



Australian  
Competition &  
Consumer  
Commission

# Draft Determination

Application for authorisation

lodged by

Victorian Taxi Association

in respect of

agreements between taxi operators within a cooperative network in regional and country Victoria for maximum fares applicable to booked and contracted work

Date: 5 September 2014

Authorisation numbers: A91428

Commissioners: Sims  
Rickard  
Court  
Featherston  
Walker

# Summary

**The ACCC proposes to grant authorisation to current and future taxi operators participating in a cooperative network (existing or future network) within Victoria's regional or country taxi licence zones to make and give effect to contracts, arrangements or understandings within that cooperative network as to the maximum fares charged for booked and contracted work.**

**The ACCC proposes granting authorisation for three years.**

## **Next steps**

**The ACCC will seek submissions on this draft determination before making its final decision. The Applicant and interested parties may also request that the ACCC hold a pre-decision conference to discuss the draft determination.**

In June 2014 the Victorian Government implemented a series of reforms intended to create a more competitive and flexible taxi industry that provides better service and safety for customers.

The Victorian Taxi Association (VTA) has sought authorisation in response to the fare setting reforms implemented by the Victorian Government (the price notification scheme). The proposed arrangement, if authorised, would allow taxi operators that are members of a cooperative network to agree within that network to a schedule of maximum fares for booked and contracted services. Although the taxi operators are part of a network, they are separate businesses capable of competing with other taxi operators inside and outside the cooperative network. The application only applies to cooperative networks in the country and regional taxi licence zones and does not extend to rank and hail services.

In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed arrangement is likely to result in a public benefit and that public benefit will outweigh any likely public detriment, including any lessening of competition.

The ACCC considers that this matter is finely balanced. The ACCC considers that the likely benefits to the public from the proposed conduct are:

- taxi operators in Victoria's regional and country-zone cooperatives will avoid some costs, as they will not have to invest in new systems specifically designed to offer a selection of fares based on the identity of the operator
- the maximum fare proposal will allow cooperatives and institutional customers to adopt a simpler process to manage contract work, with fewer transactions being required
- customers will experience a less complicated booking process and the cooperatives will be able to offer them a better coordinated service
- this in turn will enable cooperative networks to compete more effectively with corporate networks and hire car businesses. If network-on-network competition emerges, cooperatives might otherwise be at a competitive disadvantage when competing with these alternative providers if they are not able to offer customers a single guaranteed maximum price and a simple booking process.

Balanced against these benefits, the proposed conduct is likely to result in detriments to the public.

In this regard, the ACCC is concerned that the arrangements will eliminate the prospect for competition on maximum fares within the cooperative networks. This has the potential to result in detriment to the public, depending on the extent of network-on-network and off-network competition. Additionally, allowing cooperative networks to agree a maximum network price may dampen the incentives of individual taxi operators to form competing networks.

The Victorian Government's reforms to the industry are designed to increase competition. The reforms, particularly those affecting barriers to entry, are designed to make it easier for existing businesses to expand their service areas and for new businesses to enter local markets.

For example, the government has rationalised licence zones and removed the requirement that taxis must affiliate with and get prescribed services from state-accredited network service providers. Taxi businesses can pursue work across much larger areas and have more flexibility in choosing who will provide their support services, from what location and in what form. The reforms also make it easier for hire cars to offer a competing service.

The reforms therefore increase the prospects for competition both between networks and 'off network'. Such off-network competition involves operators seeking work through avenues outside the traditional network providers, such as by offering discounts off maximum prices directly to individual customers and taking bookings through smart-device apps. Operators can maintain links with established networks to get all or just some of their work, or break away entirely.

Where such new competitive constraints develop, they will place pressures on the cooperatives to compete more vigorously on price and service, and so limit any anti-competitive detriment associated with allowing cooperatives to agree maximum prices.

For these reasons and based on the information before the ACCC, the ACCC considers that the likely benefits of the arrangements will outweigh the likely detriments and therefore the ACCC proposes to grant authorisation for three years. In reaching this view, the ACCC is mindful of both enabling cooperative networks to adjust and respond to the new competitive pressures and giving time for competition to develop following the introduction of the reforms.

There is, however, considerable uncertainty about how competition in local markets will develop following the reforms and how effectively these new competitive pressures will constrain the cooperative networks in setting maximum fares. At the end of the proposed authorisation period, the ACCC will be able to assess the extent to which competition is in fact constraining cooperative networks and the extent to which the arrangements are enabling the cooperatives to compete more effectively.

If such external competitive constraints on cooperative networks have not developed to any significant extent over this time, the prospect of fare competition within cooperative networks may become more important in the assessment of benefits and detriments should the VTA seek re-authorisation in three years' time. The ACCC considers three years would allow the industry time to both adjust to the overall package of reforms, and, if competition does not develop as anticipated, prepare for the possibility that the ACCC does not re-authorise the maximum fare arrangement.

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## The application for authorisation

1. On 12 May 2014 the Victorian Taxi Association (VTA) lodged an application for authorisation, on behalf of certain regional and country taxi operators to make agreements as to maximum fares charged for booked and contracted work.<sup>1</sup>
2. Authorisation is sought for a proposed arrangement to allow operators who form part of nominated cooperative networks to 'notify' a consistent maximum fare for booked and contracted work under the price notification scheme managed by Victoria's Taxi Services Commission (TSC). 'Booked and contracted work' includes all taxi trips booked through the central communication systems provided by the booking network.
3. Authorisation has been sought following the implementation of industry reform by the Victorian Government (see under the heading Industry Reform below).
4. The VTA has not sought authorisation for work that is provided at the rank and hail level. Furthermore, individual operators or drivers are not prevented from offering discounts off the notified maximum fare, and operators affiliated with the network can opt to notify their individual fares to the TSC if they do not wish to conform to the network's fare structure.
5. The VTA has not sought authorisation for cooperatives to agree fares with other cooperatives, nor for members of one cooperative to agree fares with members of a different cooperative.
6. In lodging its application the VTA sought authorisation for five years. On 14 July 2014 the VTA advised that it considered an authorisation period of three years would be reasonable, given the Victorian Government's commitment to review the implementation of price notification in country and regional zones after three years.
7. The VTA also sought interim authorisation to allow operators within the cooperatives to engage in the conduct while the ACCC considered the substantive application. On 19 June 2014 the ACCC granted interim authorisation to provide a transitional measure to help the industry adjust to the broader industry reform agenda which commenced on 30 June 2014.

