

Competitive Pricing of Rail Passenger Services



Development and Approval Processes for CPPs

27 June, 2000

Background

Output funding options considered in Auckland

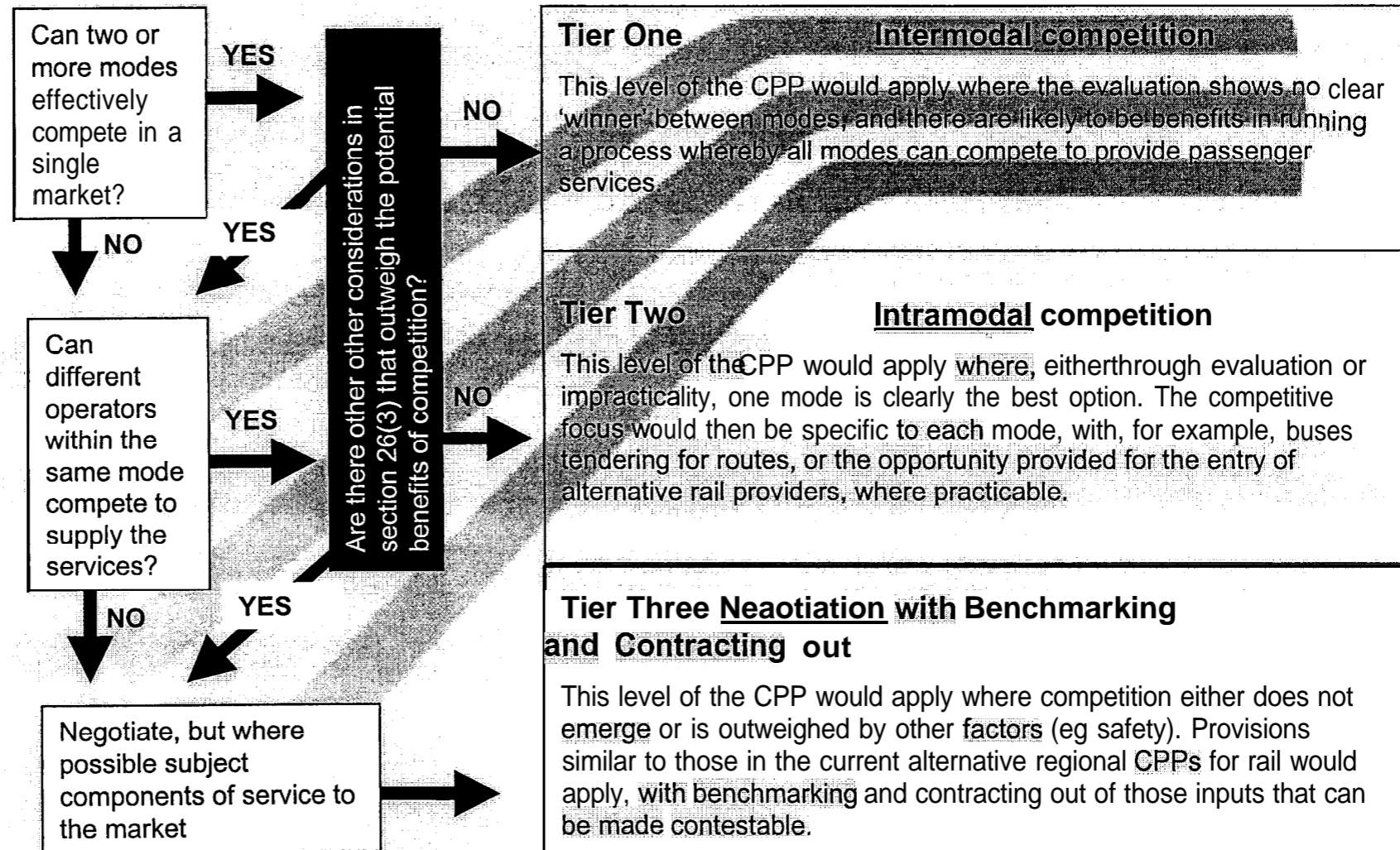
Chapman Tripp and Crown Law opinions - current CPPs
perhaps legally unsustainable (and should be reviewed in light
of large potential future investments)

Working Group established - Wellington and Auckland RCs,
Infrastructure Auckland

Transfund's Board agreed in-principle process

Development and approval processes prepared, based on legal
obligations and best practice

Three tiers of competitive, process



Key Legal Principles

Specification of output important where realistic competition may be excluded

CPP need not actually promote competition, but must trade-off section 26(3) factors - efficiency, safety, desire to encourage (and not exclude) competition, administration cost

Where competition may be reduced, probably should seek Commerce Commission authorisation

Transfund must make decision, but may rely on information from RCs

Basis of proposed processes

Processes based on review of legal obligations and of good practice in public sector tendering and contracting processes:

- Good Practice for Purchasing by Government Departments (The Audit Office, September 1995)
- Government Purchasing in New Zealand. Policy Guide for Purchasers (Ministry of Commerce, March 1994)
- A Guide to the Management of Departmental Purchasing (The Treasury, December 1990).

