

## REVIEW OF NEW ZEALAND PASSENGER LICENSING SYSTEM

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### ABSTRACT:

*The Urban Transport Council's recent Market Targeting study observed that the ability of public transport operators to develop innovative services is constrained by the inflexibility of the present public transport system. It was suggested that this inflexibility arises in part from the legislative and regulatory framework in which public transport operates. The study suggested that "a less regulated operating environment will encourage more flexibility in the provision of public transport services and will provide incentives for more innovative services."*

*As a result of this, the UTC reviewed the legislative and regulatory provisions governing the operation of public transport services. This review included a survey of operator opinion, and a review of the United Kingdom deregulation experience.*

*This paper considers the results of the UTC review, which found that while the present New Zealand legislation provides the opportunity for passenger transport operators to become more market oriented, the legislation also provides a dis-incentive to this by providing protection for existing route operators, thus virtually disallowing competition. The United Kingdom deregulation experience shows that it is competition that provides the necessary incentive for operators to become more aware of the demands of their customers.*

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### INTRODUCTION

This paper looks at the recent review carried out by the Urban Transport Council (UTC) of the effect the New Zealand Transport Licensing Legislation has on the ability of public transport operators to meet changing public demand.

It considers the results of the review and looks at possible answers to the problems identified.

### BACKGROUND

#### (a) The Market Targeting Study

In 1985 the UTC commissioned a study (which became known as the Market Targeting study) which had as its objective -

to identify discrete markets whereby operators, planners and decision-makers in the urban transport sector can be assisted in targeting urban transport services more effectively, both for existing and potential users.

One of the findings of the study stated:

"The interviews with the operators showed they are supply-driven, not demand-led. In attempting to meet yesterday's travel needs with yesterday's methods and technology, they seem bound to fail in the task of providing transportation for today and tomorrow."

While not examining this area in any depth, the study observed that the ability of operators to develop innovative services (and thereby to better meet the demands of the travelling public) is constrained by the inflexibility of the present transport system.

The study report stated that:-

"... movement to a more market oriented public transport system is constrained by the current regulatory environment within which public transport operates ..." and that "In the longer term it is suggested that a less regulated operating environment

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will encourage more flexibility in the provision of public transport services and will provide incentives for more innovative service options."

(Dialogue Consultants et al 1987)

The report also specifically stated that "the licensing system restricts the operation of the public transport system". Cited as examples of this were difficulties in the provision of a dial-a-ride experiment and in cross-town routes.

After evaluating the claims made in the report, the UTC decided that this was an area worthy of further investigation.

### (b) Current NZ Legislation

Before looking at the review, a brief overview of the current NZ passenger transport legislation is given below.

The legislation relevant to the operation of urban public transport services is the:

The Transport Act 1962 - Part VII  
The Transport Licensing Regulations 1984

Part VII of the Transport Act 1962 is the key piece of legislation for urban public transport operators as it sets in place the transport licensing system. This system requires all those operating for hire or reward to first obtain a licence from the Transport Licensing Authority. Until 1 June 1984 'the criteria for the issue of a licence by the Licensing Authority were designed to achieve a large measure of stability in the transport industry by limiting entry to those who could show that their entry would not unduly harm existing licensees.' (Graham's Law of Transportation) After 1 June 1984 this changed, with the previous emphasis on stability being replaced by criteria that simply concern themselves with whether or not the service of the applicant will be carried on in a safe and reliable manner.

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Under the post 1984 'qualitative' system, a passenger-service licensee may operate any type of passenger service without restriction (as they have met the safety and reliability criteria). However, a licensee may only operate a 'scheduled service over a specified route or between or through specified localities' if that service is specifically authorised by the licence. When applying for this authorisation the applicant faces the possibility of objection from an existing licensee should that licensee already holds a licence to operate over that route (or part of route). However, the onus is on the existing licensee to show that it already adequately meets the demand, that granting a new licence would 'materially affect' its economic stability, and, that it is just as efficient as the applicant.