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<sup>1</sup> Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the Competition and Consumer Act 2010 (the CCA). The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Detailed information about the authorisation process is contained in the ACCC's Authorisation Guidelines available on the ACCC's website [www.accc.gov.au](http://www.accc.gov.au)

## Background<sup>2</sup>

8. Participants in the Victorian taxi industry include:
  - drivers, who drive vehicles which include standard or conventional taxis and wheel chair accessible taxis
  - operators (now called Permit Holders under Victorian law), who may drive the taxis themselves and / or engage drivers, and may operate a business with one or more taxis
  - licence holders, who may lease a licence to an operator or operate a taxi or taxis themselves. Most rural licence holders are also operators<sup>3</sup>
  - networks (now called Taxi Booking Services or Authorised Taxi Organisations, at times also equating to 'depots'), which provide services to drivers and operators such as taking bookings and dispatching work. Network services can also be provided through a 'bureau' arrangement, where a network provides dispatch services on behalf of another network.
9. The taxi networks in regional and country Victoria are either 'single-owner' or 'cooperative':
  - single-owner: in most Victorian towns hosting taxis, one businessperson or business entity runs all the taxis in that town
  - cooperatives: independent operators who have elected to work cooperatively to form a central communication point (the network) and to share equally in a random allocation of work.
10. Shepparton and Warrnambool each host two cooperative networks. Mildura hosts two networks, with one being a cooperative and one being a single-owner network.

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<sup>2</sup> The information in this section is generally derived from the VTA, the TSC, the Victorian Taxi Industry Inquiry and information the ACCC has gathered during this assessment and other investigations. Please see the ACCC's public register for the VTA's application and for submissions (<http://registers.accc.gov.au/content/index.phtml/itemId/1178317/fromItemId/278039>) and the TSC's website for general information on the Victorian Government's reform program ([www.taxi.vic.gov.au](http://www.taxi.vic.gov.au))

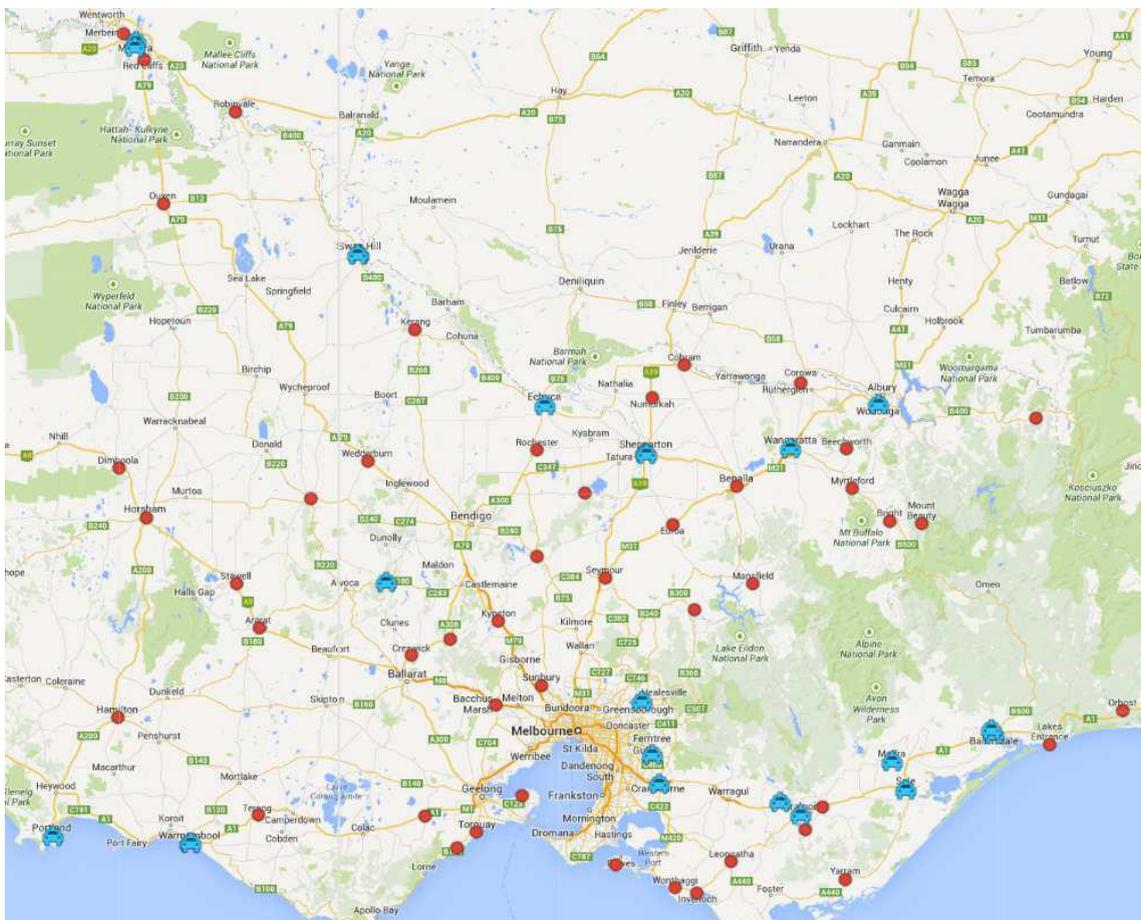
<sup>3</sup> See Taxi Industry Inquiry draft report, *Customers First: Service, Safety, Choice*, page 58 and final report, page 230.

11. Data provided by the TSC and the VTA indicates that the cooperatives participating in the proposed conduct provide approximately one third of country and regional cabs in Victoria.

**Table 1: The cooperative Taxi Booking Services covered by this application (source: VTA [taxi numbers from VTA and Victoria's Taxi Services Commission])**

	Town	Taxi Booking Service	Approximate number of cabs in the town
1	Bairnsdale	Bairnsdale Taxis (Riviera Taxis and Hire Cars Pty Ltd)	10
2	Echuca	Echuca Moama Taxi Group Pty Ltd	9
3	Emerald	13CABS (Emerald Taxi Service)	7
4	Maryborough	Maryborough Taxi Service	3
5	Mildura	Mildura Taxis Associated	14 across two networks (second is not a cooperative)
6	Moe	Moe Taxis (Ayre Port Pty Ltd)	12
7	Morwell	Morwell Taxis Pty Ltd	12
8	Pakenham	Pakenham Taxis (B.B.L. Management Pty Ltd)	9
9	Portland	Taxis of Portland Pty Ltd	8
10	Sale	Sale/Maffra Taxis (Sale Taxis Pty Ltd)	11
11	Shepparton	Greater Shepparton Taxis Pty Ltd	23 across two cooperative networks
12		Shepparton Taxis Pty Ltd	
13	Wangaratta	Taxis Wangaratta (Sixat Services Pty Ltd)	11
14	Warragul	South Gippsland Regional Taxis (West Gippsland Taxis Pty Ltd)	5
15	Warrnambool	Warrnambool Radio Taxis Pty Ltd	19 across two cooperative networks
16		Yellow Cabs Victoria Pty Ltd	
17	Wodonga	Amalgamated Taxis Wodonga Co-operative Ltd	13
18	Wy Yung	Tambo Valley Cabs (Riviera Taxis and Hire Cars Pty Ltd)	3
19	Yarra Valley	13CABS (Yarra Valley) (Black Cabs Combined Pty Ltd and North Suburban Taxis (Vic) Pty Ltd)	5

Figure 1: Map of taxi businesses in non-metropolitan Victoria (source: VTA)



Car shapes denote the cooperatives covered by this application

Pins denote single-owner businesses

(Does not indicate Bendigo, Ballarat and Geelong, which are not in the regional or country licence zones)

12. Taxi work is broadly divided into:

- rank and hail: where the passenger physically finds and engages the cab and
- booked (or 'pre-booked'): passengers or their agents book cabs over the phone or online, including through smart-device 'apps'. This includes 'contracted' work which commonly denotes that an agent for a passenger, such as a health-services provider, has a contract with the network. For example, the Australian Government Department of Veterans' Affairs (DVA) has 77 contracts in regional and country Victoria, including with 18 cooperatives, for transporting war veterans and war widows to and from medical appointments.

