



ihail Pty Ltd – application for authorisation A91501 Interim authorisation decision 17 July 2015

Decision

The Australian Competition and Consumer Commission (**the ACCC**) has decided not to grant interim authorisation in respect of the application for authorisation lodged by ihail Pty Ltd (**ihail**) on 26 May 2015.

ihail has requested interim authorisation for a joint venture between a number of Australian regional taxi companies and other operators with an interest in the taxi industry to launch and operate a smartphone application (**app**).

The application for authorisation

The ihail app will allow consumers to hail the closest available taxi to the consumer's position (from taxi companies that have signed up to the ihail app) regardless of the brand or ownership of the taxi. The ihail app has been designed to present the consumer's request to the closest taxis to the consumer and the consumer's request will be given to the first taxi driver within close proximity to the consumer to accept the request.

At the conclusion of a job booked through the ihail app the taxi driver will inform ihail of the value of the fare to be charged to the consumer. ihail states that it does not have any involvement in setting the prices that individual taxi companies charge to consumers.

ihail states that the app will operate in major capital cities in Australia, the United Kingdom and the United States for the first two years and users that sign up in one city will be able to request taxis using the app in any city in which it operates.

The ihail app includes a function where passengers will be able to offer drivers a payment above the meter fare when requesting a taxi in order to incentivise priority pick up. This payment is optional for the passenger and will only be available to the app user before the job is accepted. ihail states that it will remove this function in jurisdictions where the relevant state government requests it to do so and that it has removed this function in Queensland due to a request from the Queensland Government.

There is no restriction on which taxi companies can utilise the app. Any taxi company will be able to sign up to the app subject to entering into a Licence and Services Agreement with ihail.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the

conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

ihail Pty Ltd requested interim authorisation on the basis that:

- the launch of the smartphone app will result in an immediate benefit to the public, and
- the launch will not involve the execution of any contractual instruments which could not be amended to conform with the ACCC's final decision.

Consultation

The ACCC sought submissions from interested parties potentially affected by the application, including taxi companies, taxi industry associations, consumer groups, and government departments and regulators. The ACCC received a number of public and confidential submissions from interested parties. The ACCC also undertook its own market inquiries with industry participants including state government taxi regulatory agencies.

Submissions in support of the application argued that enabling customers to access the closest taxi irrespective of network and use the one app to request taxis nationally will be particularly attractive to consumers. In addition, they argued that the taxi industry is facing increased competition from third party ridesharing apps and ihail, being industry owned and operated, offers the best opportunity for taxi companies to compete with these new entrants.

Concerns raised by interested parties who did not support granting interim authorisation include:

- the potential impact of the arrangements on competition for the supply of taxi non-cash payment processing
- the proposed conduct will adversely impact competition between mobile booking applications, which is evolving rapidly. In particular, if taxi companies are permitted to operate their own collective app (as opposed to apps solely for their individual taxi companies) this will reduce incentives individual taxi drivers have to use apps provided by third parties, and
- there is no urgent need for interim authorisation and customers already receive most of the benefits of the ihail app as the technology ihail proposes to adopt is incorporated into the taxi companies' standalone apps many of which use the same company that ihail proposes to use to supply their software.

Concerns were also raised that the function of the app which allows customers to indicate when requesting a taxi an amount they are willing to pay above the metered fare to incentivise priority pick up runs counter to the intent of regulated fares, or regulated maximum fares, that apply in most jurisdictions. Concerns were also raised that this function may limit access to taxis in peak times for sections of the community on low incomes.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In deciding not to grant interim authorisation the ACCC considers that:

- granting interim authorisation may have a lasting impact on competition in the market. The contractual arrangements for participating taxi companies to adopt and utilise the ihail app could be unwound if the ACCC decided not to grant authorisation. However, on the basis of its preliminary consideration the ACCC considers that the impact of the proposed arrangements on competition: between taxi companies (in relation to price and service); for the supply of taxi non-cash payment processing; and for the supply of taxi booking services is potentially significant. The arrangements also have the potential for lasting impacts on relevant areas of competition even if the arrangements are later unwound.
- the Applicants have not demonstrated clear reasons to support urgent interim authorisation. The Applicants wish to launch the app as soon as possible and have a strong commercial interest in doing so. However, the Applicants have not demonstrated that waiting until the ACCC makes a draft or final decision about the application for authorisation before launching the app will result in commercial harm. Participating taxi companies will continue to offer services to passengers through their own smartphone apps.

The ACCC considers that granting interim authorisation could deliver a number of public benefits including by providing a convenient single platform for consumers to electronically hail taxis from a range of taxi companies and by providing users with a single app that can be used in a number of cities. However, as noted above, on the basis of its preliminary consideration the ACCC considers that the impact of the proposed arrangements on various areas of competition is potentially significant.

Whether the function that allows customers to offer a payment above the meter fare to incentivise priority pick up is consistent with the regulation of taxi fares in some jurisdictions and the impact it may have on access to taxis in peak times for sections of the community on low incomes is also unclear.

The ACCC intends to reconsider whether to grant interim authorisation at the time of issuing its draft determination in this matter.

The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.