



# BEYOND THE IMPASSE

## OUTA's Submission to the Gauteng Advisory Panel on Socio-economic Impact of e-tolls

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## 1. INTRODUCTION & SETTING THE SCENE

We have titled this submission “Beyond the Impasse” to express a genuine desire to work with stakeholders to achieve an accommodation with Sanral and the Transport authorities that has unfortunately eluded us since the Opposition to Urban Tolling Alliance (OUTA), came into existence in February 2012.

At the outset we wish to state that South Africa needs Sanral. Outa has no desire to see the considerable institutional memory and competence that Sanral has accumulated over the past 16 years lost. We do not see Sanral as our enemy. In the same way that the Mayor of Bogata said he wanted his citizens to love the city of Bogata for what it could be, rather than hated for what it had become, we have the same attitude to Sanral. We want Sanral to become an inclusive, transparent roads agency that serves the nation, facilitates economic development and promotes social justice and equity, exactly as the Preamble to the Constitution expresses it.

This document is a new updated and revised edition of OUTA’s “E-tolls at an Impasse” position paper which we published at the end of February 2014. In the positive climate of engagement that Premier Makhura has initiated, we trust OUTA’s input will shed light on the many issues which have culminated in the current problems surrounding the e-toll scheme. We note that whilst our confrontation with Sanral and the State has been adversarial in nature, we trust that this is noted in the context of trying to be more ‘developmental’ rather than ‘judgemental’.

Our intent has always been to highlight the gap between that which Sanral positively espouses and our reading of its actual performance. Additionally, we have consulted and researched far and wide to test our assumptions. We have also sought to engage with the Parliamentary Portfolio Committee on Transport to signal our willingness to participate in collaborative measures and deal constructively with the consequences. Insofar as we perceived evidence of maladministration, dishonesty and governance failure, knowing that such allegations could only be addressed through a legal adversarial process overseen by of an impartial authority, these were reported to the Office of the Public Protector. She has been very busy with other matters and our expectation is that her good office may at some stage enable a direct engagement with Sanral to discuss the issues and concerns we have raised for some time now.

This panel is not a court of law, and we have no expectation of the panel to play any role in that matter. We are simply here to contribute our assesement of the socio-economic consequences of e-tolling. We are here to talk economics rather than law and politics.

To date, our research, observations and learning about the decisions and mechanics surrounding the Gauteng e-toll scheme, has led us to a heightened resolve that whatever the legal and political dimensions about the issues, it is fundamentally an economic issue, and must be dealt with as such.

## A SOLUTION IN SEARCH OF A PROBLEM?

This report argues that the decision to embark on the Gauteng Open Road Tolling (GORT) system to finance the Gauteng Freeway Improvement Project (GFIP) was a 'solution in search of a problem'. It was a funding mechanism that was not researched thoroughly enough, nor tailored to the social environment, political climate and economic context that it depended upon for its viability.

That there was a need for a bold initiative to address the traffic congestion problems of Gauteng, after years growth and a lack of pace in addressing public transport infrastructure needs, there can be no doubt. That bold decisions were taken to leverage whatever modern communications technology could offer is deserving of applause. However to introduce an ITS at the scale intended and with the considerable complexity that the GORT scheme embodied, required something beyond intelligence. It required *wisdom* borne out of prudent research, the careful testing of assumptions and above all an open, transparent engagement and accountability to all stakeholders, most especially the users who would be expected to pay for it.

In outline, our assessment is that:

- Of **eight critical success factors** (see section 5 of this paper for explanation of these) which appear relevant to virtually all Intelligent Transport Systems (ITS) innovations globally, the GORT is in trouble on virtually all counts.
- That the situation has become a serious problem requiring urgent resolution, which also requires understanding and addressing the issues that caused the problem in the first place.
- That neglect to do so will bring further unintended consequences that will more than likely be unpleasant, the most serious being the further erosion of the legitimacy of the State and the problems that poses for peace, social stability and economic prosperity in the future.

The empirical data that has spawned the information to give shape to our knowledge base comes from complaints queries and comments from members of the public<sup>1</sup>; comments posted on online media reports; discussion with a cross section of members of the public; papers written by academics; interaction with journalists; observations and research conducted by OUTA members; and from the vast reservoir of attitude and opinion expressed in the social media cauldrons. OUTA has a Face Book page that has over 31,000 'friends', who broadcast and share views, opinions and messages with both OUTA and their respective networks.

Our interpretation and assessment of the situation has been greatly assisted by reading academic research, notably the work done by Ms Erin Hommes and Dr Marlene Holmner, to glean critical success factors from international experiences in the implementation of Intelligent Transport Systems. To distil some wisdom from the vast body of knowledge we have been further inspired by the insights and conceptual thinking of leading Systems-Thinkers including Peter Senge, Russell Ackoff and Stafford Beer.

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<sup>1</sup> At the time of writing these numbered over 11,000 individual complaints which OUTA has received or were channelled through OUTA's complaint portal to SANRAL. See Table and examples in Annexure 4a&b

## 2. HISTORICAL OVERVIEW

To understand how we can get out of the impasse, we need to understand how we got into it. What follows is OUTA's understanding of the relevant history.

Following years of positive economic growth and migration from other parts of the country and Africa, the Gauteng freeway network required upgrading and expansion to address the growing problem of congestion. In 2004<sup>2</sup>, SANRAL, even though it was primarily responsible for the national roads network that links all the major urban centres, claimed/obtained a jurisdictional mandate from the Gauteng Provincial and Metropolitan authorities to address the need for Gauteng's freeway upgrade, referred to as the "Gauteng Freeway Improvement Plan" (GFIP).

GFIP went through initial stages of planning and the Cabinet gave the go ahead in 2008 for an upgrade of 187 km's of public freeways that linked Johannesburg, Pretoria and Ekurhuleni. The initial ambition was to complete the work in time for the 2010 FIFA World Cup, but this proved impossible, given the demand on the construction industry to construct soccer stadia and open the first line for the high speed *Gautrain* between Sandton and OR Tambo International Airport. Nevertheless by dividing the overall work plan into sections, tenders were awarded to different contractors and consortia and a start was made in the latter half of 2008. Construction progressed through to 2011, with a three-month break taken in mid-2010 because of the demands of the FIFA World Cup.

### **GFIP & Construction Cost Collusion<sup>3</sup>**

The initial capital cost in 2006 was estimated to be R6,4 billion, but over the five year life of the project, increased almost three fold to around R18bn for the road upgrade itself, excluding an additional R2bn or so for the e-tolling infrastructure and other incidentals. In February 2013, the Competition Commission exposed the collusive practices of the construction cartel which impacted negatively on the price the state (and therefore the public) have paid for the GFIP construction costs. The Competition Tribunal confirmed on 22 and 23 July 2013 of various consent orders relating to tender collusion cartels in the construction industry, enabling SANRAL to pursue possible claims against the persons or organisations involved in such cartels and who had admitted to tender collusion for work commissioned by SANRAL

To date, a year after receiving confirmation and approval to proceed with action against the collusive construction practices, society awaits the detailed news of SANRAL'S compelling and stringent plan of action to retrieve the GFIP construction overcharges – estimated to be several billions of Rands. In this regard, OUTA has also written to the Chairperson of the Sanral Board (Ms Tembakazi Mnyaka at the time) to seek feedback as to what the progress (if any) of this expected action (see Annexure 3a), dated 11 June 2014, to which we received a reply from Mr David Hertz of Werksmans (Sanral's Attorney), which offered little explanation to our question (see Annexure 3b). We certainly expected a transparent approach from Sanral, and that society should be provided with regular updates as to their progress on this public matter.

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<sup>2</sup> Sanral Declaration of Intent 2005-2008 Pg. 27 (<http://www.nra.co.za/content/Declaration.pdf>)

<sup>3</sup> See Annexure 6: table & graph of rising costs of GFIP since 2006

In the interest of public accountability to taxpayers and users of the roads, OUTA believes that SANRAL is too close to the problem and that an independent enquiry is needed to investigate the extent of the over-charging, with a view to set in motion a process to recover the monies. It is also important to note here that had the GFIP construction costs been contained to a substantially lower sum, perhaps the decision to implement a complex, expensive and onerous ITS based collection system may never have been approved by the Executive authorities.

From the outset, mitigating against the success of e-tolling in Gauteng was the practical reality that the public transport simply did not exist as a viable alternative. The congestion problem was untypical of situations where it has worked in other cities, in that Gauteng's e-toll plan was never intended to solve an inner city congestion problem and it did nothing to reduce the sovereignty of the four-seater motor car. It in fact further elevated it by providing wider roads and (supposedly) faster intersections, and further enriched the already prosperous road construction industry and making it more attractive to entice more vehicles onto the widened freeways, thereby inducing freeway congestion to similar levels within a few years.

### **Changing and talking on the run.**

Sanral's initial launch date of Gauteng's e-toll system was April 2011, which was postponed following a public outcry at the concept and tariffs proposed. The SA Vehicle Renting and Leasing Association (SAVRALA) had engaged with SANRAL from late 2010 and most of 2011, to seek answers and a solution to the pressing challenges and concerns which the car rental industry foresaw with the e-toll scheme. The GFIP Steering Committee<sup>4</sup> was set up in April 2011 to engage with various stakeholders and assess the objections. Following a rushed (some labelled it farcical) after-the-fact engagement process, the GFIP Steering Committee reported back in June 2011 by announcing that e-tolling would continue, however they would reduce the tariff from 50c/km to 40c/km for light passenger vehicles. Minibus Taxis were set at 11c / km. In their view, this tariff reduction should have placated the public anger and sentiment.

A further two launch dates during 2011 were postponed and in February 2012, Treasury announced that e-Tolling would continue and an allocation of R5,8bn made toward the GFIP project, to reduce the (light vehicle) tariff to 30c / km and that Public Transport, along with privately owned Minibus Taxis would also receive 100% exemption. Some maintain the move by SANRAL to exempt the Minibus Taxis was to avert a clear confrontation by this largely unregulated industry, who had expressed their dissatisfaction toward the authorities on other matters by conducting drive-slows and disruptions to freeway traffic.

Despite the announcement that taxis have free passage, in February 2014, Sanral's ability to provide the Taxi's with full exemption has come under pressure and the National Taxi Alliance has denounced the e-toll plan as a result of its maladministration<sup>5</sup>. Sanral also announced in March 2014, that 46,000 taxis in Gauteng had been registered and issued with their 100% exemption e-tags. This equates to approximately 42% of the estimated 110,000 taxi's in Gauteng. We believe that virtually none of these tags can be found on the taxis. Short of having to conduct another manual count of taxis with tags, the real question is why this information not available to society?

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<sup>4</sup> GFIP Steering Committee Report – 30 June 2011

<sup>5</sup> <http://www.timeslive.co.za/thetimes/2014/01/31/taxi-drivers-to-strike-in-protest-against-e-tolling>

In February 2012, Sanral announced the launch date, 30 April 2012, against stiff and militant opposition from Cosatu who saw no benefit to their members and cash poor families. In parallel with the political mobilization by Cosatu, an alliance of business associations formed the Opposition to Urban Tolling Alliance – OUTA<sup>6</sup> to mount a legal challenge to seek a judicial review of the lawfulness of e-tolling. While court proceedings to obtain an interdict to suspend the commencement of e-tolling were underway, Cosatu and the ANC (represented by Minister of Transport Mr Sibusiso Ndebele) agreed to suspend the launch by two months.

### **Court Challenge<sup>7</sup> and another failed talk shop.**

OUTA's legal challenge was to initially seek a temporary interdict on the launch of e-tolling, which it did on 29 April 2012, followed by a judicial review of the decision to implement the system on the basis that far too many transgressions of citizens' rights and seemingly inappropriate decisions had occurred. In short, OUTA's members believed the system being introduced was not being conducted in the best interests of society. With E-tolling on hold, behind the scenes moves were afoot to broker an out of court discussion and possible agreement between Minister Ndebele and OUTA chair Wayne Duvenage, in the hope that sufficient common ground might be found to cancel the court battle and go back to the drawing board. A week after the court granted OUTA the interdict to halt the launch of e-tolls, on the 8<sup>th</sup> May 2012 Sanral CEO Mr Nazir Alli tendered his resignation, setting stage set for a negotiated solution. However this was abruptly terminated when a few weeks later, the Executive declined to accept Mr Alli's resignation and shortly thereafter, President Zuma redeployed Minister Ndebele and Deputy Minister Cronin out of the Transport Ministry in mid-term. Mr Ben Martins was appointed in his stead and a year later, Minister Dipuo Peters took over.

An Inter-ministerial committee (IMC) was formed under Deputy President Kgalema Motlanthe in May 2012 to conduct another retrospective consultation process with civil society organizations, to try and placate criticism.

Urgent recourse was also taken to obtain a Constitutional Court ruling to overturn the interdict. The Deputy Chief Justice handed down a unanimous judgement finding that the North Gauteng High Court had trespassed on the domain of a legitimate exercise of Executive powers, and rescinded the interdict (but did not interfere in the judicial review process). Sanral argued in August 2012 at the Con Court, that it was ready to start e-tolling within two weeks and it urgently needed to do so. Yet they failed to launch for another 15 months, despite being given the right to do so.

OUTA had no quarrel with the principle that the Court wished to underscore, being the necessary separation of powers between the Executive, Judicial and Legislative arms of government. Even though OUTA disagreed with the Executive decision to introduce e-tolling in the first place, they never questioned the prerogatives and powers of the Executive to execute. Now, nearly two years later, it has become clear that the pre-conditions for a successful introduction of e-tolling the GFIP were not present, and that it would have been prudent for the Executive to have exercised its powers to instead follow a less risk-prone alternative.

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<sup>6</sup> See [www.oua.co.za](http://www.oua.co.za)

<sup>7</sup> A summary of the merits and course of OUTA's legal challenge is provided in Part C of submission document.

Sanral however succeeded in November 2012 to also persuade the High Court to find against OUTA's review application, despite OUTA's assertion that Sanral had "deliberately deceived" the public when the Minister proclaimed the relevant roads as toll roads. Sanral's Counsel hit back calling for a crippling costs order to punish OUTA for alleged "vexatious motives" in making such an allegation. The High Court obliged and awarded a punitive costs order against OUTA.

A year later the Supreme Court of Appeal heard OUTA's appeal. The punitive costs order was overturned, but the Court ruled that it could not, in law, condone the late application and therefore was not authorized to rule on arguments of alleged unlawfulness. Having already once had the expense of funding a round in the Constitutional court, OUTA could not afford to match Sanral's litigation by attrition strategy and opted not to seek further recourse to the Constitutional Court.