13. The VTA estimates that about 90 per cent of taxi work in Victoria's regional and country zones is booked. The VTA has estimated that the amount of contracted work in country and regional Victoria ranges between 25 and 70 per cent of total trips, depending on such factors as an area's demographic and economic makeup, the location of health, disability and community services and the number of returned-services people in an area.

14. Regional and country-zone taxi booking services take bookings and dispatch jobs in various ways, including:
- drivers in cars taking calls and allocating jobs over radios
  - operators being rostered to run 'base' from, for example, their home
  - employing a dedicated person or people to run booking and dispatch or
  - engaging a 'bureau' service to handle bookings and dispatch, such as 13CABS in Melbourne.
15. The VTA estimates the following breakdown of booked work in regional and country zones, in terms of the time between the booking request and the ride:

**Table 2: Breakdown of Victorian regional and country booked services: percentages, based on five coops (source: VTA)**

		Standard taxi	Wheelchair accessible taxi
'Ready to ride'		20 %	-
Within one hour		10 %	-
Same day		60 %	3 %
More than 24 hours	Ongoing	5 %	85 %
	Ad hoc	5 %	2 %

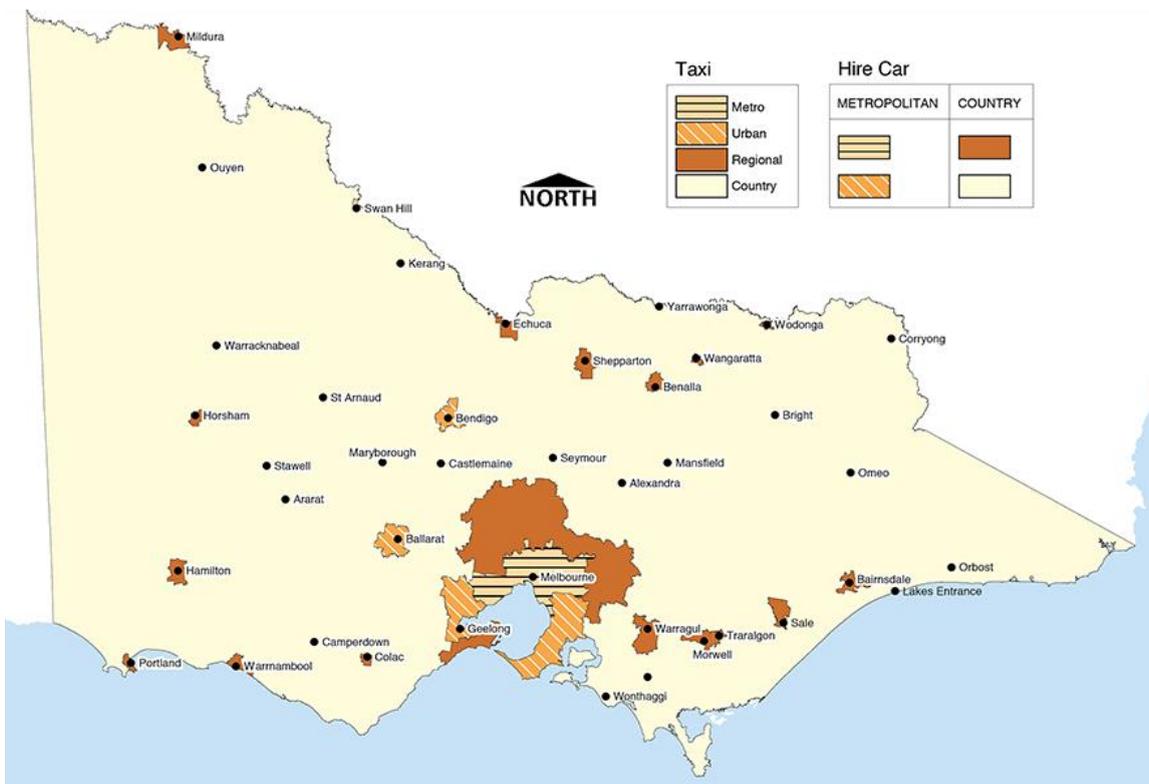
## Industry reform

16. From 30 June 2014 a series of reforms to the Victorian country and regional taxi industry took effect. The reforms include:
- better conditions for drivers: taxi drivers will have better working conditions and pay under a new mandatory Driver Agreement, which will guarantee them at least 55 per cent of takings
  - a knowledge test for drivers
  - changes to fare structures
  - a new zoning system: taxis will operate within a new four-tier system of zones, being metro, urban (including large regional centres), regional, and country. Separate licence fees will apply for each of these zones
  - improved availability of licences: the TSC will issue new licences as the market demands. A 'consumer interest test' will apply to regional and country zones to consider the benefits of new licences for customers
  - a set annual fee for licences: this will relieve pressure on overheads and fares. The annual fee will be lower in regional and country areas, and for wheelchair-accessible vehicles
  - better information and complaints handling for consumers and
  - improved safety for drivers and consumers.

## Barriers to entry

17. Under the reforms, the Victorian Government has rationalised about 100 taxi licence zones into four larger zones:
  - metropolitan (Melbourne)
  - urban and large regional (including Ballarat, Bendigo, the Mornington Peninsula and Geelong)
  - regional and
  - country.
18. Before the reforms, Victorian taxis were predominantly restricted by their licences to servicing a defined radius from their town's General Post Office. It was also a licence condition that taxis affiliate with a network and these networks were limited to that zone / town (although they could outsource some functions).

Figure 2: Taxi and Hire-Car zones (source: TSC)



19. Across the four new zones, operators can essentially 'go out but not in'. A city taxi, operating on a metropolitan licence can move to operate in regional towns and rural areas. However, taxis operating on regional and country licences cannot seek to base themselves in the city.<sup>4</sup>

<sup>4</sup> For more information on the exact work taxis can do across zones, see the table at <http://www.taxi.vic.gov.au/taxi-reform/reforms-implemented/taxi-zones>

20. The Victorian Government has also removed the requirement of mandatory affiliation with a network. That is, it has repealed the legislative provisions and the conditions in individual licences that made it a condition of accreditation for taxi operators to have affiliation and certain approved arrangements in place with accredited suppliers of taxi-cab network services.
21. Taxi licences were traditionally perpetual but the Victorian Government has not issued any perpetual licences since 2002. Parties can buy and sell licences privately and the average price of a Melbourne city licence in December 2010 was about \$521,000. However, average prices for licences have reportedly decreased in recent years. Licence holders have been able to assign or effectively lease their permits to others. In recent years, they could do so for about \$30,000 a year.<sup>5</sup>
22. From 30 June 2014, the Victorian Government has made available a new type of taxi licence, for an annual fee. The fees in rural areas for the current financial year are: \$11,247 in the regional zone and \$3,476 in the country zone.
23. The TSC states that new licences are available 'as of right'. In deciding whether to grant individual taxi licences in country and regional zones, the TSC will apply a 'consumer-interest test'. Under this test, the TSC may only refuse to grant a licence if it considers that it would not be in the interests of existing and future users of taxi-cab services in any particular district or districts. The TSC has stated that:

In exercising its discretion to grant or refuse to grant a licence...the TSC will have regard to any exceptional circumstances that arise which are demonstrative of widespread market failure resulting in significant detriment to consumers.<sup>6</sup>
24. A decision by the TSC to refuse an application is reviewable by the Victorian Civil and Administrative Tribunal.
25. The changes with regard to hire cars provide that:
  - they no longer have to be luxury cars
  - there are two hire-car zones: metropolitan, covering the metropolitan and urban and large regional taxi zones, and country, covering the regional and country taxi zones and
  - the one-off fee for a hire-car licence for the country, which covers the regional and country taxi zones, is \$20,000.

