 1400 municipal workers' salaries were also increased by 28% during the Covid-19 period whilst the municipality remained largely closed.

The FF Plus says that no municipal accounts for this municipality were delivered between 2017 and 2019, and the enormous loss of income contributed to R 5 300 000 000 in Eskom debt. In addition, about R 167 000 000 is needed to increase the delivery capacity. These power problems have apparently already resulted in foreign investors withdrawing projects worth R 540 000 000.<sup>40</sup>

As one of roughly one fifth of South Africa's 257 municipalities, it was placed under administration.<sup>41</sup> This means that they are financially bankrupt and operationally dysfunctional, which does not come as a surprise given the looting described in the above quotation. According to Auditor-General Kimi Makwetu's local government audit results for the 2018-19 financial year, out of the 257 municipalities in the country, only 20 have been awarded clean audits.<sup>42</sup> Thirteen of the municipalities with clean audits are in the Western Cape. The report found that municipalities have lost a total of R32 billion in irregular expenditure, fraud, and corruption.

As an explanation of the results, Makwetu is quoted as saying that the reason for most of the adverse findings is a lack of controls among some local government role players:

"If you look at many of the municipalities that we analysed, because they didn't apply proper controls, they run out of cash and to pay for the things they did last year. They wait for the equitable share of this year, when controls are not in place financial health risk accelerates. You get to a point where you are not able to pay for your staff."

In other words, people only do their job when they are properly controlled. Certainly, the control element is an important aspect of functioning principal-agent relationships between tax and rate-payers as service recipients and local governments as providers of such services. The error in the thinking of Makwetu, however, lies in overlooking the fact that control procedures can never replace the one fundamental dimension of all socio-economic relationships: accountability. It is implied in the mandate of every service provider, who acts on behalf of paying service recipients, that two crucial dimensions of accountability are both functional: intrinsic accountability and economic accountability.

The dimension of intrinsic accountability simply means that the agent delivering the service feels pride in doing as best a job as possible so as to justify her compensation. The intrinsic side of accountability might express itself in assuming political responsibility for solving citizens' concerns, using tax proceeds wisely, and keeping municipal finances afloat. Work ethos is an important part of the much-quoted Prussian civil servant.

In private business, however, people are also economically accountable. The owner of a business has to bear the consequences of losses. While employees are not directly economically accountable for the losses of his employer, her income (and possibly bonus) and career trajectory is dependent on good performance and reputation.

In other words, institutional structures where intrinsic and economic accountability are fundamentally decoupled are poised to fail. The fact that there is no economic accountability is the reason for the grand and widespread failure of South African municipalities. On the particular case of Maluti-a-Phofung, a regional ANC representative responded

to the critique by opposition parties as follows:

It is the sole responsibility of the ANC to be on the side of the people. Other political parties, as opposition, they will raise their views, but as the ANC, we are not concerned about the views of the opposition. We are concerned about the living conditions of our people. That is where our concern is.

This quote reveals a fundamental ignorance of what democracy means and what the role of opposition is. Furthermore, the ANC is not embarrassed at all to assume political responsibility. After all, it's the ANC's sole responsibility to be on the side of the people. This shows the problem with political accountability: ANC representatives may intrinsically feel that they are the only ones who are on the side of South Africans. Yet, the very South Africans have learned by now that such empty hogwash does not transform in functional local governance for the benefit of people.

The conclusion is that functional accountability requires political accountability to be tied to economic accountability. In South Africa, there is no economic accountability for the failures of government. The fiscal losses and bailouts resulting from government failures attribute solely to the taxpayer. In this respect, all public entities are non-economic in nature.

Again, the reader might ask what this has to do with the subject of this study: SMEs. At the beginning of this sub-section, the claim was made that all employment is local. This is a slight exaggeration given the degree of division of labour in modern economies. Yet even the employment of an Amazon or Facebook employee sitting in his home office, say, in South Africa or Brazil, is local to the extent that he can only do his job if water, electricity, and data connectivity are reliable. All services crucial for everyday living such power, water, sewage, refuse, road and transport, but also security, health, and education, are fundamentally local in its consumption profile.

It is this locality that provides a strong reason for involving local entrepreneurs and firms. Typically, they have a better understanding about both the concrete needs of consumers but also about the local economy. Managing infrastructure services as national monopolies always runs the risk of disregarding local specifics.

An even more important point is that local service providers are closer to their own people. If such service providers are directly paid by the consumers of their services and not via municipal constructs that siphon off revenues from the consumers while not paying the service provider, no accountability prevails. This is exactly what happened in many of South Africa's municipalities that have stopped paying Eskom but continue to cash in from consumers.

## **5. Policy Recommendations for Deregulation**

### **5.1. Understanding the systemic lack of accountability**

The problem with current centralised political systems is that their wide-ranging mandates are legislated from the top down to the bottom. In the same way, budgets are allocated from the top, where the tax policies are devised and tax proceeds accumulate on the accounts of government treasury, to the bottom, via grants. Taxes have become a crucial tool for governments around the world to keep local authorities and public administrations politically in line.