Instead, OUTA's management committee decided it would better serve the public interest as a watch-dog monitoring role. This would ensure that OUTA challenges Sanral's claims, propaganda and fabrications, as well as empowering citizens to assert their constitutional rights to freedom of expression, access to information, privacy and other rights entrenched in the Constitution. This approach would in turn have the impact of providing society with information to inform their consciences before deciding whether or not to buy e-tags, in a spirit of civil courage. By reminding citizens that human rights do not belong to government, but instead to the people, OUTA sought to promote a human-rights culture of civil courage on the e-toll matter.

### **E-Tolls are launched - The proof is in the eating.**

The e-toll system eventually started on 3 December 2013, following fifteen months filled with regulatory changes and preparations as a result of Sanral's failure to initially conduct a proper Regulatory Impact Assessment (RIA). How Sanral could have claimed readiness for a 30 April 2012 launch, let alone April 2011 (their first planned launch), is now patently nonsensical. In hindsight, OUTA's legal challenges and delays to the e-toll launch had done Sanral a favour, for had they launched in April 2012, the mess we are experiencing today would have been far worse then.

### **Enforcement – AARTO or Criminal Procedures Act?**

Another major complexity Sanral faces concern the confusion over the regulatory framework for dealing with people who don't pay. The system was initially designed on the assumption that defaulters would be sanctioned under the Administrative Adjudication of Road Traffic Offences Act (AARTO), but when it became clear that this regulatory framework had not been adopted by all three municipal jurisdictions affected (Johannesburg, Tshwane and Ekurhuleni) and left problems of inconsistency, the only valid legislation that has uniform application is the Criminal Procedure Act (CPA). This meant that non-payment of e-tolls was implicitly regarded as criminal rather than civil matter. This heralded similar complications that Prohibition faced in the United States of America in the 1920's: criminalising behaviour that cannot be sanctioned by due legal process, is to invite greater problems. Legislation was passed to make the criminalisation the non-payment of e-tolls not only implicit but explicit.

Believing that since the Legislature had passed a law, Sanral asserted that since the prerogatives of Executive Power had also been affirmed by the Constitutional Court, any further challenge to its determination to proceed would amount to disrespect for the rule of law. However, OUTA continued to assert that since its main legal argument (that the original tolling decision was declared unlawfully) has not been ruled upon - having

gathered significant evidence thereof throughout the earlier legal case - it would prepare for that argument to be brought as a defence when the first user of the e-tolled pays was criminally prosecuted for refusing to pay e-tolls<sup>8</sup>. The fact that SANRAL have mentioned legal summonses were being filed, planned or discussed (in June 2014), means that litigation - and a further escalation of legal bills - is far from over. Fortunately the authorities have intervened and the Minister of Transport recently announced that Sanral may not proceed with e-toll prosecutions (for now). In the absence of summonses and litigation by Sanral against non-payment, the system is doomed and will further lose many of the 39% odd members of the public who are paying their e-toll bills, as many of these e-tagged road users have become compliant under duress and fear of prosecution.

### **Many of the problems were predicted.**

Believing that all necessary and sufficient conditions for the system to succeed were in any event not present, OUTA cautiously monitored the launch and commencement of the e-tolling process to see if its predictions of the unworkability of the system would prove valid. It is important to note here that during SAVRALA's (South African Vehicle Renting and Leasing Association), engagements with Sanral over numerous months during 2010 and 2011, the myriad of expected administration challenges that society and Sanral and law enforcement agencies would encounter, are pointed out on Page 13 in this document. At the time, Sanral denounced SAVRALA's concerns, implying that these matters would all be in hand by the time e-tolling got underway. Needless to say, we were not surprised when Sanral listed some of these exact issues as being problematic for the system in February 2014. In addition, false & cloned license plates were becoming a bigger problem for the metro police & safety authorities, as announced by Johannesburg Metro Police spokesperson, Wayne Minaar within a few months of e-tolls.<sup>9</sup> To excuse these issues as "teething problems" was disingenuous of Sanral.

Minister Dipuo Peters has since the launch, added her stern voice to also scold Sanral for the billing problems during a special sitting of the Parliamentary Portfolio Committee on Transport in the first quarter of 2014. Sanral CEO Nazir Alli admits to problems and thereby contradicts his assertions made during the 2012 court process at which he repeatedly assured the public that Sanral was ready to efficiently commence e-tolling, barring a few "teething problems". This is a further indication of serious maladministration by SANRAL executives and a matter for the Sanral Board and higher level Transport Authorities to urgently address, because it signifies how little research was done to assess the impact of (the well-known inaccuracies of) the e-Natis system on the e-tolling process. OUTA raises concerns that Sanral executives merely blame their problems on e-Natis inaccuracies, when they were warned of this problem. As a State Owned Enterprise, we believe their 'owner' should now hold Sanral accountable, especially since they had over 30 additional months since their initial launch date of April 2011, to and assess the implications thereof and iron out problems.

Furthermore, the seriousness of this lack of data integrity, together with threatening

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<sup>8</sup> While news of Sanral's plans to begin with prosecutions surfaced during June and July of 2014, the Minister of Transport instructed Sanral to halt these planned actions in July 2014, as a result of the ongoing billing problems and new offers for relaxed conditions of payment.

<sup>9</sup> See this excerpt and YouTube clip with the spokesperson of the Johannesburg Metro Police (Mr Wayne Minaar): E-tolls exacerbates problems of false / cloned vehicle license plates: <https://www.facebook.com/SABCNewsOnline/posts/10152155602946543>



messages and wasteful billing has affected tens of thousands of people from all over the country. During February 2014, large logistic companies and other businesses started to add their voices by condemning the fiasco and complaining of the additional administrative burden related to e-tolls. This has necessitated redirecting vital resources toward pricing challenges and more complex fleet management. These issues were also been pointed out to Sanral by SAVRALA in 2011.

### **Civil Society defies the ‘unjust’ law.**

Since the launch of e-tolling on 3 December 2013 in Gauteng, a significant volume of freeway users have refrained from registering with the system or fitting e-tags to qualify for the discounts. OUTA’s estimates of 39% compliance after eight months after operation, extrapolates that over 1,5 million of the 2,5 million freeway users were not fitted with e-tags (i.e. over 60%), signalling that the rejection of the system by the public was holding strong.

Sanral’s multi million rand advertising campaign throughout 2013 and 2014, coupled with an offensive SMS, postal and PR messages to intimidate non-tagged users with threats of criminal records and roadblocks, appeared not have had the desired effect of driving compliance to the volumes required by Sanral. It is OUTA’s opinion that SANRAL’s arrogant and offensive strategy also served to widen the divide between the people and the state over the issue whilst massive errors, inconsistencies, hacked databases and faults in the billing system since its launch left users astonished, angry and bemused. Sanral in turn were left with mounting outstanding bills and a credibility problem. In February 2014, President Zuma scolded Sanral for the errors and told them to sort them out fast.

OUTA and the media<sup>10</sup> had also previously exposed Sanral’s deliberate deception and misinformation over e-tag penetration made by their spokesman, Vusi Mona in July 2011<sup>11</sup>. Again, later in the same month, Mr Mona made grossly misleading public statements about how many kilometers or gantries one would need to traverse, in order to achieve the maximum cap of R450.00<sup>12</sup>. Misleading statements and claims of this nature does serious damage to the credibility of the state and its institutions.

In OUTA’s opinion, as of Mid-2014, around 60% of the Gauteng Freeway users had evidently exercised their right to freedom of choice to be regarded as ‘alternate users’, and to risk whatever consequences followed. OUTA furthermore projects that the e-tag penetration rate for Gauteng has stabilised at around the 39 to 40% mark, and even if the process of attempting to criminalise the public through court action for non-payment, we believe such intimidation will not drive the number much above 55 to 60%. These levels are a far cry from the yields they need to achieve (closer to 90%), in order for the system to become viable.

It is this outline assessment that has prompted OUTA to the conclusion that an

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<sup>10</sup> [http://www.itweb.co.za/index.php?option=com\\_content&view=article&id=65332](http://www.itweb.co.za/index.php?option=com_content&view=article&id=65332)

<sup>11</sup> Mona claimed a 60% growth in e-tag sales as a result of their marketing campaign. OUTA pointed out that their figures were incorrect, but Sanral remained silent on their disputed claims.

<sup>12</sup> Mona claims “If you are one of those paying the maximum amount [R450 cap], you will have traveled through 301 gantries and done an average of 2 760 km during the month on the e-tolled roads”. When OUTA checked on the Sanral e-toll system, using three different routes, we calculated approximately 1598 km, through almost half the number of gantries (average of 163) reached the R450 cap (R443). <http://www.oua.co.za/site/sanral-continues-to-mislead-public-on-etolls/>

emergency intervention is required by the Transport authorities to arrest what has become an embarrassing fiasco for the country. Nevertheless, we support encouragement rather than condemnation and are reminded that Gauteng did not become the largest urban economy in Africa without extraordinary resourcefulness and innovation. OUTA believes we can still tap into that latent creative synergic potential to escape the e-tolling impasse.

### 3. DEFINITIONS AND CLARIFICATIONS

#### THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED (SANRAL),

Sanral is a State Owned Entity (SOE) established in 1998 as a corporatized company accountable to a Board of Directors appointed by the Minister of Transport, as well as to the Companies Act which defines the fiduciary responsibility of board members.

Sanral's mandate is to ensure the National Road infrastructure is developed and maintained. It receives revenue from two sources, the National Treasury and from tolling, the latter being to implement the user pay principle. Sanral operates a number of long distance tolled roads itself by subcontracting the operation and management to service providers on a tender basis. Where traffic volumes and social economic circumstances justify it, tolling concessions may be awarded to commercial private sector consortia in Public Private Partnerships in *Build Operate and Transfer* (BOT) agreements to develop new road construction initiatives and to upgrade and maintain existing roads.

OUTA does not question the important role that Sanral's must play to harness the efficiencies of the private sector to serve the State in its obligation to provide and maintain a good national road network. Much of OUTA's critique of the e-tolling system has been centred on its high costs, inefficiency and leadership issues of transparency and accountability to the people of South Africa.

#### THE USER PAY PRINCIPLE AND INTELLIGENT TRANSPORT SYSTEMS (ITS).

We do not have any fundamental problem with the rationale for the "User Pays" Principle. The question is a matter of which of the available user-pay options are in the best interest of society. Neither do we oppose the logic of an ITS that uses available electronic tolling technology to more decisively implement the principle so long as it does indeed ease major urban congestion, address environmental and socio-economic challenges, and promote the integration of urban transport systems and a more productive urban economy overall. Advocates of ITS innovations espouse such goals as the normative intent<sup>13</sup>.

Ordinarily, the application of a user-pay system is a generally acceptable means to pay for infrastructure usage (electricity, water etc.). We understand the efficiency

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<sup>13</sup> We use the term normative in the sense of what is intended, the ideal, based on a common value consensus, such as the is stated in the first clause of the Constitution.

benefits that modern electronic information technology can yield. It makes theoretical sense. Combining radio communication technology to identify a vehicle fitted with a RFID e-tag and Automatic Number Plate Recognition (APNR) technology offers efficient automation possibilities. The speed and efficiency makes for a compelling argument to justify the investment in the costly technology. But the vendors of the technology have to guarantee - rather than just promise - an efficient operation which is able to ensure that all users pay, and that those who don't, are efficiently sanctioned.

### **High Compliance Required From Outset**

International experience with e-toll based revenue collection innovations suggest that if more than 15% of users default in payment and are not justly sanctioned, the system is heading for trouble. This factor is indicated by experience in the Portugal SCUT e-tolled roads system which was problematic at 19% non-compliance<sup>14</sup>. It must be noted that this article on the failing e-toll system in Portugal, was highlighted to SANRAL and the Transport authorities by OUTA through South African media in June 2013, some six months prior to Gauteng's e-tolling system being turned on. One would imagine that lessons from this fresh example of what might and could have transpired in South Africa, would have elicited prompt action by SANRAL to send a team of experts to Portugal, to learn about the issues and problems within the Portugal system, prior to switching the system on in Gauteng. To date, there is no evidence that SANRAL undertook such action.

At this juncture, it appears that Sanral have realised their initial compliance level target of over 93% (as indicated during the responding affidavits by Sanral during the OUTA court challenge) have now been abandoned and they have revised their target to achieve an e-tag take-up threshold at a much lower rate, and thereby assume that sufficient numbers of the 'alternate' users will make up the revenue shortfall through payment at the higher punitive tariffs. This approach, OUTA maintains, is an extremely worrying situation as it assumes that; (a) Sanral will achieve the revised % e-tag compliance (unknown to the public as Sanral will not divulge this information); and (b) sufficient numbers of the balance of non-tagged users will pay, to make up the shortfall of funds required. We hope the next Auditor General's audit report of Sanral will provide information that shows that Sanral's actual and projected GORT revenues have been closely analysed and examined in terms of the factual compliance rates.

Furthermore, in their advertising in April 2014, Sanral thanked over 1,2 million South Africans for buying e-tags, which implied that (a) they had sold 1,2 million tags to users of the freeways and (b) an impression that road users were largely accepting of the scheme. A complaint was laid by OUTA to the Advertising Standards Authority (ASA)<sup>15</sup>, because we believed this figure was false and misleading and at variance with OUTA's research findings of the number of unique vehicles in use on the freeway network with e-tags. We found that the percentage of the traffic on the freeways which were tagged, was at the time only between 35 to 39%<sup>16</sup>. We extrapolated the percentage (39%) to the average number of freeway users per month at 2,5million motorists (figures supplied by Sanral), and obtained a figure of approximately 975,000 vehicles with tags

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<sup>14</sup> See article and quotes from Estradas de Portugal (EP) roads chief António Ramalho reflected in The PortugalNews.com <http://www.theportugalnews.com/news/dead-loss/28626>

<sup>15</sup> See this story in Eye Witness News: <http://ewn.co.za/2014/06/02/Sanral-ads-pulled-due-to-lack-of-evidence>

<sup>16</sup> Results of OUTA's tagged vehicle counts research is attached as Annexure 2.

on the freeways in Gauteng. This was a far cry from Sanral's claims of 1,2 million tags.

Furthermore, OUTA's count of e-tags was relatively accurate in that the number of tags counted on cars at freeway off-ramps in February 2014 was confirmed by answers given by the Minister of Transport to a parliamentary question on 5<sup>th</sup> March 2014.<sup>17</sup>

The media has been awash with criticisms, complaints, angry protests, blog sites, polls, songs and jokes, all of which indicates a society uniting in their disgust and rejection of the system. While the crescendo of rejection may bring a half-smile to concerned critics, the real issue is that Gauteng desperately needs an Intelligent Transport System, combined with an efficient integrated public transport network to alleviate traffic congestion, reduce carbon emissions and generate a productive and efficient environment to get people and goods to and from their daily destinations, thereby promoting a long term solution for this region's transport problems.