The Transport Licensing Regulations 1984 set out the administrative procedures for implementing the qualitative licensing system introduced on 1 June 1984. In line with the changes to the Transport Act, the changes from the 1963 to 1984 regulations make the passenger services much less restricted than before. These regulations cover such things as driving hours, Licensing Authority procedures, vehicle safety and loading requirements.

### OBJECTIVES OF THE REVIEW

The objectives of the review, as set down in the Terms of Reference, were to-

- (a) Examine the legislation and associated regulations governing the operation of urban public transport services to identify what constraints they may impose on the ability of operators to meet changing public demand for public transport services and to develop new service options.
- (b) Assess whether any changes to the legislation and regulations are necessary to address any matters identified in (a).

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### METHOD OF REVIEW

The review of public transport legislation was carried out by the UTC using the following methodology:

- (a) Letters were sent to all public transport operators receiving UTC subsidy ie. the majority of New Zealand operators, requesting comment on any difficulties they had encountered with the present transport legislation when attempting to meet changing public demand and to develop new service options. An open invitation requesting comment on this matter was also issued in the UTC Newsletter.
- (b) The case of a hypothetical passenger-service operator who held a passenger service licence and wished to provide an innovative service was examined. Could this operator provide any service type it wanted to or would the legislation prevent this?
- (c) Relevant Transport Licensing Authority decisions made since 1983 were analysed to assess the effect of the transport licensing system in practice upon operator's flexibility and innovation.
- (d) The UK deregulation experience was examined to assess the effect a change to a less regulated environment has on the ability of operators to meet changing public demand (or better meet existing demand).

### OPERATORS' RESPONSES

The first step in the UTC legislation review was the survey of operators and other interested parties.

Letters were sent to approximately 80 urban public passenger operators requesting comment about any problems they may have experienced in providing and developing services to better meet the demand for public transport which are considered to be caused by the licensing system or other aspects of the legislation.

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Operators were specifically asked to comment on whether 'the licensing system or other aspects of the legislation governing public transport operations have restricted or prevented them from -

- (a) changing the timetable of a service to better meet demand,
- (b) changing the route of an existing service in response to demand changes,
- (c) establishing a new timetabled route service,
- (d) providing new types of services (6 different service options were listed)
- (e) introducing any other measures.

Only 12 responses were received from public passenger operators. A further six were received from other interested bodies such as the Wellington Regional Council, who responded to the request for comment in the UTC Newsletter. This low response from operators (only 15 percent) was disappointing. One possible interpretation of the low response rate is that operators, on the whole, are satisfied with the existing transport legislation and do not feel constrained by it. Another possibility is that the majority of operators have not attempted to provide innovative or more demand responsive services and so have not come up against any legislative barriers.

Of the 12 operators who did respond, three specifically stated that the legislation was not a barrier to innovation. The Auckland Regional Authority, for example, commented that its evaluation of small buses in various operating situations has not been constrained by the legislation, while Invercargill City Transport believes that the licensing legislation "does not prevent any real obstacles to changes", but that "it is nonetheless slow and cumbersome." Invercargill City could not envisage any problems from the legislation in the area of innovative services." As well, a non operator, the Wellington Regional Council, believes 'the present legislation provides adequate opportunities' for innovation.

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Two operators commented that the major consideration when introducing innovative public transport services is 'profitability' rather than legislative restrictions. Bayline Group Limited, who in 1987 withdrew most of their urban services in Tauranga, commented that 'the most serious reason for lack of expanding ideas is simply one of finance; urban operators are simply not in the position to buy different types of buses and experiment with different routes as freely as they would like.' Mana Coach Services stated that 'public transport has one major consideration, profitability'.

Other issues raised by operators in their responses relate primarily to administrative problems with the existing licensing system, such as time delays, and amount to 'finetuning' concerns rather than constraints on innovation or flexibility. Significantly, only one operator who responded cited a specific example where the existing legislation had prevented it from meeting changing public demand or developing new service options. Rather, the general feeling seemed to be that while innovative services could be provided under the existing legislative framework (although the transport licensing system was considered to be slow and cumbersome), the major considerations were economic. In addition, the Whangarei City Council had previously advised the UTC of two innovative schemes it had been involved in (a Dial-A-Ride bus service, and a fixed route taxi service) which had been possible under the present legislation.