The days when municipalities were directly accountable to their residents because taxes were collected locally are long gone. The concept of subsidiarity, which as a core principle guided the clear separation of public functions between municipal and national policy-making, has been degraded to a folkloric element. It is still present, though hidden, in the constitutions of Western countries where local governments on municipal or (city) state level used to assume virtually all public functions until the early 20th century.<sup>43</sup> In those times, local authorities levied taxes in line with economic opportunities and citizens' demand for public goods and services. It was on a local level where the

foundations of today's prosperity levels in Western Europe have been laid in the 17th, 18th and 19th centuries.

In South Africa, it is the alleged participatory rights of provincial and municipal government levels that are constitutional folklore. While in many European countries, a sizable local tax base gives cities and districts some degree of financial autonomy and, consequently, imparts some degree of economic accountability on local government representatives, there is no such thing in South Africa. South African municipalities' near total dependence on government grants turn them into mere recipients of central order. The citizen asking the local ANC councillor whether he should not expect the delivery of core services for his tax deductions will see the local government representative shrugging his shoulders and pointing his finger in the direction of Pretoria.

## 5.2. Guiding principles of registration and licencing

So far, the discussion has focused on the lack of financial autonomy of municipalities which translates directly into the absence of economic accountability vis-à-vis local citizens.

Similar problems exist with respect to regulatory law-making and execution. All the described case studies document the systematic curtailment of municipal or provincial rights through national regulation. To the extent that it is useful to have legal frameworks applicable on a national level, this does not mean that practical legislation cannot differ. More importantly, the execution of regulations should fall into the domain of municipal bodies. This would not only promote greater degrees of accountability. It would also induce a much-needed competitive element into South Africa's ossified public sector.

As a matter of principle, municipalities and/or provinces should assume power over all matters of business registration. As a matter of principle, registration should be all that a business needs to start operating. Registration procedures should be independent of the person's status in terms of financial endowment, origin, residential status (e.g., citizens, permanent residents, immigrants) and incur no cost. As citizens need an ID and a proof of residence to procure certain services, most supply-chain partners will require a registration permit before conducting business with another entity. Business registration should be understood as a means of mitigating entrepreneurial risk, not as a political cudgel to lure supposedly illegal firms into formality.

It is important to understand that under the conditions of a purely private exchange regime based on voluntary, bilateral contracts between people and companies, there is simply no one who could grant licences that prohibit others from entering the market. Licences granted by sovereign authorities have to be sharply distinguished from bilateral contracts as well as from certificates. Certificates play a key role when transaction parties need more than promises and contracts to gain trust in a particular business partner or transaction. Certifications serve as standardised proof of quality, which would be costly to obtain if the same level of information had to be obtained through individual due diligence. Two of the key certificates are educational degrees and statement of financial solvency.

While certifications serve to facilitate business bilaterally, licencing is tantamount to an active market intervention—mostly in the form of prohibitions to enter a market. The renewable energy example described in Case Study 1 represents a case of a public licencing system that creates barriers to market entry. Judged by common sense, there is no reason to impose any generation threshold or to dictate to municipalities how to deal with issues of energy generation, transmission, or consumption. The original licencing sin was, of course, the creation of a state monopoly. Without Eskom there would be no reason to prohibit anybody to source power freely. Likewise, without a postal monopoly there would be no regulator who could withdraw "licences" from market players whose services are desperately needed.

The granting of licences must be strictly limited to cases where the conduct of a particular business requires additional certification justified by public safety and public health and security concerns, e.g., firearms licences. Any trade

licencing, e.g., based on geographical or other criteria, should be repealed due to its inherent protectionist and discriminatory nature. Likewise, any licencing that seeks to regulate the number of businesses along sectoral or geographical lines should be repealed. Any refusal by public authorities to grant licences or registration permits on grounds of “public interest” must be supported by a court order, which can only be granted after both parties – the authority and the licence/permit applicant – have had an opportunity to make representations to a neutral arbiter adhering to time-tested standards of evidence.

In the important area of housing and building-related regulation in South Africa, it is not acceptable that “no home built, be that new or an upgrade, will be approved by any local council authority unless the home building plans have been submitted by a registered professional with the South African Council for the Architectural Profession (SACAP).”<sup>44</sup> Principally, processes certifying the quality of buildings standards are an important pillar of a functioning economy, not least because the financial industry’s products such as house bonds and insurances are premised on such quality assurance. Nevertheless, it is more than questionable that the state, represented by municipal councils, tie the granting of building permits to certifications by one statutory body, thus creating a de facto monopoly. Such constrictions create bureaucracy and scope for rent-seeking while limiting diversity and competition of ideas.