We argue that the manner in which Sanral and the authorities have introduced the present ITS, has robbed this economic powerhouse of the opportunity to introduce a potentially successful and acceptable ITS funding mechanism, in conjunction with the developments of a **viable** integrated public transport system to address road congestion. Essentially the expected failure of the GORT system will not only leave Gauteng the poorer, but may also discredit the successful future introduction of e-tolling / Intelligent Transport Systems in other parts of the country and even globally.

#### 4. GAUTENG'S E-TOLL CHALLENGES

Although questions abound as to why the cost of the freeway upgrade escalated so dramatically, from OUTA's conversations with many critics and detractors<sup>18</sup> of the Gauteng e-toll project, it is clear that they all understand and accept that the R20 billion upgrade has to be paid for. The hotly debated question is how? What methods of raising funds were available and which was the most equitable? Which option would pose the least financial and other burdens on society, balanced against the long term need for the urban economy to become ever more productive?

A truly 'intelligent' Intelligent Transport System would need to not only promise but guarantee that;

- (a) Less costly alternatives exist for those who cannot afford to pay and therefore cannot have access to the road infrastructure. Satisfying that condition in Gauteng would require:
  - i. A tangible improvement in the safety, efficiency and range / extent of existing bus and train public transport systems.
  - ii. A tangible improvement in the safety and efficiency of private mini-bus taxis.

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<sup>17</sup> On Wednesday 5th March 2014, in response to parliamentary questions, Minister of Transport Dipuo Peters said that the average number of e-Tags fitted to vehicles making use of the Gauteng Freeways was "between 23% and 28,6% as at February 1st 2014

<sup>18</sup> Numerous statements on record from Labour unions; the Southern African Catholic Bishops Conference; the South African Council of Churches; Business formations; Opposition political parties; Academics; the Media and Civil Society leaders; Political Representatives and former Sanral executives,

(b) The costs of e-tolls (collection process) has relevance and reasonableness in relation to:-

- i. The costs relating to the collection process as a percentage of the total debt to be repaid over time.
- ii. The credibility and trust surrounding the cost of the original debt. The e-tolled roads remain public roads and must therefore be stewarded as a public asset for the long benefit of society. Knowing what we do today about the GFIP construction collusion, may require a transparent and decisive independent enquiry to investigate the extent the escalation of the GFIP construction costs, attributable to collusive practices in the construction industry.

We believe that had a meaningful and widespread interactive planning process occurred before the e-tolling decision was taken in 2007, Sanral and the Government may very well not be in the impasse it now finds itself in.

Some of the problems the system is experiencing since launch, were raised in 2010 & 2011 by OUTA's members and others, these being:-

- An inaccurate e-Natis database feeding into the Sanral e-toll system.
- Complexities and inefficiencies in the system generating inaccurate billing.
- Exacerbated false license plate tampering and cloning.
- Dissention over the high costs of collection relative to the debt to be serviced.
- An onerous dispute resolution mechanism.
- Additional administrative inefficiencies, burdens and conditions of the system on business and the public alike.
- Complex pricing and discounts system.
- High and unmanageable levels of non-compliance.

Notwithstanding, Sanral asserted that they had the mandate to go ahead, displaying excessive confidence in their own judgement and contempt for the concerns raised, advice given or the lesson on offer from other problematic e-toll cases elsewhere in the world. This has now left the public at considerably at risk. In terms of corporate governance principles the Sanral board of directors has left the Gauteng Regional and higher level authorities with a serious crisis of public confidence and negative socio-economic impact on the province. Society now has the right to hold the higher level authorities accountable and to insist that the Sanral board explains why it did not insist that its Executive Officers discharged the agencies constitutional requirements of meaningful engagement with stakeholders, conducting thorough research and taking heed of the pertinent issues and warnings offered both from some advisors and many critics.

Failure to have done so has opened the following grounds for society to oppose the GORT decision.

### 1. The rationale for the decision of the e-Toll proposal was neither transparent nor convincing:

Hommel & Holmner refer to a report that was commissioned by Sanral some two years *after* the approval of the GFIP, by Standish, Boting & Marsay<sup>19</sup> (2010), which emphasized that inadequate transport networks would constrain the economic development potential of Gauteng, and that an improved road network funded by a user-pay system may improve the long term economic development prospects while ensuring a more 'fair' system for road users<sup>20</sup>.

While economic feasibility studies by transport economists have a contribution to providing theoretical underpinnings that are useful in the conceptual planning stage, Small and Verhoef (2007) as well as Button (1993) point out that the practical demands on urban road usage are more complex. They require a more grounded and intensive modelling analysis to test the validity of working assumptions made in the process of theoretical abstraction. This is especially important insofar as assumptions are made about probable impacts on those in the lower income bracket who have little or no disposable income, and cannot afford the costs of road transport, yet lack an adequate public transport network as an affordable alternative (Button 1993, Small & Verhoef 2007). "The Poor" (and for that matter the rich) are reduced to an abstraction of financial measurement to fit the theoretical model rather than as people who are protagonists of their own development<sup>21</sup>.

Prior to the decision being taken in 2007/8, Sanral claims they followed due process required of them. OUTA argues that by placing one advert in six regional newspapers in October 2007, allowing the minimum period of 30 days from 14 November to 14 December 2007 for the public to comment was grossly insufficient, and as a result, only 28 responses were received from 3.5 million motorists in Gauteng. This process was repeated again from April to June 2008 for the R21 section of the freeway, for which only 2 responses were received.

SANRAL's response in court was to also refer to a number of mentions and press clippings about their plans to toll the GFIP, as if to imply this as being meaningful dialogue and engagement with society on the matter. Furthermore, we asked why no invitations for thorough engagement sessions were forthcoming from SANRAL to large fleet management organisations, such as South African Vehicle Rental and Leasing Association (SAVRALA), Road Freight Association (RFA), the Retail Motor Industries (RMI), and other pertinent entities. SAVRALA members together form the biggest body of vehicle buyers in the country. Neither the

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<sup>19</sup> Standish, B. (2010). *An economic analysis of the Gauteng Freeway Improvement Scheme*. Report for Sanral

<sup>20</sup> OUTA is grateful for the willing engagement of Andrew Marsay, who has educated us on the normative intent and logic of ITS's and e-tolling.

<sup>21</sup> See Smith P, and Max-Neef M, (2011) *Economics Unmasked: From Power and Greed to Compassion and the Common Good*. Green Books. Devon. For a six minute introduction of Manfred Max-Neef's thinking see this YouTube lecture <http://youtu.be/jjTvd0Yg2hk>.

representative body nor their constituent members were ever meaningfully consulted on the plan. In addition, SANRAL failed to meaningfully engage with organised Labour and disadvantaged organisations such the QuadPara Association of SA (QASA), who representing people with disabilities and already experience a severe constraint on their right to freedom of movement. The disabled public rely on use of the tolled roads and feel unjustly discriminated against because the system is still to this day, unable to accommodate exemptions for people with disabilities.

## 2. Inadequate Public Transport:

Gauteng's public transport infrastructure is currently inadequate to cater as an alternative to even a small percentage of the current 2,5 million freeway users. According to the Gauteng City Region Observatory, a partnership between the City of Johannesburg and the two universities of Witwatersrand and Johannesburg, only 10% of commuters make use of bus and train services whilst 42% make use of the city's Minibus Taxi system and 42% use cars. In addition, the current public transport network has been described as failing the users within Gauteng. Furthermore, President Jacob Zuma acknowledged this from first-hand experience when on 14 June 2012 he personally tested the Public Transport services by travelling on it for a day.

Although the new high speed **Gautrain** now links 9 stations between the two cities of Pretoria and Johannesburg with OR Tambo International Airport in a narrow North / South corridor, and serves around 45,000 commuters a day, this is only between 12-15% of the daily road commuter traffic between the two cities<sup>22</sup> and less than 3% of the total Gauteng freeway users. Although since e-tolling has commenced there has been an expected increase in passengers using the Gautrain (approximately 10% according to Business Report), until the rail network expands to cater for West – East and other corridors, and unless the tariffs are reduced to serve a larger portion of the population, the Gautrain cannot be regarded as an affordable or convenient public transport alternative for the majority of citizens who currently rely on minibus taxis and private cars to commute to and from work.

Moreover the Gautrain is not generating sufficient revenue to meet its obligations and as another embodiment of the “user pay principle” appears to be way below the requisite number of users who can pay the fares to make it profitable. The Gautrain fell short of its revenue targets by over R800m in 2012 and R500m in 2013.

These hearings are taking place in the good offices of the Gautrain, and it has not escaped our notice that to a large extent the scrapping of e-tolling will harm the financial viability of the Gautrain. While OUTA would not like to see the Gautrain end up becoming a permanent financial drain on Gauteng's finances because passenger numbers fall consistently below the forecasted rates, to peg the fortunes of the Gautrain (which was also has a controversial history) with e-tolling will only serve to compound the problems. OUTA is willing to

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<sup>22</sup> Business Report. 17 December 2013.

constructively engage with the Gautrain consortium and the Gauteng transport authorities based on this principle: transport economics must serve people. People must not become servants of transport economics.

### **3. Economic equity of e-tolls vs the fuel levy in South Africa.**

With a significant reliance on vehicle usage for daily commuting, the question arises as to how social infrastructure should then be funded in this context of pressure being placed on the national fiscus for broader and pressing challenges. To date in South Africa, urban road 'social' infrastructure has been paid through national treasury allocations, boosted by the equitable user pays mechanism of the fuel levy, which dictates that the more you drive, the more you contribute to the fuel levy.

The Fuel Levy table provided in Annexure 1<sup>23</sup>, provides one with an overview of the revenues generated by the fuel levy in South Africa. From this table, one will see that since the construction of the GFIP began in 2009 Tax Year, the fuel levy revenues have more than doubled from just under R25bn then to an expected revenue of R52bn in the current tax year ending February 2015.

In addition, it must be noted that SANRAL receives significant revenues generated on the long distance (rural) "stop-pay-go" (or boom down) tolling projects (N3, N1, N4 etc.)<sup>24</sup>. In some instances, these boom down toll-booths have crept closer to the urban peripheries (such as the Bakwena Toll Plaza North of Pretoria), to capture the higher masses of peri-urban road users, where a boom-down mechanism is still operable.

The introduction of a purely open and free flow tolling system is a new concept to South Africa and its success will rely on a number of factors, the most important of all being:

- High degree of compliance through a willing and committed public participation.
- Workability – from very efficient administration systems.

#### **Questions around the true e-toll collection costs**

There is uncertainty and debate surrounding Gauteng's e-toll administration costs, from Sanral's R12bn<sup>25</sup> (or 17%) over the 24 year period. OUTA's estimates the cost of e-toll collection to be around R1,3 billion per annum, based on the tender awarded to the Electronic Tolling Company JV (ETC) at around R6,5 billion of the R10bn, related to operational costs of collection over a five year period, with eight years to write off some of the capital ITS costs in excess of the R6,5 billion.

Furthermore, the document (as supplied by Sanral in court papers) in Annexure 5 questions the sincerity of SANRAL's claim that the e-toll collection costs only

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<sup>23</sup> See Annexure 1, which contains a table of fuel levy revenues.

<sup>24</sup> Most of these long distance tolled routes have had their capital expenses paid off, but the tariffs continue to increase and income from these feed into Sanral's revenue stream.

<sup>25</sup> See Annexure 5 which contains a copy of the breakdown of e-toll revenue as supplied by Sanral in court papers



amount to 17% of the revenue. This document depicts the e-toll revenue and costs shown in the third and fourth line of figures, of R6.194bn (VPC Capital and Operating Expenses) and R12.170bn (Toll related Capital & Operational Expenses). This in turn equates to total of R18.364bn – which is equal to R25,7% of the R71.396bn revenue forecasted by Sanral over 24 years. This questionable claim by Sanral and the debate around the true and full costs pertaining to e-toll administration & collection, adds further weight to the lack of trust in Sanral's ability to be transparent and honest on such matters.

This table was also supplied in the court arguments, at the time when Sanral was projecting an e-tag and payment compliance level of 93%. The current low compliance levels (by more than half) will drive the cost of collection significantly higher than they had anticipated.

### **Fuel levy logic**

Standish *et al* (2010)<sup>26</sup> acknowledge that the fuel tax is the most efficient in terms of an immediate cost to benefit relationship, because no additional collection costs are necessary to fund the admin & operations of tolling. Sanral argues that, since the national fuel levy would have to be applied uniformly to all motorists, non-Gauteng motorists would be unfairly paying toward the upgrade and maintenance of Gauteng roads that they do not use. However this argument rests on a false assumption, which fails to take into account the fact that the entire country stands to benefit from a more productive and efficient Gauteng economy which translates to the benefit South Africa as a whole. The Organisation for Economic Co-operation and Development (OECD), in a 2011 report states that the Gauteng region contributes 34% to South Africa's Gross Domestic Profit (GDP). In addition, 52.2% of national research and development takes place in the province. As a result 75% of Gauteng's tax contributions to Treasury flow out of this region for the benefit of other provinces. Clearly the rest of the country benefits from Gauteng's productivity, which is aided by improved freeway networks.

Moreover increase costs of business transport from e-tolls will also add to the price of commodities, consumer goods and services, a matter already surfacing in the financial results of large business entities (Checkers, Supergroup, Combined Motor Holdings), within a short period after the launch of e-tolls. The poor will most certainly experience the effect of negative economic pressures from e-tolling.

The fuel levy on the other hand, attracts **zero** administration fees and if indeed Treasury is unable to find the R1,9bn required to service the GFIP bond of R20bn and paid over 20 years (including interest) from the current annual R47bn fuel levy income (see Annexure 1 for fuel levy table), then an addition of R0.09c to the national fuel levy will, according to OUTA's calculations, produce the additional revenue required from estimated 23bn litres of fuel (Petrol and Diesel) sold per annum.

#### **4. Road expansion induces road demand and further congestion:**

A study conducted on Intelligent Transport Systems in transitional and

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<sup>26</sup> Standish B. (2010). *An economic analysis of the Gauteng Freeway Improvement Scheme*. Report for Sanral, see [www.nra.co.za](http://www.nra.co.za).

developing countries by Shah and Dal (2007)<sup>27</sup> found that construction of ever more efficient road networks leads to “induced demand”. In systems-thinking terms this is referred to a loop of self-reinforcing “positive feedback”. Extending and expanding existing road networks invites further motorization, which in turn leads to increased congestion and greater safety issues, and the need for yet further extension projects. The ever increasing burden leads to the increasing demand for non-renewable natural resources, increasing pollution and fossil fuel emissions, moving the society further away from the desired need of an integrated public transport system. Besides the burden on the natural environmental, the quality of life suffers.

