

Sanral girds for legal battle with motorists

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The South African National Roads Agency (Sanral) has prepared 6,286 summonses in a bid to recover R6.2bn in outstanding e-toll debt from Gauteng motorists. Sanral is also gearing up for its legal fight with the Organisation Undoing Tax Abuse (Outa) over an e-toll test case, which could provide final clarity on how the user-pays principle should be applied.



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Sanral has R38bn in debt that has to be serviced and it has battled for years to get buy-in for e-tolls from Gauteng motorists. This often jeopardised its capital-raising efforts when it went to market.

Sanral spokesman Vusi Mona said the parastatal held a successful bond auction in September 2016, which was oversubscribed and ensured Sanral had sufficient cash flow for 2017. The parastatal was scheduling bond auctions for 2017, with the first one mooted for March, he said. The agency has a R197bn road maintenance backlog to clear and needs all the funding it can get to make this possible.

Mona confirmed Sanral had prepared the 6,286 summonses as part of its efforts to recoup R6.2bn owed to it by motorists.

Test case for the non-payment of e-tolls

He also said: "In the interests of certainty, we would like to see this e-toll test case happen sooner rather than later."

Outa chairman Wayne Duvenage said the e-toll test case, which pertained specifically to the organisation's members, was all but inevitable.

Since June 2016, Outa and Sanral lawyers have been in discussions about the feasibility of a test case for the non-payment of e-tolls. "It is not in our or Sanral's interest that this drags on," said Duvenage.

Pieter Conradie, director in Cliffe Dekker Hofmeyr's dispute resolution practice, said the Outa case was likely to be restricted to members of the organisation but was likely to go a long way in settling the user-pays principle.

If Outa lost the case, this would prompt noncompliant users to pay. A Sanral loss could mean previously compliant motorists and businesses would swell the ranks of noncompliant road users.

Other legal hurdles

There are other legal hurdles Sanral has to clear. Its pending toll projects elsewhere in the country also face resistance. Most notable of these are Sanral's N2 tolling project in the Eastern Cape and its plans to toll segments of the N1 and N2 highways in the Western Cape.

In the Eastern Cape, environmental objections have been lodged against the project, but these relate to construction and not to the as-yet-undetermined tolling system.

In the Western Cape, Sanral has filed notice to appeal a Supreme Court of Appeal decision in September rejecting its bid to have the Winelands route declared a toll road. City of Cape Town member of the mayoral committee for transport Brett Herron said there was not indication when the challenge would go to the Constitutional Court, but the city would defend its position. The city continued to believe Sanral was being "unreasonable" in pursuing the challenge, given that it was based on technical issues rather than the merits of tolling, he said.

Independent transport analyst Paul Browning said the public could expect to see a Sanral that sought a more "moderate" image, but it was difficult to see how the agency could pursue its mandate of addressing the infrastructure backlog without some conflict over how the improvements were to be funded.

It was worth noting there was not the same resistance to tolling on national roads as there was in city areas, he said.

Source: Business Day

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