

10.3 Activities – The question of commercial and national interest activities

10.3.1 The conformity assessment landscape in South Africa

Apart from its standards development activities, the SABS also provides testing and certification services on a commercial basis, as well as regulatory services.

There are about 20 QMS/EMS conformity assessment service providers operating in South Africa of which only three are accredited by SANAS (i.e. the SABS, SGS and the Standards Association of Zimbabwe). The others are under the control of their own international bodies which may or may not maintain accreditation at least in their home country. There are approximately 14 QMS/EMS certification bodies in total operating in both in South Africa and in other parts of the SADC region, with the main ones being the SABS, TUV, DNV, BSI, KITE, SGS and BVQI. These organisations are generally speaking specific to QMS or EMS, although sector specific management systems are starting to emerge e.g. QS9000 for the motor industry.

The SABS is the dominant product certification body in the South African market with about 95% of the market. It has its own mark, which is known as the “the SABS Mark”. BSI and TUV have their own certification marks. The SABS Mark, as is the case for most product certification marks, really only has local value. The SABS provides testing services under sub-contract to BSI and others.

10.3.2 Commercialisation, corporatisation or privatisation of the conformity assessment services of the SABS

The issue of the SABS providing commercial services in the area of conformity assessment, in competition to the private sector, has been under debate for a number of years. The Test House and Certification Divisions of the SABS perform these commercial services. Numerous organisations and associations have complained about this situation during the course of this review. The following issues were raised:

- The SABS Certification Division is not a tax-paying entity, unlike its competitors in the conformity assessment field. These service providers are therefore of the opinion that the playing field is unfairly weighted in favour of the SABS.

- The SABS, being both a standards developer and assessor, could in theory use privileged information regarding standards being developed as a competitive advantage for its commercial operations.
- Although the SABS denies that any subsidisation of commercial activities from Government funding is taking place, and no evidence of such practice was found by the Review Team, an uneasiness remains within industry regarding the potential for such practices.

A survey of prominent standards development organisations internationally indicates three possible approaches that can be pursued:

a) No commercial activities in the area of testing and/or certification. One example is Malaysia where the peak organisation responsible for standards development, Department of Standards Malaysia (DSM), supervises the development of standards by other bodies, but does not have separate commercial activities.

b) Commercial activities in the area of testing and/or certification separated from the standards development activities at organisational structure level. In the United Kingdom the standards body (BSI) has substantial commercial activities in addition to its standards development and publishing roles. BSI separates its activities at the organisational structure level. Standards writing is undertaken through the role of the Director Standards and these activities are described as “British Standards” in the structure. For BSI’s comprehensive commercial businesses, management is through the position of Chief Operating Officer. Both the Director Standards and Chief Operating Officer report to a single Board.

A similar situation exists in Brazil where the Standards body (ABNT), has both standards development and commercial activities (certification). These are operated within a single organisational structure with division of management and responsibility occurring at the Technical Directorate level. Managers for Certification and Standardisation both report to the Technical Directorate, which in turn reports to the Director General.

c) Commercial activities in the area of testing and/or certification performed by subsidiaries wholly owned by the standards organisation. In the case of Standards Australia International, its major commercial activities are undertaken through a tax-paying subsidiary proprietary limited company. The parent entity operates as a non-tax paying company limited by guarantee.

It is noted that in the case of both Standards Australia International and BSI the organisations are obliged to ring fence their government funding to ensure it is applied only to their national standards development and publishing roles.

A decision regarding the need to commercialise/corporatise/privatise the commercial activities of the SABS is complex, with many factors that need to be considered.

At the outset it must be stressed that privatisation of government owned institutions rarely occur without the organisation first proceeding through a commercialisation phase and then corporatisation phase. The rationale is that during the commercialisation phase the focus of the organisation is to optimise its operations, to get onto sound financial footing and to increase market-readiness. This ensures that maximum value is unlocked at privatisation due to higher intrinsic asset value and less risk of failure in the market.