Using data for 24 California freeway projects across 15 years, Robert Cervero<sup>28</sup> found that; *Roadway investments spur new travel and in effect, fail to relieve traffic congestion, known as induced demand. Traffic increases are explained in terms of both faster travel speeds and land-use shifts that occur in response to adding freeway lanes and simple mode structures have often been used to reach the conclusion that road investments provide only ephemeral congestion relief, with most added road capacity absorbed by increases in traffic. Based on model outputs, it generally takes 2 to 3 years for development activity to respond to the addition of lane miles, and another 3 years for urban business and residential development activity to take place along new nodes or improved traffic corridors.*

## 5. Weak Economic Arguments:

Dr Roelof Botha, an academic economist and strong advocate of e-tolling has argued that the time saved by users of a decongested road network has a significant productivity benefit that he quantifies in financial terms as R2.1 billion annually. The long term boost to the SA economy would by his calculation be some R26.5 bn over 20 years, (assuming 5% inflation), "which is 32 percent higher than the total cost of the project". He assumes that this value of economic productivity for the average freeway users is generated from time saved and other vehicle running and maintenance costs, which computes at a benefit to cost ratio of 8,4:1. This claimed benefit was sourced from the Economic Analysis of the Gauteng Freeway Improvement Scheme, prepared in August 2010 by the Graduate School of Business (University of Cape Town) for both the South African National Roads Agency and the Provincial Government of Gauteng. Their research made use of input compiled from a 2007 feasibility study on behalf of Sanral. This ratio was also presented in 2011 GFIP Steering Committee Report.

This return has been downplayed by many other reputable economists (Chris Hart and Azar Jamine and others) as well as being questioned by members of the public who comment in online articles. Sanral has also had the benefit of around three years of GFIP in full operation (since 2011) to measure and confirm the ratio claims for freeway users, but they have not done so yet. Furthermore, the validity of such projections rely on assumptions that the public transport system

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<sup>27</sup> See Shah, A.A. and Dal, L.J. 2007. Intelligent transportation systems in transitional and developing countries. IEEE. August 2007: 27-33.

<sup>28</sup> Cervero, R. (2001). University of California Transportation Center *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis*.

will provide a viable alternative to keep the e-toll roads uncongested throughout the period and that users will pay the e-toll bills.

Dr Botha's needs to respond to the problem of induced congestion with a more convincing case and Sanral needs to be held accountable to a more credible and impartial authority, lest they be simply respond to the induced demand by putting up the e-toll fees to finance an additional lanes to Gauteng's freeway network every 5 to 8 years. This action, which will serve the interests of the road construction industry very well, is highly impractical and will not serve the greater good of society or the planet.

Furthermore, on 31 October 2011, the Minister of Transport (Mr Sibusiso Ndebele) replied in the National Assembly, to a question posed by the Democratic Alliance (Question no. 2598), which questioned the claimed 8,4:1 benefit to cost ratio of the GFIP project. Minister Ndebele responded as follows:-

*"As can be seen, the key assumption of the 2007 feasibility study was that the GFIP project would reduce congestion. In my considered view, and in retrospect, the original feasibility study did not sufficiently weigh up international evidence suggesting that freeway expansion often does not – in the medium term – resolve congestion challenges, and often induces greater demand.*

*It also failed to consider alternative solutions to congestion – improved public transport provision, moving more freight onto rail and a curb on urban sprawl. The project benefits to road users may, therefore, unfortunately not be forthcoming. This is the subject of further assessments and consultations by the Department of Transport and a Cabinet task team."*

With the above controversies and concerns in mind, one can accept that society (particularly in Gauteng), has entirely plausible and legitimate grounds for their rejection of the GORT scheme. Their views cannot be 'solved' by economic modelling and engineering, and neither can it be 'absolved' by excusing whatever wrong-doing may have occurred. Integral to finding a solution to the current impasse, will be the genuine display of a good quality of leadership that acknowledges the significant errors and assumptions it has made and one that sincerely displays a capacity for learning from experience. If this learning is to be developmental and restorative, it will require a willingness to be confronted, and responsive to the truth, however embarrassing and awkward it may first appear to be.

While legal adversarialism comes into its own in matters of determining guilt or innocence of a person accused of a crime, it is less helpful in determining whether a decision by an organ of state in the executive arm of government was indeed good, bad or indifferent. The judiciary has in the 'lawfare' phase awarded Sanral only one sound legal judgement. It has affirmed the separation of powers and affirmed the right of the executive to execute its own policy decisions, and to take whatever consequences flowed. Policies are made and unmade in the Legislative Arm of Government. The elections have shown what the Gauteng electorate think about the e-tolling decision. While OUTA is not politically aligned, we could not ignore the fact that etolling has proved to be a political hot potato, and to generate light rather than heat, we have sought to steer the discourse around e-tolling into a space more conducive to truthful enlightenment than party political contestation.

## 5. THE SUCCESS FACTORS OF 'USER PAY' I.T.S.

The Department of Information Sciences of the University of Pretoria proved very helpful to help OUTA put things into a wider perspective.

*“Some documented success factors for the implementation of Intelligent Transport Systems (ITS), include the presence of strong advocates and public support; weak opposition; a single agency overseeing the project; a good public transportation system in place; simple and affordable pricing systems using proven technology; environmental monitoring and protection; and comfort factors that create confidence amongst users (Carnevale & Crawford 2008; Jarašūniene 2010)<sup>29</sup>.”* Dr Marlene Holmner and Ms. Erin Hommes. University of Pretoria Department of Information Sciences.

From the academic literature on Intelligent Transport Systems, University of Pretoria researchers Hommes & Holmner, have identified **eight success factors**, which OUTA take to be critical for any e-tolling venture to successfully innovate the conceptual invention of an Intelligent Transport System in any context. Based on Hommes and Holmner's abbreviated listing OUTA has amplified them into eight affirmative statements of importance. OUTA makes no claim that these are the last word on the matter, but we have been surprised and encouraged that so far these have not been challenged. In due course they may be, in an appropriate academic discourse, and we look forward to their further refinement.

### 1. **Public support needs to be extremely high with strong advocates promoting acceptance.**

OUTA's findings are that public support for GORT is extremely low, at around the 40% of freeway users being tagged and / or paying for use of the freeways, some eight months since implementation. The professional research organisation Ipsos, conducted research which displayed the public sentiment of low support to get e-tags (38%) and the public's opinion to have the roads funded by alternative means (58%)<sup>30</sup>. This we attribute to a dismal and meaningless public engagement program conducted in 2007/8, along with Sanral's lack of transparency, numerous confusing claims on e-tag sales<sup>31</sup> and embarrassing PR blunders, all of which have compounded the lack of trust by the public.

The signs of negative public sentiment toward the scheme were also clearly displayed during the three public engagement sessions held by Sanral and the Department of Transport in November 2012 to try and win over support. At the time,

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<sup>29</sup>. Hommes, E and Holmner, M, June 2013. Intelligent Transport Systems: privacy, security and societal considerations within the Gauteng case study. In *Innovation: Journal of appropriate librarianship and information work in Southern Africa*. Issue 46, UKZN.

<sup>30</sup> Polls conducted by Ipsos prior to the launch: <http://www.ipsos.co.za/SitePages/Etoll%20Adoption.aspx>.

<sup>31</sup> Misleading e-tag sales from Sanral, reported by ITweb on 1 July 2013: [http://www.itweb.co.za/index.php?option=com\\_content&view=article&id=65332](http://www.itweb.co.za/index.php?option=com_content&view=article&id=65332)

the Government Gazette (#35756 & 35755) published the proposed tariffs and exemptions and invited public comment. More than 12,000 submissions were made. This is one of the highest public submission responses ever to a notice in the Government Gazette.

Given that the system relies on personal information of users it is especially important that any threats to the right to privacy is countered by strong advocates from academic and civil society circles. Only a few academic economists and consultants have been willing to endorse the GORT.

## 2. **Oppositional forces must be weak.**

When the tolling decision was taken in 2008 the opposition thereto was indeed weak. A mere 28 comments were apparently recorded when the decision was gazetted. However this was due to Sanral having avoided any substantial debate by only placing the regulatory notices once, in six newspapers, some of these placed in the business section of these newspapers - out of plain sight of the public. From 2010 when the Gantries started to appear, questions that ought to have been asked and answered three years previously, began to surface and opposition mobilised.

Besides OUTA's opposition, the GORT has been heavily opposed by COSATU, the SA Chamber of Commerce & Industry, Business Unity SA, the Southern African Catholic Bishops Conference, the SA Council of Churches, the Southern African Faith Communities Environment Institute, the Black Management Forum, the SA Local Government Association, the QuadPara Association of SA, and other civil society organisations. Even strong opposition within the governing party was evident. The ANC Youth League denounced e-tolling in 2011 and again in 2012<sup>32</sup>. While the previous Premier of Gauteng supported the e-toll decision, the newly elected Premier, Mr David Makhura is on record (18 February 2011<sup>33</sup>) as voicing his concerns and strong criticism

## 3. **Tangible comfort factors must be immediately felt to create confidence.**

Users who pay for a decongested traffic experience need to experience satisfaction. If they don't, their complaint may or may not be heard by Call Centre staff, but it will nevertheless travel by word-of-mouth. Social media further accelerates the spread of bad news. The Automobile Association recently tested the comparative experience of using the freeways and alternative routes and concluded in a recent article concluded:

*Every time we tried a different route we kept coming to the same conclusion – in off-peak hours there is less case for using toll roads than one might believe. And in peak traffic, the freeway gridlock makes it a no-brainer – you need to decide whether to pay Sanral to sit in their traffic or sit in town traffic for free? Perhaps*

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<sup>32</sup> See <http://www.ancyl.org.za/show.php?id=8235>,

<sup>33</sup> See <http://www.iol.co.za/news/south-africa/gauteng/toll-costs-reveal-two-faces-of-anc-1.1027432#.UwzIXuOSySo>,

*there may be exceptions and we look forward to hearing members' experiences comparing routes. But from what we can see, the exceptions will only end up proving the rule. And the rule is that restricting access to roads by financial means is just plain wrong<sup>34</sup>.*

Not only are the comfort factors absent, but many e-tag users have become very uncomfortable because of failure by Sanral to reassure them of the security of personal information. The following link to an article by Jon Tullet, a seasoned Information Management journalist writing for IT Web, reflects three security breaches having occurred in the Sanral e-toll website before and since e-tolling commenced:

[http://www.itweb.co.za/index.php?option=com\\_content&view=article&id=70981](http://www.itweb.co.za/index.php?option=com_content&view=article&id=70981), .

**4. Alternative public transportation systems should be adequate and reliable.**

This is not the case in Gauteng and the research conducted by Hommes & Holmner clearly indicates that good public transport alternatives should exist for an ITS to work, and revenues of ITS's substantially channelled toward investment in the further improvement of their integrated public transport systems. It would have been prudent in terms of the logic of an ITS for the State to have borrowed money to initially finance a sound integrated urban transport system to meet Gauteng commuter needs, where after the introduction of an ITS / e-toll system could have been contemplated.

**5. The pricing systems should be simple and the billing system user friendly.**

The fact that the GORT system has failed on this criterion is now self-evident, given the scolding Sanral has received from both President Zuma and Minister Peters, more than once, on the billing error fiasco. This was in response to public outrage. OUTA has received a steady stream of complaints from vehicle owners and have tested these perceptions against random interviews to gauge the general understanding of the various elements of tariff calculations based on; vehicle classifications; time of day discounts; time of week discounts; high use additional discounts; discounts related to period of payment; user classifications (tagged, standard, alternate); payment methodologies etc.).

The pricing system is so complicated especially for 'alternative users' that it has led to the suspicions that this was a deliberate ploy to manipulate users to sign Sanral's Terms and Conditions and buy an e-tag. One respondent (a highly respected human rights attorney) believes that the combination of a 'very juicy carrot' (substantial discounts for tagged users) with the 'very big stick' (a punitive tariff of 4.8 times the discounted tariff) was "idiotic" especially given the lack of widespread support. "People may have responded to the threat of a penalties for late payment, but it would have had to be reasonable. The penalty tariff is so exorbitant many people will simply refuse to pay. Sanral is creating the very scenario it is trying to avoid.

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<sup>34</sup> <http://www.aa.co.za/about/press-room/press-releases/rediscovering-the-road-less-travelled.html>

Widespread civil disobedience.”

Discussions with people from poorer areas around Gauteng, appear to know very little about how the e-toll system and its pricing structures apply. It appears that vehicle owners residing in townships are generally not densely connected to the internet and do not live close to or shop where the Sanral Customer Service Centres are located, making them less aware of how the e-toll scheme should be complied with. This raises questions of a possible discriminatory practice and that Sanral is risking further allegations of human rights infringements.

**6. The soundness of the technology and data needs to be extremely reliable.**

Sanral CEO Nazir Alli has himself admitted that the data base has “let us down”. This contradicts his repeated assurances over the past three years that the system was technologically sound and ready for business. While he has apologised to the public and asked for patience, one has yet to hear his apology for his mistaken assurance, or his explanation as to why he was so confident before the system commenced, and why he did not use the two and a half year delay to conduct data integrity tests and systems trials.

**7. Environmental benefits and costs must be monitored and managed.**

A major justification for the cost of ITS’s lies in the promise of not only reduced traffic congestion (because people move to public transport options) but the consequent reduction in greenhouse gas emissions to combat global warming. A major complaint from users concerns the waste of paper and colour printing resources in printing invoices and statements for small amounts that bear no relation to the estimated cost of the printing. Many people even received invoices which displayed an amount owing as “R0.00”

**8. A single agency with unquestioned legitimacy and authority should be responsible for implementation.**

At the outset of the GFIP upgrade, Sanral was indeed regarded as a strong and credible agency and this is probably the only factor they had in their favour. Today, their strength, both in public perception and that of Ratings agencies is questionable. Furthermore since it is a ‘roads agency’ staffed with civil engineers and specialists in road construction, and since the key rationale of an ITS lies in the necessity to ultimately constrain road transport in favour of other less environmentally burdensome transport systems, it is logically perverse to place a roads agency in charge of an ITS.

Judging by the number of court cases that Sanral has had to face, initiated by members of the public, civil society and city management entities (especially during the past few years), indicates a level of frustration being expressed by a cross section of society against this state owned entity.

## 6. INTERNATIONAL I.T.S. EXAMPLES & CASE STUDIES

Other cities with similar challenges have made progress in overcoming urban traffic congestion, from which South Africa can learn. At the turn of this century Enrique Peñalosa, former mayor of Bogotá, Colombia redefined a successful, developing and productive city on the basis of the approach that *'developed urban environments are not those where the poor travel by car, but where the rich make use of public transport.'* He transformed a city with a reputation as one of the crime capitals of Latin America into a city which loves itself for what it could be, rather than hates itself for what it had become. He showed the humility to learn from the experience of other cities, notably Curitiba in Brazil. We urge readers to view this short video clip of his vision and outcomes at this link: <http://youtu.be/hPf4s2oFnp0>.

