

**Industry developments and factors
hindering public transport contracting
implementation**

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Overview of the presentation

- Four main themes:
 - The Consumer Protection Act
 - Road Safety in the bus industry
 - The four types of contracts – issues
 - The “speed” of public transport policy implementation
 - Some conclusions

The Consumer Protection Act (CPA)

The aims of the Act are as follows:

To promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection

To provide for **improved standards of consumer information**

To **prohibit certain unfair marketing and business practices**

To **promote responsible consumer behaviour**

To **promote a consistent legislative and enforcement framework** relating to consumer transactions and agreements

To establish the National Consumer Commission

The Consumer Protection Act (CPA)

A number of areas of the Act poses challenges to the industry. Only the most important will be highlighted here.

Section 23- Disclosure of prices

It will be impossible for an operator, especially the larger operators to display their prices in any one place on any one display area due to the many services being operated and the varying fares charged for said services.

The Consumer Protection Act (CPA)

Section 26 – Sales records

Section 26(2) provides that a supplier of services must provide a written record of each transaction to the consumer to whom any services are supplied.

- **Ticketing equipment currently in use also cannot accommodate the requirements of S 26**

The Consumer Protection Act (CPA)

The Commission apparently views multi journey tickets as part of S 63 of the CPA

Section 63 - Prepaid certificates, credits and vouchers

In terms of section 63(2) of the CPA:

“(2) A prepaid certificate, card, credit, voucher or similar device contemplated in subsection (1) does not expire until the earlier of—

*(a) **the date on which its full value has been redeemed in exchange for goods or services or future access to services; or***

*(b) **three years after the date on which it was issued, or at the end of a longer or extended period agreed by the supplier at any time.***



The Consumer Protection Act (CPA)

Section 63 - Prepaid certificates, credits and vouchers

(3) Any consideration paid by a consumer to a supplier in exchange for a prepaid certificate, card, credit, voucher or similar device contemplated in subsection (1) is the property of the bearer of that certificate, card, credit, voucher or similar device to the extent that the supplier has not redeemed it in exchange for goods or services, or future access to services.”

The Consumer Protection Act (CPA)

Section 63 - Prepaid certificates, credits and vouchers

- **An extended validity period will provide a larger incentive for drivers and passengers to avoid cancellations.** The result will be substantial revenue losses
- **Companies also prefer to sell multi journey tickets as it limits the amount of cash on a bus which in turn discourages theft and drivers being robbed**
- **Passengers benefit as multi-journey weekly and monthly tickets are sold to passengers on a discount**
- **In passenger transport systems throughout the world tickets lapse shortly after the defined time period on the ticket**

The Consumer Protection Act (CPA)

Section 63 - Prepaid certificates, credits and vouchers

- **The above will require major changes to ticketing systems (which are prescribed within the bus contracts) and control procedures** will have to be improved at large costs in order to minimise revenue losses
- **Commuter bus operators are on monthly or slightly longer contract terms – to invest in expensive equipment now does not make sense.**
 - The contracts prescribe the ticketing equipment needed; the nature of ticketing systems required that are capable of functioning in integrated transport systems is not known at this stage

The Consumer Protection Act (CPA)

- **However, a legal opinion obtained by SABOA indicates that S63 is not applicable to the industry** – in similar cases the Commission apparently rejected the legal opinions
- The Consumer Commission has given notice that the industry is to be investigated
- SABOA has requested a meeting with the Commission, which was agreed to – a date is to be finalised
- SABOA has had discussions with Metro Rail as well as Gautrain that face the same dilemma and there is in-principle agreement to collectively deal with the matter
- The DOT has indicated that it would work with the respective industries in addressing the CPA issues

Road safety

- The recent festive season has once again focused attention on road safety matters
- About 39 people die on our roads on average every day and tens of thousands are injured annually
- This can, and should no longer be tolerated
- An new approach to road safety is required – one that identifies all the different aspects of road safety (the entire value chain of road accidents) and where the problems are tackled holistically

Road safety

- SABOA has been actively involved in improving safety of the bus fleet:
 - Vehicle design standards
 - Role over protection for buses
 - Seat anchorage points
 - Maximum speed of 100km/h
 - 6-monthly COFs
 - Insurance scheme for operators – at present the majority of participants are SMMEs. This ensures that operators are aware of roadworthiness issues should they want to claim against the scheme
 - The industry is highly unionised where working conditions are regulated by a Bargaining Council
 - Bus homologation requirements
 - Major involvement and participation in training programmes for staff and drivers
 - Roof racks
 - Emergency exit regulations etc.

Road safety

- Last year, on 1 September, we made certain proposals to the RTMC and the Minister of Transport that we believe will make a significant contribution to road safety in this industry. These proposals included:
 - A Road Safety Summit to discuss the road safety issues and contributing factors to road traffic accidents
 - A permanent Road Safety Council chaired by the Minister of Transport
 - This Council should ideally be replicated on a provincial basis to deal with issues “closer to the ground”.
 - Members of such a council could consist of organised labour, passenger forums, operator associations, road safety enforcement agencies etc.