The operator who considered the present legislation to be restrictive was Fullers Corporation Limited who was denied a licence to compete with an existing harbour ferry company on an established route. Fullers claimed that the travel needs of existing and potential customers are not being met and that competition would stimulate demand and provide for a better service to the public.

An interesting point is that two of the 'non-operators' who responded believe the conservative 'attitude and perceptions' of bus operators are an impediment to innovation in public transport services. The Canterbury United Council commented that 'large transport undertakings tend to be conservative in their practices and resist change'.

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A further point of interest identified during the Market Targeting Study was that operators did not have a high level of awareness of the provisions and flexibility of the Transport Act.

Overall then this part of the review indicated that, at least as far as the majority of the operators were concerned, no barriers exist within the legislation that prevents them providing whatever services they wish to provide. Only one operator identified a barrier - that being the restriction on competition for scheduled services over fixed routes.

### THEORETICAL TEST OF LEGISLATION

The second area the UTC looked at was the case of a hypothetical passenger-service operator who held a (normal) passenger service licence and wished to provide an innovative service (ie. as distinct from a traditional, large bus, scheduled timetable, route service). The question considered was, could this hypothetical operator provide any service type it wanted to or would the legislation prevent this?

Analysis of the Transport Act 1962 shows that two classes of permanent passenger-service (and harbour-ferry service) licences are available (apart from taxicab service licences) ie. a (normal) passenger service licence, and, a passenger service licence 'to carry on a scheduled service over a specified route or between or through specified localities.'

No restriction as to type of service is imposed upon a (normal) passenger service licence, except that the licensee may not undertake any scheduled services. Thus, the only possible restriction on innovative services is where an operator wishes to run a scheduled service, and, where an existing scheduled route licensee objects to the grant of a licence. Even where this happens, the onus is on the existing licensee to show its services:

- (i) already adequately meet demand;
- (ii) that it would be 'affected materially' by the granting of a licence; and
- (iii) that it is just as efficient as the applicant.

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This means that passenger-service operators have a large degree of flexibility as to service type, the only possible restriction being on competition between scheduled route operators.

Some of the innovative services possible under the existing legislation are given below:

- Scheduled route minibus services
- Demand responsive services
- Jitneys
- Scheduled route taxi services
- Express services
- Commuter subscription services
- Cross suburban routes
- Customised services
- Local community services

The review determined that all the above are possible for the holder of a passenger-service licence. However, to operate an option which could be classified as a 'scheduled service over a specified route or between or through specified localities' the licensee would be required to have its licence amended by the Licensing Authority to specially authorise the licensee to carry on that service. As stated earlier, this would mean that any existing licensee who held a scheduled route licence for the route (or part of the route) proposed could object.

Although the Transport Act is not clear on exactly what a scheduled route service is, the two important features seem to be:

1. a timetable for the service - this does not need to be written down, but can be inferred from practice;
2. an evident route - this does not need to necessarily be specified street by street, for a route can be between two localities (a 'locality' is not defined in the Act).

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In the chart below, the innovative options previously described are analysed on the basis of these two scheduled route service characteristics. It can thereby be determined as to whether they would be open to objection by an existing licensee.

<u>Service Option</u>	<u>Timetable</u>	<u>Defined Route</u>	<u>Open to Objection</u>
1. Scheduled minibus services	Yes	Yes	Yes
2. Demand responsive services	No	No	No
3. Jitneys	No	Yes	No
4. Scheduled route taxi services	Yes	Yes	Yes
5. Express services	Yes	Yes	Yes
6. Commuter subscription services	No	Yes	No
7. Cross-suburban routes	Yes	Yes	Yes
8. Customised services	No	No	No
9. Local community services	Yes	Yes	Yes

Assuming an operator holds a passenger service licence (and therefore meets the safety and reliability requirements), the existing legislation does not appear to prevent it from introducing any innovative public transport options conceivable. The only restriction imposed by the legislation is where a licensee wishes to operate a scheduled route service over a route for which another existing licensee is authorised to carry on a service. However, the onus is on the existing licensee to show it is adequately meeting existing demand, that it would be affected materially by the granting of a licence to the applicant, and that it is just as efficient as the applicant. This, however, is a restriction on direct competition rather than on innovation and the legislation would not prevent any licensee holding a schedule route licence from operating an innovative service over that route.