Sanral claims to be a learning organisation. When Sanral set out to introduce this ambitious plan, why did the Board not insist upon the conduct of significant research of international examples of successful and failed systems, as one would expect given their risk management responsibilities. If indeed they did, this has not been expressed in their communication to date. Furthermore, it appears that whilst ITS implementations for congestions management in London, Stockholm and Singapore are shining examples of e-tolling success stories, the wisdom behind the successes of these has never been assimilated into Sanral's GORT plans. Case studies of failed, failing or troubled ITS initiatives provide still richer lessons, but it appears that Sanral never applied their minds to these either. Edinburgh, Manchester, Hong Kong, Detroit, California, Australia and more recently Portugal have all attempted to innovate ITS schemes. Some of these heeded the outcomes of their research and halted before they implemented the scheme (Edinburgh & Manchester), while others have failed or are in difficulty and falling far short of their targets.

The preliminary review by Hommes and Holmner of these experiences usefully pinpoint the advantages and the limitations of Intelligent Transport Systems. From this international experience we have written above of what we consider to be the eight most critical success factors in planning and implementing an e-toll based ITS system. Hommes and Holmner cite three examples of successful e-toll user pays ITS systems which raise doubt over the short to medium term success of Gauteng's e-tolling system. The London Inner City Congestion Charge of 2003, (once referred to by Mr Nazir Alli as the success story on which the GORT-ITS is modelled); the Stockholm Congestion Charge system of 2011; and the Singapore road pricing scheme introduced to cut congestion and carbon emissions in 1975.

In summary the following characteristics were very prevalent:

- a. These cities had well-developed and reliable public transport systems before the 'user pays' system was introduced, which gave citizens cheaper and reliable alternatives, so as not to impose financial constraint on their right to freedom of movement.
- b. The primary purpose of the ITS was to reduce congestion, i.e. to discourage road use during peak times. Charges were free outside peak and on weekends.
- c. The revenues from the collection process were used to further improve public



- transport and other congestion easing, and not to upgrade existing motor ways.
- d. Prior public engagement programs were exemplary, inclusionary and conducted extensively, to respect the international bench mark principle of prior free and informed consent insofar as the ITS implied any limitation of citizen rights. Because the citizens were very involved in the requirements, solutions and even pricing of the system, the levels of public confidence were high. In Stockholm, a six month trial period was adopted to give citizens real experience, after which a referendum to gauge the level of acceptance by society to proceed was held. Seventy percent voted in favour and the revenue flow financed improved public transport as well as the construction of a new bypass to further ease congestion.
  - e. Strong, transparent and participatory leadership was exercised to gain public trust and support, resulting in high levels of compliance from the very outset.

Virtually none of the above steps were taken by Sanral before implementing GORT.

Turning to the problematic instances Hommes and Holmner found that ITS innovations failed to gain the requisite momentum for success when restrictions were imposed by suddenly charging users for the use of roads when they had become accustomed to free passage. Threats to civil liberties and suspicions of a “stealth tax” left citizens distrustful.

Hommes & Holmner cite the following examples where ITS innovations ran into trouble:

- **Greater Manchester** – 2008. Despite being based on the very same principles and technology that had succeeded in London, and despite having the same stated intent to use revenues for development and funding of improved public transport systems (bus rapid transport and rail), citizens nevertheless were sceptical. They rejected the system because of affordability and a weakened economy at the time. Stephen Glaister of the RAC Foundation (Transport Research Body for the UK) stated its failure was due to negative public perception *‘on the basis of no compensating reductions in taxes or any other charges and a lack of confidence that anything would be different, or that the authorities could be trusted to do what they said they were going to do.’*<sup>35</sup>.
- **Edinburgh** – A Congestion Charge by way of e-tolls was proposed in 2002 to relieve inner city congestion with the stated intent to use re-invested revenues to improve the public transport system. Notwithstanding, after intense political lobbying and public debate, 75% of citizens rejected the proposal. An investigation into the reasons for the rejection attests to the critical importance of avoiding unnecessary complexity. (Gaunt and Rye: 2005)<sup>36</sup>
- In **Hong Kong** in mid 80s, congestion charging using e-tags and CCTV was rejected twice, due mainly to pricing, economic climate and privacy issues, despite an initial pilot program and a massive Government communication campaign. The road users also objected to taxi’s being exempted from paying the toll.

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<sup>35</sup> Report on Governing and Paying for England’s roads for the RAC Foundation by Stephen Glaister – July 2010

<sup>36</sup> Allen S, Gaunt M, and Rye T. 2006. *An investigation into the reasons for the rejection of congestion charging by the citizens of Edinburgh*. [O]. Available at [http://www.openstarts.units.it/dspace/bitstream/10077/5896/1/Allen\\_Gaunt\\_Rye\\_ET32.pdf](http://www.openstarts.units.it/dspace/bitstream/10077/5896/1/Allen_Gaunt_Rye_ET32.pdf)

Additional to the above examples cited by Hommes & Holmner, OUTA's research has found other failed or failing cases of ITS implementation across the globe:-

- **Portugal:** Launched in 2012, by Mid 2013 the SCUT (previously free roads) has shown "signs of failure" according to Estradas de Portugal (EP) roads chief António Ramalho<sup>37</sup>. The report states that 19% of road users were not paying their tolls and 29% of the revenue was being channelled toward collection costs, with revenues falling well below initial study indications.
- **Australia:** According to Paul Grad and Peter Kenyon, Correspondent at Australia's, TunnelTalk discussion forum, on 16 July 2013 they stated that

*"Australia has some of the finest highway tunnels in the world, but for the private investors who trusted traffic usage projections from leading and respected consultancy firms the story has been a tale of insolvency and disappointment. Most of the privately owned toll highway projects constructed in the last 15 years in Australia have fallen into receivership or administration within a short time of opening to traffic when it became clear that toll revenue from actual traffic usage would be well short of covering its contribution to the construction costs. Class action lawsuits are now being initiated by investors who believe they were misled by overly optimistic usage forecasts, and construction companies are becoming wary of bidding future concession projects. Not all toll tunnels in Australia have failed financially. Some have been highly successful. But for all cases of failure, the traffic forecasts were two or three times higher than the actual traffic usage when opened. This has led to the conclusion that there was something wrong with the procurement concept and the financial structure of the toll concessions"*<sup>38</sup>

A Public Private Partnership approach was adopted by the Brisbane State Government to seek private investment in a costly scheme to build a tunnel to enable motorists to get to the Brisbane International Airport more efficiently. It was assumed the users would pay. However traffic volumes have proved woefully short of projected estimates and the private sector consortium is in financial trouble. The lesson to be learned from the Australian experience is that if the State has to bail out a failed PPP with tax revenues, it ends up with a greater injustice: non-users paying still more.

- **California:** In a paper written by D Arduin and W Winegardner<sup>39</sup> in April 2013, the "Foothill/Eastern Transportation Corridor Agency (FETCA) these toll roads presently appear to be unsustainable and likely have been unworkable from their inception". The roads are deeply in debt. The recent reviews "clearly raises significant concerns about the toll roads' sustainability, cost to taxpayers, and ability to relieve traffic congestion."

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<sup>37</sup> The Portugal News on Line. (2013) .Dead Loss Reported to journalist Brendan de Beer

<sup>38</sup> Article in Tunnel Talk by Paul Grad – 16 Jul 2013 - <http://www.tunneltalk.com/Discussion-Forum-16Jul13-Australia-PPP-toll-tunnel-crisis.php>

<sup>39</sup> Arduin, D and Winegardner W. (2013) *Orange County Toll Roads: Serious Concerns Should Lead to Significant Review by State and Local Officials*. Pacific Research Institute.

- **Taipei & India** and other countries also have examples where e-tolling has been under pressure or has failed.

In all the examples of ITS failures, the following factors were prevalent:

- Lack of acceptance / approval by the public leading to lower than required compliance.
- Projected revenues were not met – initial revenue targets and calculations of compliance and / or usage was too high and not achieved.
- Public distrust and concern about invasion of privacy.
- High proportionate collection cost.

According to an article<sup>40</sup> dated 10 September 2013, the **Fitch Ratings Agency** explains:

*"Public private partnerships can provide public value, but need to be carefully crafted to address all stakeholder concerns. When public private partnerships are viewed to have failed, the issue is often inappropriate transaction design and application." They indicate "a number of failed projects around the world that suffered from overleveraged assets".*

## 7. THREE BURNING ISSUES

From the history of Gauteng's e-tolls and the wisdom from other case studies (successes and failures), we have distilled the following three burning issues that we consider to be the most incendiary.

### INFORMATION ETHICS

Since OUTA undertook to channel public complaints to the Public Protector the steady stream of complaints received over the past few months have helped us come to the realisation that what is at stake is much more than an operational efficiency problem, but a human rights challenge, particular with respect to the right to privacy. Besides the excess of 11,000 individuals who have either put their concerns and complainant in writing to us, or channelled their complaint through OUTA's web site to Sanral's complaints department over the past 8 months, we estimate that tens, if not hundreds of thousands of motorists have simply not as yet been notified of any e-toll invoice or amount due by them, due to the maladministration within the GORT system.

Hommes and Holmner caution in their paper on Intelligent Transport Systems<sup>41</sup>;

*"The advancements in Information and Communication Technologies (ICTs) together with the ability of ICTs to capture and store vast amounts of*

<sup>40</sup>Newspaper.com, The. (2013). *Credit Rating Firm Catalogues Toll Road Woes*. [O]. Available at: <http://www.thenewspaper.com/news/42/4228.asp>

<sup>41</sup> Hommes, E and Holmner, M, June 2013. Intelligent Transport Systems: privacy, security and societal considerations within the Gauteng case study. In *Innovation: Journal of appropriate librarianship and information work in Southern Africa*. Issue 46, UKZN

*personal information has amplified the risk of this technology being used unethically (Reynolds 2011). These risks necessitated the application of a new set of ethical rules to an intangible world (Capurro 2006). This type of ethics is known as information ethics. To achieve a better understanding of information ethics, the origin and concept of ethics needs to be evaluated.*

*The word ethics stems from the Greek word Ethos implying the character and spirit with fixed moral attitude/culture that informs the beliefs and socially acceptable practices of a person or society (Britz 1996; Whitman & Mattord 2010). By extension, information ethics is concerned with the moral norms and justice, socially acceptable practices and beliefs concerning information use (Fallis 2007; Britz 2008). This field of ethics has received more attention with the increased development and capabilities of technology as well as enhanced access to information through the growing internet infrastructure (Molnar Kletke & Chongwatpol 2008).*

Ordinarily given South Africa's internationally regarded constitution, with a bill of rights which explicitly sets out the normative principles to formulate a properly contextualized information ethics, it is regrettable that Sanral was not deliberately proactive to secure a broad and durable consensus between stakeholders, fleet organisations, faith-based organisations, academics, political parties, unions and civil society organisations, before proceeding with the ITS of the Gauteng Open Road Tolling plan. Had it done so it could have conceivably avoided the present impasse.

Jon Tullett, a senior editor for ITWeb, appealed to OUTA to raise the alarm stating;

*"It is coming up on 8 weeks since the last major incident was demonstrated, leaking customer details, and Sanral apparently has yet to establish how many user accounts were compromised, never mind which accounts they were. More to the point, it has neither notified compromised account holders of the crime, nor notified its user base as a whole that their personal data may have leaked".<sup>42</sup>*

In a follow up interview he said that he has "*never in his career as an internationally experienced specialist IT journalist, come across the same level of defensiveness that Sanral executives have shown during his interviews with them.*"

This may sound ominous, but it is perhaps indicative at a subconscious level that Sanral executives are beginning to realize that they are now in *impasse*.

## **ODIOUS TAXATION**

It would appear from the significant resistance across all sectors of society within Gauteng and other parts of the country, that the introduction of e-tolling on an existing urban freeway system that has already been paid for amounts to double taxation. This becomes more problematic when applied to social infrastructure on which citizens rely to commute daily to work and back, so as to earn a living, and in the absence of a safe, reliable and efficient integrated urban transport system. They pay taxes on their earning and have the right to benefits. Urban roads are not the occasional routes one

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<sup>42</sup> Personal correspondence. 9<sup>th</sup> February 2014 & Sanral in denial" – IT Web, Jon Tullett, 14<sup>th</sup> February 2014 .

takes on holiday or to visit other cities. This factor alone is a strong motivator for urban commuter road development to be funded using general and fuel levy taxation.

Furthermore, this logic is supported by the recommendations in the Presidential Review Committee Report on State Owned Entities in May 2013<sup>43</sup>, which stated in recommendation #21 that “*Funding of social infrastructure, including roads, should have less reliance on the ‘user pays’ principle, and more on taxes.*” This approach not only allows for people to commute to and from work, but also places of worship, sports, schools and recreation without being constrained by affordability and onerous conditions which detract from their quality of life, prosperity and productivity in the urban environment - the precise purpose of social infrastructure.

## CRISIS OF LEGITIMACY

In a constitutional democracy the all-important ingredient of *public acceptance* must, of necessity, embody the meaningful pro-active commitment to human rights by political representatives and senior officials. When people in authority (the governors) want the rest of society (the governed) to behave, it matters first and foremost how they themselves behave<sup>44</sup>.

It is a matter of the adherence by the State (and any state owned enterprise such as Sanral) to what sociologists and criminologists term the **Principle of Legitimacy**. In essence this means that the legitimacy of any authority derives from three interrelated warrants:

1. The extent to which people subject to that authority are listened to and respected;
2. A reasonable consistency over time in the laws imposed by the authority;
3. The fair and impartial application of the laws without fear, favour and prejudice. (Discrimination between people may only legitimately occur, if it is manifestly in the interests of the most vulnerable people of society.)

Any shortcoming in the above three warrants is indicative of social injustice which the State, under a democratic constitution such as South Africa’s, must address. Under conditions where a tendency toward de-legitimization exists, any recourse by an otherwise legitimate authority to the use of inappropriate threats, force and coercion to impose authority on any person who is perceived to be disobedient to its law, only serves to further delegitimize its authority. Accordingly, what might otherwise be considered sound measures to bring about law and order in society and foster respect for the rule of law and good citizenship, become precisely the opposite - the cause of further resistance, instability and disorder, the likes of which is taking place on the e-toll matter.