Road safety

- To review the operating licensing system (permits).
 - Currently, all the focus is on the vehicle whilst the operator is not required to provide any proof that he or she is capable of managing a business,
 - It is also not a requirement that the operator must provide proof that he or she has the facilities or knowledge to maintain a vehicle in a roadworthy condition.
- To ensure that operators' managerial staff are accredited through an accredited training course linked to the obtaining of an "Operator or "O" " License for the company
- To consider the introduction of an ISO Quality Management system for all public transport operators that would deal with systems, managerial and safety practices etc. This will ensure uniform standards and can be linked to a star grading system.

Road safety

- There should be greater consensus over how buses should be tested for road worthiness (especially along the road). At present the procedures are very subjective and open to interpretation.
- There should be a review of the number of testing stations in the country. In the Gauteng area , for instance, there is a shortage of testing stations which results in capacity issues when vehicles have to be tested.
- The PRDP system needs to be reviewed.
 - Members of SABOA have found that drivers with valid PRDPs often fail company tests when they are tested again. It appears as if this system is open to fraud and corruption.
 - Operators are also finding that a fair number of drivers are using Cannabis that could impact driving ability. Cannabis is very difficult to pick up in normal health tests.

Road safety

- SABOA is further of the view that the Arrive Alive Campaign should be extended to twelve months instead of the current situation where it is mainly applicable over the Easter weekend and during December. Effective law enforcement should be a year-round exercise.
- Financial assistance to SMME bus operators to upgrade their buses.
- The viability of setting up a Driver Academy for the training of bus and taxi drivers
- Road infrastructure improvement

Road safety

- Unfortunately we did not even have an acknowledgement from either the Ministry or the RTMC about our proposals
- SABOA is currently investigating a road safety strategy for the bus industry

Review of four contracting documents

- SABOA is a member of a DOT Task Team that is working on a new contracting framework
- The Association has commented in detail on the following four contract types:
 - Negotiated Net Cost Contract
 - Negotiated Gross Cost Contract
 - Tendered Net Cost Contract, and
 - Tendered Gross Cost Contract

Review of four contracting documents

- One of the problems that we have encountered is that **the TT has not had a meeting for months** but there have been substantial changes made to the critical areas by the DOT without any discussion.
- The DOT has indicated that they do not wish to discuss these matters and that the “consultation process could be viewed as the SABOA comments and the response of the DOT to these comments”
- This is clearly a major problem when the DOT does not use its own structure to discuss fundamental changes to its documents that are of material interest to an industry

Review of four contracting documents

- Amongst the issues that have been identified and that need discussion are:
 - **The removal of the conditions of sub-contracting** from all the documents. This is no longer allowed
 - **There is no clarity on how SMMEs will be empowered.** By the time that the tendering system was put on hold in 2002 more than 640 buses were allocated to SMMEs through sub-contracting and joint ventures
 - **A clause that the DORA allocation overrides the entire escalation formula in the contracts.** This is hugely problematic in contracts that can be as long as 12 years. At present the DORA escalation is almost always below the agreed escalation formulae in the respective contracts
 - **Inclusion of clauses to the effect that the CA may purchase the bus depots from operators**