The conclusions from this part of the review confirm those from the operator survey ie. no real restrictions exist in the legislation (other than on competition between operators on the same route) to prevent operators providing innovative services.

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### REVIEW OF TRANSPORT LICENSING AUTHORITY DECISIONS

The third part of the UTC review involved an analysis of relevant decisions made by the Transport Licensing Authorities to see how the legislation works in practice and to compare it with the results of the theoretical test.

In 1986 the Licensing Authorities in New Zealand considered 315 applications relating to passenger service licences (200 for new licences and 115 for amendments). Only two of these applications were refused. In 1987, a further 300 applications were considered and six of these were refused. (Source : Ministry of Transport).

Those applications that were unsuccessful usually failed the "safe and reliable" test rather than because of legislative barriers on proposed services.

It is possible that potential applicants are deterred from applying for a licence because of the likelihood of being unsuccessful. However the review indicates that the chances of success, both in theory and in practice, are very high.

The only area where potential applicants are likely to be deterred, and an area where the failure rate of applicants is relatively high, is in the area of protection from competition.

The protection given to existing operators is contained in Section 123(5) of the Transport Act which gives an existing scheduled service licence holder the right to object to any application to run a service over routes for which it holds a licence. To be successful the existing licensee must prove that : existing services adequately meet demand; granting a licence would affect materially the economic stability of any existing licensee; and the existing licence is as efficient as the applicant.

There have been few tests of this section of the Act, but two that occurred in 1987 were analysed by the review.

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The first was the decision of the Harbour Ferry Licensing Authority in July 1987. Fullers Corporation Ltd had applied to amend its harbour-ferry licence to allow it to run a commuter service between Auckland and Waiheke Island. However another licensee, Waiheke Shipping Company, already had a licence to operate a similar service, and it opposed Fullers application.

The Licensing Authority prefaced his decision with the following remarks:

"I am aware that my decision regarding this application for rights to compete for the commuter traffic on the Auckland to Waiheke Island Ferry Service route has wide interest amongst all schedule route operators. The law as it effects both bus and ferry operators in this instance is identical. I am also aware that this is the first major case in terms of the new law wherein an existing urban scheduled route passenger operation is the subject of an application for direct competition."

The decision went against Fullers on the basis that Waiheke Shipping met the three necessary conditions in S.123(5).

It is interesting to note that although the provisions of S.123(5) came into effect on 1 June 1984, (and at the time Grahams Law of Transport noted : "In essence the section gives very limited protection to those operating licensed passenger services to a timetable over a specified route"), three years had passed before a major case appeared before a Licensing Authority.

The second test of the legislation analysed in the review involved the case of Microbus Services Ltd and Guthries Coachlines Ltd in October 1987. Guthries had a licence which entitled it to run a shuttle between Wellington Airport and Central Wellington. Microbus began a similar service but whereas Guthries operated from the Air New Zealand Terminal and operated over a fixed route, Microbus ran from the Ansett terminal and was prepared to deviate off the usual route to set down passengers.

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Microbus believed that its service was not a "Scheduled service over a specified route" etc. and that it was therefore able to operate the service under the terms of its "normal" passenger service licence. It began operating the service but Guthries successfully sought an injunction from the High Court which declared that the Microbus Service was in fact a "scheduled service over a specified route or between or through specified localities", ie. was subject to the provisions of S.123(5).

In his decision, Heron J. stated:

"In my view the Airport, on one hand, and the central business district, on the other, is a service, probably over a specified route in fact, but more likely between specified localities. The fact that the journey may be interrupted and depart from the shortest possible distance by road between the two points, is of no material concern. The object is to take passengers into the city, which is a journey between specified localities."

Microbus ceased operating the service, and applied for a route service licence. Guthries duly opposed the application but the Licensing Authority found that Guthries would not be materially affected economically by the new service and also that Guthries, by not visiting the Ansett terminal, was not adequately meeting the demand. Microbus was therefore granted a licence.