International evidence (and common sense) indicates that for an e-tolling system to work best, *every* user must pay. The current manual boom toll plaza based collection system achieves this even though the manual (or partially automated boom) collection

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<sup>43</sup> See page 21 of the Executive Summary of the report:  
[http://www.thepresidency.gov.za/ElectronicReport/downloads/volume\\_1/volume\\_1.pdf](http://www.thepresidency.gov.za/ElectronicReport/downloads/volume_1/volume_1.pdf)

<sup>44</sup> See the latest bestselling book by Malcolm Gladwell, *David and Goliath: Underdogs, misfits and the art of battling giants*. Little Brown and Co. 2013.

process, which lacks the instantaneous efficiency of an automated electronic toll system. However if the users do not buy into an automated system (for whatever reason), and if the State lacks either the legitimacy or the practical capacity to impose sanctions that encourage (not threaten) compliance, the system will be neither financially sustainable nor systemically viable.

In the case of the Gauteng e-tolling system, the Criminal Justice system would never be able to cope with even 10% (250,000) of road-users defaulting, let alone a level of 60% (or some 1,5 million), which is where it currently stands as of August 2014. In our view, when looking into the international systems that fail, even at 80% compliance, those paying become irate with the fact that too many (the other 20%) are not paying and the system starts to spiral downward, slowly at first, but gradually the problem worsens and the collection process quickly becomes too difficult and costly to manage.

If the projected output of the system falls far short of meeting the contractual obligations Sanral has set for the Electronic Tolling Company, the financial subsystem will in turn be under strain and the ramifications for society immense. Sanral will fail to achieve revenues to meet the administration and the interest portion, let alone the capital repayment of the loan. In the OUTA court papers, Sanral mentions their initial expectations to achieve 93% compliance rate, which today can be construed as grossly out of touch with reality, even though this level was very necessary for the system to succeed. It is clear to OUTA that the present executive leadership of Sanral cannot see it is ultimately in Sanral's best interest to be transparent with the exact details of the e-tag penetration rate achieved. It appears that they are terrified of facing the awkward truth that public acceptance is far short of viability or workability in the medium to long term.

Most critically for any system to be or remain viable, the purpose of the system must withstand scrutiny in terms of **ethical legitimacy**. Unfortunately for Sanral, the GORT system finds itself on an even steeper hill, amidst a broader Government legitimacy crisis because of persistent questions about Nkandla, the Spy Tapes, Marikana, the Gupta Wedding Scandal, the Auditor General's report on wasted taxes etc.. These factors have been further compounded by an ailing economy, high fuel prices and a weaker rand, all of which adds more troubled waters to their dilemma, as large numbers of society begin to openly boycott the system in an irate display of defiance against Government and Sanral, for failing to take the users of the system into their confidence.

Minister Peters' may order Mr Alli to fix the operational efficiency problem and cut the wastefulness, however, it will take a lot longer to do than Sanral is prepared to concede, and it will require a quality of leadership that is not prone to self-deception. Apologies to entice compliance will also simply not suffice at this late stage. Moreover Sanral does not help itself by being cagey and scant about the information sought by its critics and secrecy challenges in court. That pattern of denial was evident when their e-toll scrutiny problems began to surface in 2010 and has not abated. Sanral has no commercial competitor and its critics are not the enemy: they are the very people that Sanral is supposed to serve. The continuous lack of transparency displayed by Sanral executives has eroded the very quality that is needed from the human/behavioural subsystem: **trust**.

The operational and strategic viability ultimately depends on what happens at the normative level. Without a sound, incontestable and inclusive normative ethical rationale for e-tolling, solving the strategic and operational problems will ultimately be an exercise in futility, and the impasse will continue.







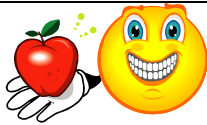
## 8. THE WAY FORWARD.

A command and control type of management and leadership attempts to force people to submit. However, you can force people to submit, but you can never force them to cooperate.

To garner public support, leaders need to inspire people with a vision for what could be, just as the mayor of London, Ken Livingston did, when he engaged with the citizens of his city to agree to the introduction of an ITS based inner-city congestion charge.

The e-tolling system uses impressive and sophisticated technology, the gantries have architectural design merit, and the roads that have been built are world class. So why the lack of enthusiasm from Gauteng motorists?

This continuum helps explain why.

Opposed	Negatively compliant	Neutral	Compliant	Positively compliant	Enrolled	Committed.
						

The prudence of public participation programs is to give stakeholders the opportunity to interrogate and influence a proposed plan or vision so that they move as far along from the left to the right, before the scheme comes into operation. It is only to the extent that a critical mass of stakeholders are clustered in the right half of the spectrum that any ambitious innovation that requires the support of the public, can hope to succeed. There will always be some who are reluctant to follow, and some who might be violently opposed to it. But the system becomes relatively successful if the majority are supportive, allowing the administrators to concentrate on sanctioning the reluctant and the opposed, knowing that the greater public interest is being served, because the majority are clustered densely along the right side of the continuum.

The fact that the enthusiasm levels of the Gauteng Freeway users is so low, means that it cannot be sustained without considerable application of negative sanctions by the authorities. Even then, if there is lack of moral sanction and ethical underwriting, it will become impossible for the required levels of enforcement to be sustained. South Africa simply cannot return to being a police state.

Thus with empirical evidence from both successful and failed ITS e-tolling cases and the conceptual analysis conducted by OUTA and others, the message ought to be clear that the Gauteng e-toll system was in trouble before it started.

Whereas the examples of success in London, Stockholm and others reflect excellent public engagement programs which garnered the support of society to enable their positive outcomes, those that failed or are in trouble (Manchester, Edinburgh, California,

Portugal, Hong Kong, Australia and others) suffered from poor public acceptance, or high collection costs and shortfall in revenues anticipated. In some cases, these systems started out at well over 80% compliance and still fell short. The GORT system started out with only 15% of users with e-tags fitted and as more corporate and government fleet vehicles became tagged, along with some of the public who did so out of fear, this number grew and stabilised at around the 40% level. Over the past several weeks, OUTA has seen a growing number of people who are enquiring and stating their decisions of 'de-tagging' and opting to defy the system.

We simply cannot see how the Gauteng's e-toll compliance will ever manage to achieve the required levels for success. If Sanral Executives have indeed lowered their sights and making statements that their "targets are being achieved", they are only fooling themselves, and if their higher level authority allows them to perpetuate the self-deception they too become complicit.

E-tolling has proved a highly divisive and controversial issue, partly for reasons that lie outside and beyond the internal logic and rationale of the system. Paradoxically one of the unintended benefits it has brought is to unify Gauteng residents across historical race, class, political alliances and ideological divides, but alas not in support of the system but in *opposition* to it.

The time is over for excuses and rationalisations. The reality is that Gauteng is now a province prone to significant societal conflict over the e-toll decision and this does not bode well for success with the project.

## **OUTA PROPOSALS.**

1. A suspension of e-tolling and an invitation to stakeholders to engage in a facilitated process to imagine what a truly integrated urban transport and congestion management system for Gauteng would look like, to address its future / expected commuter and congestion problems.
2. During the suspension of e-tolling, the following alternative options are considered as a temporary (or permanent) funding alternative:-
  - a. The funds required for the settlement of the bond is paid for out of current fiscus, bearing in mind that the fuel levy has been increased by R0.55c since the completion of the GFIP in 2011/12, which adds a further R12bn to the coffers of Government.
  - b. If indeed these funds proposed in (a) above are not available, then we propose the national fuel levy is increased appropriately (estimate R0.09c per litre) to raise the revenues to meet the GFIP financial commitments of approximately R1,9bn per annum.
  - c. If indeed a National fuel levy is a bridge too far for the authorities to accept - as suggested in (b) above - then we propose a combination of the national fuel levy and an 'inland' fuel levy be adopted. An 'inland' fuel levy will have the effect of concentrating some of the charge to Gauteng motorists, who make up the vast majority of inland motorists. Government has ring-fenced levies on fuel in the past, which suggests there is reason to believe this option can be applied in this instance. We believe this combination of a National Fuel Levy at R0.05c per litre and the Inland Fuel Levy at R0.07c per litre, might be an answer to the funding



option see table below).

- d. A third option takes into account that because the nation as a whole benefits from the productivity and success of the Gauteng Region, some of the GFIP funding should be extracted from the general fiscus. Even those who don't drive benefit from road infrastructure. As such we propose a hybrid of National Fuel Levy (R0.028c) & the Inland Fuel Levy (R0.05c) and General Taxation (R650m per annum) should apply, to raise the estimated R1,9bn required to fund the capital bonds and interest over 20 years:-

The table below gives a breakdown of the calculations of all three options in 2 a, b & c.

ALTERNATIVE FUNDING PROPOSALS FOR GFIP		OPTION 2 (b)			OPTION 2 (c)			OPTION 2 (d)		
		Fuel Levy Increase	Revenue Generated	% to Tot.	Fuel Levy Increase	Revenue Generated	% to Tot.	Fuel Levy Increase	Revenue Generated	% to Tot.
* Funds Required to finance GFIP (pa)	1,900,000,000									
NATIONAL FUEL LEVY (Litres pumped):	22,976,000,000	R0.087	R1,998,912,000	100%	R0.042	R964,992,000	50%	R0.028	R643,328,000	33%
GAUTENG WEIGHTED - "Inland" Fuel Levy: Inland Litres Pumped **	10,339,200,000			0%	R0.093	R961,545,600	50%	R0.063	R651,369,600	33%
GENERAL TAXATION:				0%			0%		R650,000,000	33%
<b>TOTAL ANNUAL REVENUE GENERATED FOR GFIP FUNDING &gt;</b>			<b>1,998,912,000</b>	<b>100%</b>		<b>1,926,537,600</b>	<b>100%</b>		<b>1,944,697,600</b>	<b>100%</b>

\* Based on Standard Finance Model of R20bn paid over 20 years (straight line capital depreciation) at interest rate of 12%

\*\* Inland fuel pumped is estimated at 45% of total, of which Gauteng is estimated at 80% of inland fuel pumped and 36% of national volumes (estimates to be verified).

- 3. Furthermore, we propose that a multi-lateral and multi-party working group of government, business, labour and civil society representatives is established to examine in more detail, the best options for raising the necessary funds for:-
  - a. Repay the bonds and interest for GFIP, over 20 years.
  - b. Extricate the nation from current contracts.
  - c. Combined in this discussion, should be the inclusion of how the region can fund an accelerated improvement / upgrade and expansion of its proposed integrated public transport infrastructure.
  - d. And funding of the planned additional freeways (PWV5, 9, N14 etc.).
  
- 4. One should not eliminate the view that if indeed at some stage in the future, when good public transport alternatives are in place, an ITS tolling system may become possible, but only after a thorough public engagement and approval process has been conducted to obtain societies acceptance of this methodology to manage and ease future congestion, the likes of which was successful in Stockholm.
 

Until then, the e-toll Gantries can be put to good use in the following manner:

  - a) Traffic volume monitoring and redirection.
  - b) Communication to motorists of traffic alerts & congestion.
  - c) Average seep over distance monitoring and law enforcement.
  - d) Surveillance and policing of cloned / false number plates and poor road behaviour.
  - e) Stolen vehicle tracking and policing.

We believe a collaborative effort and approach by all stakeholders on this matter will improve the credit rating of Sanral and will achieve the best possible result for both citizen and the state.

## 9. CONCLUSION.

In 1893 the government of President Paul Kruger in Pretoria angered the *Uitlanders* who had flocked to Johannesburg to dig for gold by erecting tollgates on the seven major entrances into the Johannesburg gold fields. The diggers complained that these were punitive taxes to provide revenue for the near bankrupt Zuid Afrikaanse Republic, not to maintain the roads. To travel from the one city to the other was a time consuming expedition. One needed a good reason to do so. On the rare occasions that President Kruger did so it made headline news. *The Star* newspaper at the time was filled with angry editorialising and letters complaining about the injustices of the Boer Government on the matter of tolling and a host of other grievances. Seven years later war broke out, that cast an exceedingly long shadow over the entire century that followed.

But for the fact that they are protesting against e-tolling of motor vehicles rather than against toll gates for charging for animal drawn wagons, today *The Star* and other media contain sentiments of anger and outrage that are not too different in substance to what appeared in the 1890's.

Whereas the residents of Pretoria and residents of Johannesburg were in opposite camps in the 1890's today residents from both Tshwane, Johannesburg and other metropolitan areas within the region, are united in their opposition to the 'tax' of e-tolls. Fortunately, in contrast to then, today they are able to do so backed by a non-racial constitution which guarantees their freedom of expression and a host of other fundamental rights which empower the citizens to hold Government accountable.

It is never too late to halt the journey down a dangerous path and embark along a safer and more prosperous route that garners the support of ones people. Persisting and pursuing with the current e-toll journey scheme will further drive a wedge between our Government and its people. The unintended consequences of innocent people being caught up in the mess will pose problems far too serious to contemplate.

There are simply too many factors loaded against Sanral and the governing authorities on this GORT project. The examples on the international stage are there to clearly see why this scheme has an extremely high probability of failure. Furthermore, Sanral's conduct and poor public engagement process at the outset has robbed this society of a wonderful opportunity to have explored the introduction of a world class ITS system, which may have replaced the wider freeway network with a much needed and vastly improved integrated public transport system, or a combined variation / hybrid outcome thereof.

With the real possibility of a meaningful public participation program and collaborative approach to the dilemma, we believe that it is not too late to achieve a genuine and committed societal support of a new plan to settle the debt on the GFIP

loans, whilst addressing the broader issues of Gauteng's traffic congestion going forward.

In publishing this assessment OUTA has gone a step further than simply complaining that those rights and opportunities have been infringed. We have indeed 'cursed the darkness', but have sought to light a candle by exercising responsibility to show due respect for the complexity of the issues, and to suggest a way forward in the hope that those in authority will exercise the necessary leadership, to lead Gauteng out of the impasse.

Wayne Duvenage  
Chairperson – OUTA

John GI Clarke  
Consultant Social Worker

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## ANNEXURE 1. FUEL LEVIES.

