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3 July 2015

Australian Competition and Consumer
Commission

GPO Box

Canberra ACT 2601

AUSTRALIA

Attention: Gavin Jones

By Email

Dear Mr Jones

ihail Pty Ltd application for authorisation [A91501] - interested party consultation

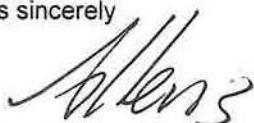
We act for Uber and respond on its behalf to your letter dated 19 June 2015 in relation to the application for authorisation by ihail Pty Ltd (ihail).

Uber is a technology company that connects those seeking to arrange point-to-point transport with those offering those arrangements and is concerned by the conduct proposed in ihail's authorisation application.

Uber provides in Annexure A its submission in respect of the interim authorisation. Uber will provide a further submission by 10 July 2015 in relation to the final authorisation.

Uber would be pleased to further discuss its submission with the Commission.

Yours sincerely



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Our Ref 120539571:120539571

lvvs A0133592130v7 120539571 3.7.2015

Your Ref 57520

Annexure A – Uber's submission on ihail Pty Ltd's application for interim authorisation

1 Overview

ihail seeks authorisation on an interim basis to:

- execute the shareholder documents; and
- commence the launch of the smartphone application.

ihail asserts that the ACCC should permit this as:

- the launch of the app will result in an immediate benefit to the public; and
- will not involve the execution of arrangements which could not be amended.

Uber submits that there is no foundation for the interim authorisation being sought by ihail and that the ACCC should refuse to grant the interim authorisation.

To assist the ACCC, Uber discusses under the headings at 2 below, the factors to which the ACCC has regard in determining whether to approve an application for interim Authorisation.¹ These are:

- whether the proposed conduct enhances the welfare of Australians through the promotion of competition;
- the extent to which the relevant market will change if interim authorisation is granted;
- whether the interim authorisation is required urgently;
- whether there is possible harm to the applicant if interim authorisation is not granted;
- whether there is possible harm to other parties if interim authorisation is denied or granted; and
- whether there are any possible public benefits or detriments in connection with the proposed conduct.

2 The ACCC should not grant interim authorisation

2.1 Interim authorisation will not promote competition

Uber submits that rather than promoting competition, as is asserted by ihail and its proposed shareholders, the interim authorisation will have a negative effect on competition. ihail is *prima facie* an anticompetitive arrangement between competitors. This is to be contrasted with other point-to-point transport apps that are provided, not by taxi companies themselves, but by third parties such as Uber, Ingogo and goCatch. If the taxi companies are permitted to operate their own collective app (as opposed to apps solely for their individual taxi companies) this will fundamentally change the dynamic of the taxi services market and the incentives individual taxis have to participate in the apps provided by third parties.

(a) ihail shareholders will continue to exclude Uber and other apps

Granting the interim authorisation will have a lasting negative effect on other mobile booking applications. There is rapid industry change and innovation and this is a particularly significant time for consumers of Australian point-to-point transport booking services. The number and sophistication of booking applications that challenge the entrenched players in the Australian taxi industry continues to grow month on month. In addition, outdated taxi regulations that have poorly served Australian consumers for decades are currently the subject of review in New South Wales, Victoria,

¹ Authorisation Guidelines, 2013, Part 8.

South Australia, the ACT, and Western Australia.² In these circumstances, it is imperative that new entrants, such as Ingogo, goCatch, and Uber are not anti-competitively excluded from access to new users – even for a matter of months.

As soon as ihail is granted interim authorisation Uber is concerned that ihail's shareholder taxi companies (who are currently competitors of each other and of Uber and other apps) and the NSW Taxi Council will accelerate efforts to prevent taxi drivers from using third party transport applications and force them to use ihail. The interim authorisation states that the ihail shareholders are free to retain their own individual apps, however it is conspicuously silent on whether ihail shareholders, or even future non-shareholder taxi company participants, are free to use or to allow their drivers to use the services of third party apps.

The ACCC has previously taken action against Townsville Taxis for:

supplying taxi booking services to its affiliated drivers on condition that they would not acquire taxi booking services (through the use of third party booking applications) from a competitor of Townsville Taxis...³

However, this type of conduct continues. The reality is that powerful taxi owners and operators and the NSW Taxi Council continue to demonstrate their lack of regard for competition, and continue to employ various tactics to pressure drivers and third parties to not use competing services like those provided by Ingogo, goCatch and Uber. For example:

- Uber recently received a copy of a standard form agreement between Yellow Cabs and its taxi drivers that expressly banned drivers from using mobile booking applications, such as Uber;

-

-

Uber is particularly concerned about the role of the NSW Taxi Council in the ihail venture. It is inappropriate for an industry advocate to align itself with one particular commercial venture. This endorsement will further encourage drivers to exclude third party point-to-point applications. In addition, Uber is also very concerned about the involvement of Cabcharge, which operates a virtual monopoly with respect to payment processing for the taxi industry.