The widespread and diverse needs for trustworthy certifications and equally trustworthy processes for their issuance, can be met by public or private entities subject to competition. Except for absolutely sovereign tasks such as the issuance of IDs, birth certificates, or passports, the needs of people should determine concrete certification procedures and direct which entity is best suited to issue that certification. However, if public authorities are unable to provide such documents within an acceptable timeframe or under acceptable conditions (e.g., no 8-hour wait in front of Home Affairs branches), citizens should have the right to obtain these services from alternative providers.<sup>45</sup>

This sub-section concludes with four principles of citizen-oriented, market-based regulation:

- Principle 1: The domain over all existing registration and licencing procedures shall strictly sit with local municipal councils.
- Principle 2: All trade licences of entities along geographical or industry-specific lines shall be repealed.
- Principle 3: The issuing of all public certificates and the practical execution of certification procedures shall be allowed to be carried out as far as possible by competing private players (subject to compliance with necessary data protection requirements).
- Principle 4: With regard to key documents issued by sovereign authorities, citizens must be granted the right to obtain important documents from alternative providers if the procurement of documents from public authorities exceeds the limits of reasonableness with regard to, e.g., issuing times, collection times, red tape.

### 5.3. On the misguided idea that informal businesses should be formalised

As to registering and establishing a business, the process in South Africa is quite straightforward. Via the homepage of Companies and Intellectual Property Commission, a private company can be registered online for R125. At the same time, entrepreneurs have to register with the South African Revenue Service. The matters become more complicated when employing people at a fixed salary, which is one of the key reasons for SMEs to avoid formalisation. And here’s the rub: Studies concerned with creating better regulatory conditions for informal enterprises implicitly assume that formalisation is the way to economic success and that informal businesses are in need of support to thrive.

As an example, in the recommendation section of their study “New Perspectives on Informality,” the Small Business Institute proposes to “develop a compelling reason for, and simplified path to, formalization” and “educate and train people to be employable and to run business.” It is unfortunate that the authors want to develop a reason for informal entrepreneurs to be trained to become employable. In other words, the implication is that the informal entrepreneur is not employable and does not know how to run a business. In hardly any other area does the host of charitable economists and policy advisors—unintentionally, but all the more clearly—show their contemptuous attitude towards their object of study as clearly as they do towards the informal sector.

What the authors of the study miss is that informal businesses have a place in the economy precisely for what they are. The people running informal businesses might not develop new DNA sequencing techniques, but they should be given the benefit of the doubt that they understand their business and provide valuable services to their mostly local customer base.

“Government (the Department of Small Business Development in particular) should consider opening digital support centres in townships, small towns and rural areas: Instead of delivering costly business support services through traditional, classroom coaching, government could have a huge impact in helping to modernise the informal economy by rolling-out digital support centres in localities such as townships, small towns and rural areas - just by providing the basic infrastructure to crowd in the private sector as well as other key departments engaged in science, technology and innovation.”

It's as simple as that: Just let the state create the basic infrastructure and crowd the private sector in. The track-record of government agencies on their own digitisation should be warning enough.

Any additional mandate given to public agencies in fact crowds out the private sector through its tax effect. That said, entrusting the state, of all people, with its demonstrably abysmal entrepreneurial track record, with opening digital support centres to push people into the private sector may be the surest way to keep businesses in informality.

From an economic perspective, it has to be understood that informality simply means that businesses elude state authorities with regard to taxes, rules and regulation. In any case, most informal entrepreneurial activities are far below any tax threshold. And most offerings are such that they naturally elude regulatory frameworks. As an example, in South Africa domestic workers pay no taxes. Their employers may register them with the Unemployment Insurance Fund, which is where formalisation stops. Of course, the state can implement a national minimum wage for domestic labour. But who cares? If the salary is two or three hundred rand below the threshold, workers could take their employers to court. But there are hundreds of people—especially immigrants—who would fill the job immediately.

To avoid any misunderstanding: Providing people with a minimum income to enable them to live in dignity is the right idea. However, great caution must be exercised when transforming good ideas into law. The cost of living varies greatly from region to region and individual needs depend on household size and the number of people contributing to the income. In the household of a large family, for example, even a very low additional income can make or break the education of the children. In other words, a minimum wage, which is noble in principle, might rob a family of a small (under minimum wage) income if it forces a household to let go of its domestic worker. No matter how small that wage might have been, it was what kept the family afloat, and the minimum wage took it away.

With increasing prosperity, economic dynamics change. It is an empirical truth that the participants in rapidly progressing emerging economies naturally move towards formalisation. With better education and rising income levels, people are beginning to invest in their social security, especially unemployment, pension, and health insurance, which are perhaps the services that best represent the notion of formality. These benefits are often provided by the state, usually with the aim of ensuring that all income groups have access to a guaranteed minimum standard of benefit. The better the state succeeds in providing minimum cover for social security, the more willing people are to register for such services.

In conclusion, formalisation is not an end in itself. At the macroeconomic level, increasing formalisation is usually an indicator of economic success and prosperity. From the individual perspective, it can be different. An institutional environment in which bureaucracy is trimmed down to the bare necessities, taxes are moderate, all economic sectors are open to entry and tax money is not wasted on bailing out bankrupt SOEs are minimum conditions of economic progress across all sectors and income groups.



## 5.4. Positive examples of market liberalisation and deregulation in South Africa

If you do a Google search for “deregulation” or “success of deregulation” for South Africa, two topics come up: the liberalisation of the aviation industry in the 1990s and the emergence of private power generation from the 2010s. Industries that are crucial for economic development, such as road and rail transport, water and wastewater supply, electricity transmission and ports, are still run as public monopolies where possible competition is prohibited.