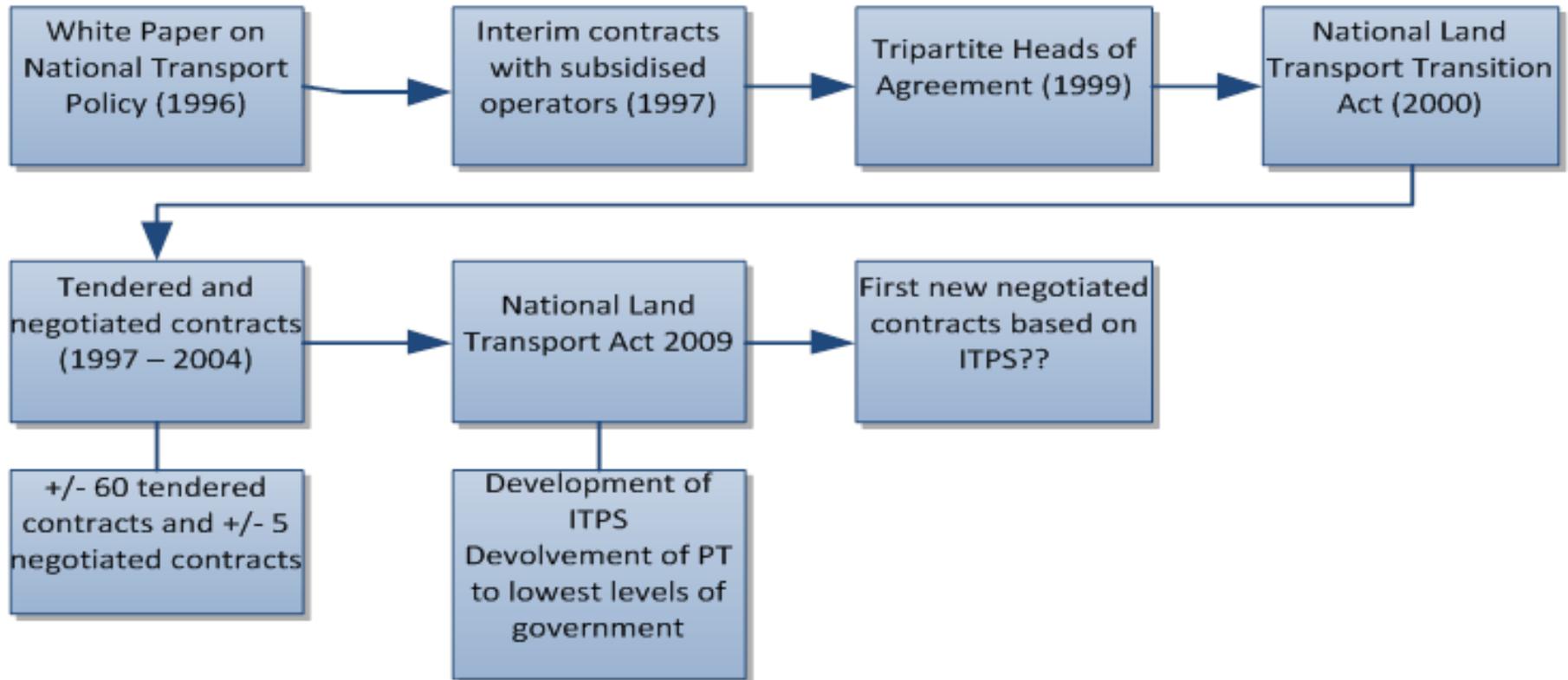


Review of four contracting documents

- **Insistence that a percentage of private hire income should go to the CA based on the reasoning that the subsidy that operators receive in part funds the capital costs of the fleet**
- **An operator performance management system that needs much discussion** to obtain clarity about its intention, definitions and meaning
- **The exclusion of specific vehicle types in the draft documents** that could be beneficial to operators and the CA alike. In addition, wording to the effect that other vehicle types will not be paid on differentiated scales from the standard bus specifications in the contract
- **Massive penalties, in some instances five times higher than the present penalties.** What is the justification for it?
- **A complexity that will even be difficult for established operators to deal with, let alone SMMEs**



Flow diagram of policy process in South Africa



Overview of progress achieved

- **Interim contracts with operators in 1997 as a transition measure to competitive tendering-** intended as a three-year transition measure
- **Organised labour opposition to competitive tenders** – no new tenders since 2002; also views regarding **tendering companies as “going concerns”**

Type of contract	Number of buses	Contract characteristics	Duration
Interim contracts	+/- 3849 (68% of sub budget)	Foreseen as transition arrangement in 1997	3 years originally. In practice some interim contracts are 15 years old
Tendered contracts	+/- 1834 (28% of subsidiy budget)	Based on standard contract document Mostly “stand alone” services in rural/urban operations	5 years originally. Contracts are being extended to 7 years New contracts to be 7 years. Most contracts are currently on a month-to-month basis.
Negotiated contracts	250	Mostly applicable to state-owned and operated bus companies – form of privatisation	5 years originally. New contracts to be 7 years. Some contracts on a month-to-month basis
Sale of bus entity through negotiation based on service contract specification (form of privatisation)	1050	Applicable to bus operations at local and provincial government levels	Contracts are 5 years in duration. New contracts to be 7 years. Implemented in the City of Durban (June 2003) and North West Province (January 2004).