Recommended Process - Section 17 Approval

Transfund to take view on importance of competition in output specification - advise RC of any difficulties early

Expect that evaluation will indicate desired form of output specification

6

Recommended Process - Section 26 Approval

Goals of RCs and Transfund aligned:

- meet legal obligations
- determine best practice contracting approach to ensure value for: money

Transfund's decision (based on trade-off of section 26(3) factors, dependent on information from RCs

Information required from RC

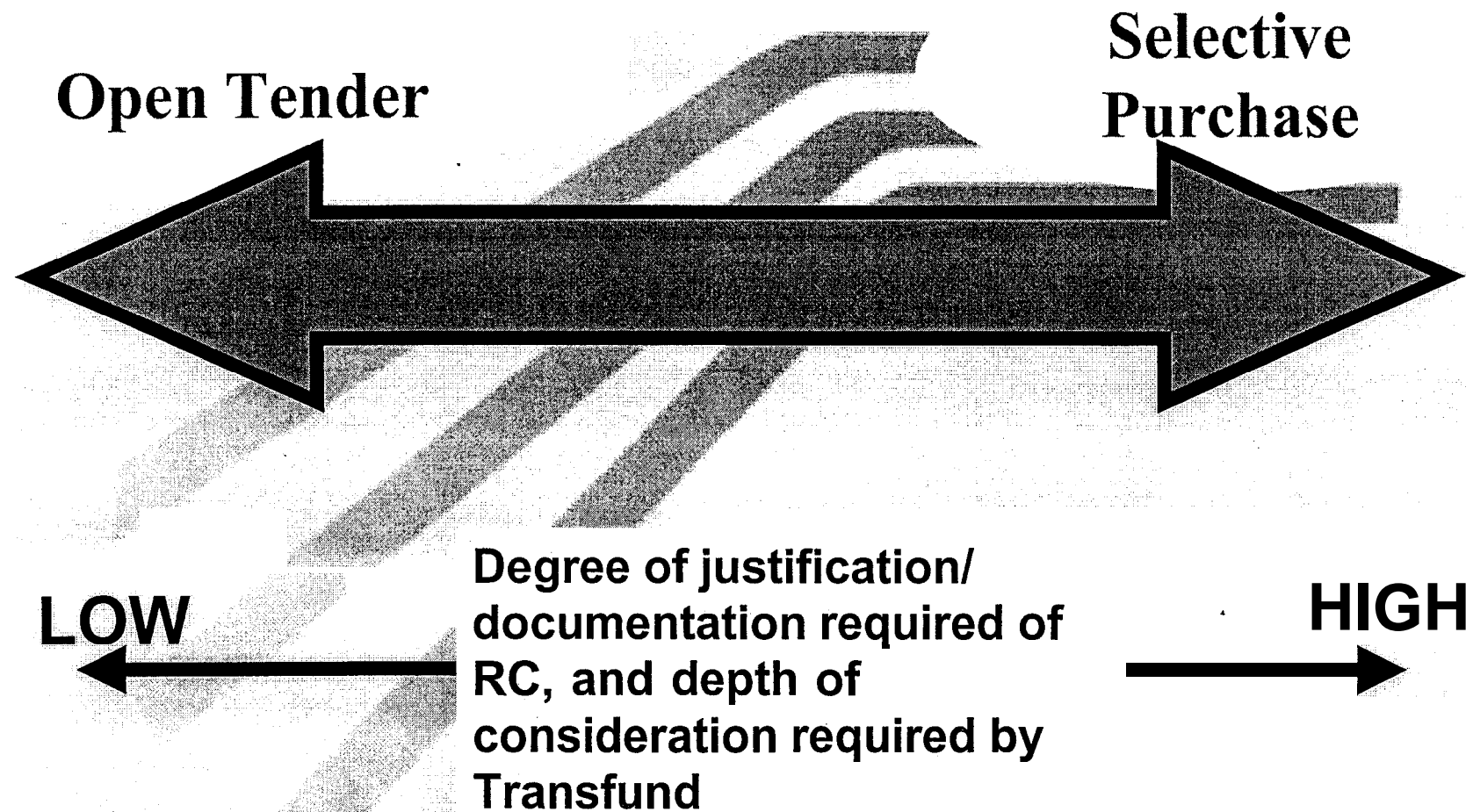
At a broad level, need to cover:

- output specification (including function, volume, time)
- choice between open tender, closed tender and selective purchase
- tender/selective purchase arrangements
- contract arrangements including exclusivity and contract periods

Transfund/RC will need to consider:

- market definition (impacts on output specification)
- incumbent providers and market shares
- potential new entrants and any barriers to their entry
- realistic timeframe for new entry

Continuum of approaches



Note, however, that tendering is not a cost-less process, and it may restrict costs (both to the tendering authority and tenderers) to use a form or pre-selection listing

Review of processes by Audit NZ

Draft report on development and approval processes compares favourably with good practice

Point out several issues not considered:

- **Official Information Act provides further justification for documentation of decisions on contracting approaches**
- **Obligations to tender under Local Government Act (s. 247E)**

Suggests the use of due diligence enquiries for major contracts

Make suggestions for further audit roles (either external or internal Transfund audit functions)

10

Summary

Just about any situation can have an approved CPP, as long as the RC and Transfund have satisfied themselves that:

- **the best output has been chosen (evaluation)**
- **an appropriate CPP has been developed, in terms of**
 - trading off the factors to be considered under section 26(3) of the Transit Act
 - achieving value for money.

Where to from here?

Working Group's comments incorporated

**Transfund's Board to approve recommended
development and approval processes (July)**

**Transfund to work with ARC and WRC on applying the
processes in particular situations**

**Transfund to approve new CPPs developed using the
guidelines (end of 2000)**

Refine guidelines based on practical application