

OUTA CHAIRMANS REPORT – AGM – 30 April 2013

OUTA is now one year old and today marks the anniversary of the temporary interdict against the launch of eTolling, granted to OUTA in the North Gauteng High Court on 29 April 2012. Our recent history has revealed a growing number of legal and other challenges against Government for service delivery issues as society becomes more vocal in calling for a reduction in unnecessary burdensome decisions and costs that Government places on its citizens from time to time.

OUTA's decision to legally challenge the eTolling matter in Gauteng, was decided following several months of engagement with SANRAL by some of OUTA's members, who questioned:-

- The many inefficiencies and problems envisaged: tags, cloned number plates, payment, enforcement, dispute resolution mechanisms, etc.
- The high costs related to ETC Tender of R8,4bn for 5 year contract, tag administration, information integration etc.
- The cumbersome processes of the eTolling plan, especially when other more efficient funding mechanisms were available to government within the existing policies and regulations (such as the fuel levy and national taxes).
- The lack of public engagement had negated society's ability to influence the decision which may have produced more amenable solutions and outcomes.
- The lack of alternative transport or route options.

To this end, OUTA's members viewed the eTolling decision as being irrational and not in the best interests of society. This left them with two options; to do nothing, or to exercise our rights and test this apparent ill conceived decision in court. They chose the latter.

Consultative meetings between a number of associations were held during the first quarter of 2012 and the following associations obtained support and approval from their respective boards to jointly challenge the eTolling matter and thereby formed the Opposition to Urban Tolling Alliance (OUTA); the SA Vehicle Renting & Leasing Association (SAVRALA), the QuadPara Association of SA (QASA), The Retail Motor Industry organisation (RMI), the SA Travel Services Association (SATSA), and the SA National Consumer Union (SANCU). Three of these member associations (namely SAVRALA, QASA and SANCU) along with OUTA, became the separate four litigants in the matter.

A flurry of legal activity and the filing of affidavits commenced in March 2012, after it became clear from the Minister of Finance budget speech in late Feb 2012 that eTolling would not be set aside and that Government favoured this funding mechanism for the Gauteng Freeway Improvement Project (GFIP). OUTA's initial success was to gain the interdict that halted SANRAL from their planned launch of eTolling on 30 April 2012, which in effect confirmed their cause and justified the action taken. Thereafter, the past twelve months has seen the interdict appealed in the Constitutional Court (August 2012 – which set aside the temporary interdict in September 2012, granting SANRAL the ability to start tolling, pending the review outcome), and then the surprising judgement passed on 13 December 2012 which ruled against OUTA, following the review from 26 to 28 November 2012. It needs to be noted that seven months after the interdict was set aside in September 2012 - when SANRAL and Treasury argued strongly that they could and desperately needed to start tolling within two weeks, due to sever funds required and a negative impact on their credit rating - they still have not been able to launch as of mid April 2013. OUTA's legal case has clearly not been the reason for their inability to launch eTolls.

The negative review judgement (against OUTA) in December 2012 was surprising for two reasons:-

- (a) The onerous costs order slapped on OUTA when this was clearly a public interest matter.
- (b) The judgement contained significant flaws and oversights, which had indicated that Judge Vorster overlooked the pertinent arguments provided in OUTA's case, not least of all the fact that the public's constitutional rights for meaningful consultation on a matter of this nature had been negated.

It was for these reasons that OUTA's members decided to appeal the review judgement and were successfully granted leave to appeal in January 2013. The case is to be heard in the SCA later in 2013.

One of OUTA's biggest challenges has been to raise the necessary funds to cover the legal and administrative costs of this court challenge. Society has been slower in coming forward than initially envisaged, despite the millions of rands being saved as a result of OUTA's interdict. Of greater concern has been the reluctance of large corporate entities to support OUTA financially, despite strong moral support for the case being clearly expressed by society at large. We have come to realise that this situation arises largely from a fear by business to back cases opposed to Government, due to possible reprisals that Government tends to express and meet out against its critics.

OUTA continues to express its concern for the lack of feedback from Government on the recommendations made by the IMC to Cabinet, following the engagement process it followed throughout 2012. In addition, the feedback of the outcome of the three public engagement sessions and written responses to the 'tariff and exemption notices' in November 2012 remain outstanding.

Despite this, OUTA has been able to raise over R8 million by the end of February 2013, thanks to 200 or so businesses and 3000 plus individuals and families. However, the organisation remains in arrears with its ability to meet the legal costs. The case is expected to mount to just over R12million (up to and including the Appeal in the SCA) and the alliance needs to work hard at securing the remaining estimate of R4million needed. Efforts to introduce additional drive in the social media space, calling on corporate entities and other plans continue to attract the Management Committee's attention in this regard.

I would like to thank the team of hard working individuals and members of OUTA's management committee along with the legal team that have worked tirelessly over the past year on this case. In addition, there have been numerous other organisations, companies and individuals who have provided OUTA with exemplary support.

In closing, I'd like to remind ourselves why we chose to take up this matter. We chose not to be idle or to sit back. We chose to be active citizens because it was sufficiently clear to us that the eTolling plan as presented to the South African public by SANRAL, was significantly flawed and was always going to be an unnecessary burden on the people for whom it is intended to serve. Again, I make it clear that we supported the need for the road infrastructure upgrade and it is only the wasteful, costly and inefficient process of revenue generation that we sought to challenge. We are extremely confident of the strength of our case to rule the eToll plan in its current format as being illegal in the Supreme Court later this year. However, win or lose in court, our challenge has certainly had the following impact:-

- Empowered society with greater knowledge and understanding of how flawed the eToll plan is.
- Without the interdict, the IMC process may not have happened, along with other significant reviews and changes to the eTolling processes and plan over the past year.
- We have added strength and additional courage for society to stand up and challenge the authorities on important matters that affect their rights and freedom.
- We have made Government (even only if parts thereof) more mindful of its role when seeking to subject onerous processes, costs and conditions onto its citizens.

OUTA believes that with or without the blessing of the courts to stop this ill-conceived plan, eTolling will face significant challenges and resistance from society at large, to the extent that there is a strong chance this plan will fail. Amidst society's overwhelming rejection of the eToll plan, we express our concern at their continued insistence to press on regardless and once again, we call on Government to reconsider and halt the GFIP eToll plan as the mechanism to finance the upgrade to our urban freeways.

Wayne Duvenage
Chairperson – OUTA.