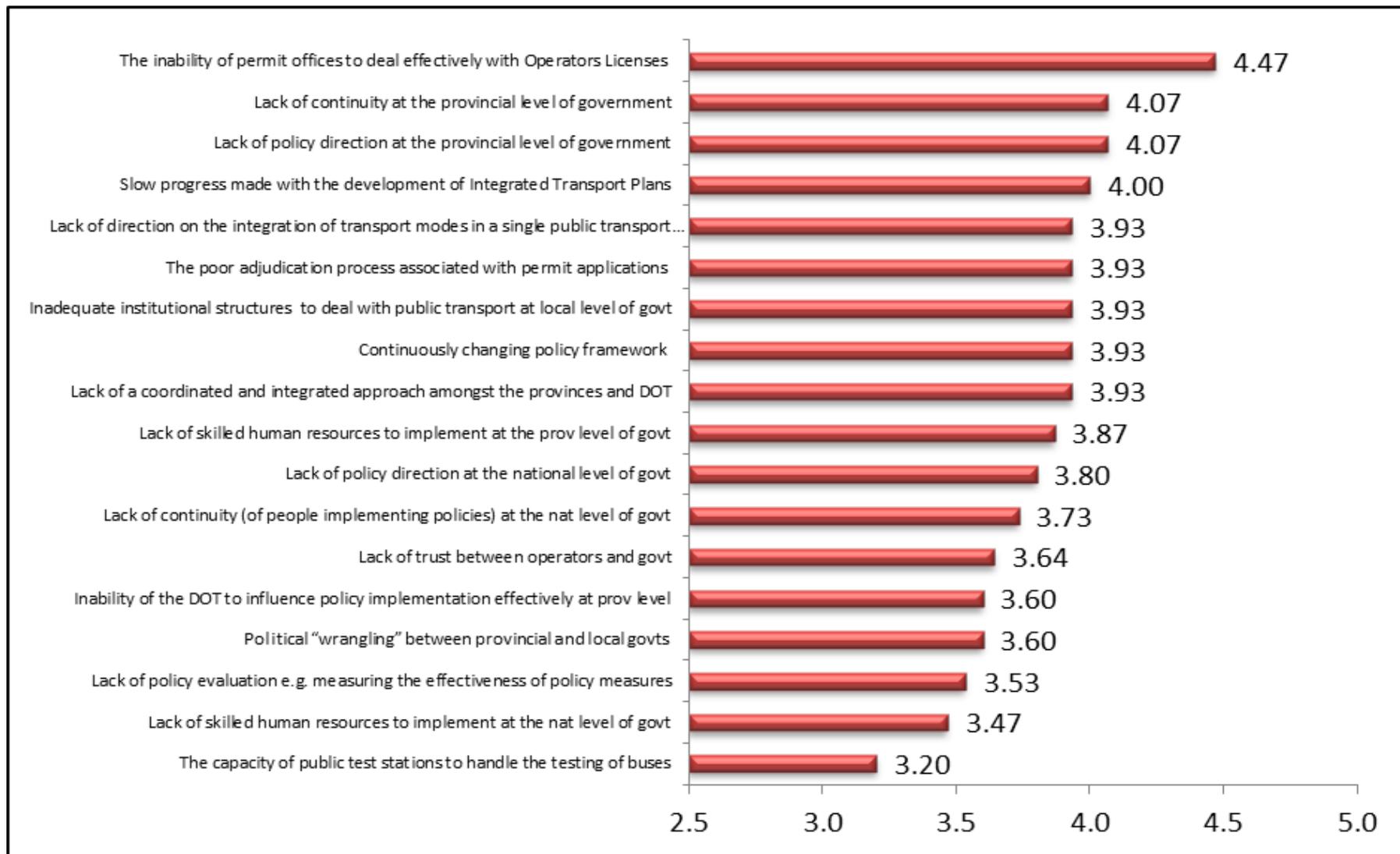
Summary of progress with policy implementation

- **Public transport contracting has been on hold since 2002**
- **The process of competitive tendering has picked up significant opposition** and is currently not an option that can be realistically considered.
- In addition, the Department of Transport, Department of Labour and organised labour believe that, based on current South African labour legislation, **all employees of incumbent operators should be transferred, based on the “going concern” business principle, to the new operator.**
- **This poses major issues**, for instance:
 - surplus personnel in **right-sized contracts**;
 - **the disclosure of sensitive remuneration information** to a range of bidders so that they can take this into consideration when bidding;
 - **the splitting of personnel between various contracts** should an existing contract be split into smaller parts;
 - **operators facing various labour dispensations** within the same operating environment, etc.