(b) sharing information through ihail will facilitate price coordination by taxi companies

Interim authorisation will negatively affect competition by allowing taxi companies to share competitively sensitive pricing and other data. The competitor shareholder taxi companies cannot

² Uber understands that announcement of this review is imminent.

³ <https://www.accc.gov.au/media-release/accc-accepts-undertaking-over-restrictions-on-townsville-taxis-booking-apps-and-mobile-phones>

⁴ <http://www.abc.net.au/news/2014-11-06/taxi-drivers-worried-uber-will-drive-them-out-of-business/5869910>

dispose of this knowledge if the ACCC ultimately refuses to grant final authorisation. For example, through the proposed ihail application from the first day of its operation and for the duration of interim authorisation the competitor shareholders will have access to:

- a set of *current* competitively sensitive information about the prices and competitive strategies of other taxi services. For example, Yellow Cabs could have access to data that show whether Black and White Cabs or Silver Top Taxis always charges at the regulated maximum price; and
- a set of *historical* data on the activities of other taxi companies that have used the ihail software for a number of years. These include the shareholder taxi companies as well as a range of other Australian taxi companies. A list is available on MT Data's website.⁵

2.2 Interim authorisation will permanently alter the dynamics of the market

As discussed above, granting the interim authorisation will permanently alter the dynamics of the market by allowing the competitive shareholders access to pricing information and launching their app.

As well as effects on their existing businesses, losing access to drivers affiliated with the taxi businesses run by ihail's shareholders may affect the decisions of other companies, including Uber, to launch or expand into certain Australian regions in the short term. In the long term, the initial decision made during any period of interim authorisation to focus scarce start-up company resources on regions where ihail is not present may reduce the access that consumers in the remaining regions will have to the competitive pressure these mobile applications would bring.

Granting interim authorisation in a dynamic and rapidly changing industry such as point-to-point transport, at a time when state and territory governments are actively engaged in regulatory reviews of the space, will therefore have damaging and long lasting industry impact.

2.3 No urgent need for interim authorisation

There is no urgent need for the ACCC to approve ihail's application for interim authorisation. Uber suspects the actual reason that ihail seeks to launch its application urgently is to mount a front guard action to block the current expansion of mobile point-to-point transport applications into new territories and to frustrate the legitimate efforts of consumers seeking to use those technologies. As was noted above, point-to-point transport applications are growing in popularity and the next six months will be critical for the long-term success of these businesses. This is especially so as various state based reviews into taxi industry regulation are likely to recommend the removal of outdated anti-competitive laws that currently limit the expansion of competitive third party app-based booking services.

Further, journeys booked through third party mobile applications represent a small fraction of the total trips that consumers take in Australia. The increased competition and associated public benefits that mobile booking applications can bring to consumers is vulnerable to large scale efforts by taxi companies to collectively exclude those services from access to driver networks, including taxi drivers. Uber suspects this is the reason why the taxi industry, variously through the shareholders of ihail, has launched this application at this time.

Finally, for many years MT Data has sold on a wholesale basis to taxi companies a variety of software solutions that use ihail technology. A list of some of the companies that use the ihail technology is included on MT Data's website.⁶ That list includes a number of ihail's shareholder

⁵ <http://www.mtdata.com.au/industry/taxi/item/355-taxi-apps-download>

⁶ <http://www.mtdata.com.au/industry/taxi/item/355-taxi-apps-download>

competitor taxi companies. Consumers already receive almost all of the claimed benefits through the technology being incorporated into the stand-alone applications of the competitor taxi companies.

2.4 No harm to the applicant if the interim authorisation is denied

The applicant has put on no evidence that it will suffer harm if the interim authorisation is not granted. ihail's proposed shareholders are large, long standing, well-resourced, entrenched, and dominant. Any delay as a result of due ACCC process in properly considering the application before launch of the ihail application would have little impact on these businesses. For example, Cabcharge is a global enterprise with 2014 revenues of over \$197 million.

As was noted above, the ihail technology is already in the market in various forms through applications operated by a range of competing taxi companies. ihail continues to benefit from this business.

By contrast, the launch of ihail will harm consumers through further coordination between competing taxi companies and the continued systematic exclusion of Uber and other third party services.

2.5 Consumer detriment if authorisation is granted

Interim authorisation of ihail will, as noted above, potentially have a detrimental effect on competition and be a detriment to consumers more generally. There is no public benefit in the proposed application for interim authorisation that outweighs these detriments.

