

Level 8
175 Eagle Street
Brisbane QLD 4000
AustraliaGPO Box 617
Brisbane QLD 4001
AustraliaTel: +61 7 3069 6200
Fax: +61 7 3069 6201
www.bakermckenzie.com

Our ref: AUSJDP:AUSRKD

Your ref: 57520

By email

Richard.Chadwick@accc.gov.au

Asia Pacific
Bangkok
Beijing
Brisbane
Hanoi
Ho Chi Minh City
Hong Kong
Jakarta*
Kuala Lumpur*
Manila*
Melbourne
Seoul
Shanghai
Singapore
Sydney
Taipei
Tokyo
YangonEurope, Middle East
& Africa
Abu Dhabi
Almaty
Amsterdam
Antwerp
Bahrain
Baku
Barcelona
Berlin
Brussels
Budapest
Cairo
Casablanca
Doha
Dubai
Dusseldorf
Frankfurt/Main
Geneva
Istanbul
Jeddah*
Johannesburg
Kyiv
London
Luxembourg
Madrid
Milan
Moscow
Munich
Paris
Prague
Riyadh*
Rome
St. Petersburg
Stockholm
Vienna
Warsaw
ZurichLatin America
Bogota
Brasilia**
Buenos Aires
Caracas
Guadalajara
Juarez
Lima
Mexico City
Monterrey
Porto Alegre**
Rio de Janeiro**
Santiago
Sao Paulo**
Tijuana
ValenciaNorth America
Chicago
Dallas
Houston
Miami
New York
Palo Alto
San Francisco
Toronto
Washington, DC

* Associated Firm

** In cooperation with
Trench, Rossi e Watanabe
Advogados

4 August 2015

Dr Richard Chadwick
General Manager | Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Dear Dr Chadwick

ihail Pty Ltd application for authorisation

We refer to the Australian Competition and Consumer Commission (**Commission**) decision regarding interim authorisation. ihail Pty Ltd wishes to make a number of further submissions addressing some of the reasons for the decision to reject its application for interim authorisation, as well as some of the comments made in the public submissions by other interested parties. ihail Pty Ltd has outlined these submissions below.

ihail Pty Ltd has drafted this further submission with the intention of it being made publicly available for the purposes of the Commission's consideration.

1. Executive summary

ihail Pty Ltd submits that the private transport industry is currently undergoing significant change, from formal reviews and legislative amendments to shifts in consumer preferences. Any market data or actions in the private transport industry must, therefore, be considered in light of this dynamic activity.

These developments to the market centre around fast-moving entrants that are significantly changing the service desired by consumers, who now value elements like cash- and cardless payment, GPS tracking, user-review mechanisms and multi-jurisdictional functionality. Changing consumer demands are changing the service offering required of cab and ride-sharing companies, and the ihail app is technology designed to allow traditional service providers to adapt and meet new consumer demands, much as fast moving new entrants are doing.

ihail Pty Ltd is a technology company that uses existing taxi dispatch systems in order to provide a safe and convenient method for users to access taxis from licenced taxi companies whose drivers opt to use the app. ihail Pty Ltd is not a taxi company, nor will it operate taxis. The ihail app is designed to compete with other booking and dispatch apps, and to provide convenience and universality of access to travelling customers.

ihail Pty Ltd believes that the essential markets to be considered in relation to ihail are:

- (a) competition for the supply of taxi booking services. This is the market that the ihail app is intended to compete in, but also involves all other taxi and ride booking apps, telephone bookings, on-the-spot hails and rank hails. ihail Pty Ltd has previously provided extensive information regarding the small amount of this market that is currently occupied by the app booking market (this is also addressed further in Section 3);
- (b) competition between providers of in-car taxi payment processing systems, including the installation, operation and processing of payments through physical machines. This is the market in which Cabcharge currently operates. However, ihail Pty Ltd will not be involved in this market. As such, this market is merely included to note the difference between in-car and in-app payment processing markets which use different technology and have different providers; and
- (c) a separate market for completely electronic in-app payment processing systems, which involves significantly different technology to in-car payment processing systems and has a number of different operators. This is a significantly broader market and includes any company that can or has designed software for processing payments through apps, including Braintree (a subsidiary of Paypal, and is used globally by Uber),¹ Commbank (used in the Black & White Cabs app), Visa and many others. This is addressed further in Sections 4 and 4.