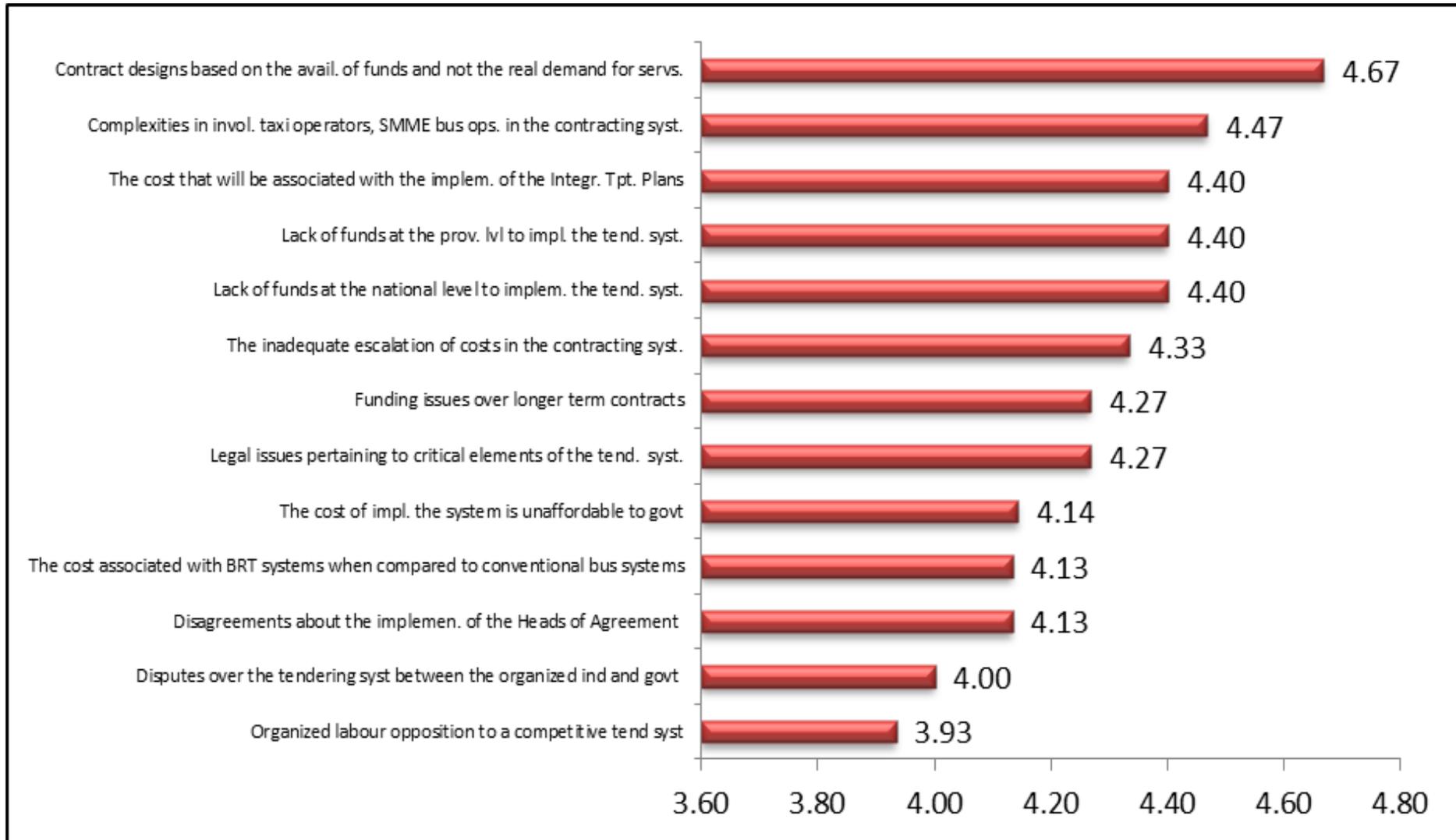
Industry survey on governance and implementation issues in public transport in SA

- A survey was conducted during the second half of 2011 amongst the 18 largest contract operators in SA
- A very high response rate was achieved
- Aim of the survey was to determine the industry's opinion regarding aspects of governance and implementation of policy matters

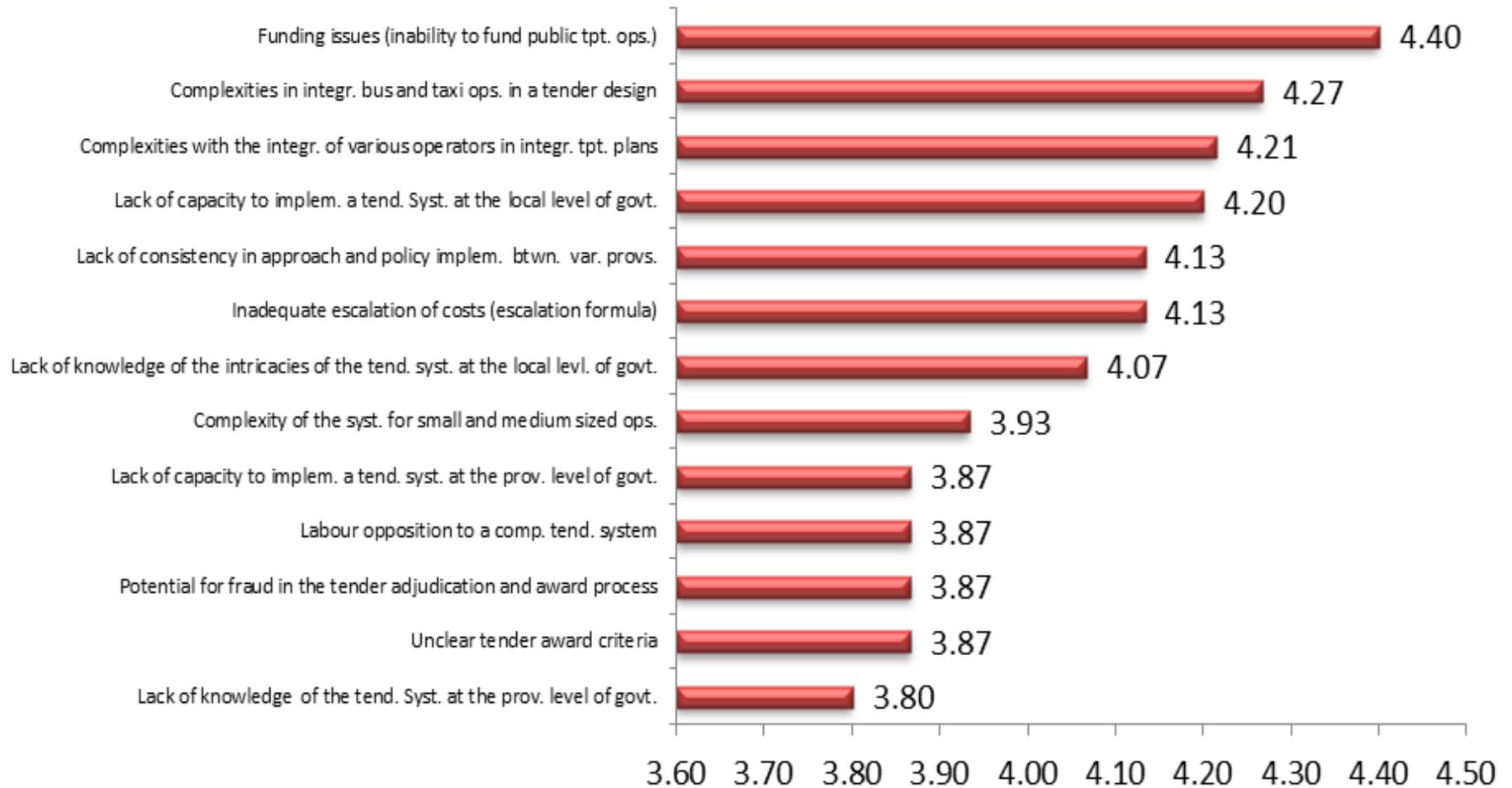
The most important governance issues regarding the implementation of the contracting system