Uber will discuss the various public detriments further in its submission on the final determination. However, relevant detriments include that:

- as discussed at section 2.2, it is likely that ihail drivers will not be permitted to offer their services through other competing booking applications such as Uber. Limiting the booking platforms that drivers can use will decrease competition and make it difficult for other players to compete in or enter the market, particularly in areas underserved by taxis. Even if there is no such prohibition, there will be no incentive for taxi companies and their drivers to use other applications. Accordingly, consumers will be forced to book taxis through ihail and incur ihail's fees and charges and there will be no downward pressure on prices from unimpeded competition;
- while the Application suggests that the shareholders will continue to operate their individual applications, there will no longer be any incentive for them to do so. Once ihail launches and secures its position in the market, the shareholders are unlikely to continue to maintain and incur the costs associated with their individual applications. Accordingly, shareholders will likely consolidate all users onto the ihail platform and consumers will be forced to book through ihail. In this regard, no information has been provided regarding the market shares of the proposed shareholders. We would request this information to be able to provide the ACCC with submissions on this point, in particular the detrimental effect that this will have on consumers;
- Cabcharge is also a key player in the present ihail application, as is the 'old guard' of the Australian Taxi industry. For example, [REDACTED]
[REDACTED] As the ACCC is aware the taxi industry and Cabcharge in particular has a poor history when it comes to encouraging competition. Cabcharge has sought to retain its dominant position through a range of anti-competitive tactics over a number of years. These have been the subject of investigation by the ACCC and penalty by the Federal Court. Only this week Cabcharge gave undertakings to the ACCC to ensure that it did not continue to anti-competitively block competing payment processors from processing its Cabcharge cards.

- Uber cannot make a proper assessment on the overall effect of the conduct without knowing fully the shareholding that Cabcharge, and other taxi companies [REDACTED] will have in ihail. Uber respectfully requests that the ACCC make available this information publicly or, in the least, to interested parties who may make submissions on the authorisation application.

2.6 No public benefit in granting interim authorisation

ihail has requested the Application on the basis that the 'launch of the smartphone application will result in an immediate benefit to the public'. ihail has not provided any further information as to how the public will benefit from an interim authorisation as opposed to waiting for a final determination. As noted above, the far more likely scenario is that substantial public detriment will result from interim and final authorisation of the proposed ihail joint venture.

3 Conclusion

Uber will make more fulsome submissions on the competition issues with the ihail arrangement in its submission on the final determination and submits that the ACCC should not grant interim authorisation but fully consider the competition issues in the context of a final authorisation application, following a proper consultation process.

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Date 10 July 2015
From Carolyn Oddie / Lincoln Verass
To **Gavin Jones**, Director, Adjudication, Australian
Competition and Consumer Commission, Canberra
Email Adjudication@accc.gov.au

Dear Mr Jones

ihail Pty Ltd application for authorisation [A91501] - interested party consultation

Attach

Our Ref 120539571:120539571

Your Ref 57520

lvvs A0133638225v4 120539571 10.7.2015

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10 July 2015

Australian Competition and Consumer
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Attention: Gavin Jones

By Email

Dear Mr Jones

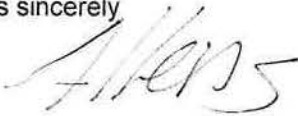
ihail Pty Ltd application for authorisation [A91501] - interested party consultation

We act for Uber and respond on its behalf to your letter dated 19 June 2015 in relation to the application for authorisation by ihail Pty Ltd (**ihail**).

Uber provides in Annexure A its submission in respect of the ihail authorisation application.

Uber would be pleased to further discuss its submission with the ACCC.

Yours sincerely

**Carolyn Oddie**

Partner

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Our Ref 120539571:120539571

lvvs A0133638225v4 120539571 10.7.2015

Your Ref 57520

Annexure A - Uber's submission on ihail Pty Ltd's application for authorisation

1 Overview

Uber opposes the proposed ihail joint venture. Uber welcomes legitimate competition in the Australian transport industry, and is proud of the competitive pressures it has brought in Australia for the benefit of consumers. The proposed ihail joint venture is not legitimate competition.

Significant public detriment will flow from authorisation of the ihail application. This includes that:

- ihail drivers will be prohibited or actively discouraged from offering their services through competing third party point-to-point booking applications, such as Uber. This will reduce competition and make it difficult for other players to compete in or enter the market, particularly in areas that are underserved by taxis;
- once ihail launches the shareholders are unlikely to continue to maintain and incur the costs associated with their individual booking applications. While the authorisation application suggests that the shareholders will continue to operate their individual applications, there will no longer be any incentive for them to do so;
- the ihail application (and subsequent abandonment of individual applications) will result in coordination of taxi fares and limit price competition. The conduct proposed in the application includes a fare estimate function, which will show a maximum estimated price. This is likely to become the price in the market that all relevant bookings will follow;
- the dominant position of Cabcharge in the Australian market will be further entrenched. It has underserved Australian consumers and sought to retain its market dominance through a range of anti-competitive tactics over a number of years.

The ihail joint venture is ill suited to achieve the claimed public benefit. The only available conclusion is that it is being established for purposes other than achieving that public benefit, such as blocking the launch and expansion of competing point-to-point transport booking applications.

ihail claims that its application will benefit the public by:

"allow[ing] taxi users to access services in a number of cities or regional locations, both within Australia and globally."

ihail could simply grant the proposed shareholder taxi companies licenses of the application and easily achieve this claimed public benefit without establishing what amounts to a cartel between taxi companies, taxi industry bodies, and Cabcharge.

It would take minimal if any financial input to develop or exploit the ihail consumer-facing application. The ihail technology is in fact already developed and in use by a range of domestic and international taxi companies – and has been for some years.