In contrast, South Africa’s agricultural sector is widely market-based and highly diversified. On their country profile of South Africa, the United States agency, the International Trade Administration, judgment about the agricultural sector is: “This is the best prospect industry sector for this country.”<sup>46</sup> It contributed around 10% to total export earnings in FY 2019. South Africa is ranked at 11<sup>th</sup> place on the list of the top 25 agricultural countries in the world (being the 5<sup>th</sup> largest producer of cereals). This is no coincidence for two reasons. Firstly, South Africa has world-class farmers and agricultural knowledge supported by one of the best global financial industries. Second, the atomistic structure of agricultural production, transport, trade, and sales, provides a natural shield against sectoral policies, overreaching regulatory regimes, and the capture of the market by tenderpreneurship and corruption schemes devised by political cadres.

South Africa has a range of world-class industries, in particular the financial sector and the private health system. Both are eminently competitive and innovative, with medical aid provider Discovery combining the best of both worlds and Capitec demonstrating that market entry is possible. The fact that these services are still unaffordable for most South Africans is difficult to accept. However, as this is the economic reality, the political system must deal with it constructively instead of pursuing politically inspired quick fixes. It is very unlikely that a ban on private provision and the creation of subsidised public provision in its place will lead to viable solutions. To the extent that the recently contemplated ideas to create a National Health Insurance by prohibiting Low-Cost Benefit Options (LCBO) for low-income consumers is paved with good intentions, it seems to be the sure road to ruin, given the dismal track record of South African SOEs.

Perhaps the best recent example of an innovative service that has revolutionised an entire industry is mobile-based ride-hailing introduced by Uber. The private taxi industry was so bad that people preferred to risk their lives (and that of others) by driving intoxicated instead of calling a taxi. Uber was the service South Africa has been waiting for, which is demonstrated by the fact that it was the first country outside of the United States to have three cities operating. It is also an example of the economic truism that companies attract their own competition through their success. With an estimated market share of 25%, Bolt has become a credible competitor by the end of 2019.<sup>48</sup>

## 5.5. Better policy-making through SEIAs and RIAs?

After a concise criticism of the “disabling environment” that the government of South Africa has created, it is surprising to read that according to the Small Business Institute “the priority job at hand is to fix the economy” falls to government. The authors have great faith that obligatory socio-economic impact assessments (SEIA) and “transparent and methodological regulatory impact assessments (RIA)” in conjunction with more parliamentary oversight and a reduction of red tape will boost economic growth. The question of which mandates the state should take on at all is not addressed. The idea seems to be that the combination of ex ante SEIAs and ex post RIAs will distill what government mandates works and which not.

This is a dangerous road to travel for two reasons. First, there is no calculation methodology to verify the success or failure of a public undertaking. Public entities are driven by budget criteria that are not indicative of value creation. Public economic entities are not subject to profit and loss goals that refer to equity provisions of flesh-and-blood people. Even if the financial statements of SOEs give the appearance of being a normal company, they are not

because there is nobody with “skin in the game.” This means that there is no equity provider who could be accountable for losses of equity (i.e., investment failures). This also means that it is impossible to formulate an equity target because, economically speaking, there is no owner. Note that a public company belongs to the public—that is, it belongs to all and thus to nobody. This is the root of the economic accountability problem inherent to all SOEs. Whatever the outcome at the end of the year, the SOE’s staff and the politicians in the ministries bear no personal responsibility for the economic consequences of the failure.

Secondly, even if one believes that such SEIAs and RIAs are helpful in ensuring at least some degree of accountability, they miss the critical point that deciding in which areas private market participants should govern matters and where the public should take on a mandate is primarily a political, not an economic, decision. This means that a democratic discourse must take place in which the representatives of the state are obliged to present credible reasons for their interventionist proposals. Since all economic action is future-oriented and thus uncertain, an assessment of costs and benefits cannot and must not replace the fundamental discussion about the proposed benefits and potential dangers of expanding public mandates.

As an example, in the “National Integrated ICT Policy White Paper” of 28 September 2016, the Department of Communications and Digital Technologies, then Department of Communications, advanced the proposal that mobile telecommunication spectrum “needs to be governed in line with a paradigm shift towards the non-exclusive assignment of highly contested spectrum.” This was correctly interpreted by industry to say that MNOs must hand back to the regulator the spectrum they had been assigned and had been using exclusively. Consulting and research firm Africa Analysis stated that government’s White Paper essentially amounts to the “nationalisation of spectrum in South Africa” and that implementing the ideas in the White Paper would “lead to loss of confidence in investing in the infrastructure market.”

The public outcry and immediate opposition from the operators forced Minister Siyabonga Cwele to publicly revoke the proposal. Just imagine, politicians have seriously entertained the idea of nationalising the core resource of one of South Africa’s most successful industries, thus depriving operators of the basis for their business planning. Such a proposal cannot be countered with an impact analysis. What is needed is a policy discussion that makes the public aware of the enormous economic impact of such ideologically inspired, intellectually half-baked ideas.