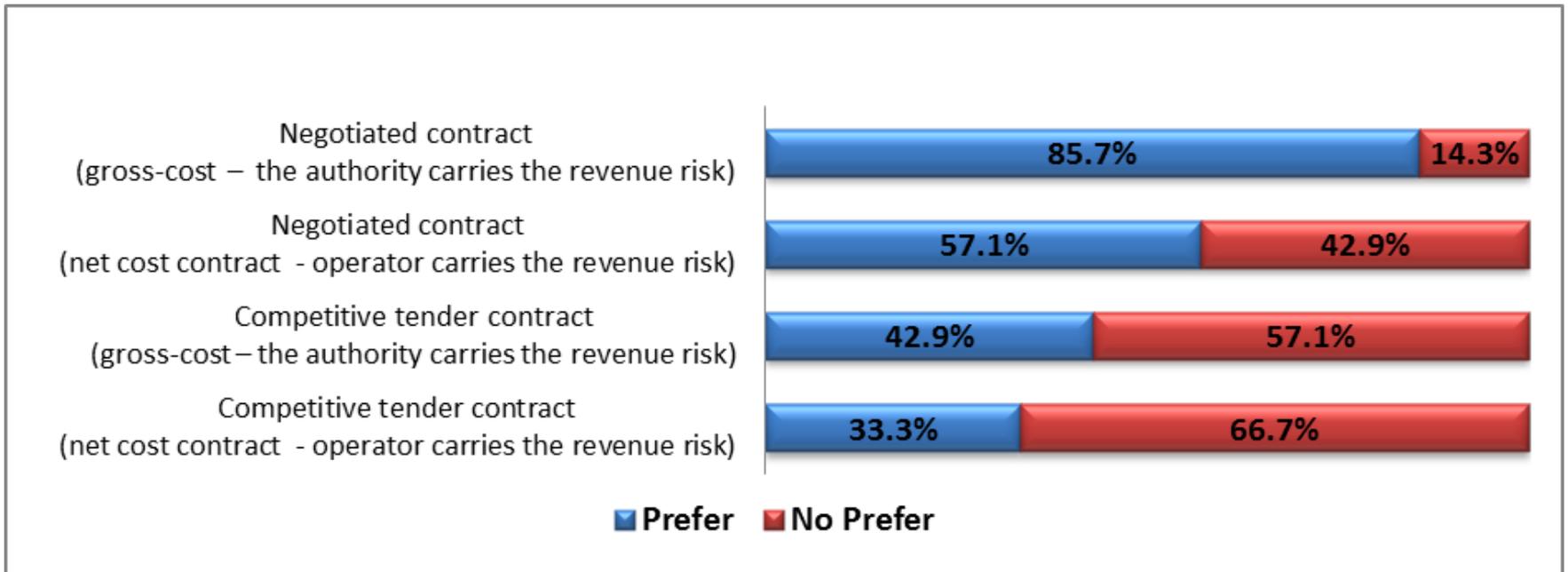
Stumbling blocks related to the implementation of the contracting system