An exhaustive cost-benefit analysis of the potential commercialisation/ corporatisation/ privatisation of specific activities within the Test House and Certification Divisions of the SABS is beyond the scope of this review. The purpose here is to identify the principles on which such a decision should be made, and to examine, on a first principle basis, the merit of pursuing commercialisation/corporatisation/privatisation as an overall strategic imperative. The recommendations therefore indicate a strategic direction that can be further pursued.

It is also recognised that within the Testing Division there are at least two National Testing Facilities that provide national interest testing facilities. These facilities (which are the NETFA high voltage test laboratory and the vibration and acoustics laboratory) are essential to support the manufacturing industry and infrastructure of South Africa and the broader SADC area, but are not commercially viable since the demand for their services is low. These facilities are supported financially by cross subsidisation from other activities within the commercial Divisions. In many ways their national interest status is equivalent to the national interest standards development.

The following table summarises the four options considered as part of this review, and the inherent differences in ownership, financial and legal status, as well as governance.

Table 9: The commercialisation / corporatisation and privatisation options

Inherent characteristics	Status quo	Commercialisation	Corporatisation	Privatisation
Ownership	Government	Government owns entity within which commercialised body resides	Government owned entity owns majority (usually 100%) of equity in legal entity	Private shareholders have majority interest
Legal status	Statutory body or Government agency, legal accountability vests with Government	Division of statutory body or government agency	Standalone legal entity e.g. Limited company, accountability with a board of directors	Private company, legal accountability vests with Directors
Financial status	Non tax-paying entity, financial accountability vests with the state	Profit focused, non-tax paying entity, measured on returns to investors	Tax paying entity with accountability and dividends resting with the state. Performance measured on normal financial criteria	Tax-paying entity and financial accountability vests with (Directors and shareholders)
Governance	The SABS governing structures	SABS governing structures with separate management structure	Management board independent from the SABS, but with the SABS representation as owner	Completely independent Management Board. The SABS could be represented as a minority shareholder

The following assumptions are made as part of the analysis:

- Regardless of whether the conformity assessment services of the SABS are corporatised or privatised, the newly created organisations will become tax-paying entities (commercialisation does not allow for tax paying status in the above definition).
- There will be no market failure in the uptake of equity by the private sector in the case of privatisation.
- Any potential implementation problems or constraints associated with the process of commercialisation, corporatisation or privatisation beyond the control of the SABS are not

considered. The current South African Government policy regarding privatisation is assumed.

Different activities need to be performed to take the SABS commercial activities from one stage to another. An indication of these activities is provided in the table below.

Table 10: Commercialisation, corporatisation and privatisation transitional activities

State of Commercialisation	COMMERCIALISATION	CORPORATISATION	PRIVATISATION
Purpose	To design, structure and develop the organisation to be able to operate on a proper commercial basis.	To house the organisation in a private sector legal entity with appropriate governance structures.	To ensure a change of ownership of the entity to a partner (s) outside of government.
Transition Activities	<ul style="list-style-type: none"> • Organisation design • Strategy, structure, process • Business prioritisation and planning • Commercial function establishment • Costing systems and financial controls • Billing, reporting, collections • Building of sales and marketing capacity • Performance management and tracking implementation • Creation of profit track record • Dispose of/restructure unprofitable services. 	<ul style="list-style-type: none"> • Convert legal status • Design governance • Constitute/ convene management board • Adapt financial structures/ processes to take into account additional needs • Implement revised governance and reporting structures. 	<ul style="list-style-type: none"> • Valuation • Business viability and prospectus • Corporate finance/ capital raising • IPO/sale (all, majority, minority) • Integration/ transition to private ownership • Redesign of performance criteria and governance structures.

The following analysis highlights the implications of commercialising or privatising the conformity assessment services of the SABS.