### FUEL LEVY REVENUES (source SARS & SAPIA)

Tax Year (to Mar)	* Fuel Levy (SARS) R Millions	% Increase	PETROL						DIESEL					
			Incr in April of Year ...	Fuel Levy Tariff	% Increase	For Cal Year of ...	** Litres PETROL Pumped Approx (SAPIA) Millions	% Increase	Incr in April of Year ...	Diesel Levy Tariff As at 31 Dec	% Increase	For Cal Year of ...	** Litres DIESEL Pumped Approx (SAPIA) Millions	% Increase
2003/4	16,652			1.01		2003	10,667		2003	0.85		2003	7,263	
2004/5	19,190			1.11	9.9%	2004	10,985	3.0%	2004	0.95	11.8%	2004	7,679	5.7%
2005/6	20,506			1.16	4.5%	2005	11,165	1.6%	2005	1.00	5.3%	2005	8,115	5.7%
2006/7	21,844	6.5%	2006	1.16	0.0%	2006	11,279	1.0%	2006	1.00	0.0%	2006	8,708	7.3%
2007/8	23,740	8.7%	2007	1.21	4.3%	2007	11,558	2.5%	2007	1.05	5.0%	2007	9,755	12.0%
2008/9	24,884	4.8%	2008	1.27	5.0%	2008	11,069	-4.2%	2008	1.27	21.0%	2008	9,762	0.1%
2009/10	28,833	15.9%	2009	1.50	18.1%	2009	11,321	2.3%	2009	1.35	6.3%	2009	9,437	-3.3%
2010/11	34,418	19.4%	2010	1.68	11.7%	2010	11,455	1.2%	2010	1.53	13.0%	2010	10,170	7.8%
2011/12	36,602	6.3%	2011	1.78	6.0%	2011	11,963	4.4%	2011	1.63	6.6%	2011	11,225	10.4%
2012/13	40,410	10.4%	2012	1.98	11.3%	2012	11,714	-2.1%	2012	1.83	12.3%	2012	11,262	0.3%
2013/14 (Est)***	46,055	14.0%	2013	2.14	8.4%	2013	11,714	0.0%	2013	1.99	9.0%	2013	11,262	0.0%
2014/15 (Est)****	50,512	9.7%	2014	2.34	9.3%	2014	11,714	0.0%	2014	2.19	10.1%	2014	11,262	0.0%

#### NOTES:

\* <http://www.sars.gov.za/About/SATaxSystem/Pages/Tax-Statistics.aspx>

\*\* SAPIA Annual Report 2103

\*\*\* Fuel volumes not yet available from SARS / SAIPA. However, conservative use of fuel volumes pumped during 2012/3 tax year and the fuel levies applied for this year, we estimate the fuel levy to generate a minimum of R47,5bn revenue to treasury coffers for the year ending March 2014.

\*\*\*\* Fuel volumes not yet available from SARS / SAIPA. However, conservative use of fuel volumes pumped during 2012/3 tax year and the fuel levies applied for this year, we estimate the fuel levy to generate a minimum of R47,5bn revenue to treasury coffers for the year ending March 2015.

## ANNEXURE 2. E-TAG RESEARCH & COUNTS.

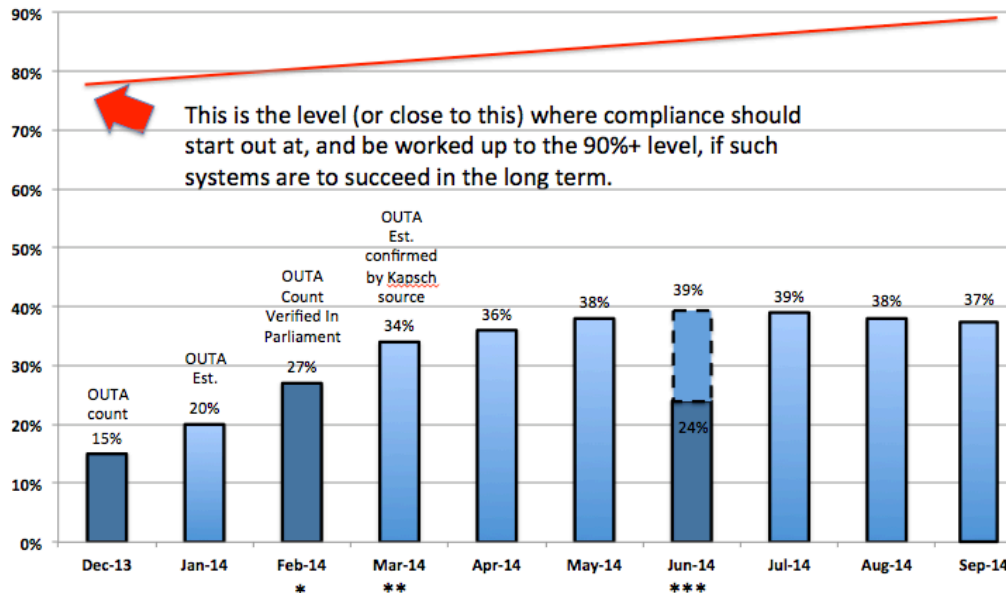
### SUMMARY OF OUTA's E-TAG COUNTS

PERIOD OF COUNT	PLACES	FREEWAY USERS			NON FREEWAY USERS		
		SAMPLE SIZE	e TAGGED	% TAGGED	SAMPLE SIZE	e TAGGED	% TAGGED
5 to 13 Dec 2013	Various freeway on and off ramps around city	5186	788	15%			
5 to 8 Dec 2013	Various shopping centres and parking areas around the city				2636	234	9%
29 Jan to 6 Feb 2014	Various freeway on and off ramps around city	1500	406	27%			
13 June 2014	Various freeway on and off ramps around city	2213	539	24%			
15 July 2014	Various shopping centres and parking areas around the city				1628	276	17%

#### NOTES:

1. The 'non-freeway' e-tag count (i.e. shopping centres & town) is expected to be lower (by around 30%) as this is the ratio of cars within total Gauteng car park that do not use the freeways, compared to those that do.
2. In March 2014, SANRAL claimed over 1,2 million motorists bought e-tags. There are approx 2,5m freeway users each month.
3. OUTA's counts extrapolated 34% of 2,5mil to be 850K e-tag users on freeways.
4. OUTA sites Sanral's information as misleading and calls for transparency, but none forthcoming on this issue.

### OUTA's e-TAG FREEWAY COUNTS & ESTIMATION



#### Notes

Dark bars reflect % tag counts at freeway on & off ramps

\* Feb 14 count verified by Minister of Transport - answers to DA questions in Parliament (23 to 28%)

\*\* Kapsch whistle blower information that 34 to 35% penetration was achieved in March 2014.

\*\*\* June 14 Count appeared low. Signs of motorists obscuring and placing of tags in area difficult to detect

## ANNEXURE 3A. LETTER FROM OUTA TO SANRAL BOARD

The intention of this letter seeks explanations of action taken against collusive construction companies.



OPPOSITION TO URBAN TOLLING ALLIANCE

Non-Profit Organisation - Reg #: 124381NPO

11 June 2014

Attention: Ms Tembakazi Mnyaka  
Chairman of the Board  
South African National Roads Agency Ltd  
48 Tambotie Avenue  
Val de Grace  
Pretoria 0184.

**BY E-MAIL: mnyakat@nra.co.za**

Dear Ms Mnyaka.

### **GFIP CONSTRUCTION COLLUSION REMEDY - QUERIES AND REQUEST FOR FEEDBACK**

Past and recent developments which have unfolded have necessitated the following queries from OUTA, of the Sanral Board. We respectfully request feedback and clarity on developments and possible action in regard to the points raised below.

#### **1. Remedy for tender collusion in GFIP construction.**

On 18<sup>th</sup> November 2013 certificates of decision were issued by the Competitions Tribunal based on consent orders with respect to certain contractors and members of a construction cartel who had admitted to tender collusion for work commissioned by SANRAL for the Gauteng Freeway Improvement Project – GFIP (among other projects). According to our understanding, these certificates were issued to empower the authorities to institute further proceedings to recover the additional cost resulting from the anti-competitive collusion and price fixing practice.

The Opposition to Urban Tolling Alliance has approached the Competitions Tribunal with a view to seeking recognition as an interested and affected party in the proceedings that we expect will ensue. We have been advised to notify Sanral of this intention and request as follows:

- a) A progress report on the current state of proceedings of civil claims by Sanral against the collusive construction companies.
- b) Whether there has been any agreement reached between Sanral and the 'cartel' members for a fair determination of the quantum of the overcharged sum.
- c) When and where an application will be made to the High Court for a civil suit to be lodged by Sanral against the cartel members, so that OUTA may consider making an application to be admitted a co-applicant.
- d) Whether indeed there have been any criminal charges laid by Sanral or its executives, resulting from reporting the collusion and price fixing perpetrated by the relevant construction companies, to the Directorate for Priority Crime Investigation and what the progress thereof is? If so, we would be grateful if you could provide us with the SAPS CAS or other reference number.

ADDRESS:  
P O Box 2627, Northriding, 2162  
E-Mail: wayneduv@gmail.com  
COMPANY REGISTRATION:  
2012/064213/08  
WEB SITE: www.outa.co.za

DIRECTORS:  
Wayne L Duvenage  
Jeff Osborne  
Paul Pauwen

COMMITTEE MEMBERS:  
Wayne Duvenage (Chairperson)  
Jeff Osborne (Vice Chairperson)  
Paul Pauwen (Secretary)  
Ari Seirlis, Clif Johnston  
Robert Handfield-Jones Tracey McKay

## 2. Enquiry regarding Professional Conduct – Construction Cost Claims

In addition to the above questions, we raise the following comments and concerns regarding the cost of the freeway construction costs.

- a) Following the completion of the GFIP, Sanral was queried on a few occasions as to the seemingly high cost of the road construction, both in the escalation of these costs since 2006 and the final amount reflected. The response from Sanral Executives at the time was in essence, that *all costs were above board*.
- b) Clearly the exposure of construction collusion indicated that not all was above board.
- c) Has the board received feedback from Sanral Management as to what the overcharges from the collusive practices are estimated to be?
- d) Has the board enquired as to how it was possible that higher than expected costs were able to be processed by Sanral, whose expertise and thorough understanding of road construction expenses should have prevented these significantly inflated costs?
- e) As was prudently conducted by the Gautrain project, was an Independent Certifier appointed to ensure the project remained within budget and if not, why was this practice not applied on the GFIP project?
- f) Was there an effective 'whistle blower' process in place during the GFIP construction and if so, how many queries were lodged and again if so, were these thoroughly followed up?
- g) Is the Sanral Board satisfied with the cost of approximately R100m per KM of the GFIP project, which is incidentally around 300% higher than the approximately R35m per KM initially indicated some five years earlier in the 2006 project estimations.
- h) Has the Sanral board ever contemplated the appointment of an external investigation in regard to verification of untoward or unsuspected inflation of the GFIP construction costs?

Although Sanral and OUTA have been strong adversaries we trust that our intention in seeking to participate in the process and request for your feedback on the above queries, is understood as being aligned with Sanral's mandate to ensure the long term public interest is served. As such our hope is that this will widen the 'solution space' so that a more just outcome and deeper learning is achieved.

Yours faithfully,



Wayne Duvenage.

Chairperson - Opposition to Urban Tolling Alliance  
E: wayneduv@gmail.com  
Cell: +27 82 8846652



# ANNEXURE 3B. RESPONSE FROM SANRAL (VIA WERKSMANS).



## DELIVERED BY EMAIL

OUTA - Opposition to Urban Tolling Alliance  
Attention: Wayne Duvenage  
Email: [wayneduv@gmail.com](mailto:wayneduv@gmail.com)

**Johannesburg Office**  
155 5th Street  
Sandton 2196 South Africa  
Private Bag 10015  
Sandton 2146  
Docex 111 Sandton  
Tel +27 11 535 8000  
Fax +27 11 535 8600  
[www.werksmans.com](http://www.werksmans.com)  
[enquiries@werksmans.com](mailto:enquiries@werksmans.com)

YOUR REFERENCE:  
OUR REFERENCE: Mr D Hertz/cjf/SOUT3114.114/#3187424v2  
DIRECT PHONE: +27 11 535 8283  
DIRECT FAX: +27 11 535 8683  
EMAIL ADDRESS: [dhertz@werksmans.com](mailto:dhertz@werksmans.com)

14 August 2014

Dear Sir

### GAUTENG FREEWAY IMPROVEMENT PROJECT : CONSTRUCTION COLLUSION

- 1 We, as you are aware, represent the South African National Roads Agency (SOC) Limited ("our client"/"SANRAL").
- 2 Our client has handed to us a copy of your letter ("your letter") dated 11 June 2014 for our attention and reply.
- 3 Your letter was forwarded to the Minister of Transport who has requested SANRAL to respond on her behalf,
- 4 It is correct that OUTA has been an adversary of SANRAL for some time. That said, our client has taken note of the content of your letter and instructed us to respond as set out below -
  - 4.1 following the confirmation by the Competition Tribunal on 22 and 23 July 2013 of various consent orders relating to tender collusion cartels in the construction industry, we were retained to advise SANRAL on possible claims against the persons involved in such cartels and who had admitted to tender collusion for work commissioned by SANRAL;
  - 4.2 our client intends to recover from the persons involved in the abovementioned tender collusion any and all damages it may have suffered resulting therefrom;
  - 4.3 our client is not, at this stage, prepared or obliged to disclose the legal advice received (which remains privileged from production) but will respond to your queries, to the extent necessary, once its actions are a matter of public record.

**Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa**  
**Directors** DG Williams (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata AR Berman MNM Bhengu L Bick GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan D Corbett JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer H Goolam R Gootkin ID Gouws GF Griessel D Hertz J Hollesen VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew N Kirby HA Kotze S Krige P le Roux MM Lessing E Levenstein JS Lochner L Louw JS Lubbe BS Mabasa PK Mabaso PM Madala MPC Manaka PJG Mason H Masondo C Moraitis KO Motshwane TA Mthiyane J Nickig JJ Niemand GA Nott BPF Olivier WE Oosthuizen M Pansengrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath L Rood BR Roothman W Rosenberg NL Scott LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans E Wood BW Workman-Davies **Consultant** JM Bortz

JOHANNESBURG • CAPE TOWN • STELLENBOSCH • TYGER VALLEY



- 5 For the reasons detailed above, we do not intend to respond substantively to your letter or address the interrogatories therein at this stage. Our client's right to do so in due course is reserved.

Yours faithfully

Werksmans Inc  
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

## ANNEXURE 4A. TABLE OF COMPLAINTS - BREAKDOWN.

### E-TOLL OUTA COMPLAINTS VIA OUTA

MONTH	* AUTOMATED COMPLAINTS PORTAL	** OUTA WEB SITE	TOTAL
Dec-13		253	253
Jan-14		212	212
Feb-14	657	236	893
Mar-14	3,854	216	4,070
Apr-14	1,931	237	2,168
May-14	956	180	1,136
Jun-14	677	317	994
Jul-14	419	327	746
Aug 14 (to 25)	364	280	644
<b>TOTAL</b>	<b>8,858</b>	<b>2,258</b>	<b>11,116</b>

\* OUTA received many complaints from motorists on e-toll billing errors and disputes with SANRAL on the bills received. We therefore felt it prudent to introduce a safe and confidential system which channelled these billing queries through a portal on the OUTA web site, directly to SANRAL, who could then handle the enquiries and respond back to the individual (using their unique reference provided), to answer the complainant. Thus the nature of these complaints were billing queries.