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<sup>5</sup> Taxi Industry Inquiry May 2012 draft report, *Customers First: Service, Safety, Choice*, page 58

<sup>6</sup> <http://www.taxi.vic.gov.au/taxi-reform/reforms-implemented/new-taxi-licences-from-1-july-2014>, viewed on 1 August 2014.

## Fare setting

26. The Victorian Government has ceased setting taxi fares in the regional and country zones. Most recently fares were set by Victoria's Essential Services Commission (ESC). Taxi operators in these zones must now set their own fares, notify their maximum fares to the TSC and display these to passengers. This regime is called the price-notification scheme.
27. Operators can adopt as their maximum fare the rate most recently set by the ESC, applicable from 19 May 2014, until they notify any new maximum fares. The TSC publishes all country and regional operators' fares, including those that adopt the last ESC-rate, on its website.
28. The ESC will continue to set regulated fares for the metropolitan, urban and large regional zones, subject to review in about three years' time.
29. Victoria's 2011-2012 taxi industry inquiry recommended deregulation of fares in rural Victoria first because

...country taxi trips are overwhelmingly booked. For booked services, [compared with rank and hail transactions] customers have a much greater ability to choose which service they will use and businesses must rely on their reputations to sustain their viability. This is particularly the case in small country towns where the likelihood of the passenger knowing the taxi operator and business is very high. The inquiry considers that its proposed reforms will provide for structural conditions that support competition or are likely to support competition. Reducing restrictions on issuing licences and changing the regulation of networks makes the threat of competitive entry more credible – reducing the need for price regulation.<sup>7</sup>

## ACCC evaluation

30. The ACCC's evaluation of the proposed arrangement is in accordance with the relevant net public benefit tests contained in the CCA.<sup>8</sup> In broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition, and weigh the two. Essentially, the ACCC may grant authorisation if it is satisfied that the benefit to the public would outweigh the public detriments.
31. Broadly, the VTA states that it sought authorisation for the operators

...so that networks that operate in rural and regional towns can continue to operate whilst the industry adjusts to a new environment, which involves significant deregulation, substantially reduced barriers to entry and the prospect of competition between networks, some of which are likely to operate in multiple towns.

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<sup>7</sup> Taxi Industry Inquiry September 2012 *Final Report - Customers First – Service, Safety, Choice*, p200.

<sup>8</sup> Subsections 90(5A), 90(5B), 90(6) and 90(7), as set out in Attachment A.

32. The VTA submits, among other things, that:
- networks are essential for the industry to operate efficiently in the dispatch or pre-booked market. They provide an effective mechanism to match consumers to taxis in an efficient way
  - competition is more likely to be effective between a small number of networks rather than a large number of operators and ‘the outcomes of similar reforms...around the world have also indicated that competition is unlikely between operators’, which is neither efficient nor practical
  - networks reduce costs for individual operators by allowing members to share costs, and enable taxis to be dispatched to customers efficiently and minimise waiting times.
33. The VTA states that:
- The recent reforms are likely to lead to significant change to the taxi industry in Victorian regional and country towns. Entry barriers are being lowered and networks will be able to compete on price and quality of service. While it is difficult to estimate the transition time for this to occur, it is likely to happen rapidly in some areas. The VTA believes that a period of three years is necessary to enable the changes that will result from the reforms to flow through. However, the starting point must be the existing networks...<sup>9</sup>
34. The ACCC tests the public benefit and detriment claims by an applicant through an open and transparent public consultation process. The ACCC sought submissions from a range of parties potentially affected by or otherwise interested in the application, including institutional customers such as care providers, Victorian cooperative and non-cooperative taxi networks, taxi ‘app’ providers and Victorian regulators.
35. The ACCC received public submissions from six interested parties, generally in support of the application for authorisation. The public submissions were from:
- Australian Government Department of Veterans’ Affairs
  - Australian Taxi Drivers Association
  - Personalised Cabs
  - Victorian Government Department of Transport, Planning and Local Infrastructure
  - Victoria’s Taxi Services Commission
  - Wellington Taxis Pty Ltd.
36. The views of the VTA and interested parties are considered in the evaluation below. Copies of public submissions may be obtained from the ACCC’s website [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister)

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<sup>9</sup> The VTA submitted a diagram documenting what it anticipated could happen within multi-operator cooperative networks in country and regional licence zones without authorisation. See Attachment 1 to ‘Submission – before draft decision – Applicant – 14.07.14’ at <http://registers.accc.gov.au/content/index.phtml/itemid/1178317/fromItemid/278039/display/submission>

37. In order to assess the effect of the proposed arrangement and the public benefits and detriments likely to result, the ACCC identifies the relevant areas of competition and the likely future without the conduct.

## The relevant areas of competition

38. The VTA submits that:
- the relevant market is that for the provision of taxi services in the country and regional taxi licence zones of Victoria
  - at a minimum, there are regional markets that cover a number of local service areas and, at broadest, there is a single market for all country and regional taxi licence zones
  - substitutes for taxi services include hire cars and community and public transport.
39. The final report of the *Victorian Taxi Industry Inquiry* noted that country and regional markets for taxi services in Victoria have a number of distinguishing features, including smaller market size, less developed public transport networks, proportionately higher demand by elderly customers and high rates of pre-booked services compared to rank and hail work.
40. The ACCC considers that the most relevant area of competition is that for the supply of pre-booked taxi / car hire services to consumers and their agents, on a local and / or regional basis.
41. Such pre-booked taxi services are, in essence, transportation services that are largely door-to-door, private (that is, for a small number of pre-designated passengers) and at an agreed time. Such work may be provided by operators pursuant to a contractual agreement entered into by network service providers with a third party organisation such as DVA or a disability service organisation.
42. The ACCC understands that the majority of pre-booked services in country and regional Victoria have traditionally been provided by taxi services, with hire cars and community transport meeting a smaller proportion of available work.
43. The supply of taxi booking services (network services) to taxi operators is also a relevant area of competition. The VTA advises that, for a taxi operator, such services can include access to booked work through the designated phone number managed by the network, as well as other safety and compliance services such as in car Global Positioning System-monitoring and back-to-base driver duress alarms. Networks also enter into contracted service arrangements with large-scale or frequent acquirers on behalf of operators.
44. The Victorian Government's reforms impact these areas of competition in a number of ways, such as by aiming to lower barriers to entry and softening geographically based restrictions on the areas in which taxis can operate.
45. The ACCC notes that while network services have traditionally been provided by the locally based cooperatives, they may also be provided on a

franchise or contract basis by non-local networks. In this respect the VTA notes that taxi operators in Shepparton acquire network services from a provider in Ballarat.