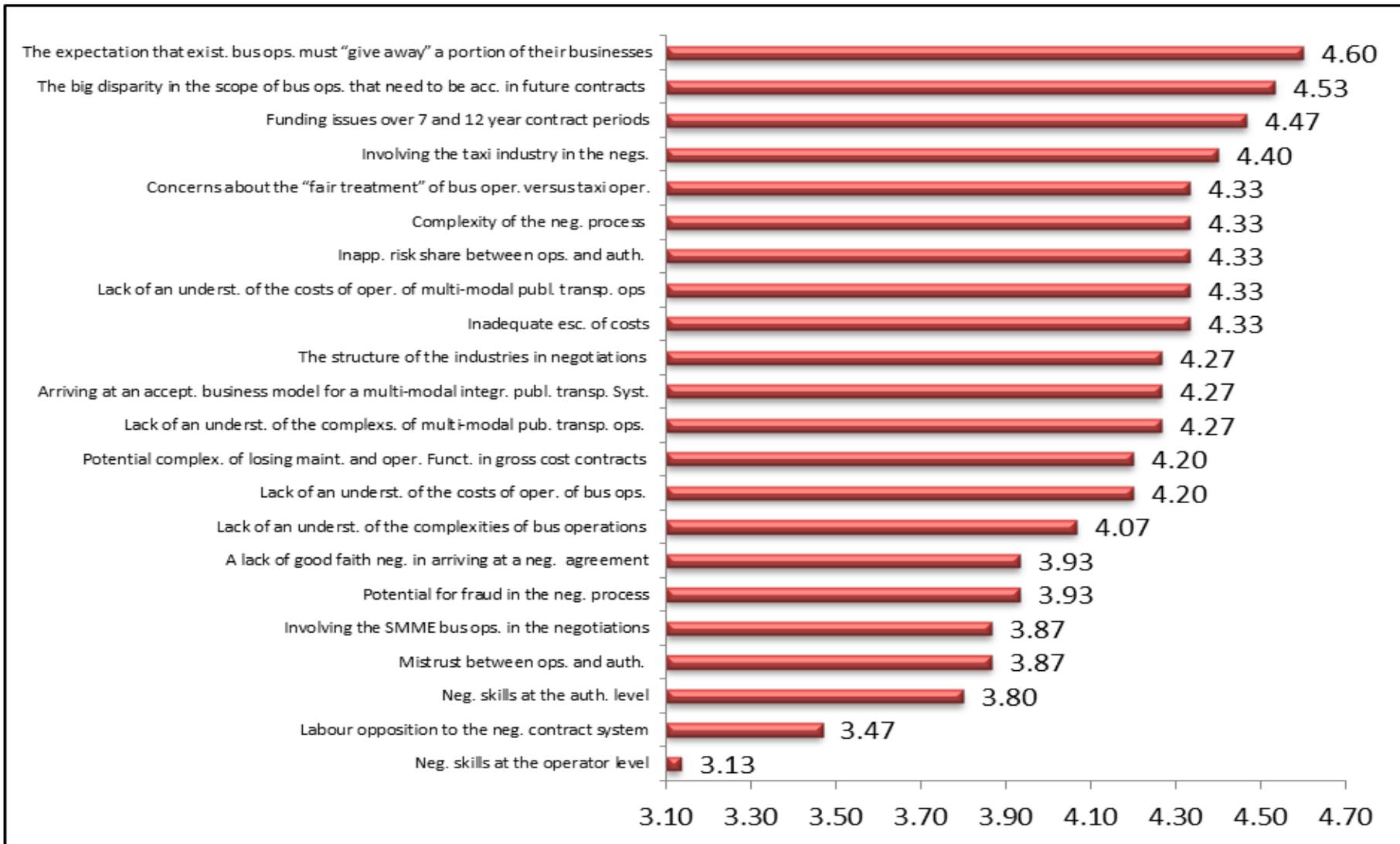
Major issues in the further implementation of a competitive tendering system