Uber provides further detail on these points under the headings below.

2 Real competition in the Australian taxi industry

Globally, Uber's entry has forced taxi companies to re-evaluate how they treat consumers.

Uber was founded in 2009 and, since then, has launched in 57 countries (including over 40 cities in the Asia Pacific region) and has more than 160,000 active drivers in the United States alone.¹

¹ As at December 2014.

Since 2009, Uber has been an innovator in the transport industry driving regulatory change and delivering benefits to consumers. Uber is altering the sector and allowing consumers to seek affordable, convenient, safe and quality transportation services.

Uber launched in Australia in October 2012 and now operates three services in Australia:

- uberBLACK, which connects consumers with drivers offering rides from commercial registered luxury/private hire vehicles;
- uberTAXI, which connects consumers with drivers offering rides from licensed taxi cabs; and
- uberX, which connects consumers with drivers offering rides in their private vehicles.

3 ihail will cause substantial public detriment

3.1 Drivers will not be able to use 3rd party booking applications

As Uber set out in its submission on ihail's application for interim authorisation, ihail will have a negative effect on competition in the taxi industry. This effect is likely to be substantial, given that:

- there is rapid industry change and innovation in this sector; and
- outdated taxi regulations are currently the subject of review in nearly every Australian state and the ACT.²

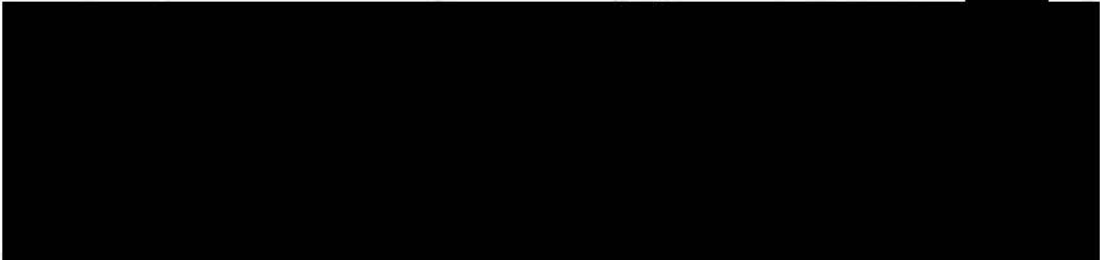
It is imperative that as the number of point-to-point transport bookings made by consumers continues to grow, new industry entrants, such as Ingogo, goCatch and Uber are not anti-competitively excluded from access to new users – even for a matter of months.

If the ACCC grants authorisation to ihail, Uber is concerned that ihail's shareholder taxi companies (who are currently competitors of each other and of Uber and other apps), Cabcharge and the NSW Taxi Council will accelerate efforts to prevent taxi drivers from using third party booking applications and force them to use ihail. The authorisation application states that the ihail shareholders are free to retain their own individual apps, however it is conspicuously silent on whether ihail shareholders, or even future non-shareholder taxi company participants, are free to use or to allow their drivers to use the services of third party apps.

The ACCC has previously taken action against Townsville Taxis for:

"supplying taxi booking services to its affiliated drivers on condition that they would not acquire taxi booking services (through the use of third party booking applications) from a competitor of Townsville Taxis..."³

However, this type of conduct continues. Uber recently received a copy of a standard form agreement between Yellow Cabs (one of the proposed ihail shareholders) and its taxi drivers that expressly bans drivers from using mobile booking applications, such as Uber.

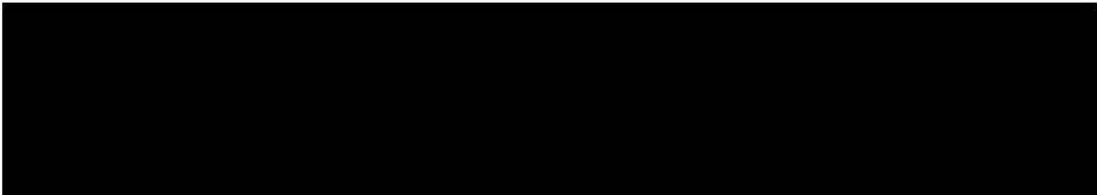
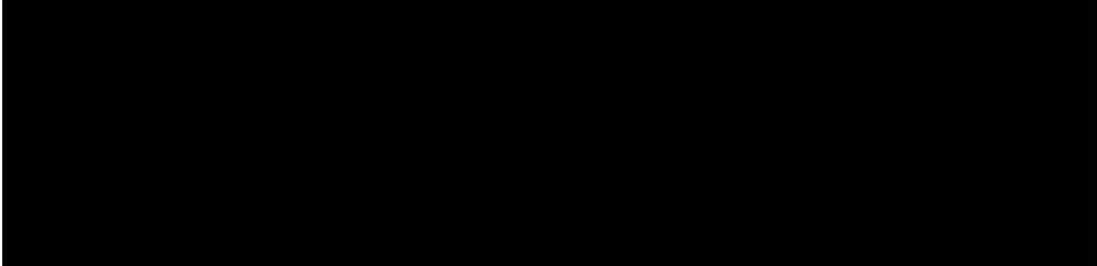


² Uber understands that announcement of this review is imminent.