The effect of this case was to strengthen the legislative protection to the current operator (by the High Court decision) but at the same time show that a new operator can overcome that same protection (by the Licensing Authorities' decision).

The conclusions reached from this part of the review were that almost all applications that go before the Licensing Authority are granted, confirming the theoretical review which indicated that few legal restrictions exist for operators. However the review of Licensing Authority decisions also found that the protection given by the legislation to existing operators acts as a strong deterrant, although not an insurmountable one, to potential competitors.

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### DEREGULATION IN GREAT BRITAIN : THE TRANSPORT ACT 1985

In view of the comments made in the Market Targeting study (that a less regulated operating environment will encourage more flexibility in the provision of public transport services), it was decided that the fourth and final section of the UTC review would focus on deregulation in Britain and its affect on the ability of operators to meet the demands of the travelling public.

With the passing of the Transport Act 1985, route service licensing was abolished in the United Kingdom thereby removing any legislative barriers to competition. The provisions of the Act and its effects on the provision of bus services in the UK was therefore of direct relevance to the UTC review.

#### (a) Background

In July 1984 the Secretary of State for Transport presented to Parliament the so called 'white paper' which specified the Government's proposals for public road transport and laid down the reasons for seeking change. The 'white paper' described a situation in which public transport services, in particular bus services, were seen to be in decline. Costs and fares were continually increasing, patronage was dropping and subsidy levels were increasing. The fundamental cause for the decline of this industry was postulated to be the restrictive licensing system which was seen to prevent competition and stifle innovation.

The Government aimed to reverse this decline by removing legislative restrictions imposed on bus operators. The benefits envisaged included:

- lower fares on many services
- a reduction in the costs of services
- more variety in the kinds of services offered
- an influx of new operators, providing new jobs
- an increase in overall patronage

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### (b) Main Provisions of the Act

The 1985 Transport Act abolished route service licensing throughout Great Britain, apart from London. To operate a 'local service' (less than 15 miles in length) an operator must hold an unconditional Passenger Service Vehicle operator's licence and register the service with the traffic commissioner for that area. Thus, a licence is no longer given to run a particular route or routes, but rather a licence enables the licensee to operate any passenger services it wishes to. The objection rights of existing licensees to the granting of licences to new operators were therefore removed.

The Act recognised that some services would not be provided by the market, but that it may be desirable to continue these services for social and other reasons. Local authorities are therefore able to subsidise services which are not provided under commercial registration. However, all such services must be put out to public tender and contracts entered into with the successful tenderer for those services. Subsidy is no longer provided to subsidise a network of services as a block, but rather on a service by service basis.

The Act aimed to increase innovation in public transport services and one such direct provision was allowing taxis and licensed hire cars to carry passengers at separate fares under certain circumstances. As well, under certain circumstances a taxi may be used to provide a local service.

Another stated purpose of the Government was to foster public transport in rural areas. Transitional grants were provided for in the Act to assist the operation of bus services in rural areas. However, these grants will only be available for the first four years after the introduction of the new licensing regime.

In order to encourage competition and promote efficiency the 85 Act provided for the transfer of the former National Bus Company (the former government owned bus operator) to the private sector. The Company was to be disposed as smaller units, rather than as one giant operation. The Act also required Passenger Transport Executives (PTEs) to break down their bus operations into smaller units, to

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become independent companies, and Municipal bus operations were to be incorporated into companies still owned by their district councils.

The Act provided for the continuation of concessionary fare schemes in which all operators can participate on an equitable basis.

Operators were required to register commercial services between 1 January and 28 February 1986. These services were to begin operating from 25 October 1986 and could not be withdrawn until 26 January 1987. (However, operators can now withdraw services at any time with 6 weeks notice) Local Authorities therefore had from March to October 1986 to call tenders for services not registered commercially which they wanted to continue with subsidy.

### (c) What has happened

The new licensing system has therefore been in operation for only 15 months and it is still too early to predict long term effects on public transport services. However, the Transport and Road Research Laboratory (TRRL) of the Department of Transport, has reported early effects, and short term results can be analysed. The results, given below, are from a series of TRRL 1986 and 1987 working papers.