ihail Pty Ltd itself operates in the taxi booking and dispatch market. It operates a separate booking service for consumers that can then dispatch jobs through cab companies' existing in-car dispatch systems for a safe and convenient method of travel. The ihail app has been designed specifically to take advantage of the shifts that ihail Pty Ltd has seen in consumer preferences towards point-to-point convenience, as well as to service the needs of travelling or business consumers who wish to access the convenience of a legal local cab service but in locations where they do not have that information or preference.

The ihail app does not restrict any of the other apps or services that cab drivers, cab companies or consumers can access. ihail Pty Ltd's corporate strategy is simply to service that growing market for app-based transport bookings. In doing so, ihail Pty Ltd believes that the ihail app is providing consumers with a number of clear public benefits, including convenience and speed (both of which are important to modern consumers), and is not creating a detriment as it is not restricting or impeding any other competition in the

¹ See <https://www.braintreepayments.com/>.

market. ihail Pty Ltd wishes to take this opportunity to clearly identify the benefits and detriments of the proposed ihail technology, especially in light of the current nature of the private transport market.

2. The taxi booking and dispatch market

ihail Pty Ltd notes Swan Taxis' and Uber's concerns regarding the fact that the ihail app will enjoy almost immediate significant market power within the taxi booking and dispatch market. ihail Pty Ltd does not agree that this is a legitimate concern. This is primarily because the market includes a range of booking methods, including telephone, app and rank bookings, as well as access to a consumer base (which existing apps and services providers have, but ihail will be required to build).

In this market, there is already a significant degree of competition provided by app booking services, with an ever-growing number of participants offering different services or products. This market already includes a large number of apps (either operating in, or with ease of entry into, Australia) including Uber, Lyft, Sidecar, The Ride, Hailo, Gett, mytaxi, eCab, Curb, Ingogo, goCatch, Ridesurfing, Moovit, numerous brand-specific taxi apps, and there are many more apps being developed for this market.

Although there is little independent data regarding current market shares, ihail Pty Ltd notes the growing market share that is being captured by ride-sharing services. Reports vary, however, earlier this year in its final decision on taxi fares and new licences to be released in Sydney the Independent Pricing and Regulatory Tribunal (**IPART**) found that in Sydney:²

- (a) 18% of residents utilised hire cars with drivers;
- (b) 13% of residents used commercial carsharing services; and
- (c) in the six months that commercial ridesharing services operated in Sydney, they were used by 11% of Sydney residents despite being illegal.

Along these lines it has been reported on a number of occasions that the Western Australian Department of Transport believes that Uber already has approximately 20% market share in the taxi and ride sharing services market in Perth.³ As such, ihail Pty Ltd notes that an increasing market share is held by ride share services from what was traditionally considered to be the taxi market.

3. Competition with cab companies and ride providers

3.1 Drastic increase in price and service competition

² Independent Pricing and Regulatory Tribunal, *Final Report: Sydney taxi fares to apply and new licences to be released from July 2015* (February 2015).

³ For example, see Jessica Strutt, "Uber crackdown: Private investigators to target rideshare service" (7 July 2015) *ABC News (online)* <<http://www.abc.net.au/news/2015-07-07/private-investigators-to-be-used-to-investigate-uber/6601556>>.

ihail Pty Ltd is a technology company that integrates with existing taxi software to make booking and dispatch easy and safe in multiple jurisdictions, however, it does not have any direct interests in the taxi services market. ihail Pty Ltd does not own or operate any taxis, will be open to any driver who has opted-in from any participating licenced taxi company and will not prohibit its driver users from using other booking applications (so will not be foreclosing opportunities for any other business), and will have no role in the price charged to consumers for the provision of those services.