³ <https://www.accc.gov.au/media-release/accc-accepts-undertaking-over-restrictions-on-townsville-taxis-booking-apps-and-mobile-phones>



Express contractual restrictions are only part of the problem. The reality is that powerful taxi owners and operators and the NSW Taxi Council continue to demonstrate their lack of regard for competition, and continue to employ various tactics to pressure drivers and third parties to not use competing services like those provided by Ingogo, goCatch and Uber. For example:

- 
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Uber is particularly concerned about the role of the NSW Taxi Council in the ihail venture. It is inappropriate for an industry advocate to align itself with one particular commercial venture. This endorsement will further encourage drivers to exclude competing third party point-to-point applications. In addition, Uber is also very concerned about the involvement of Cabcharge, which operates a virtual monopoly with respect to payment processing for the taxi industry. These two organisations play a significant role in an industry that has avoided innovation and new consumer friendly initiatives.

Many participants, including Cabcharge, have engaged in anti-competitive practices over a number of years to the detriment of the industry and consumers as a whole. For example, Cabcharge imposes a mandatory 10% fee on consumers for the 'privilege' of paying directly from their bank funds via EFT; despite the actual costs of payment processing not being anywhere near this level. Cabcharge has also resisted moves to have this surcharge brought down to a (still excessive) rate of five percent.

It is entirely consistent with this history to expect that these and other businesses in this industry will pressure drivers not to use point-to-point booking applications that would compete with ihail. These 'pressure tactics' are, by their nature, hard to prevent and likely to occur even in circumstances where the contractual position may be different. As taxi driving represents the livelihood for a significant number of drivers, they cannot afford the risk of getting significant industry players offside, such as the owners and operators of the taxis they drive, or getting banned from their networks.

The table below sets out a range of matters that have since 2000 alone concerned anti-competitive behaviour by Cabcharge and the taxi industry more generally.

⁴ <http://www.abc.net.au/news/2014-11-06/taxi-drivers-worried-uber-will-drive-them-out-of-business/5869910>

Year	Conduct	Outcome
Cabcharge – A proposed shareholder of ihail		
2015	Between 2011 and 2012, Cabcharge reportedly refused to deal with a third party payment processor. This limited the ability of third parties to compete with Cabcharge for non-cash payments in taxis.	In June 2015, the ACCC accepted court enforceable undertakings from Cabcharge in which Cabcharge agreed that third party payment processors would be able to process Cabcharge cards on their own terminals.
2009	Between 2005 and 2008, Cabcharge agreed that it misused its substantial market power for the purpose of deterring or preventing other competitors from entering its markets by: <ul style="list-style-type: none"> refusing to deal third party payment processors; and supplying taxi meters and fare schedule updates below cost or free of charge. 	In June 2009, the ACCC instituted Federal Court proceedings against Cabcharge alleging that Cabcharge misused its market power and entered into an agreement with the purpose or effect of substantially lessening competition. In September 2010, Justice Finklestein declared that Cabcharge had taken advantage of its substantial market power and ordered it to pay \$14 million and establish a competition law compliance program.
2000	The ACCC received complaints that there were discrepancies between credit card statements compared to Cabcharge invoices they had received, consumers claimed they authorised a lesser amount than appeared on their credit cards.	The ACCC made inquiries into the alleged conduct on the basis that it might be misleading and deceptive. As a result of the inquiries, Cabcharge agreed to: <ul style="list-style-type: none"> refund the difference to customers; ensure that all terminals were updated to clearly show the true cost of the taxi travel; and retain an independent auditor to conduct an audit to ensure all invoice discrepancies were correctly refunded.
Black & White Cabs – A proposed shareholder of ihail		
2010	In 2009, Black and White Cabs required its taxi drivers to exclusively use the Cabcharge Payment System when processing electronic payments.	In August 2010, the ACCC instituted proceedings against Black and White Cabs for engaged in third line forcing in contravention of section 47(1) of the <i>Trade Practices Act 1974</i> . In November 2010, Justice Finklestein declared that Black and White Cabs had engaged in the anticompetitive practice known as 'third line forcing' and ordered it to pay \$110,000.00 and implement a trade practices compliance program.
Townsville Taxis		
2014	The ACCC received complaints that Townsville Taxis was restricting its affiliated taxi drivers' from using third party booking applications and mobile phones to accept taxi bookings (in this instance, GoCatch) in breach of the exclusive dealing provision of the CCA.	The ACCC accepted a court enforceable undertaking from Townsville Taxis that it would ensure that its affiliated drivers were free to use third party booking applications and mobile phones to receive taxi bookings.
White Top Taxis Limited		
2009	White Top Taxis operated a roster system in Shepparton which divided work between all vehicles by allocating each vehicle a rotating weekly shift of hours. This contained a provision that the taxis the subject of the roster would not operate their cabs during other times.	In August 2008, the ACCC instituted proceedings against White Top Taxis and its directors. The ACCC alleged that the rostering arrangement contravened section 45(2) of the <i>Competition Code of Victoria</i> . Justice Finklestein found that the arrangement reduced the ability of individual taxi operators to operate their business and to serve the public of Shepparton at times when those taxi operators may have otherwise made themselves available for work.