## 5.6. Concrete approaches that help municipalities and SMEs

This study argues that the best policy to promote business and employment is to create a conducive local institutional environment and ensure the provision of infrastructure services that are crucial for any business and indeed for daily life. Since life always takes place at the local level, tailor-made solutions are very often developed locally. Since in South Africa’s municipalities basic infrastructure services are all provided by public monopolies, local entrepreneurs are prohibited from legally entering the market. Law begins to turn against citizens when they are forced to pay taxes without receiving anything in return. Only with civil courage can a way out be found.

### (i) Service delivery protests and tax withholding

There is a simple rule in everyday business: No service, no payment. Many ratepayers’ associations have begun to withhold taxes. This is perfectly legitimate avenue to “incentivise” the otherwise unaccountable public council structures and could pave the way for viable long-term solutions.

### (ii) Resident association Take-overs

One of such solutions is resident associations taking-over key infrastructure services such as sewage, water networks, or refuse collection from nonperforming government entities. Such take-overs can emerge from residential grassroots initiatives and pave the way to stabilise operations. When in Harrismith grassroots outfit Water Heroes did the city’s

job and repaired hundred of pipes and collected rubbish, the city was clean.<sup>50</sup> It is important, however, to turn such spontaneously evolving structures into formal entities that operate professionally. No matter the degree of failure, for local councils such movements constitute a political embarrassment and—possibly more relevant—a threat of their income. Hence, resident undertakings must secure court orders to establish and safeguard the operations of newly evolving entities.

Backed by a High Court ruling in December, the Kgetlengrivier Ratepayers' Association has officially taken over water and sewage provision from the failing Kgetlengrivier Local Municipality in the North West Province. This is a landmark judgment as it gave the association the green light to take over if the municipality fails to supply water sustainably to residents.<sup>51</sup> Not surprisingly, the provincial municipal workers union, Samwu, has protested for fear of duplicate job positions to be paid by the municipality (not understanding that their council position would not be needed anymore if the private operations establishes itself in the long term).

The government, meanwhile, has a decidedly comfortable as well as elementary view of things, as documented by MEC for Local Government Mmoloki Cwaile: "We will never agree that the constitutional mandate of the municipality should be hijacked by the communities."<sup>52</sup> In other words, in the world of politicians, government has the mandate for mandate's sake, not because citizens have the right to receive a service for their taxes. This sentiment is echoed by the Department of Cooperative Governance, which stated that it is not in line with government laws to hand over assets to private entities (even if these people are residents of the municipality). This might indeed be correct based on current law. But law is—and must never be—an end in itself if it is to be on the side of citizens. Indeed, the natural state of order is that private individuals have ownership and control of assets because public entities and their personnel are not and cannot be held economically accountable.

Undeterred by such matters of principle, it is not surprising that a recent court ruling ordered the Ratepayers' Association to hand back all infrastructure under its control.<sup>53</sup> The Department of Cooperative Governance says it has put plans in place to assist the municipality, e.g., by establishing the provincial and district streams committee and by including multiple role-players such as the municipal infrastructure support agency and the department of water and sanitation to succeed with a turnaround. It is to be seen whether committees and plan announcements will be followed by action.

### **(iii) Cut out failing or needless intermediaries**

In respect of Case Study 4.5., the proposal made by Eskom to manage the electricity affairs of the Maluti-a-Phofung Municipality (and possibly others) is meaningful. It would be even more meaningful to assign the billing responsibility for end-consumer services to a third-party provider under the supervision of the energy ministry or the regulator. This would prevent city councils from falling short on their payment obligations to Eskom.

The most meaningful attempt to achieve accountability in the energy (and all other infrastructure) sectors, however, is to break the monopoly and allow private energy companies to operate in all areas of the value chain. This would allow consumers and firms to directly sign up with their preferred service provider. It would also force municipalities—and the central government—to rethink the unviable fiscal structure.

### **(iv) Re-establish municipalities as entities accountable to their citizens**

Two steps are necessary to ensure accountable public action. First, municipalities must be re-established as ordinary legal entities that can go bankrupt. It follows, secondly, that debtors must be able to seize assets of failing entities and assign property rights to players that inject private funds to establish a going concern. This is how it works in everyday life when private entities do business. There is no reason why municipal entities should be exempt from this common-sense rule. Indeed, the timeless principle that law must apply equally to both citizens and to government agitates in favour of dropping the exemption. To the extent that the state fulfills social obligations in the form of concessionary services to poorer sections of the population, it can compensate the provider directly or issue transfers to the recipients.

There is no doubt that the overwhelming majority of current public employees understand their subject matter area and will be eager to work in environments driven by merit and performance. It will be liberating for most of city council's and their entities' staff to be managed according to best-practice principles applied in private business, not least because it will improve people's knowledge and their employability.