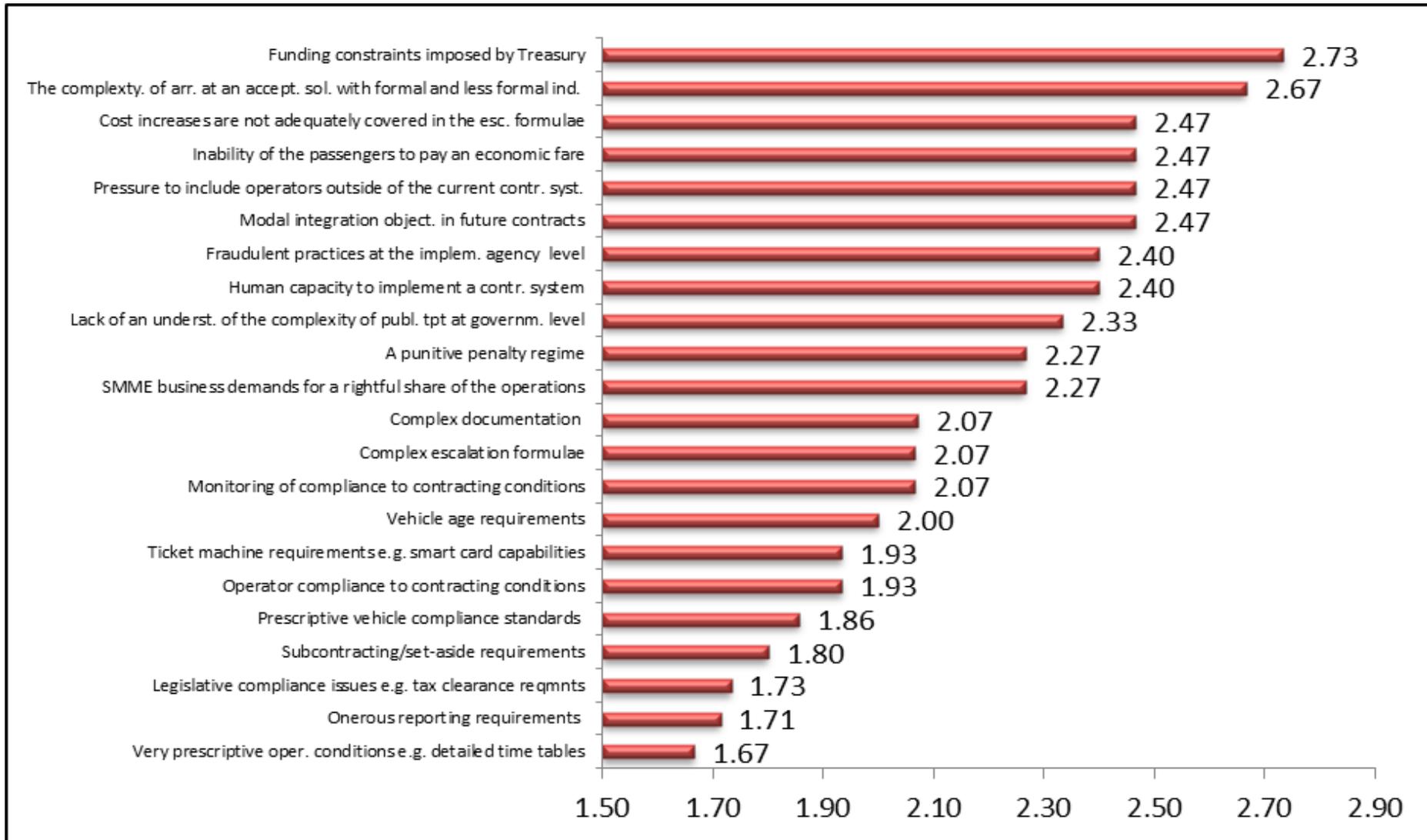
Operators' views on negotiated contracts



Operators' views on the further implementation of negotiated contracts



Drivers of the complexity of the current contracting system



Ranking of the most important issues regarding policy implementation (operator's perspective)

Ranking of issues	Governance issues	Contract system issues	Competitive tendering issues	Negotiated contract issues	Drivers of complexity
1	Inability of permit offices to deal effectively with operator licences	Contract designs based on the availability of funds and not the real demand for services	Funding issues (availability to fund PT operations)	The expectation that existing bus operators must "give away" a portion of their businesses	Funding constraints imposed by National Treasury
2	Lack of continuity at the provincial level of government	Complexities of involving taxi operators, SMME bus operators in the contracting system	Complexities in integrated bus and taxi operations in tender design	The big disparity in the scope of bus operations that need to be accommodated in future contracts	The complexity of arriving at an acceptable solution with formal and less formal industries
3	Lack of policy direction at the provincial level of government	The cost associated with the implementation of the ITPS	Complexities in integrating various operators in ITPS	Funding issues over 7 and 12 year contracts	Cost increases not adequately covered in the respective escalation formulae
4	Slow progress made with integrated transport plans	Lack of funds at the provincial level to implement the tendering/contracting system	Lack of capacity to implement a tendering system at the local level of government	Involving the taxi industry in negotiations for future contracts	The inability of passengers to pay an economic fare
5	Lack of direction on the integration of transport modes in a single public transport system	Lack of funds at the national level to implement the tendering/contracting system	Lack of consistency in approach and policy implementation between various provinces	Concerns about the fair treatment of bus operators versus taxi operators	Pressure to include operators outside of the current contracting system

Summary and conclusions

Some conclusions

- SABOA is very concerned about the changes made to the proposed tender and negotiated documents – these were substantial and require discussion
- Road safety initiatives were put to the department and the RTMC in good faith – we would like to have some response to or a discussion of our proposals
- Some sections of the CPA have major implications for the industry – the sooner these are addressed the better for the industry
- The most notable issue is the **lack of sustainable and adequate levels of funding** to fund policy implementation
- The **lack of capacity to implement the chosen policy.**

Summary and conclusions

Some conclusions

- There are **major operational issues in the permit offices**
- **A lack of policy direction at the provincial levels of government**
- **Complexities regarding the integration of the informal taxi services into a formal subsidised industry, and**
- **The lack of progress made with the development and implementation of integrated transport plans.**
- **The funding of public transport is a political decision that can only be resolved at that level**
- **Maybe the envisaged public transport plans are too ambitious for South Africa in its current developmental state.**

Summary and conclusions

Potential solutions

- **One potential solution would be to create more capacity at provincial and National Department of Transport levels**
 - At the Metro level it will assist greatly if **properly structured and capacitated formal transport authorities could be established** that will have the necessary capacity to plan, implement and monitor integrated transport plans
- **It is also important that clarity be obtained about the role that the respective modes of transport need to play in future.** The current policy statements are too ambiguous and not well thought through and cause uncertainty and distrust.