Year	Conduct	Outcome
Dubbo Radio Cabs Co-operative Limited – A member of the NSW Taxi Council		
2005	Dubbo Cabs operated a system for allocating jobs in excess of 20 kilometres on a value basis in numerical order.	<p>The ACCC accepted a court enforceable undertaking from Dubbo Cabs that it would:</p> <ul style="list-style-type: none"> • notify all taxi operators of the termination of the value based system for allocating jobs in excess of 20 kilometres • instruct a solicitor or suitably qualified person to review the rules and by-laws and remove all paragraphs that may be anti-competitive, and • develop a trade practices compliance program.
Tamworth Radio Cabs Co-operative Limited - A member of the NSW Taxi Council		
2004	Tamworth Cabs operated a points system that shared jobs in excess of 30 kilometres between drivers, banned drivers accepting private or direct bookings and restricted where drivers could buy fuel.	<p>The ACCC accepted a court enforceable undertaking from Tamworth cabs that it would:</p> <ul style="list-style-type: none"> • notify all taxi operators of the termination of the points system • hold a meeting to amend its rules and by-laws in relation to private bookings and fuel supply and notify all operators of the rescission of those rules • instruct a solicitor to review the rules and by-laws and remove all paragraphs that may be anti-competitive • develop a trade practices compliance program.

3.2 Existing booking applications will be shut down

If the ihail joint venture is approved its shareholders will have no incentive, and are therefore highly unlikely, to continue to maintain and incur the costs associated with their individual booking and payment applications. Accordingly, the shareholders will likely consolidate all users onto the ihail platform and consumers will be forced to book through ihail. Competition will suffer.

Taxi companies that operate their own applications currently compete on the prices at which fares are charged, as well as the service fees associated with transactions carried out using these applications. For example, Black and White Cabs (one of the proposed ihail shareholders) recently advertised the "exclusive" benefits associated with using its app, which are apparently unavailable through other point-to-point booking apps. Relevantly, this promotion also undercut by 50% the fees charged by Cabcharge for use of its in-taxi payment networks. An excerpt of that promotion appears below:

you already know that using our **In-App Payment** feature is the **quickest, easiest** and **most secure** way to pay for your taxi fare without the need to get out your wallet... NOW it's also the **cheapest** way to use your credit card in a cab!

In-App Payment's Service Fee of 5% inc. GST is **50% cheaper** than the service fee of in-car EFTPOS and credit card transactions.

Register for In-App Payments in Under 5 Seconds...

Exclusive to Black & White Cabs Brisbane and Redcliffe App Users, registering for In-App Payments gives you access to:

- Convenient one-tap payment option
- Unique security code verification
- Electronic receipts and booking history

As is clear from the above, taxi companies currently use their individual apps to compete with other taxi companies and payment networks. This results in discounts and improvements to services that are of significant benefit to consumers. This competition is unlikely to continue if the ACCC approves ihail's application.

ihail technology is already licenced by the shareholder taxi companies for use in their respective individual apps. If the ihail joint venture is established, shareholder taxi companies and others will be unlikely to want to continue to pay these licence fees and invest the resources needed to maintain those apps (such as data storage and usage, and maintenance and support).

Further, any individual apps that do continue to operate in parallel with ihail will not offer an effective competitive constraint on ihail or Cabcharge. The resources and attention of shareholder taxi companies will be very much diverted to handle ihail and participate in the monopolistic upside of their holdings in that business. Through shareholdings in the ihail joint venture, a number of taxi companies will have a direct financial incentive to favour that application over their own. This includes the taxi companies operated by Cabcharge, but which are not direct shareholders of ihail, such as Black Cabs, Newcastle Taxis, and Arrow Taxis.

ihail will replace the apps operated by individual taxi companies with neither an effective, nor vigorous competitor. For example, ihail is unlikely to offer discounts such as the one set out above, which undercuts Cabcharge, because Cabcharge will be a shareholder of ihail. If the apps remained independent, it is far more likely taxi companies would offer such discounts. Incentives aside, Uber suspects that in any event the ihail app has no technological capacity for individual taxi companies to differentiate themselves on the basis of service fee discounts.

3.3 Taxi companies will coordinate prices

Uber is strongly of the view that the Australian taxi industry has been uncompetitive for decades, and as a result Australian consumers have paid too much for point-to-point transport. However, even the substandard competition that occurs in the taxi industry at present is at risk from the ihail proposal.

There are a range of regulatory impediments that limit effective competition in the Australian taxi industry. However, these structures do not stop the possibility of price competition below the regulated maximum price. There should be price competition in the taxi industry.