Table 11: Analysis of commercialisation, corporatisation and privatisation options

Decision factors	Analysis	Conclusion
International developments	<p>It is not uncommon for standards development organisations to also perform commercial services in the conformity assessment area.</p> <p>Commercial activities are however clearly separated from standards development activities. There is no common approach regarding the structuring of such commercial services in relation to standards development functions, except that they are expected to be ringfenced, and should not be subsidised by Government funding.</p>	<p>No single approach is considered better than another. It depends on the context.</p>
South Africa as a developing nation	<p>It is recognised that South Africa is a developing nation, and that there are certain national interest activities that cannot be sustained on a commercial basis, and therefore need to be performed or funded by Government. The certification and testing businesses of the SABS, as a whole, can not be seen as national interest activities since they are completely self-sustainable.</p> <p>If national interest activities are indeed performed within the Divisions, they are being cross-subsidised by other commercial activities. This does not constitute good practice and such activities ought to be identified, ring-fenced and funded by Government.</p> <p>Should the commercial Divisions of the SABS be privatised, and fail in the market place, it would in general not represent the complete erosion of service availability in South Africa. The SABS is not the only player in the market and others will fill any gaps.</p>	<p>The privatisation or commercialisation of the conformity assessment services of the SABS, as a whole, will not compromise the national interest</p> <p>If national interest activities are performed within the commercial Divisions, they are being cross-subsidised by other commercial activities. This does not constitute good practice and such activities ought to be identified, ring-fenced and funded by Government.</p>
National imperatives	<p>The only national imperatives that could be impacted are job creation and national human resource development. The potential impact on either should commercialisation/corporatisation/privatisation take place is a highly contentious issue, that can not be resolved as part of this review. It is however noted that Government has an explicit strategy of selective privatisation.</p>	<p>The potential impact on national imperatives of job creation and human resources cannot be determined. The Government policy on privatisation is assumed.</p>
The regional interest	<p>It is recognised that many aspects of the SQAM infrastructure in the SADC region is either underdeveloped or in development. The fact that the commercial activities of the SABS are sustainable and the fact that there are other players in the market, indicates that regional development in this area is not solely dependent on the existence of the SABS</p> <p>There might however be specific activities within these Divisions that are of national/regional interest, and not self sustainable. Capacity building in the region might be negatively impacted should they be closed down.</p>	<p>The privatisation or commercialisation of the conformity assessment services of the SABS will in general not compromise the regional interest.</p> <p>Specific activities that are not self-sustainable but in the national/regional interest need to be identified and ring-fenced. They should not be part of any commercialisation/ corporatisation/ privatisation.</p>
Current developments	<p>It is noted that the SABS has already established the Eurotype Test Centre as a wholly owned subsidiary.</p> <p>It is also noted that the ring-fencing of the SABS paves the way towards commercialisation/corporatisation.</p>	<p>Some activities already fully commercialised.</p>

Decision factors	Analysis	Conclusion
Legislative requirements	The Review Team is not aware of any legislation that prohibits entry into the conformity assessment market.	The privatisation or commercialisation of the SABS will not change its position in offering conformity assessment services
Impact on the conformity assessment landscape	<p>At present the playing field are not level, with the SABS Certification and Testing services in a advantaged position for the following reasons:</p> <ul style="list-style-type: none"> • Not being a tax paying entity: • Utilisation of the SABS brand. <p>At present the SABS is the dominant service provider in the certification arena. The fact that the SABS has not been able to achieve complete market dominance from its current preferential position, is reason enough to conclude that commercialisation, corporatisation or privatisation would not result in a monopolistic market situation</p>	<p>Privatisation and commercialisation will create a level playing field.</p> <p>It is highly unlikely that a monopolistic market situation will be created if privatisation, corporatisation or commercialisation is pursued.</p>
Commercial viability	<p>No in depth analysis was performed. Limited financial information is available since the commercial activities of the SABS were only ring fenced during 1998,</p> <p>The current financial policy is to achieve and sustain a return on working capital, which exceeds the current cost of capital. The Test House recorded a net loss in the last financial year and the Certification Services a small profit, with commercial services overall recording a net loss. This does not indicate that the organisations will not be sustainable in the marketplace, as they are not purely commercially driven at this stage.</p> <p>Total turnover for testing (R77m) and certification (R62m) as well as high market share indicates that critical mass has been achieved</p>	<p>No decision can be made regarding privatisation unless the organisations have operated on a commercial basis for a sustained period.</p> <p>There are no inherent financial risks associated with commercialisation.</p>
Impact on Government funding	<p>No Government funding is currently provided to the conformity assessment services of the SABS, and considering the fact that the services are assumed to be financially viable, no funding can be expected if commercialisation or privatisation is pursued.</p> <p>If cross-subsidisation of activities is occurring within these Divisions, and it is to finance non sustainable national interest activities, Government will have to fund such activities if either commercialisation or privatisation is pursued.</p> <p>Should commercialisation or privatisation be pursued, the Government will benefit from taxation income, and profits from the subsidiary could be used by the SABS to fund standards development activities (as is often the case internationally).</p>	Commercialisation, corporatisation or privatisation could reduce the overall dependence of the SQAM infrastructure on Government funding (assuming financial viability of such commercialisation).
Impact on the SABS standards	Internationally it is accepted that profits from commercial conformity assessment operations can be used to subsidise standards development activities. In fact most standards development organisations indicated that, in face of reduced government funding and reduced revenues from standard sales, their future survival might depend on revenues and profits from activities in the conformance assessment area.	Commercialisation could provide the SABS (Standards) with an income stream that would not be the case if privatisation is pursued, depending on the extent of Government shareholding.