When considering ihail Pty Ltd's position in its own market (for taxi booking and dispatch services), however, it is important to consider the changes that are occurring to the level of competition and pricing pressure in the taxi and ride sharing services market. The taxi and ride sharing services market is not in the list of the three markets outlined above as ihail Pty Ltd will not have any direct interest in it. ihail Pty Ltd submits that the taxi and ride providing market is currently an extremely dynamic one, suffering from significant technological disruption. Further, ihail Pty Ltd believes that this market is likely to undergo structural change soon as legislators regulate or structurally address ride-sharing apps which, while currently operating outside the scope of legislation and regulation in many countries around the world, are becoming prolific and will undoubtedly become part of the private transport market in competition to taxis.

As such, while this has been a relatively stable market for an extended period of time, it is not correct to view this market statically as it is currently undergoing dynamic developments.

Because of these significantly lower costs and reduced barriers to entry, ihail Pty Ltd submits that it is important to consider the impact that this will have on the traditionally regulated requirements relating to price and service competition between taxi companies. Taxi companies are now competing with companies that have much lower overhead costs and, regardless of any regulatory requirement to do so, cab companies will by necessity have to compete with the service and price currently offered in Australia by ride-sharing and booking apps like Uber, Ingogo and goCatch, and which could be easily be offered by already successful international companies like Lyft, mytaxi and eCab. As such, even where there is the potential for a minor impact on competition (as ihail sends the closest available cab of any participating taxi network where the driver has opted in for the convenience of the consumer), there is unlikely to be any ability for a cab company to stop competing on service as the taxi market is structurally moving to a highly competitive environment.

Further, as ihail Pty Ltd has previously noted, there is not going to be any impact on price competition between cab companies caused by the ihail app as ihail Pty Ltd does not have any involvement in the price being set by the driver. ihail uses the metered price as a regulated requirement (in precisely the same manner as Ingogo and goCatch), however, does not prevent any negotiation between the customer and the driver.

As such, ihail Pty Ltd submits that it would be inappropriate to consider the authorisation of the ihail app without considering where it sits in the broader market for taxi and ride-share booking services. This is a dynamic market with already successful entrants and international possibility, meaning that there is no way that taxi networks will be able to use the ihail app to attempt to reduce competition for price or service.

3.2 Independence from shareholders

ihail Pty Ltd is a separate legal entity to the taxi companies that participate in the ihail app. While many taxi companies have opted to invest in ihail Holdings Limited (the United Kingdom-based parent trading entity to the regional operating entities like ihail Pty Ltd) as an investment in a global taxi application to compete on a global scale with ride-sharing and other apps, this does not alter the competition of those taxi companies at a local or regional level.

Because of this local competition, the companies will be incentivised to continue to own, operate, develop and promote their competitive apps and booking systems as:

- (a) taxi companies wish to own their own customer base and inspire loyalty in their own brand. Any business that does not have its own customer base will devalue quickly and, while they will participate, ihail Pty Ltd does not believe that its constituent cab companies will be likely to give it (or other cab companies participating in ihail) the benefit of customers and goodwill developed over a significant period of operation. Individual companies want to be in control of their marketing and promotion activities and operating exclusively through the ihail app will erode the ability for cab companies to control their own customer bases or marketing. The ihail app and brand is not a replacement to the existing cab companies, but rather another competitor attempting to attract consumers;
- (b) ihail Pty Ltd charges taxi companies for each booking made through the ihail app. This is compared to bookings made directly to cab companies which do not cost the cab companies a premium;
- (c) ihail Pty Ltd may choose to offer competitive services that individual taxi companies do not agree with in order to attempt to attract consumers that the taxi companies do not control if ihail Pty Ltd feels is in the best interests of the ihail brand (meaning that the taxi companies are not in control of that consumer strategy); and
- (d) ihail Holdings Limited is already showing its independence from cab companies by considering offering both high-end Limousine or Black Car (in the United States) services in different markets, and lower-end Private Hire (in the United Kingdom) or Transportation Network Company (in the United States) services where it is legal to do so. Again, this attracts customers away from the taxi industry and offers

them a choice of quality, service and price which differs from the traditional taxi offering. Not all taxi companies involved with ihail will agree with these strategies, creating a further reason to continue to independently operate their own strategies, booking systems and apps.