#### (i) Innovation

TRRL state that "while most of the bus services now being provided use conventional vehicles and operating methods, there is a growing element of more "innovative services. The most significant example is the growth of minibuses." TRRL commented that "the introduction of minibus services did not depend on new legislation, but was undoubtedly stimulated by the prospect of competition arising from the Transport Act 1985."

As an example of the Mini-bus explosion, at the end of 1986 some 3000 mini-buses were in operation by current and former subsidiaries of the National Bus Company. By the summer of 1987 the number of minibuses in use had increased to 5,000.

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There are other examples of innovation brought about by the UK legislative change.

The Act allowed the use of taxis as 'shared taxis' on fixed and variable routes and 61 local services using taxis were registered as commercial services. Most of these services were on fixed routes (78.4%); hail and ride was the most popular method of picking up passengers (49%); and 21.6% of services deviate from a fixed route to accommodate passenger needs. Another innovation in bus services has been an increase in through journeys, with operators bypassing previous interchange points. This has improved the service for some passengers, although lowering it for others.

In rural areas the Rural Transport Development Fund has encouraged a number of innovative public transport services. These include commercially operated services such as minibus services, community bus projects and advisory projects. The community bus projects are typically minibus schemes providing general scheduled services to amenities and demand responsive trips for a variety of purposes. The most important of the advisory projects are the rural based transport 'brokers' whose role is to fill gaps in transport provision by making the best use of existing facilities and encouraging the development of new projects.

### (ii) Other Areas

Deregulation has affected other facets of bus services and these are listed briefly below:

- Service Levels : generally service levels are similar to what they were prior to deregulation, although some reductions have occurred in rural and suburban areas.
- Competition : competition initially occurred on about 3% of route miles.
- New Operators : almost no change occurred in the number of bus operators.

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- Fares : these generally have not changed.
- Operating Costs - little information is available in this area.
- Subsidy levels : Subsidy levels have fallen, in some cases by substantial amounts (up to 70%).
- Patronage levels : difficult to tell at this stage, with some areas up and some down.

Part four of the UTC review revealed that deregulation (and with it the removal of route protection) has stimulated operators in the UK to provide services more in keeping with the demands of the customers. The services now provided were generally possible before deregulation but it was the prospect of competition that made those services a reality.

### SUMMARY

The first three parts of the UTC review, the operator survey, the theoretical test, and the review of the Transport Licensing Authority decisions, all revealed that the opportunity generally exists within the New Zealand licensing legislation for licensed Passenger Operators to provide innovative services which would better meet the demands of the travelling public. The only area identified as being restrictive is that involving the protection the legislation gives to the holder of a licence to operate a scheduled service over a fixed route. This protection generally acts to prevent competition.

The fourth part of the review however indicated that it is competition (or at least the threat of competition) that is the incentive necessary to spur operators into becoming more market oriented.

### CONCLUSIONS

The objectives of the UTC review were to examine the legislation governing the operation of urban public transport services to identify any constraints they may impose on the ability of operators to meet changing public demand. If any constraints were identified, the review was to assess whether any changes to the legislation were necessary.

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The results of the UTC review indicate that passenger transport operators work in an environment with few restrictions on what they can do by way of innovation or in meeting the demands of their customers. Yet it is apparent that operators are not particularly responsive to those demands and do not seek out new markets.

Why is this? It appears that the restriction on competition is the answer. Currently NZ operators work within their own little patch, protected by legislation from competition. This protection, combined with the subsidy system, guarantees urban operators a satisfactory level of income. The usual commercial pressures to not exist.

There is little incentive for an operator to attempt to become more efficient and effective, to take risks, or act in an entrepreneurial fashion. If competition is introduced, or at least the possibility of it, operators will need to become more efficient and effective simply in order to survive. The UK deregulation experience to date confirms this to be the case.

Thus the UTC review concluded that competition is required between passenger service operators in order to encourage them to be more effective in their role of providing transport services to meet the demands of the travelling public. Therefore the protection that currently exists within the legislation should be removed.

The UTC is currently examining the subsidy system with a view to changing it. The incentive aspect of the system is addressed in the review.

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