Decision factors	Analysis	Conclusion
The SABS Mark	The recommendation that SABS standards be renamed "South African National Standards" means there is no conflict with the SABS mark.	The SABS mark will be retained by the SABS as its property.
Impact on the overall SQAM infrastructure		No direct impact on the overall SQAM infrastructure.
Impact on society	Conformity assessment services are not public interest services per se, although they play a role in the SQAM chain of activities aimed at protecting the interest of society.	No direct impact on society.
Service delivery	It is a proven fact that commercialisation, corporatisation or privatisation could result in efficiency gains and service delivery improvements, as long as there is a competitive market. Where privatisation occurs in monopolistic environment, service delivery is not necessarily enhanced, as has been internationally proven in the electricity utility industry.	Commercialisation should result in improved service delivery. Privatisation should also improve service delivery since a monopolistic environment is unlikely.

It is concluded that privatisation of the commercial activities of the SABS can not be considered at this stage. Apart from the fact that it would contradict good practice of first going through a complete commercialisation phase followed by a corporatisation phase, as earlier explained, three fundamental factors indicate that privatisation should not be pursued at this stage.

- The long-term existence of standards development organisations internationally could in future depend entirely on revenues generated from value added services. Certification and testing are typical of such value-added services, and the privatisation of the Certification and Testing Divisions of the SABS could compromise the long-term existence of the SABS Standards Division.
- The ring-fencing of the certification and testing activities of the SABS was only concluded in 1998. The process of optimising the commercial orientation of the Divisions is still underway. More time is required for them to refine their commercial orientation. Private investors will be reluctant to invest in businesses without a proven track record in an established market.
- The financial viability of the entities in question can not be established beyond doubt. This is primarily because of the fact that the Divisions have been ring-fenced for a relative short period of time and because the current financial policy is not driven by profitability or growth objectives, but by return on working capital. Commercialisation will allow the optimisation of the activities and prove financial viability or otherwise.

Recommendation 20: The SABS test-house and certification activities be corporatised into a wholly owned tax paying subsidiary of the SABS, free to compete nationally, regionally and globally.

The implications of corporatisation of the entities in question are as follows:

- Any functions and facilities within the Certification or Test House Divisions that are potentially of national importance, and that would not be sustainable in the market place, should not be included in the corporatisation drive. The process that need to be followed, as advised by the National Research Foundation (NRF), is as follows. The SABS has the responsibility to identify and ring-fence such functions. The relevant Government Department (at present DACST) should be informed that the SABS is of the opinion that such functions (facilities) are potentially of national importance. The relevant Minister will then, at own discretion, involve the NRF in conducting a study as to whether the proposed functions (facilities) constitute a facility of national importance or not. Depending on the outcome of such an investigation, there are a number of options that can follow. One would be that such facilities operate under the auspices of the NRF in a similar manner as the South African Astronomical Observatory, another being that they operate within a trust, for example in a similar manner to the laser facilities of the AEC operating under the National Laser Centre Trust. The other option would be close down such a facility.
- This company should be free to compete nationally, regionally and globally.
- The Governance of the newly established company should be through a Board of Directors. The composition and focus of the Board would be different to that of the SABS Council. It would be less focussed on national interest and more concerned with commercial opportunities. It is suggested that the Board be small, say 8 members, and that it include representatives of the major customers of the commercial arm as well as financial and marketing expertise. The SABS should be initially responsible for establishing the Board. The corporatised entity should become a wholly owned subsidiary of the SABS, i.e. the SABS retains 100% ownership, and be responsible to the SABS Council.