### (v) Creation of SEZs and IDZs

Finally, the ideas of creating Special Economic Zones (SEZ) and Industrial Development Zones (IDZ) also have the potential to promote investment and job creation for an area, which however will not fly without sound municipal services and infrastructure.<sup>54</sup>

The Western Cape has successfully used SEZs to boost local economies and job creation, something that has eluded the Free State due to the conditions in the Maluti-a-Phofung Local Municipality.<sup>55</sup> Yet, placing too high hopes on such public institutional constructs are unwarranted. In fact, the acknowledgement that the overall fiscal-regulatory structure is not conducive to economic development is implied in the idea of SEZs and IDSs. To the extent that such constructs are makeshift solutions to circumvent the wider problems of the fiscal-regulatory structure they may, if successful, have the power to act as pacesetters for a broader deregulatory movement.

## 6. The Way Forward: Conclusion of the SME Study

The best way to create a conducive regulatory environment not only for SMEs but for the economy as a whole is to limit government mandates to areas where they fulfil a sovereign function clearly distinct from the private sector. Of course, voters mandate the government to ensure that the low-income population receives a minimum level of services in the areas of education, health, social security, etc. This, however, does not mean that such services must be provided by government agencies or SOEs. In many cases, transfer payments to the beneficiaries are a better solution. As far as the provision of core infrastructure services is concerned, the mobile sector and its surrounding ecosystem has demonstrated the superiority of private entrepreneurship. Since a significant portion of people's income is spent on electricity, water and transport, the best deregulation policy is to let people decide for themselves what they want to buy and from whom.

Through their decision to invite private generators of renewable electricity first to feed into the Eskom grid and now also to generate up to 100MW for self-consumption government did exactly this. The industry shows tremendous momentum already. Many start-ups are popping up as we speak, funded by domestic and international capital providers. When, inevitably, private players start building and procuring their own transmission and distribution networks in the upcoming years, and municipalities will turn to procure power and transmission capacity from any supplier, hundreds of billions of rands of investment will not only relieve South Africans of a dysfunctional utility – it will also relieve the government of a heavy burden and allow it to focus on its core tasks.

Deregulation is rarely about big-bang revolutions. It is about mundane politics oriented towards the average citizen and firm, the overwhelming majority of which are small, that is, they have fewer than twenty employees. Government does its job by limiting its regulatory interventions to concrete cases of market failure, say, river pollution or financial fraud, instead of devising grand policy plans. South Africa has neither the resources to afford Scandinavian welfare systems nor does it have the funds to continuously bail out loss-making SOEs.

The ANC in particular will have to come to terms with the fact that the high hopes it placed in its own ability to create prosperity for all South Africans through active policy-making via SOEs and national development plans have proved unrealistic. It must bury its grand plans and trust that the people are capable of achieving their goals through their own efforts. For ANC leaders this means lowering their sights, which might be close to a political-psychological 180-degree turn. Yet, it is the only way to support the people in realising higher incomes and creating more jobs. A way to start this

process is to grant municipalities and its councils more financial autonomy in order to reintroduce a sense of political and, above all, economic accountability.

More than two and a half millennia ago, Chinese Taoist philosopher Lao Tzu (604 BC - 531 BC) formulated a guiding principle of human action that is particularly relevant in the context of regulatory regimes that encroach on individual freedom and suffocate economic activity:

“To attain knowledge, add things every day. To attain wisdom, remove things every day.”

Generally, wise regulatory policies must not be understood as a task of establishing sophisticated rules that follow the criteria of procedural or economic justice according to the opinion—a term routinely conflated with knowledge—of a few policymakers. Wise policymaking means removing regulatory frameworks and repealing regulatory mandates where their benefit cannot be clearly established. As a matter of principle, the onus of proof for the need to restrict individual liberty rests with politicians and bureaucrats, and no one else.



### III. ENDNOTES

<sup>1</sup> A big part of McDonald's success is that it owns the land and buildings at most of its locations.

<sup>2</sup> Please refer to the appendix.

<sup>3</sup> Hodgson, Geoffrey (2006). 'What Are Institutions?' *Journal of Economic Issues* 40 (1): 1–25. <https://doi.org/10.1080/0213624.2006.11506879>.

<sup>4</sup> Schumpeter, Joseph A. 1942. *Capitalism, Socialism and Democracy*. New York: Harper and Brothers.

<sup>5</sup> This study does not deal with the manifold types of market-based, bottom-up regulatory frameworks that emanate as a consequence of bilateral agreements and societal consent. All common law frameworks developed in spontaneous ways. The institutional environment is as much evolving as a "spontaneous order" as are new ways of economizing, which is a point that Nobel Prize laureate FA Hayek (1960; 1988) stressed in various of his works such as "The Constitution of Liberty" and "The Fatal Conceit."

<sup>6</sup> Regulator ICASA owns electromagnetic spectrum, the key resource for providing mobile telecommunication services. The cost imposed on South African consumers through regulatory failure is discussed in the SEIA on South African spectrum politics (2021).

<sup>7</sup> See FMF's (2021) SEIA study on South African spectrum politics.

<sup>8</sup> Based on methodology of the World Bank (data base). South Africa, however, belongs those countries with an extremely unequal distribution of income. While in terms of GDP per capita, South Africa ranks on position 92

<sup>9</sup> Acemoglu, Daron, and James A Robinson. 2012. *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. Crown Books.