3.3 Individual cab company taxi booking apps

ihail Pty Ltd notes that some concerns have been raised in relation to the fact that the ihail app will provide an incentive for the individual cab companies to discontinue their company-specific apps, thus lessening competition.

ihail Pty Ltd notes that there is no rational economic reasoning for individual cab companies that are participating in the ihail app to discontinue their own apps. Rather, ihail Pty Ltd believes that there is still strong incentive for individual cab companies to continue to develop and attempt to expand their specific apps in competition with ihail. This is because of the charges that a cab company will face for using the ihail app, rather than the fees it receives when customers use their own app. An ihail transaction will cost the individual cab company 20c and it will not receive any portion of the credit card surcharge fees, all of which go to ihail Pty Ltd. Conversely, when a consumer books through the cab company's individual app the company pays no fee for the booking and receives a portion of the credit card charge (if applicable). As such, while it costs cab companies to receive bookings through ihail, they make revenue from bookings through their own apps and it would be economically irrational to forgo that revenue stream.

ihail Pty Ltd notes that there is already an example of this in practice. eCab is a Paris-based company that offers a similar service to the one that is proposed through the ihail app, and is also supported by and utilises a number of taxi companies in a growing number of cities. eCab has been developed to meet similar public needs for convenience and streamlining. To take a specific region, however, in Vancouver all four of the taxi companies that have joined eCab also maintain their independent taxi booking apps, assumedly for the economic and strategic reasons that ihail Pty Ltd has outlined above.

Beyond this, there is also a need for cab companies to continue to expand their exposure to online or app booking in order to compete with other ride share booking mechanisms. The more avenues that consumers have to conveniently and quickly access taxis, the more ability taxi companies have to compete with the growing prevalence of ride-sharing apps like Uber and Lyft (which are already large, multi-national booking networks).

The same argument is true for cab drivers who operate in an increasingly competitive environment, where innovations like UberX have dramatically increased the number of cars available to provide private transportation services. Drivers who already use third party booking apps like Ingogo and goCatch which have existing large customer bases will continue to use these apps to attract and accept bookings. Further, new drivers still have an

incentive to tap into the existing customer bases of these apps as it is in every driver's best interests to expand the number of methods that he or she can attract customers. A number of third party apps also offer bonuses or specials for drivers using their apps: ihail will have no impact on this and will continue to operate in competition to these apps that drivers are already established using and that a number of consumers already have an affinity with.

ihail Pty Ltd notes that in some jurisdictions there have been reports that cab companies have been attempting to restrict taxi drivers from participating in Uber. In some of these jurisdictions, ihail Pty Ltd notes that Uber has not yet become a legal service. The Commission will understand that the cab companies do not wish to facilitate illegal conduct. Otherwise, ihail Pty Ltd does not support cab companies restricting the means that taxi drivers can attempt to attract customers, and ihail has been designed to be competitive because of its need to compete with both established apps and new entries in this extremely dynamic segment of the taxi booking market. ihail Pty Ltd understands that ultimately it is taxi drivers who choose which booking app (or multiple apps) they use to attract customers and that it is not the rational interests of drivers to only access and use one app when many are available.

ihail Pty Ltd understands that some interested parties have suggested that cab companies have attempted to restrict the use of mobile booking apps, ihail Pty Ltd has not seen any evidence of this in the market. ihail Pty Ltd is a separate company with no visibility or knowledge of the decisions or actions taken by cab companies and has certainly not attempted to restrict other competitive dispatch or booking apps.

As such, ihail Pty Ltd notes that there are still significant reasons for individual cab companies, whether shareholders or licensees of ihail Pty Ltd, to continue to develop their own apps in competition with both ihail and each other. Maintaining these apps means that the taxi networks can continue to compete directly with each other for customers who are loyal to their brand and are likely to be repeat users, resulting a much higher and steadier revenue stream for that company. ihail Pty Ltd does not believe that the fear that individual cab companies will discontinue their apps is correct, either by evidence available in other cities or by the economic rationale of keeping individual apps.

