

OUTA CHAIRMANS REPORT – 24 April 2014

It was just over two years ago, in February 2012 that OUTA was constituted to launch a legal challenge against Government's decision to introduce e-tolling to fund the upgrade of Gauteng's freeways. The challenge has lasted far longer than we had imagined, but the fight and resolve remains as strong as ever within the team - and seemingly throughout all ranks of society - as we continue to drive drive the cause that seeks halt the ill-conceived practice of e-tolling on Gauteng's urban freeways.

The past year saw OUTA at a crossroad in its legal challenge, following the Supreme Court of Appeal's (SCA) decision on 9th October 2013, not to condone the lateness of our application, nor to grant a declaratory order on the merits and lawfulness of the e-toll decision. Fortunately, the shocking costs order granted against OUTA by Judge Louis Vorster in December 2012, was overturned by the SCA.

Following the SCA judgment, OUTA's committee met on the 14th of October 2013 and although we felt that justice had not been served, we decided not to appeal the ruling on the grounds that funds were low and that, since the Constitutional Court had already indicated a disinclination to go against the Executive powers, a change in strategy was required. The committee decided to keep the organization intact, with slight amendments to the constitution and that it would continue to challenge the rationale and related issues of e-tolling, using all channels of media in order to hold Sanral and the Government to account for their decisions, press statements and other related matters. OUTA's committee would also continue to empower the public with information, facts and research conducted and if fitting, would assist in the first qualifying legal challenge brought against a e-toll perpetrator by Sanral, should the organisation receive the necessary funding and other support from the public to cover the costs of this initiative.

On 29th October 2013, OUTA management met with the CEO of Clif Dekker Hofmeyr (CDH), being OUTA's attorney during the legal challenge, to request reprieve or relaxation of its outstanding debt of approximately R2,5 million due to them. CDH Management agreed that while they would not expunge these debts, their directors agreed not to pursue OUTA for these outstanding fees and we reached agreement on how the outstanding debt would be treated going forward, to which OUTA expressed its sincere gratitude.

With new effort required around research and engagement with the media, in November 2013, the committee decided to contract the services of John Clarke, a qualified social worker and writer, with significant experience in dealing with Sanral for several years. John had been successful in defending society and the Amapondo communities by thwarting Sanral's efforts to force the construction of a new section of the N2 as a tolled road, through the Wild Coast. John had also remained close to OUTA's case and the organization needed the assistance to cope with the numerous press, media and research requirements. Additionally, Rob Hutchinson, a web and social media specialist with a passionate resolve

to challenge the e-Toll decision, met with the Chairperson in October 2013 and by January 2014, was contracted to manage OUTA's social media program.

Despite the many signs and warnings of numerous consequences to their e-toll plans for Gauteng, Government decided to push ahead with their decision and launched the scheme on 3 December 2014, amid a large public outcry. Within weeks, Sanral began to send threatening SMS's and invoices to motorists who had not paid their bills within 7-days and by January 2014, it was clearly evident that our concerns of serious maladministration had surfaced, as thousands of complaints which pointed to serious errors and glitches in the system were shared with OUTA, the NCA, SANCU, SANRAL themselves and the media in general. Innocent people and even children were receiving threatening notices to pay up or face being handed over to Sanral's Violations Processing Centre (VPC). Sanral's reliance on poor vehicle ownership data supplied to them from the e-Natis licensing system, along with cloned / incorrect license plate details, plus the cumbersome and inefficient processes set up by Sanral, were largely responsible for the numerous billing errors.

Sanral stepped up its propaganda marketing campaign by spending millions of tax payer's rands in advertising (radio and print) and PR, aimed at convincing the freeway users that e-tag compliance was high, to coax the road users to register with them. They also continued to send strong messages that motorists who did not pay their e-tolls would be subjected to the unpleasant outcomes of being pulled over by mobile police, or bad credit ratings and / or being summons to court and possible arrest. OUTA was kept extremely busy since the e-toll launch and to this day, has had to issue numerous press statements to challenge Sanral's maladministration, bullying tactics and misinformation.

The fiasco that has unfolded to date was almost predictable. The extent of defiance has been massive and even caught OUTA's members by surprise at how low the e-tag compliance levels were. This in turn has signaled strong civil courage displayed by the motorists and e-tag counts on vehicles undertaken in December 2013 and again in February 2014, confirmed our suspicions of the very low E-tag penetration rates of 15% and 29% respectively. While Sanral attempted to down-play our research, these numbers were revealed to be extremely accurate from answers put to the Minister of Transport in Parliament by the DA and the Freedom Front during March 2014.

Besides Government fleets and the decision by many corporate organisations to fit e-tags, it became evident that a number of the ordinary motoring members of the public had also reluctantly decided to fit e-tags, seemingly out of fear and in heed of Sanral's threatening stance. This bullying tactic by Sanral has however only managed to push the number of e-tags fitted to levels of around the 38% by April 2014. OUTA projects the e-tag uptake to taper off at around to 48 to 50% level, which is extremely low when compared to numerous international cases where Tolling has failed, even at much higher compliance.