Recommendation 21: Governance of the new ‘testing and certification’ company be through an independent Board, with the SABS represented on the Board by no more than two members of the SABS Council.

- Consideration should be given to renaming the separate entities to ensure that there is no unfair association between the brand names of the national interest standards development body and the commercial subsidiary. In this context adopt the recommendation of the Review that “SABS Standards” be re-titled “South African National Standards”

The anticipated benefits of corporatisation are as follows:

- The conformity assessment playing field will become level.
- The continuation of national interest activities will not be compromised if an appropriate process is followed.
- It should result in improved service delivery.
- Improved ability for the SABS to expand regionally or internationally
- Reduce the financial burden of the Government relating to SQAM, as follows:
 - It will be a tax-paying entity
 - It could contribute toward funding for the standards development activities of the SABS, which are at the moment almost entirely supported by Government. This contribution could be in the form of a “dividend” to the parent organisation or through fees where the parent provides specific services (e.g. accounting, HR).
- It does not represent any inherent financial risk to the Government beyond the current risks associated with financial failure

The risks associated with corporatisation are as follows:

- The creation of a monopolistic situation. This risk is considered to be small since the SABS has not been able to attain complete market domination under its present preferential conditions.
- The commercialised organisation might not be financially viable. If the new organisation is properly designed and structured, this risk should be minimised. The SABS needs to ensure that it creates the proper commercial skills within the organisation that can provide the management and direction it will require. Unprofitable activities that are not in the national interest should be discontinued unless there is a clear business case which will demonstrate future profitability.

In summary, the overall benefits to all stakeholders of commercialising and then corporatising the aforementioned functions of the SABS are considered to far outweigh the potential risks and this is therefore seen as a sound strategy for the SABS.

10.4 Requirement for amendment to the Standards Act

The SABS Council has recently proposed the revision of the Standards Act. The desirability of the proposed changes have been considered in the complete context of this review, and recommendations regarding changes in the Standards Act made as part of broader recommendations. The following deal with current proposals, but there has been a more general review made of the Act and additional suggestions made for changes in line with good practice.

- The Standards Act should be revised to be restricted to enabling preparation and co-ordination of South African National Standards, including provision for accreditation by the SABS of other standards developing organisations.
- To confirm the SABS role as the National Standards Body.
- To ensure that no other organisation can publish National Standards.
- It is noted that the SABS is still empowered "To accredit laboratories and to administer schemes with regard to laboratories thus accredited". This should be removed.
- The governance of the SABS resides in a formally constituted Council representative of major stakeholders. The size of the Council should be increased as recommended by the Review.
- The proposal that the SABS mark no longer be used to denote compliance with regulatory requirements in the health and safety fields, is supported.
- The current proposal to amend the Standards Act to allow the SABS to set up commercial subsidiaries is supported. The Act should not include any specific operating requirements on these subsidiaries e.g. require approval of the Minister (refer to Table 12). If desired the Act may specify the need to return a dividend to the SABS without being specific on the amount.
- The current proposal to amend the Standards Act to allow the SABS to operate outside South Africa is supported. The SABS should be given the appropriate authority to allow it to

actively develop value added products including entering into commercial contracts for the production of national and regional standards for other countries in Africa.

Although it is recognised this is a contentious issue since it involves national sovereignty as opposed to commercial imperatives, the SABS is the most developed and sophisticated standards organisation in central and southern Africa and has an extremely good reputation in Africa and should capitalise on this. The SABS should therefore not be precluded from acting as an agent contractor (running the committees and writing the standards) for other countries' standardisation activities. Ultimate control would remain within the contracting country and the SABS would be expected to respect national viewpoints.