3.4 No restriction on third party booking apps

ihail Pty Ltd notes that one of the major concerns raised by interested parties in their submissions is that ihail Pty Ltd will require any cab driver using the ihail app not to use a competing taxi booking application.

ihail Pty Ltd has not given any indication that it would require cab drivers' to exclusively use the ihail app, nor does it intend to require that.

4. Role of Cabcharge as payment processor

ihail Pty Ltd understands that through the interested party consultation process concerns have been expressed regarding Cabcharge's role as the payment provider for the ihail app.

While Cabcharge has been a leading payment processing provider for in-taxi payment systems, this does not translate to the functions of smartphone apps which offer in-app payment systems. One fundamental difference is that the Cabcharge payment processing system is purely for card-present transactions where a credit card or payment card, with or without an electronic chip, is physically presented to facilitate payment for a taxi trip. In-app payments are card-not-present transactions and payment is made without the physical presentation of a payment card (eg, there is no credit, debit, travel cards presented to the driver) and is enabled by a smart phone or other electronic device. The systems that facilitate in-app (or card-not-present) payments use fundamentally different technology from card-present systems (including different hardware and software for data processing, storage and security). In addition, they also require different forms of input and installation for the driver and offer consumers a different service. Cabcharge does not offer any services that facilitate payment through smartphone apps. Its involvement in the ihail app will be its first development in this market. As such Cabcharge can exert little or no market power in the in-app payment segment.

Another distinction between card-present and card-not-present (or in-app payment transactions) is that, unlike card-present systems where different terminal hardware can dictate the type of instrument or transaction that can be processed, in-app payments for most retail and service environments use the same fundamental platforms, equipment and methodology for transaction processing. This means that there is no difference between processing an in-app payment for groceries, pizzas, clothing or taxis. The suppliers of in-app payments can supply equally to taxis as to any other product or service. This is not the case for card-present transactions. As such, ihail Pty Ltd submits that there are distinct and separate markets for in-car card present payment processing and in-app card not present payment processing.

Frost & Sullivan's mobile commerce market survey in 2014 estimated that total Australian expenditure via mobile devices was \$22 billion, and further predicts that by 2019 the mobile commerce market could be as large as \$54 billion. There is no question that the market for in-app card not present payment processing is already a substantial, competitive and innovative one with many players. A number of these have such size and scale that the entry into this segment by a business like ihail, no matter who it chooses to be its in-app payments processor, is not going to pose an anti-competitive threat. An example of the businesses that already operate in this market are:

- (a) PayPal (which currently advertises through its associated business Braintree that it provides in-app card not present payment processing for Uber, amongst other multi-national corporations);

- (b) Commonwealth Bank (which provides in-app payment card not present solutions to almost all business sectors including taxis);
- (c) Secure Pay (a business of Australia Post);
- (d) Visa;
- (e) Mastercard;
- (f) NAB;
- (g) Westpac;
- (h) ANZ; and
- (i) Stripe.

These electronic payment processors have such penetration and exposure in the in-app non-cash payment processing market that ihail Pty Ltd's involvement regardless of the payment processor it chooses will not significantly impact the share of electronic payment processing already held by these other companies.

As such, ihail Pty Ltd cannot see how Cabcharge's involvement as the ihail app's electronic payment processor would pose a competitive issue. Drive, innovation and competition in this market will continue regardless of the number or size of new entrants. ihail with Cabcharge as its payment processor will actually be increasing competition in this market as there will be another competitor providing in-app payment systems.

5. Tipping mechanism

ihail Pty Ltd does not provide any submission either for or against the availability of tipping functions to taxi bookings apps. ihail Pty Ltd submits, however, that a tipping mechanism should either be available to all booking apps, or not available to any. There should not be an uneven playing field where some apps are entitled to access a price discriminatory function, while others are not able to. ihail Pty Ltd is happy to provide detailed submissions for or against tipping if the Commission so requires, however, it believes that ensuring fair treatment of all taxi booking apps is the threshold question.

