TRANSNET LODGES FORMAL COMPLAINT WITH NERSA ON HISTORICAL NEUTRALITY AGREEMENT

[Johannesburg, 3 March 2021] Transnet SOC Ltd. ("Transnet") has lodged a formal complaint with the National Energy Regulator of South Africa (Nersa) which - at its core - serves to protect the public interest, and prevent discriminatory pricing in the transportation of crude oil currently imposed by a historical agreement between Transnet, Sasol and Total.

The unfair pricing mechanism, which was concluded in the apartheid era between the government at the time and Natref (the inland refinery owned by Sasol and Total) has not - to date - been regulated or approved by Nersa. If left unchecked, it would have negative consequences for fuel consumers, as the shortfall imposed by the discriminatory pricing would need to be recovered by Transnet from other customers.

This increase will impact all customers using the Transnet pipeline network who transport petrol, diesel and jet fuel. The increase would ultimately be felt by every inland province, with the expected result being a rise in petrol costs.

To avert this eventuality, Transnet is requesting the Regulator to investigate Natref's failure to abide by Nersa tariffs.

The Neutrality Agreement, as it was known, had the objective of ensuring that Natref was not disadvantaged by operating an inland refinery, in respect of the tariffs applicable, when compared to coastal refineries i.e. that they be kept neutral.

At the time, Natref alleged that it was at a disadvantage in respect of transport costs. This was addressed by an agreement to adjust the cost of transporting its crude oil in such a way that it would not cost more to transport petroleum products to inland markets than to a coastal refinery.

The Agreement was honoured by Transnet until March 2005, when the National Energy Regulator Act 40 of 2004 and the Petroleum Pipeline Act 60 of 2003 ("PPA") came into effect.

The effect of the PPA on the Agreement was that Transnet ceased to set its own tariffs, and Nersa became the statutory entity empowered to do so.

Since its establishment, Nersa has been setting and publishing pipeline tariffs.

Natref has been paying tariffs set by Nersa under protest but maintained that Transnet was legally obliged under the Variation Agreement.

In a drastic change of events, in 2013, Total issued summons against Transnet – citing Sasol as the second defendant – in a claim for a discounted tariff of R838.01 million (excluding interest) for the period from April 2008 to March 2019. Sasol also mirrored Total's claim for the period of August 2008 to May 2017, for an amount of R 1, 072 billion (excluding interest).

The matter is still a subject of litigation, and there is a pending application for leave to appeal before the Supreme Court of Appeal.

Transnet has now taken a decision to submit a formal complaint to Nersa in terms of the Petroleum Pipelines Act, which provides - among others - that tariffs set or approved by the Regulator, must enable the licensee to recover the investment, operate and maintain the system, and make a profit commensurate with the risk.

Transnet is of the view that if these tariffs cannot be recovered from Natref, they will have to be recovered from customers -- resulting in all tariffs other than crude tariffs increasing by at least 10%. This would impact customers using the Transnet pipeline, and ultimately, consumers. NERSA is currently considering the complaint.

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NOTE TO EDITORS:

In 1966, the then government approached Total and requested it to participate in an inland refinery. Total was initially reluctant to participate as coastal refineries have access to both international and domestic markets, whereas an inland refinery would have access only to inland markets. Moreover, when using an inland refinery, crude oil would have to be brought to it from the coast, thus incurring pipeline costs that would not arise if the oil were processed at the coast. The South African government established Natref in 1966 to cater for increasing petroleum demand in the inland areas. In 1967, Total entered into an agreement with the then Department of Commerce and Industries that it would be treated as if it were located at the coast when determining the tariff for the transportation of crude oil.

The agreement was known as 'the neutrality agreement'.

In 1991, the later version of 'the neutrality agreement' was enshrined into a 'Variation Agreement'.