## The future with and without

46. To assist in its assessment of the conduct against the authorisation tests, the ACCC compares the likely future with the conduct for which authorisation is sought and the likely future without the conduct for which authorisation is sought. The ACCC will compare the public benefits and detriments likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.
47. The VTA submits that a cooperative-style taxi booking service cannot operate with any fare competition within the service. It notes:
  - operators in such services agree to share and allocate work based on availability and proximity of the taxi, not through customers choosing between differing fares within the network
  - if fares differed and customers chose on price:
    - customers could wait longer for taxi services
    - if a booked taxi became unavailable, jobs could not be re-allocated to alternative providers effectively
  - in country and regional markets, where over 90 per cent of work is pre-booked, it is not possible for individual operators to compete efficiently for this work.
48. The VTA submits that the Victorian Government's taxi reforms are intended to enhance the potential for competition between networks. The VTA considers that the competition that exists [or will exist] in country and regional areas is between networks seeking to get customers to book taxi / car hire services using their phone number, app or other technology.
49. The VTA notes that in regional and country areas, taxis do a great deal of work with outside agencies, such as the DVA, aged care facilities and community groups and businesses, 'where a central point of contact is required to ensure a price for that service can be arranged'. Authorisation in this case would ensure this important process was able to continue while at the same time not limiting the ability of an independent operator or competitor network to offer an alternative service at a cheaper fare.
50. Wellington Taxis considers that, without authorisation, providers would effectively have to negotiate rates with customers for every booking made.
51. The Victorian Government Department of Transport, Planning and Local Infrastructure submits that an inability to offer uniform fares would significantly undermine the operations of cooperative booking networks in country and regional Victoria and could eventually lead to their complete collapse.
52. The TSC submits that cooperative networks would not be able to continue to operate in their current form without authorisation to agree maximum

fares for booked and contracted work. The TSC notes that the amalgamation of more than 70 localised taxi zones into the country and regional zones enhances the chance of networks competing with each other. In addition the reforms will make it easier for new businesses, including non-luxury hire cars, to enter the industry.

*ACCC view*

53. While recognising that intra-network fare competition would be a significant change for operators within a cooperative, the ACCC considers that it would be feasible for Victorian regional and country taxi operators to participate in cooperatives without agreeing maximum fares if they resolved to do so.
54. There are already examples in Australia of rivalry between operators who might otherwise participate cooperatively in a network together. For example, they might already compete on customer service and ad-hoc discounts.
55. Individual taxi drivers or groupings of drivers (as an informal network) would often build up personal relationships with particular customers. More recently, individual taxi drivers or operators have signed up with apps such as goCatch, ingogo and Uber to win work outside their traditional network service (that is, 'off network').
56. The ACCC considers that there are a range of incentives for operators to participate in a common network service, including:
  - provision of a central point of contact for bookings and contract work and a matching service between booking requests and taxis
  - aggregation and co-ordination of a fleet of taxis to achieve scale and network efficiencies, supporting enhanced brand recognition to attract and keep custom
  - providing timely information to customers, for example on estimated waiting times
  - referring work to an alternate taxi if the one first arranged becomes unavailable
  - spreading the costs of running the service, including elements such as marketing
  - competing with alternative taxi booking services and transport services.
57. The ACCC considers that these incentives will be likely to remain even if a network were to adopt a fare setting policy under which operators acted independently.
58. The ACCC recognises that a number of adjustments to the operations and activities of the cooperative would be required to support intra-network competition. In some circumstances members of a cooperative may elect to take other steps in preference to intra-network competition. This could include exiting the cooperative and/or restructuring into a corporate model. The significant reforms implemented by the Victorian Government can also be expected to reshape the industry over the coming years.
59. In conclusion, the ACCC considers it would be feasible for the Victorian regional and country taxi operators to participate in cooperatives without

agreeing maximum fares if they resolved to do so, by offering a 'menu' or list of fares.

## Public benefit

60. Public benefit is not defined in the CCA. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.<sup>10</sup>

## Applicants' submission

61. The VTA submits that the proposed conduct delivers a range of public benefits. In particular the VTA considers that it is more efficient for a network to dispatch work if it can advise customers on a common maximum fare. Without this ability, the network would not be able to function as effectively because of the complexities that would develop in relation to issuing work that is pre-booked or negotiating a service contract with an external agency or business.
62. The VTA further submits that:
- network dispatch systems allocate booked jobs to the nearest available taxi, resulting in an impartial distribution of work between the available taxis:
    - this is the most efficient way to service a customer's needs and to maximise the potential of a fleet of individually owned / operated taxis. Allocating bookings on price would, for instance, lead to longer waiting times for customers
    - this enhances the network's brand, thereby improving local demand for taxis and thus the financial return for operators affiliated with the network
  - should a network not be able to offer consistent advice to passengers about the maximum fare schedule, there is potential to lead to conflict between drivers and passengers
  - from a customer service point of view, it is imperative that the network be in a position to inform passengers of the approximate cost of the trip based on the schedule of maximum fares for an intended journey. This would be made exceedingly difficult should affiliated operators notify divergent fare models.

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<sup>10</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

## Interested parties' views

63. The DVA has expressed concern that its current pre-booking arrangements with contracted networks would deteriorate if allocation and dispatching was based on a fare schedule. The DVA has noted that its Booked Car Service (BCS) arranges more than one million journeys each year for its special needs client group. DVA notes that many of its BCS clients are both frail and aged and cannot drive or face mobility issues utilising public transport. DVA advises that the vast majority of its booked car services are undertaken by taxis. DVA is concerned that without authorisation there may be a detrimental impact on its ability to make arrangements for travel for its special needs client group.
64. The DVA has 77 contracts in place in regional and country Victoria for the provision of booked car services, 18 of which are with cooperative booking networks. DVA is concerned that without the authorised arrangements it would need to enter into contracts with operators directly, which would be a significant increase in contracted service providers. To efficiently co-ordinate the allocation of BCS work, DVA has implemented a Transport Booking and Invoicing System (TBIS). In allocating work the TBIS is programmed to allocate a predetermined percentage of work to each contracted provider in a region based on the size of the fleet, availability of wheelchair accessible vehicles and ongoing performance as measured by DVA. DVA is concerned that, without authorisation, this performance framework could become ineffective.
65. The TSC submits that if operators were forced to price and offer their services independently, this would diminish many of the efficiency benefits from a network in providing services to operators and customers, which include:
- shorter average waiting times
  - higher customer awareness
  - greater realisation of other scale economies, resulting in better and lower costs of service.
66. The TSC submits that other benefits to customers would include greater customer certainty of fares, resulting in reduced conflict between passengers and drivers.
67. Wellington Taxis submits that:
- If networks were not able to set a consistent maximum schedule of fares for booked work, customers would be confused about the variability of fares and [this] would be particularly difficult for elderly customers, those with disabilities and other disadvantaged groups who tend to rely heavily on taxis for their transport and therefore their independence.
68. Wellington Taxis notes that when booking through a network, customers rely on such factors as:
- fare-price certainty, as variations can be distressing, particularly for those on fixed incomes
  - the level of service they can expect

- protection from the need to haggle or of someone taking advantage of them.
69. Wellington Taxis submits that the network relies on its ability to provide such assurances and its ability to give these would be severely compromised if it was not able to set a consistent price for booked and contract work through the network:

Without authorisation, networks would be required to effectively negotiate rates with customers for every booking request that is made. This would be very costly in terms of time and efficiency and is likely to lead to many disputes – if this was to occur, it would destroy the purpose of the network and the customer would lose.