In February 2014, inspired by recent research conducted by two academics from the University of Pretoria (Hommes and Holmner), OUTA completed its own comprehensive research and position paper entitled "E-Tolls at an Impasse – Transcending the Mess in

Gauteng”, which is housed on the OUTA web site at: <http://www.oua.co.za/site/wp-content/uploads/2014/02/2014-02-27-Etolls-at-an-Impasse.pdf>

It was around the end of February 2014 that OUTA received communication from a senior manager within Kapsch TrafficCom in Austria, informing of us that OUTA’s stance had been right to challenge the ethical nature and practicalities of Sanral’s e-Toll plan. The “insider” provided OUTA with significant input to confirm that Sanral was misleading the public on the e-tag penetration levels, that the system was fraught with maladministration and erroneous data and that Sanral’s management of the entire fiasco was driven by arrogance, misguided judgment and a grandiose plan lacking in credibility and public acceptance. These conditions were serious enough to jeopardise the scheme’s success, a matter which of course, would spell dire consequences relating to billions of tax-payers Rands being squandered on a failed project, the blame for which could only lie squarely at the feet of Sanral and its Executive Board. OUTA’s board was positively moved by the reassurance of its efforts, gained from this interaction with a person whom we regard as someone with high morals and integrity.

Today, the public complaints continue to pour into OUTA’s on-line complaint portal. Over 7000 complaints have been registered through the web-site between January and March of 2014. While Sanral have downplayed these numbers as being minor in the greater scheme of things, OUTA maintains it is the nature of these complaints, plus the fact that hundreds of thousands of people are not aware of OUTA’s role and therefore have not contacted the civil action group with their complaints.

Recent news has revealed that most (over 65%) of the gantry charges are being moved into the VPC process and this portion is unable to achieve a mere 10% collection rate. With well over a million motorists still refusing to participate in what is described as a ‘most irrational, inefficient and expensive process’, one wonders what it will take for the authorities to realize that a ‘User Pays’ system which has less than half the users paying is unsustainable. It is a system that will forever suffer the onslaught of high administration costs and high non-compliance rates, which ultimately means that a significantly small percentage of the funds will flow through to the repayment of the tarmac. Collecting money to largely pay for the collection process alone, is a farce and failure second to none.

OUTA’s opinion remains that this country’s cabinet and senior Government leaders were ‘sold’ a most grandiose and ambitious plan by Sanral, to extract funds from motorists for repayment of a social infrastructure upgrade. Furthermore, we remain convinced that due to the nature of our societal and economic challenges, this urban freeway upgrade ought to be settled using general taxes and fuel levies. This opinion was also expressed in a report by the Presidential Committee that conducted a review of State Owned Entities in May 2013, wherein they stated (in recommendation #21) that *“Social infrastructure, including roads, should rely less on user pays funding and more on general taxation”*.

OUTA also notes with concern, the lack of a strong approach being taken by Sanral to hold the perpetrators to account for the collusive pricing practices during the GFIP. More than a

year has passed since the Competition Commission has raised and tackled this matter, giving SANRAL the green light to launch stringent investigations and to open cases against the transgressors, so as to claw back some of these funds on behalf of the public. To date, society has yet to hear of Sanral's *detailed* plans in this regard and we strongly advise that an independent body be appointed to address this matter and make recommendations.

The OUTA Management Committee remains overwhelmed and elated at the extent of the wrath expressed from all sectors of society against the e-toll scheme. We maintain that the public outcry and rejection of e-tolling in Gauteng has come about as a result of Sanral's dismal public engagement during 2007 & 8, along with their poor planning, short sightedness and arrogance, all of which has long lost the trust and support of the people, without which it is doomed. We also take note that Sanral has lowered their targets to seek an e-toll compliance level of around 60%, and are astounded that the authorities should allow or entertain this dismal approach to a user pays scheme which should require that all users pay. This concern is a serious issue, especially in light of Sanral's initial plan which indicated an achievable compliance rate of 93%, following their apparently 'thorough' research and public 'engagement' processes conducted on the matter.

OUTA has also highlighted the fact that the fuel levy has been raised by an additional R0.55 per liter since 2012 (completion of GFIP), which places an additional R12bn into Treasury's coffers per annum, the value of which could support the equivalent financing of another six Gauteng Freeway Improvement Projects. In total, the fuel levy raises R46bn per annum and OUTA remains resolute that this is the best and most equitable user pays mechanism to fund urban freeway and other social road infrastructure projects.

We trust that OUTA's recent complaint lodged with the Public Protector will highlight the serious errors, oversights and irrational nature of the e-toll scheme. Furthermore, we trust the developments to date on the e-toll debacle will also send a strong message to the policymakers going forward, who will be wise to take heed of the possible outcomes and backlash from society when dismal public engagement processes and poor research on matters of this magnitude take place. Without the best interests of society being at the core of such policies, they stand to attract ridicule and resistance from a broad based society that can ill afford the immense waste of their hard earned resources and time.

In closing, I would like to thank the OUTA Directors, Management Committee and our consultants for their relentless and tireless work throughout the year. Furthermore, the OUTA Management team expresses its gratitude and thanks to the millions of South Africans for their display of active citizenry and civil courage, by standing strong in their rejection of the e-toll system. It is ultimately this display by a strong willed society to reject unjust and irrational laws that will give rise to a new direction on this decision, one that we hope will eventually have the best interests of the people at its core.

Wayne Duvenage
OUTA Chairperson - 24 April 2014