- All sections regarding issuing and control of Marks by the SABS other than their own "commercial" marks should be removed from the current Standards Act.

In addition to the above mentioned changes, the Table on the following pages summarises the sections of the Act that are considered to need review and changing.

Table 12: Proposed changes to the Standards Act

Relevant section	Proposed changes
Whole of Act	The entire Act should be revised to eliminate gender specific terminology such as "his", Chairman etc.
Definitions	Definitions should be reviewed for their adequacy, clarity and alignment with WTO and ISO nomenclature.
Continuation of the SABS	Revision of Section 2 (1) will be required to ensure a smooth transition from the 1993 Act to the revised Act.
Objects of the SABS	Sections 3 (c) and (e) should be deleted as they are relevant to SANAS. Item (m) requires amendment as marks should not be the exclusive province of the SABS. An additional item should be included to enable the SABS to provide accreditation to Standards Development Organisations (SDOs).
Functions, powers and duties of the SABS	Sections 4 (1) (a), (b) and (g) should be revised to delete reference to approval by the Minister and instead refer to Resolution by Council.
Exercise of powers outside of Republic	Section 5 (1) should be amended to enable the SABS to operate contractually outside of South Africa.
Constitution and functions of Council	Section 7 should be amended to increase the size of Council to reflect the membership being representative of the major stakeholders. Council should be able to co-opt non-voting members for specific purposes.
Meetings of Council	Section 8 should be amended to delete reference to the President. Clarification of what constitutes a majority of members to form a quorum should be provided (i.e. it should be greater than 50% of voting members, not including co-opted).
Financing	Sections 12 (4) and (5) should be revised to delete reference to the approval by the Minister and the concurrence of either the Ministers of Finance or State Expenditure and instead refer to Resolution by Council.
Standards	Section 16 should be amended to stipulate that only Standards (including specifications, codes of practice, standard methods) issued by the SABS or an accredited Standards Development Organisation shall be designated as South African National Standards.
Copyright in Standards and publications	Section 17 (2) should be amended to align with current copyright law and that no more than 10% of any document should be copied for personal use without written permission from the SABS.
Establishment of marks	Section 18 should be revised to clarify that any mark issued by the SABS shall be classified as a "commercial mark" (voluntary certification). Any approval of the establishment of marks by the SABS should be deleted.
Mark specification	Section 19 should be deleted and transferred to the proposed Regulatory Reform Act.
Application of certification mark	Section 20 should be deleted and transferred to the proposed Regulatory Reform Act.
Limitations on certain claims	Section 21 (1) should be deleted and transferred to the proposed Regulatory Reform Act.

Relevant section	Proposed changes
Compulsory specifications Effect of declaration as compulsory specification and application of distinctive mark Non-compliance with compulsory specification	Sections 22, 23 and 24 should be deleted from the Standards Act as the matter of compulsory specifications, their issue and their compliance should be transferred to the proposed Technical Regulations Act.
Permits Right to appeal to Minister Marks of proof and marks of authenticity	Sections 25, 26 and 27 should be deleted and transferred to the proposed transferred to the proposed Regulatory Reform Act..
Inspectors and auditors	Section 28 should be deleted and transferred to the proposed Regulatory Reform Act .
Samples and information	Section 29 should be deleted and transferred to the proposed Regulatory Reform Act.
Incorporation of Standards in laws	Section 31 should be deleted and transferred to the proposed Regulatory Reform Act.
Secrecy	Section 32 should be re-titled confidentiality and revised to align with current Acts such as the Open Democracy Bill , the Public Information Act and others as relevant.
Inventions by staff members and other persons	Section 33 (3) should be revised to delete reference to the Minister and the concurrence of the Minister of State Expenditure and instead refer to Resolution by Council.
Offences and penalties	Section 34 should be deleted and transferred to the proposed Regulatory Reform Act.
Presumption	Section 36 should be deleted and transferred to the proposed Regulatory Reform Act.
Regulations	Section 37 should be deleted and transferred to the proposed Regulatory Reform Act. A mechanism should be established whereby fines or imprisonment periods can remain relevant without having to continually update the Act