Uber expects that, absent the approval of ihail's authorisation application, the increased competitive pressure placed on taxi companies by point-to-point booking applications will force taxi companies to compete on price and deliver better service to consumers. For example, in Townsville, following entry by competing booking applications, a dominant taxi operator reduced the prices it charged for a range of services. Interestingly, fares reduced for services used by younger people, who are the most likely demographic to use competing applications, and did not reduce for services hailed through taxi ranks.⁵

ihail's recent submission to the ACCC comments that "there is currently very little price competition in the taxi market below the regulated prices set by the relevant authorities."⁶

However, in its submission to the 2015 Competition Policy Review (**Harper Review**), the NSW Taxi council claimed that "competition within the NSW Taxi Industry is strong and dynamic" and further that "[e]very network competes with each other; every operator competes with each other and every driver competes with each other."⁷ It also put a similar position in a 2013 submission to the NSW Independent Pricing and Regulatory Tribunal, stating that in respect of taxi networks, operators, and

⁵ <http://www.townsvillebulletin.com.au/news/win-some-lose-some-in-taxi-shake-up/story-fnjfzs4b-1226749347067>

⁶ Letter to ACCC, 2 July 2015

⁷ http://competitionpolicyreview.gov.au/files/2014/08/NSW_Taxi_Council.pdf

drivers: "All of these entities are independent business [sic] and actively compete with each other on a daily basis."⁸ They can't have it both ways.

Taken together, ihail and its shareholders ask the ACCC to accept a confused position that competition on price is not required for there to be "strong and dynamic" competition in the taxi industry. The ACCC well knows that is not the case, and ihail and its shareholders misrepresent the importance of price competition in a properly functioning market.

ihail will eliminate the emerging possibility that price will finally become a factor on which the taxi industry competes. This is primarily because:

- shareholder taxi companies will through the ihail app have access to current and historical pricing and other competitively sensitive market data from a number of their competitors; and
- all ihail affiliated taxi owners and operators will know that their competitors advertise the regulated maximum price to consumers through the fare estimate function of the ihail application.

These points are discussed in detail below.

(a) access to sensitive data will lessen competition

Authorisation will allow taxi companies to share competitively sensitive pricing and other data. The competitor shareholder taxi companies cannot dispose of this knowledge and the use of confidentiality and other protocols would be ineffective to guard against this information being incorporated into the pricing and other strategies of taxi companies.

Through the proposed ihail application from the first day of its operation and for the duration of any authorisation, the competitor shareholders will have access to:

- a set of current competitively sensitive information about the prices and competitive strategies of other taxi services. For example, Yellow Cabs could have access to data that shows whether Black and White Cabs or Silver Top Taxis always charges at the regulated maximum price; and
- a set of historical data on the activities of other taxi companies that have used the ihail software for a number of years. These include the shareholder taxi companies as well as a range of other Australian taxi companies. A list is available on MT Data's website.⁹

(b) the threat of competitors pricing below the regulated maximum price will disappear

In a world without the ihail joint venture, as price competition increases with the expansion of point-to-point transport booking applications, individual taxi companies will respond competitively through various channels including their own applications. This response is likely to include price discounting – such as that undertaken by Townsville Taxis and Black and White Cabs (both noted above). There is significant consumer benefit in price-reducing initiatives like these.

By contrast, faced with the same scenario, taxi companies using the ihail application have far more certainty that their peers are pricing at the same level as they are – as the estimated price will reflect the market price at which a whole range of currently-competing taxi companies communicate their pricing expectations to consumers and their drivers. The incentive and technical capacity for one

⁸ http://www.ipart.nsw.gov.au/Home/Industries/Transport/Reviews/Taxi/Review_of_fares_for_Taxis_in_NSW_and_number_of_new_Sydney_Taxi_Licences_to_be_released_-_both_from_1_July_2014/17_Dec_2013_-_Draft_Report_Draft_Recommendations_-_Sydney_fares_licences/Draft_Report_and_Draft_Recommendations_-_Review_of_maximum_taxi_fares_and_review_of_annual_Sydney_taxi_licences_from_July_2014#thesubmission

⁹ <http://www.mtdata.com.au/industry/taxi/item/355-taxi-apps-download>

particular taxi company to innovate and communicate a lower maximum price is greatly reduced. This effect is compounded by the facts that:

- it is likely that individual applications from each of the participating taxi companies will be abandoned;
- ihail cannot offer different service charge discounts for different taxi participants; and
- all taxis are aggregated on ihail and individual companies cannot advertise their lower prices to consumers through the application – like they could with individual apps.

Taken together this means that ihail will form a pricing block, with prices for consumers higher than would otherwise be the case if the taxi companies instead competed on an individual basis.

Other competitors may struggle to provide pricing pressures or other competitive constraints in circumstances where they will have limited access to driver networks.

3.4 ihail will elevate barriers to entry

ihail's business strategy involves "broad usage and acceptance" of the ihail application. It believes that the more taxi companies that use the application, the more attractive it will be to consumers. The public benefit that ihail claims is only possible with broad scale adoption of the application and the leveraging of network effects.