### **ACCC's view**

70. Having regard to the submissions of the VTA and interested parties, the ACCC considers that the following public benefits are most relevant to its consideration of the proposed conduct:
- taxi operators will avoid some costs, as they will not have to invest in new systems specifically designed to offer a selection of fares based on the identity of the operator
  - the maximum fare proposal will allow cooperatives and institutional customers to adopt a simpler process to manage contract work, with fewer transactions being required
  - customers will face a less complex booking process and the cooperatives will be able to offer them a better coordinated service
  - this in turn will enable cooperative networks to compete more effectively with corporate networks and hire car businesses.
71. The ACCC's consideration of these potential public benefits follows.

### **Cost savings to the cooperative in avoiding otherwise unnecessary systems change**

72. The ability for taxi operators within a cooperative to agree and set a maximum fare is likely to result in the avoidance of some costs relative to a situation where they must implement systems to support a fare setting policy under which operators acted independently.
73. As noted previously, the ACCC considers that operators can participate in a common taxi booking service without agreeing maximum fares for booked and contracted work. The ACCC recognises that a number of adjustments to the operations and activities of the cooperative would be required to support intra-network competition. Such adjustments could include:
- changes to systems to support a differentiated fare model and training for members and staff on new procedures. These system changes are likely to be more significant for cooperatives whose members implement a fare system with greater variations / complexities

- advertising or other costs associated with informing / educating customers.
74. The ACCC accepts that implementing such changes would come at a cost to the cooperative, such that the proposed arrangement may result in some cost savings and efficiency in operations. The ACCC does not however consider that such cost savings are likely to deliver substantial public benefit.

### **Transaction cost savings in a streamlined contracting process between cooperatives and institutional acquirers**

75. The ACCC understands that the cooperative networks have routinely engaged in interactions with customers on non-price terms and conditions on the operators' behalf. For example, a network administrator might have worked with a care or education provider on such things as setting the routes and pick up times for regular runs, or on booking-system interfaces. For institutional customers, the taxi booking services / cooperatives have routinely taken on the role of being the interface between the customer and the operator servicing contracted work.
76. The ACCC considers that without the proposed arrangement the networks would still be able to provide a booking service for many institutional customers, albeit with some added complexity due to variations in fares charged by operators within the cooperative for the relevant service. The ACCC accepts that the proposed arrangements are likely to result in transaction-cost savings by providing a simpler and potentially more efficient contracting and booking service for institutional customers. The ACCC considers that these transaction-cost savings would be of benefit to the public.

### **Simplified booking process for consumers and better coordinated service**

77. The VTA has submitted that with authorisation the cooperative networks will be better able to match vehicles to customers and offer shorter waiting times for booked services. It is the VTA's view that the authorisation will result in efficiencies for customers by reducing time and effort searching for and booking taxis.
78. It is the VTA's view that vehicle dispatch will be more efficient if a common maximum fare is payable. The VTA is concerned that, if customers request a particular vehicle based upon fare, this would lead to the unequal distribution of work within the network. The VTA considers that this would lead to inefficient fleet utilisation, increased wait times for customers and the potential for conflict about work allocation between operators. The VTA is concerned that conflict about allocated work could lead to an increase in service delivery failure as operators could begin to refuse to accept referred work. Currently, if a booked vehicle becomes unavailable, the job is referred to another available taxi, providing an efficient coordinated service to the customer.

79. The VTA has provided a report from Monash University economist Professor Stephen King. Professor King has noted that customers seek a range of attributes when they search for a taxi service. In particular, customers seek reliable and safe transport with relatively short waiting times for booked services, preferably at a low price. Professor King considers that without authorisation, cooperative networks would have to operate as a 'listing service'. While the network will be able to provide options to customers about the likely alternative combinations of waiting times and prices, it will not be able to do more than that. Professor King considers that without authorisation customers will have to attempt to make a (relatively difficult) trade-off between expected waiting time and price in real time during a telephone call.
80. Professor King is further concerned that, from the customer's perspective, the cooperative network will be difficult to use and will lack clarity. Professor King considers that it is likely that many or most customers would prefer to use a network with characteristics that include fixed, transparent prices. Professor King is concerned that the reduction in consumer benefit associated with using a cooperative network will undermine the ability of the network to compete with single operator networks.
81. The ACCC considers that, depending on the attitude taken by operators, the proposed arrangement may provide a more seamless transition between operators for customers of a network. Network members may decide to cooperate less if they are charging different fares and this may affect service standards, particularly for regular and / or large-scale users.
82. Where a network is offering a standard fare for all operators, customers face a simpler booking process because they do not have to choose between options. Single-owner networks and hire cars are able to have a single fare offer. If network on network competition develops as envisioned by the taxi industry reforms, cooperatives may be at a competitive disadvantage when competing with corporate networks if they are not able to offer customers a single guaranteed maximum price and a simple booking process.
83. The ACCC considers that the proposed arrangement is likely to result in a simplified booking process for consumers and a better coordinated service, giving rise to public benefit. This in turn may enable cooperative networks to compete more effectively with corporate networks and hire car businesses.

## Public detriment

84. Public detriment is also not defined in the CCA but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>11</sup>

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<sup>11</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

## **Applicants' submission**

85. The VTA has submitted that a cooperative-style taxi booking service cannot operate with any price competition within the service. It is the VTA's view that the proposed conduct will not result in any anti-competitive detriment as there would be no competition in any case. The VTA also notes that the application does not prevent individual operators or drivers from offering discounts, nor prevent operators affiliated with the network from opting to notify individual fares to the TSC if they did not wish to conform to the network's fare structure.

## **Interested party submissions**

86. The TSC:
- submits that fares charged by cooperative networks under the authorisation are likely to be kept in check due to the potential for competition between networks
  - has noted that the Victorian Government's amalgamation of more than 70 localised taxi zones into the country and regional zones significantly enhances the chance of inter-network competition
  - has noted that these reforms have made it easier for new businesses, including non-luxury hire cars, to enter the industry and compete.
  - considers that the publication of fares on its website will provide a further constraint by allowing customers to compare fares across operators and networks
  - further notes that community scrutiny and existing relationships between customers and operators will help to moderate fare rises.