<sup>10</sup> [https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf).

<sup>11</sup> Ease of Doing Business (2020) International Bank for Reconstruction and Development/The World Bank.

<sup>12</sup> <https://solability.com/the-global-sustainable-competitiveness-index/the-index/governance-capital>.

<sup>13</sup> And not to forget taxation by issuance of central bank money, which hits the poor the hardest through inflation, and increasing contingent liabilities by way of government guarantees, which present a mortgage on the future taxpayer base.

<sup>14</sup> <https://www.iol.co.za/business-report/economy/sa-wage-bill-at-r630bn-is-higher-than-the-global-norm-as-a-percentage-of-gdp-463ab0b6-97c4-4c6a-84fd-2885a4eef729>.

<sup>15</sup> See the SEIA (2021) on South Africa's spectrum politics: [https://www.respondnow.biz/v4/uploads/1960\\_invitation/Spectrum%20SEIA-FMF%20-%20FINAL\\_clean\\_update.pdf](https://www.respondnow.biz/v4/uploads/1960_invitation/Spectrum%20SEIA-FMF%20-%20FINAL_clean_update.pdf).

<sup>16</sup> OECD (2019): *Multi-level Governance Studies, Making Decentralisation Work A Handbook for Policy-Makers* <https://www.oecd-ilibrary.org/sites/53013b71-en/index.html?itemId=/content/component/53013b71-en>

<sup>17</sup> Data extracted from: <https://www.compareyourcountry.org/subnational-government-finance-and-investment/en/>

<sup>18</sup> Roach, Craig R. 2017. *Simply Electrifying: The Technology That Transformed the World, from Benjamin Franklin to Elon Musk*. Benbella Books.

<sup>19</sup> The so-called Great Leap Forward devised by Chairman Mao to catapult China from an agrarian into the industrial era, was the most destructive economic growth program in human history causing an estimated deaths of an estimated 15 to 30 million people in the late 1950s and early 1960s. See: Li, Wei Tao Yang, Dennis (2005). *The Great Leap Forward: Anatomy of a Central Planning Disaster*. *Journal of Political Economy*, Vol. 113, No. 4, pp. 840-877

<sup>20</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics\\_on\\_small\\_and\\_medium-sized\\_enterprises](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_small_and_medium-sized_enterprises).

<sup>21</sup> <https://www.wylie.co.za/articles/new-price-discrimination-and-buyer-power-provisions-are-now-law/>.

<sup>22</sup> Based on World Bank data: <https://data.worldbank.org>.

<sup>23</sup> <https://www.news24.com/fin24/economy/12-numbers-that-put-the-public-wage-debate-in-context-20200304>.

<sup>24</sup> The problem is that some beer is quite alcoholic. The strongest beer in the world available on the market is the Schorschbock 57%, an Eisbock from German brewer Tscheuschner, who secured the world record with it in 2011.

<sup>25</sup> Which, of course, does not make the regulatory rules go away. In respect of the regulations applicable to horse-drawn carriages in the city of Palm Springs, Municipal Code 5.40.290 of year 2003 stipulates in Section 2(A):

“The horses must be properly cleaned, with no offensive odors or caked dirt or mud.” [http://www.qcode.us/codes/palmsprings/view.php?topic=5-5\\_40-5\\_40\\_290](http://www.qcode.us/codes/palmsprings/view.php?topic=5-5_40-5_40_290).

<sup>26</sup> This is known as Type Approval Regulation, governed by Section 35(2) of the South African Electronic Communications Act, 2005.

<sup>27</sup> <https://www.mondaq.com/southafrica/telecoms-mobile-cable-communications/588326/icasa-states-its-regulatory-position-on-equipment-type-approval-exemption>.

<sup>28</sup> Zhaohong, Bie, and Lin Yanling. 2015. ‘An Overview of Rural Electrification in China: History, Technology, and Emerging Trends.’ *IEEE Electrification Magazine* 3 (1): 36–47.

<sup>29</sup> Lu, Yonglong, Yueqing Zhang, Xianghui Cao, Chenchen Wang, Yichao Wang, Meng Zhang, Robert C Ferrier, Alan Jenkins, Jingjing Yuan, and Mark J Bailey. 2019. ‘Forty Years of Reform and Opening up: China’s Progress toward a Sustainable Path’. *Science Advances*, 5 (8): eaau9413.

<sup>30</sup> Pedersen, Mathilde Brix, Ivan Nygaard and Walter Wehrmeyer. 2017 Rural electrification through private models: the case of solar-powered mini-grid development in Kenya: Exploring the hybrid nature of private business models and the interplay between new players and existing structures in the Kenyan rural electrification regime. <https://core.ac.uk/download/pdf/86557499.pdf>.

<sup>31</sup> Schedule 2 of the Electricity Regulation Act as per the amendments effected on 10 November 2017.

<sup>32</sup> <https://www.engineeringnews.co.za/article/ramaphosa-moves-to-tackle-growth-sapping-electricity-crisis-by-increasing-licence-exemption-cap-on-distributed-project-to-100-mw-2021-06-10>.