This commercial strategy compounds the public detriment that will flow from the incentive and the propensity for taxi companies, including the ihail shareholder taxi companies, to prohibit their drivers from using third party point-to-point transport booking applications. For example, Uber will be excluded from achieving the same network effects that ihail seeks because Uber will be excluded from accessing the same significant numbers of taxi drivers that will use ihail. From launch, ihail will have partners and drivers in at least the following locations:

- | | |
|--------------|----------------|
| • Sydney; | • Newcastle; |
| • Melbourne; | • Toowoomba; |
| • Brisbane; | • Yeppoon; |
| • Adelaide; | • Warwick; and |
| • Perth; | • Maryborough. |

This is an instant and anticompetitive leg-up for ihail where these networks are only available to ihail by virtue of the existing vertical integration and relationships of the ihail shareholders with those taxi companies. The combination of the access to taxi companies and network effects that ihail will generate will become a substantial barrier to entry for new entrants. This is at a critical stage when new entrants are seeking to develop networks of drivers and acquire acceptance from consumers for their new business models. Despite Uber's global presence, in Australia itself it is a relatively nascent competitor.

3.5 The dominant position of Cabcharge will be further entrenched

ihail is another example of Cabcharge removing an element of competition and bringing revenues lost to competing transactions back within its corporate network. Further consolidation of the dominant position that Cabcharge has in the Australian taxi industry is certainly not in the interests of consumers.

As discussed at section 3.2, the ihail technology that is already used by taxi companies allows consumers to book taxis and to pay their fare through a mobile application. Cabcharge processes these payments. However, in the absence the ihail proposal, this would not necessarily be the case.

The current ability of ihail to switch to other payment processing providers if Cabcharge offers an uncompetitive product affects the terms on which Cabcharge provides its services to ihail, and by extension the terms on which ihail provides its service to independent taxi companies. ihail submits that it "investigated the means of using other payment systems in the construction of its application". Clearly, lower priced competitors to Cabcharge exist – and ihail would be an attractive client for such competitors.

However, once Cabcharge has an equity position in ihail there is no prospect that ihail will use another payment platform. As it has done in with in-car payment processing, Cabcharge will be able stop innovating and increase prices.

Cabcharge is a key player in the present ihail application, as is the 'old guard' of the Australian Taxi industry.

Cabcharge dominates the Australian taxi industry with use by, as ihail helpfully notes, "the majority of current cab companies". As set out at section 3.1, Cabcharge and the taxi industry more broadly have a history of engaging in anti-competitive tactics over a number of years. These have been the subject of investigation by the ACCC and penalty by the Federal Court. Only last week Cabcharge gave undertakings to the ACCC to ensure that it did not continue to anti-competitively block competing payment processors from processing its Cabcharge cards.

4 There are better ways to achieve the claimed public benefit

4.1 Claimed public benefit is minimal

ihail claims that its app will provide a benefit to a small class of Australian consumers. These consumers are said by ihail to occupy "a targeted and convenience-conscious niche market". For this alleged very small group (which Uber disputes), it will be possible to use a single app to book taxis, provided that a taxi company in the consumer's location has signed up to the ihail app. In Uber's experience, the vast majority of consumers that book journeys using point-to-point transport booking apps are not merely "business or travelling" consumers. Rather, the majority of such consumers book journeys in their location of residence.

In any event, the public benefits claimed by ihail are already provided to a large extent by other providers. Uber, for example, already allows taxi users to access services of competing taxi companies in numerous locations, both within Australia and globally. Uber's app allows consumers to book taxis from a range of different companies. Similarly, a number of applications already allow consumers to access taxis close to where they are - known as 'ehailing'. This way of procuring point-to-point transport by consumers is likely to become more prevalent and flourish if a competitive market is maintained.

4.2 Alternative ways to achieve the claimed public benefit

Uber supports genuine competition in the Australian taxi industry and Australian consumers deserve to share in the public benefits flow from that competition. The public benefits claimed by ihail may be small, and, according to their claims, limited to a niche set of consumers. Even if that were correct, ihail could easily provide to consumers this benefit by simply licencing its technology to taxi companies. ihail's corporate structure of taxi industry participants with a vested interest in protecting their privileged and dominant market is entirely unnecessary to achieve the claimed public benefit.

The ihail app is already developed. There is no need for the capital funding that is typically associated with joint ventures between competitors. Authorisation is not, for example, sought for a

billion dollar investment in jointly owed mining infrastructure. Nor, for example, is authorisation sought for a project with significant risks to capital that must be shared amongst investors.

It is clear that achieving the claimed public benefits are not the real purpose of ihail's proposed joint venture. Rather, the purpose is to raise barriers to entry, block the expansion of mobile point-to-point transport booking applications into new territories and frustrate the legitimate efforts of consumers seeking to use those technologies. An arrangement whereby taxi companies have an interest in rides being booked and paid for using an application in which they have a financial stake is an excellent means of achieving this anti-competitive goal – but not the claimed public benefit.

5 Conclusion

For many reasons, including those set out above, the ACCC should not grant the authorisation sought by ihail.