## **ACCC's view**

87. Having regard to the submissions of the VTA and interested parties, the ACCC considers that the proposed conduct has the potential to result in detriment to the public, most relevantly:
- the arrangements will eliminate the prospect for competition on maximum fares within the cooperative networks. The ACCC notes that in many communities there is only one network
  - allowing agreements between cooperative members on maximum fares may also dampen the incentives of taxi operators to break away from the existing cooperatives to form competing businesses.
88. Against this the Victorian Government's reforms have been designed to promote network on network competition and off-network competition. Such developments may mitigate the potential detriment to the public stemming from the proposed conduct.

89. The ACCC's consideration of the likely public detriment and the factors which may mitigate them follows.

### **Effect on competition between operators**

90. In most cases, the cooperative networks are the sole providers of taxi services in their towns.
91. Each taxi operator within a cooperative is a separate business, capable of competing with other businesses inside and outside its cooperative. Conduct that involves competitors agreeing on prices is considered to be one of the forms of anti-competitive conduct most likely to harm the community (along with such conduct as competitors agreeing to allocate customers or territories between them, restrict output or rig bids in tenders). Competition between individual businesses generates price signals that direct resources to their most efficient use. Practical manifestations of this might include a business able to offer lower prices winning more work, or a business offering some form of premium service being able to charge a higher fare.
92. The ACCC considers that the proposed conduct is likely to lessen competition between operators within a cooperative. The ACCC expects that, compared with the uniform fare offering that the proposed conduct would create, there would be greater scope for operators to charge less and / or offer greater product differentiation if they were not collectively agreeing maximum fares. The loss of competition may result in a loss of consumer welfare, as competition can generally be expected to enhance consumer welfare more than anti-competitive alternatives.
93. As stated earlier, the ACCC recognises that intra-network fare competition would be a significant change for operators within a cooperative and that a number of adjustments to the operations and activities of the cooperative would be required to support intra-network competition.

### **Structural change**

94. Additionally, allowing cooperative networks to agree a maximum network price may also make it less likely that, following the Victorian Government's reforms, individual taxi operators will break away from the existing cooperatives, particularly larger cooperatives, to form competing networks.
95. The ACCC has listed below, under the heading Mitigation of detriment, the factors that have the potential to contribute to the intensification of competitive tension between networks. The ACCC considers that these factors also have the potential to enhance the incentives of members of a cooperative to disaggregate and form as a competing network.
96. The ACCC is concerned that the proposed arrangement could have the effect of dampening these incentives.

## Mitigation of detriment

97. The VTA, TSC and Victorian Department of Transport have submitted that the Victorian Government's removal of various barriers to entry will provide a competitive constraint on fares and so mitigate the possible public detriment.
98. The ACCC considers that competitive constraints can place pressure on cooperatives to compete more vigorously on price and service. Such competitive constraints can reduce any anti-competitive detriment and loss of consumer welfare associated with allowing cooperative members to agree maximum prices.
99. The reforms implemented by the Victorian Government are designed to, among other things, increase competition within and with the taxi industry. Relevantly it has:
  - amalgamated localised licence zones into four zones from 30 June 2014
  - made it easier for new parties to enter the industry, including hire cars and
  - removed the requirement that taxis affiliate with a taxi booking service.
100. Network on network (or inter-network) competition and off-network competition are two forms of constraint which may limit the public detriment of the proposed conduct.
101. The ACCC recognises that the reforms have the potential to increase the competitive tension between networks over time. Geographic barriers between traditional taxi zones have been softened, which may encourage networks to consider expansion opportunities outside of their existing location. The VTA, TSC and some others have cited, among other places, the towns of the Latrobe Valley (Moe, Morwell, Traralgon and Churchill) as candidates for expansion as the towns are very close together and passengers routinely travel between them.
102. At the same time, the industry is generally evolving:
  - traditional scale considerations for a network may change over time, allowing a smaller number of vehicles to form a competing network
  - bureau services are becoming more readily available, attractive and used. These provide greater scope for members of a cooperative to disaggregate and form a competing network. The ACCC understands that 13CABS and Ballarat Taxis are two local examples of businesses expanding their bureau services, and
  - information technology advances are making it cheaper and easier to set up communication links.
103. Overall, taxi businesses can pursue work across much larger areas and have more flexibility in choosing who will provide their support services, from what location and in what form.
104. Changes to affiliation requirements have the potential to increase competition between networks for operators in other regions. Perhaps most

importantly, the flexibility in how, from where and in what form operators can obtain their infrastructure needs can make the economics of entry and, specifically, entry at a smaller scale more attractive and manageable.

105. Markets that are of sufficient size and profitability may attract and maintain the interest and presence of more than one network service. The VTA has noted that a market with a carrying capacity of around 12 taxis appears to have the scale to support two competing networks. However, it may be possible to operate an efficient taxi service with fewer taxis in the future.
106. The VTA has noted that smaller/ isolated markets may not support more than one network service. The network services in these smaller markets may however still face a threat of displacement and replacement if their service standards fall below industry norms. A threat of displacement may offer some constraint on the decisions of the cooperative, including the collectively agreed maximum fare.
107. The ACCC recognises that benchmark competition may also act as a constraint. This is where a customer compares the price and service proposition of one network with the price and service of a proximate but not directly competitive provider. Benchmark competition could be expected to include hire-car services (discussed in more detail below). In country towns, where customers and operators often know each other, these pressures may be more effective.
108. The ACCC notes that the competitive constraint that can be provided by hire cars is likely to change in the future, as:
  - the Victorian Government no longer requires that such vehicles be luxury or otherwise-specialised cars only
  - the one-off fee for a hire-car licence for the country (which covers the regional and country taxi zones) is \$20,000, compared with annual fees to lease regional-zone taxi licences from the Victorian Government of \$11,247 (\$3,476 for a country licence)
  - state law prohibits hire cars doing rank and hail work but they can do booked and contracted work, the main form of work in rural Victoria. In this respect it is noted that the DVA already has arrangements in place with hire-car providers.
109. A number of hire cars are already based in rural Victoria and a new Pre Booked Only (PBO) vehicle business has been recently announced.<sup>12</sup>
110. The ACCC considers that the reforms and the wider technological and consumer environment have also increased the opportunity for taxis to compete 'off network'.
111. As discussed earlier, under the previous regime of regulated fares, taxis competed with each other in a range of ways. For example, individual taxi drivers or groupings of drivers (as an informal network) would often build up personal relationships with particular customers for their custom. They could take bookings over their personal phones and now through apps. Options to use the internet and apps as tools for matching customers with taxis

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<sup>12</sup> See <http://www.professionaldrivers.com.au/Whats-new/Whats-new/FREEDOM-TOWN-CARS-a-new-fleet-of-PBOs.asp>, viewed 24 July 2014

continue to expand. The operators could and can now even more readily offer discounts off maximum prices directly to individual customers.

112. The proposed arrangement does not prevent competition between operators on matters such as service standards and the current scope for direct discounting is retained. This means that there is still the potential for price competition below the maximum fare.
113. Additionally, taxi operators may elect to implement new business structures, such as breaking away and forming new cooperatives or forming a single-operator network.