<sup>33</sup> <https://www.bloomberg.com/news/articles/2021-06-10/south-africa-allows-more-private-power-generation-to-ease-crisis>.

<sup>34</sup> Previous attempts by the City of Cape Town to get the right to procure power from IPPs have been blocked by imposing a ministerial determination to do so. In August 2020, while South Africa was hit by rolling blackouts (“loadshedding”), the North Gauteng High Court in Pretoria indefinitely postponed the application by the City of Cape Town. Such disheartening rulings make it all too clear to be wary of naïve hopes that the judiciary will solve problems for which the government itself lacks the moral determination.

<https://www.news24.com/fin24/economy/eskom/blow-for-city-of-cape-towns-plans-to-buy-power-as-court-refers-matter-back-to-govt-20200811>.

<sup>35</sup> *Ibid.*

<sup>36</sup> <https://www.timeslive.co.za/news/south-africa/2021-07-11-durban-becomes-first-city-in-sa-to-seek-private-power-deal/>.

<sup>37</sup> [https://www.engineeringnews.co.za/article/busa-expresses-concern-over-commissions-rejection-of-burger-king-sale-2021-06-08/rep\\_id:4136](https://www.engineeringnews.co.za/article/busa-expresses-concern-over-commissions-rejection-of-burger-king-sale-2021-06-08/rep_id:4136).

<sup>38</sup> Merriam-Webster (online dictionary) defines la-la land as follows: “a euphoric, dreamlike mental state detached from the harsher realities of life.” This is not to invalidate the many meritorious actions taken by the government to reduce historical injustices and disadvantages. In the cases discussed in this study, however, the government is well advised to trust in the competence of people who know best what they are doing, whether in their role as consumer, entrepreneur or shareholder.

<sup>39</sup> <https://www.polity.org.za/article/da-welcomes-lifeline-for-bankrupt-maluti-a-phofung-municipality-2021-01-14>.

<sup>40</sup> <https://harrismith.com/concerns-over-maluti-a-phofung-municipality-collapse/>.

<sup>41</sup> <https://www.dailymaverick.co.za/opinionista/2020-10-06-the-decline-and-fall-one-in-five-municipalities-in-a-state-of-collapse/>.

<sup>42</sup> <https://www.sabcnews.com/sabcnews/only-20-out-of-257-municipalities-awarded-clean-audits/>.

<sup>43</sup> The notion of subsidiarity is enshrined as a core principle in the German constitution and in the European Treaty of Rome. A definition of the subsidiarity principle formed part of the amendments to the Maastricht Treaty in 1992 and is laid out in Article 3b. The treaty states that “decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity.”

<sup>44</sup> <https://www.privateproperty.co.za/advice/property/articles/the-definitive-guide-to-house-plan-approval-permissions/7166>

<sup>45</sup> To the extent that policymakers try to dispel such requests by emphasising national security concerns, the public interest and similarly opaque reasons, it is important to stress that the only *raison d'être* of public offices is to serve their citizens. If they do not serve their citizens, their *raison d'être* ceases to exist instantaneously. The “outsourcing” of identity card applications and their collection to commercial banks is a good example of how the state can streamline procedures while retaining sovereign control, e.g. through central database access. It would be highly advisable to extend the use of these more efficient and better-equipped offices to foreign citizens applying for an ID in order to spare them all-day (sometimes futile) waits in front of the dilapidated buildings of Home Affairs.

<sup>46</sup> <https://www.trade.gov/knowledge-product/south-africa-agricultural-sector>.

<sup>47</sup> <http://news.agropages.com/News/NewsDetail---35595.htm>.

<sup>48</sup> <https://www.reuters.com/article/bolt-safrica-idUSL8N28E4AU>.

<sup>49</sup> However legitimate this claim is considered to be on the basis of common sense (or natural law, for that matter), it is not legal in the sense of codified constitutional law. The state is the only “business” entity that can take money from citizens, in the form of rates and taxes, without giving anything in return—and mostly without breaking the law. If judges rule in individual cases that public actions have been unconstitutional, it has no economic consequences for individual public representatives. This is the definition of systemic unaccountability.

<sup>50</sup> The Economist, June 5th, 2021.

<sup>51</sup> <https://www.sabcnews.com/sabcnews/kgetlengrivier-residents-group-takes-over-water-sewage-provision/>.

<sup>52</sup> <https://www.sabcnews.com/sabcnews/kgetlengrivier-residents-group-takes-over-water-sewage-provision/>.

<sup>53</sup> <https://www.sabcnews.com/sabcnews/kgetlengrivier-municipality-take-back-charge-of-sewage-and-water-plants/>.

<sup>54</sup> See for an overview on SDZs and IDZs: <http://www.thedtic.gov.za/sectors-and-services-2/industrial-development/special-economic-zones/>.

<sup>55</sup> <https://www.polity.org.za/article/da-welcomes-lifeline-for-bankrupt-maluti-a-phofung-municipality-2021-01-14>.