NATURE OF THE VPC DISPUTES	No. OF DISPUTES RAISED	DOCUMENTS RECEIVED BEING QUERIED
Photo evidence provided is not my vehicle:	807	Account Statements: 4,293
Photo evidence provided is unclear to verify if this is my vehicle:	2,871	Copy Tax Invoice: 4,057
The detail provided is insufficient to confirm these charges relate to my vehicle:	4,714	Correspondence Document: 3,452
I require a clear breakdown of each gantry transaction and tariffs to verify if these are my movements:	5,727	Transaction Report: 4,232
I need photo evidence for each gantry event as I think someone has cloned my numberplate:	4,795	Tax Invoice: 1,002
I have no tax invoice for this account:	4,446	
The gantry tariffs displayed on the highway do not match with the charges reflected:	3,497	

\*\* The OUTA web site has a "contact us" page for members of the public to share with us some of their concerns and frustrations. The nature of these complaints are as follows:-

COMMON THEMES OF COMPLAINTS / QUERIES / CONCERNS
Roadblocks - intimidation
Can my Renewal of licence be halted?
Incorrect billing
Alternate rate not advertised
Threats of prosecution from call centre staff
I have an e-tag and my bill is incorrect
I have a paid up e-tag and I'm still getting bills ( double billing?)
I've put money into my e-tag account and it never reflected (very common concern raised)
I registered and paid in time to qualify for the Standard rate, yet higher alternative rate was applied. (very common)
Not my car (very common concern)
I simply cannot afford e-tolls (very common complaint)
I've never received a bill, what do I do? (very common)

## ANNEXURE 4B. EXAMPLES OF COMPLAINTS.

From: [REDACTED]  
Subject: **OUTA Contact Us - Incorrect EToll Billing**  
Date: 20 August 2014 12:21:41 GMT+02:00  
To: rob@outa

From: [REDACTED]  
Subject: OUTA Contact Us - Incorrect EToll Billing

Message Body:  
To whom it may concern:

I received an invoice from SANRAL for a vehicle I no longer own for a date that is incorrect. I moved to Cape Town prior to ETolls going live and at the time of the invoice, I was in Cape Town – and no longer the owner of the vehicle.

I just want to know if you need additional evidence (cases like these) and if so, where can I send the invoices to. I will not pay the amounts nor query it.

Regards,

[REDACTED]

--

This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

From: [REDACTED]  
Subject: **OUTA Contact Us - e-toll charging 200% interest**  
Date: 25 August 2014 08:17:51 GMT+02:00  
To: rob@outa

From: [REDACTED]  
Subject: OUTA Contact Us - e-toll charging 200% interest

Message Body:  
Dear OUTA,

I am at wits end with E-toll as advertised I paid nearly R9600 in the promise that I would be given a 63% discount as a credit within 15 days which should have been in 15 July 2014.

They have not credited me and ask me to pay more now which includes 200% interest, I am refusing to pay and telling them that they are no failing me.

I am shocked at them charging me 200% and want to know if this is legal and if I can take them to court.

I would be grateful for some advice

Regards

--

This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

From: [REDACTED]  
Subject: **OUTA Contact Us - large amount of paperwork for Sanral**  
Date: 22 August 2014 08:58:31 GMT+02:00  
To: rob@outa

From: [REDACTED]  
Subject: OUTA Contact Us - large amount of paperwork for Sanral

Message Body:

Dear OUTA. I recently received a SANRAL e-toll account, for a car that is not mine. I have a sedan, and the photo shows a mini-bus. You reported this to Sanral for me. Now Sanral want to fill out a 2 page forms, get an affidavit signed and send them the original documents. I am self employed, and don't have the time or inclination to do what they request. What the implications of ignoring this unreasonable request ?

--

This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - support against e-toll  
**Date:** 27 August 2014 10:52:12 GMT+02:00  
**To:** rob@outa

---

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - support against e-toll

**Message Body:**

i am totally against e-toll because they contribute in stifling the economic growth in the country. as unemployed drivers have to drive around seeking to find jobs or using their vehicles to transport their wares to make a living. henceforth i am not going to pay because i cant afford the e toll fees. Is this government entity expect unemployed drivers to stay at home? Also is the fate of the students and scholars using these roads being considered?

--

This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - E-TOLL  
**Date:** 27 August 2014 16:15:51 GMT+02:00  
**To:** rob@outa

---

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - E-TOLL

**Message Body:**

Good day, i am honestly disappointed in what our country is doing to us...i mean the necessity of paying fines, e-tolls, petrols , taxes at the same time is ridiculous...i mean the way the fees are it is really worrying as to how they scale..does this mean we get employed to take the money back to the government? what exactly are they saying to us? i mean really, i am one of those who CANNOT afford this kind of unnecessary expense and am not prepared to do that., they should really sit down and reconsider., ....and everyone has their rights, i cannot be forced to pay for using a road with a car that's in my name...how will i save or apply for a car that's in my name as im the current bread winner? then where is e-toll fitting in my expenses? NO.....NO.....No

--

This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - E-toll. Vpc acc no.10921015696  
**Date:** 27 July 2014 19:10:45 GMT+02:00  
**To:** rob@outa

---

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - E-toll. Vpc acc no. [REDACTED]

**Message Body:**

From December 2013 I received statements from Sanral that I owe them for using e-toll up to now about R6000. The problem is that I am staying in Durban not Johannesburg and never used the E-toll.

I have send Sanral about 15 emails, phoned them on several times explaining to them that I live in Durban driving a 2013 Ford Figo and not a Honda Ballade about a late eighties model according to their photo evidence.

Furthermore this person is using the E-toll at Tembisa, Kempton Park. The only answer and reply I get from them is that I remain responsible for paying this statement although everyone but them can see its a false number plate.

As they got all my details from the E-natis computer why can't they see it's not my vehicle.

Please forward this to them maybe you will have more luck with them as they are threatening me now with this unpaid e-toll statement.

Thank you

[REDACTED]

--

This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - e- tolls  
**Date:** 24 July 2014 13:20:39 GMT+02:00  
**To:** rob@outa

---

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - e- tolls

**Message Body:**

My wife inherited a 1992 model car a year ago from her aunt after her aunts husband died. The car was registered in July 2013 into my name. At irregular intervals I use the R21, Ni and N14 and receive the inappropriate and confusing paperwork from Sanral. The prices charged are inconsistent and the pictures inconclusive to the drivers ID. I therefore ask them to forward me an invoice by registered mail and better quality pictures. To date these requests were ignored and hence I could not pay. I am an unregistered user and will remain so for a long time to come,

My wife received a phone call from her 86 year old aunt yesterday as to why she is receiving Sanral invoices for her late husbands car she knows was registered into my name a year ago. Can you explain that please. Does this mean that the OEM's are not getting invoiced by Sanral if the car owners fail to pay?

This system is corrupt and run by a dictatorship. Please, billing dead people and harassing widows – can it get worse?

Please, I need some guidance as I would like to give these morons a piece of my mind. Harassing old ladies!!!

--

This mail is sent via contact form on OUTA <http://www.oua.co.za/site>

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - Etoll acc  
**Date:** 24 July 2014 19:48:05 GMT+02:00  
**To:** rob@outa

---

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - Etoll acc

**Message Body:**

Im writing to you on behalf of my daughter. who is 18 years old and studies at Tuks she also stays at res. She received etoll accounts. The invoices show Modderfontein, Rivonia etc. Her car is at home. The photos also does not look like her car and the no plate doesnt look the same(numbers). MY worry is that if she doesnt pay the amount they will blacklist her and she is still so young she cannot afford to have a blacklisted name at such a young age. I sometimes use the car to go to my present work and take the Van Buuren offramp from Germiston to avoid etolls especially with her car, and thats the furtherest I will drive with her car.

Please advice.

Many thanks

[REDACTED]

--

This mail is sent via contact form on OUTA <http://www.oua.co.za/site>

**From:** [REDACTED]  
**Subject:** OUTA Contact Us - Billing  
**Date:** 24 July 2014 10:59:16 GMT+02:00  
**To:** rob@outa

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**From:** [REDACTED]  
**Subject:** OUTA Contact Us - Billing

**Message Body:**

I asked why i was billed for a heavy vechile and after months they answered me that it was the correct bill according to the government gazette published.I live in a small town and this paper is not for sale here .Can you please inform me if they are allowed to do this.I think it is not fair since i don't use this road every day.

--

This mail is sent via contact form on OUTA <http://www.oua.co.za/site>

From: [REDACTED]  
Subject: **OUTA Contact Us - The burden of proof for using toll roads**  
Date: 21 July 2014 15:56:46 GMT+02:00  
To: rob@outa

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From: [REDACTED]  
Subject: OUTA Contact Us - The burden of proof for using toll roads

Message Body:

Hello

Normal business practice requires that invoices show what has been bought. In the case of etolls is it reasonable to expect road users to TRUST SANRAL and its systems and to simply pay whatever they demand?  
I would submit that it is not reasonable to expect a consumer to pay an account for toll fees FOR MULTIPLE TRIPS AND MULTIPLE GANTRIES where an attached photograph shows the consumers vehicle under a single unidentified gantry on a single date which does not cover the the other dates of trips on the account.  
I would therefore demand that EVERY gantry is identifiable on the photograph that shows my vehicle and that I receive a photo for every single gantry passed on every single trip I make. Without this, I would be being expected to TRUST Sanral admin which would be very unwise after having experienced the electricity billing shambles of the Joburg Metro.  
Perhaps you could advise whether this is a reasonable demand. (not that I intend to pay unless I am summonsed to do so on principal)  
regards  
[REDACTED]

PS how does Outa know that people with etags are actually paying their bills or are the etags done on debit orders?

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This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

From: [REDACTED]  
Subject: **OUTA Contact Us - Info please**  
Date: 21 July 2014 09:33:29 GMT+02:00  
To: rob@outa

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From: [REDACTED]  
Subject: OUTA Contact Us - Info please

Message Body:

This might sound silly, but...

I live in Cape Town and refuse to register for etoll. End of May, till end of first week of June in jhb/Pta. To date I have not received an invoice from them, and when I want to check if there is any balance against my name on the SANRAL sight, it demands from me to register before I can check the balance.

I don't want to register, no reason to as I live in the Cape.

But they say you must pay within 7days, butl dont have an invoice?

Just another example of how fraudulent and broken their system is.

Do I just ignore, till I get locked up for it, because I did not get it?

--

This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

From: [REDACTED]  
Subject: **OUTA Contact Us - e Toll Statements**  
Date: 18 July 2014 07:49:44 GMT+02:00  
To: rob@outa

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From: [REDACTED]  
Subject: OUTA Contact Us - e Toll Statements

Message Body:

How do I get a detailed E toll statement from SANRAL if I am not registered?  
Tried phoning SANRAL they can't help if you are not registered.They need a 16 digest ID number which I don't have.  
Tried the kiosk in Killarney mall and 4only a total amount owing could be provided.

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This mail is sent via contact form on OUTA <http://www.outa.co.za/site>

## ANNEXURE 5. TABLE OF E-TOLL COSTS & INCOME (SANRAL).

This document is a copy of the table supplied by Sanral in the answering affidavits in the OUTA court case.

Note the third and fourth line of figures, of R6.194bn (VPC Capital and Operating Exps) and R12.170bn (Toll related Capita & Operational Expenses), equate to total of R18.364bn – which is equal to R25,7% of the R71.396bn revenue forecasted by Sanral over 24 years.

2991 "SAA4"

GFIP: LATEST TARIFFS (EXPENDITURE DURING LOAN LIFE  
CYCLE) -  
24 YEARS (in Millions of September 2011 Rands)

Expenditure Item for 24 years	Expenditure	Percentage
Initial Capital Cost	R20 629.99	28.90%
Road Maintenance	R10 669.45	14.94%
VPC Capital and Operating Expenditure	R6 194.06	8.68%
Toll Related Capital and Operating Expenditure (excl VPC)	R12 170.13	17.05%
Other Operational Expenses	R1 727.11	2.42%
Interest	R20 005.00	28.02%
REVENUE OVER 24 YEARS	R71 395.74	100.00%



## ANNEXURE 6. ESCALATING COSTS OF GFIP

The Ever Changing Costs of the Gauteng Freeway Improvement Project (GFIP)

SOURCE DOCUMENT >	SANRAL Declaration of Intent 2005 - 2008, based on 2004 costs	SANRAL Documents to Dept of Transport in 2006	SANRAL Letter to Minister Of Transport 10 Jan 2008	SANRAL (Founding Affidavit of Appeal to Cons Court) June 2012	Lastest Media notifications - Including E-Toll Capital Costs	Adjusted to exclude contingencies, gantries etc
	2004	2006	2008	2011	2102	2012
<b>GFIP ROAD CAPITAL COSTS (R Bn)</b>	<b>R 4.500</b>	<b>R 6.400</b>	<b>R 11.800</b>	<b>R 16.900</b>	<b>R 20.630</b>	<b>R 17.900</b>
<b>ROAD DISTANCE</b>	<b>340</b>	<b>185</b>	<b>185</b>	<b>194</b>	<b>194</b>	<b>194</b>
<b># of Lanes (Est over length of GFIP)</b>	<b>6.5</b>	<b>8.7</b>	<b>8.7</b>	<b>8.7</b>	<b>8.7</b>	<b>8.7</b>
<b># of Lane KMs</b>	<b>2,210.0</b>	<b>1,609.5</b>	<b>1,609.5</b>	<b>1,687.8</b>	<b>1,687.8</b>	<b>1,687.8</b>
<b>Cost per Lane KM</b>	<b>R 2,036,199</b>	<b>R 3,976,390</b>	<b>R 7,331,469</b>	<b>R 10,013,035</b>	<b>R 12,223,012</b>	<b>R 10,605,522</b>
<b>% Increase on previous 2004 figure</b>		<b>95%</b>	<b>260%</b>	<b>392%</b>	<b>207%</b>	<b>421%</b>

NOTE 1: These figures have all been supplied by SANRAL

NOTE 2: Granted the scope of the plan may have varied somewhat to justify some of the increase.

NOTE 3: Granted, there could have been inflationary pressures above the norm which added to the higher costs

NOTE 4: Despite Notes 2 & 3 above, there are enough concerns which warrant an independent enquiry into the ever changing and seemingly exorbitant costs of the GFIP construction

NOTE 5: This is compounded by the current competition Commission and HAWKS investigations which have revealed collusion with in the industry players who were involved in GFIP Construction

NOTE 6: The distance reflected in 2004 of 304 km included other Gauteng freeways planned, beyond Phase 1 of 185km