## **Balance of public benefit and detriment**

114. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed arrangement is likely to result in a public benefit and that public benefit will outweigh any likely public detriment, including any lessening of competition.
115. The ACCC considers that this matter is finely balanced.
116. The ACCC considers that the proposed arrangement is likely to result in benefits to the public by allowing the taxi operators to avoid some costs by not having to invest in new systems that accommodate multiple fare offerings by different operators within the network. Having a consistent maximum fare within a network will also provide transaction cost savings for contract work and may also deliver a less complex booking system and better-coordinated service for consumers. This may also improve the effectiveness of cooperative networks where they face inter-network competition as a result of the industry reforms.
117. Balanced against these benefits, the proposed conduct has the potential to result in detriments to the public. The ACCC is concerned that the proposed arrangement lessens competition between members of a cooperative on fare setting. The potential detriment flows from agreements on price between parties that might otherwise be able to compete against each other.
118. The Victorian Government reforms, particularly those affecting barriers to entry, are designed to make it easier for existing operators to expand their service area and for new operators to enter the market. These reforms provide important incentives for enhanced inter-network and off-network competition.
119. Such external constraints, including the threat of such competition, can constrain the pricing decisions of the cooperatives. The ACCC considers that these factors may mitigate the potential detriment of the VTA's proposal.
120. Based on the information before it, the ACCC considers that the proposed arrangement is likely to result in a public benefit and that public benefit will outweigh any likely public detriment, including any lessening of competition.

121. It is recognised however that there is uncertainty about exactly how competition in local markets will develop following the Victorian Government's reforms and how effectively these new competitive pressures will constrain the cooperative networks in setting maximum fares.
122. The ACCC considers the best way to account for this uncertainty is in setting an appropriate period of authorisation, at the end of which, the ACCC will be able to assess the extent to which competition is in fact constraining cooperative networks and the extent to which the arrangements are enabling the cooperatives to compete more effectively.

## Length of authorisation

123. The CCA allows the ACCC to grant authorisation for a limited period of time.<sup>13</sup> This allows the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
124. The VTA initially sought authorisation for five years. On 14 July 2014 the VTA advised that it considered an authorisation period of three years would be reasonable. It stated that three years was needed to enable changes resulting from the government's reforms to flow through. It also noted such a period aligns with the Victorian Government's commitment to review the implementation of price notification in country and regional zones after three years.
125. The ACCC proposes to grant authorisation for three years. In reaching this view, the ACCC is mindful of both enabling cooperative networks to adjust and respond to the new competitive pressures and giving time for competition to develop following the introduction of the reforms.
126. There is considerable uncertainty about how competition in local markets will develop following the reforms and how effectively these new competitive pressures will constrain the cooperative networks in setting maximum fares. At the end of the proposed authorisation period, the ACCC will be able to assess the extent to which competition is in fact constraining cooperative networks and the extent to which the arrangements are enabling the cooperatives to compete more effectively.
127. If such external competitive constraints on cooperative networks have not developed to any significant extent over this time, the prospect of fare competition within cooperative networks may become more important in the assessment of benefits and detriments should the VTA or other parties seek re-authorisation. The ACCC considers that a period of three years would allow the industry time to both adjust to the overall package of reforms, and, if competition does not develop as anticipated, prepare for the possibility that the ACCC does not re-authorise the arrangement.
128. If the VTA or any individual cooperative or group of businesses wishes to apply for similar authorisation at the end of this period, the ACCC is likely to consider information and submissions on such matters as:

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<sup>13</sup> Subsection 91(1).

- the extent to which the threat of new entry and other constraints have become a reality or otherwise constrained incumbent businesses
  - the findings of Victoria's Essential Services Commission planned monitoring of industry prices, costs and return on assets
  - the TSC's planned assessment of competition following the first three years of the government's reform program
  - whether any cooperative has trialled or implemented differential pricing or alternative structures and the experience of these
  - more generally, the balance of public benefits and detriments that have flowed over the time of this proposed authorisation.
129. If operators within a network wish to pursue differential pricing, authorisation for three years is likely to be an appropriate transitional period for them to:
- consider, plan for and possibly trial or implement differential pricing (operator-by-operator) through the taxi booking service and / or
  - consider, plan for and possibly implement new business relationships, structures and models that do not raise competition concerns.
130. Furthermore, this period is likely to be an appropriate transitional period for customers to prepare for any changed relationships with operators. For example, DVA has noted that its contracts expire in March 2017.

## Future parties

131. The ACCC is proposing to grant authorisation to allow future taxi operators within a cooperative network to participate in the arrangements.<sup>14</sup> The authorisation will also cover taxi operators participating in new cooperative networks within Victoria's regional or country taxi licence zones.
132. The ACCC considers that such authorisation will allow industry participants the flexibility to respond to the Victorian Government's reforms in the manner which best suits their business needs.
133. It should be noted that the CCA provides that the ACCC may initiate a process of revocation of authorisation or revocation and substitution of authorisation should a material change in circumstance occur.<sup>15</sup>

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<sup>14</sup> Section 88(10).

<sup>15</sup> Sections 91B and 91C.

# Draft determination

## The application

134. On 12 May 2014 the Victorian Taxi Association (VTA) lodged application A91428 with the ACCC. The VTA made the application using Form B, Schedule 1 of the Competition and Consumer Regulations 2010. The applications were made under sections 88 (1) and 88 (1A) of the CCA, on behalf of regional and country taxi operators who constitute multi-operator cooperative network service providers, for the operators to make agreements as to maximum fares charged for booked and contracted work.
135. The VTA sought authorisation to make and give effect to contracts, arrangements or understandings with provisions that might be cartel provisions (other than exclusionary provisions) or might have the purpose or effect of substantially lessening competition within the meaning of section 45 of the CCA.
136. Subsection 90A (1) requires that, before determining an application for authorisation, the ACCC shall prepare a draft determination.

## The net public benefit test

137. The relevant tests for consideration of this application for authorisation are set out in subsections 90(5A), 90(5B), 90(6) and 90(7).
138. For the reasons outlined in this draft determination, the ACCC considers that in all the circumstances the proposed arrangement is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result.
139. The ACCC therefore proposes **to grant authorisation** to application A91428 for three years from a final determination coming in to effect.

## Conduct for which the ACCC proposes to grant authorisation

140. The ACCC proposes to grant authorisation to current and future taxi operators participating in a cooperative network (existing or future network) within Victoria's regional or country taxi licence zones to make and give effect to contracts, arrangements or understandings within that cooperative network as to the maximum fares charged for booked and contracted work.
141. The authorisation does not extend to any contracts arrangements or understandings between cooperative networks or between taxi operators participating in different cooperative networks.
142. This draft determination is made on 5 September 2014.

## **Interim authorisation**

143. On 19 June 2014 the ACCC granted interim authorisation for Victorian taxi operators who participate in Victoria's 19 regional and country cooperative networks to make and give effect to contracts, arrangements or understandings within the same cooperative network as to the maximum fares charged for booked and contracted work.
144. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

## **Further submissions**

145. The ACCC will now seek further submissions. In addition, the Applicants or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the CCA.

## Attachment A - Summary of relevant statutory tests

**Subsections 90(5A) and 90(5B)** provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public, and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

**Subsections 90(6) and 90(7)** state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.