ihail Pty Ltd notes that a number of its submissions have dealt with the inclusion of the optional tipping mechanism as part of the ihail app, however, the Commission has still expressed concerns regarding the application of the tipping mechanism. As a fundamental principle, ihail Pty Ltd agrees that taxi services should be an essential part of State Governments' public transport infrastructure and, therefore, that service should be available to all parts of the community equally without favour or without requirement of further payment.

ihail Pty Ltd also notes that existing licenced taxi companies often have State Government service level agreements that ensure service times and functions for the disabled and the broader community are addressed equally.

ihail Pty Ltd submits that, for the broader element of consumers rather than those with special requirements, the transport market has moved away from the ideal of taxis being a public transport solution and many of ihail's competitors use an opt-in tipping function or surge pricing (which, in Uber's case, is not optional) as a mechanism to encourage more drivers to drive during peak periods, increasing the service available to consumers as more cars are available. ihail Pty Ltd notes that where a tip is offered, the funds are generally structured to go to the app provider and the driver, meaning that the tipping function has little impact on the revenue stream received by the taxi company itself. As such, tips are a way of incentivising drivers, not a further revenue stream for taxi companies.

The ihail app is not a taxi network, and while a number of taxi networks have made an initial investment in ihail Pty Ltd's parent company, ihail Pty Ltd is a separate company with its own Board, management team, and corporate strategy to develop a means of connecting consumers with taxi networks in competition with other booking services. ihail has chosen to work through taxi networks (and their installed dispatch systems) in order to conform to the existing legal standards and regulatory requirements, so as to be able to offer legal transportation. As such, while ihail Pty Ltd has offered to disable the tipping function for the purposes of interim authorisation, its application for authorisation does include the tipping functionality, subject of course, to State regulation.

Most importantly, ihail Pty Ltd notes that if the Commission prevents ihail from utilising a tipping function, the Commission will be allowing other apps to select and market to the most profitable customers, as well as allowing other smartphone apps to price discriminate between consumers where ihail Pty Ltd is denied this option. ihail Pty Ltd does not believe that it is appropriate to distinguish between otherwise competitive apps in this way, including by impairing ihail's ability to compete for services. As ihail Pty Ltd has previously noted, all of the apps which are competitive with the ihail service offer a similar form of price discrimination or tipping mechanism, and ihail Pty Ltd believes that it is inappropriate for the Commission to impose such a restriction on ihail but not on the other app service providers. ihail Pty Ltd believes that the only other appropriate outcome is for the Commission to ban the practice of tipping for all market participants.

Further, ihail Pty Ltd believes that the tipping mechanism is merely a priority service fee. ihail Pty Ltd notes that priority service fees are not uncommon, even in other regulated services. One example of priority services fees is in the postal system, where customers of Australia Post can pay an extra fee to ensure express or couriered delivery of their goods. ihail Pty Ltd submits that the tipping mechanism has a very similar function, and is simply for users to be able to offer to pay a premium for a priority service. This does not, as the

Australia Post priority service fee does not, mean that customers who are unwilling to pay for the priority will not receive service, just that it may not be as expeditious as that offered to premium paying customers. ihail Pty Ltd does not see how this differs from standard price discrimination, a concept that is well-known and welcome under competition law.

6. Impact of ihail on the public

6.1 Clear public benefits

ihail Pty Ltd notes that there are clear public benefits derived from the introduction of the ihail app. ihail Pty Ltd understands that a number of interested parties have suggested that the public benefits of the ihail app would be better delivered individually by separate cab companies, or licenced to cab companies. ihail Pty Ltd notes that this is, in fact, the structure that it has adopted in relation to the service of its app: it intends to enter a number of Licence and Services Agreements with individual cab companies to licence the use of the ihail app to their drivers, should the individual drivers choose to opt-in to the app. Further, while app-booking technology is in the market and a number of designers have developed programs for their own labelled cab booking apps, the ihail technology is a new and innovative product designed specifically for the purposes of ihail Pty Ltd and its related entities in other jurisdictions. Contrary to the points made by Uber in its submission, ihail Pty Ltd does not have any connection to taxi network owned and labelled cab company booking apps, nor does it receive any benefit from the operation or maintenance of those apps.

In its application and earlier submissions ihail Pty Ltd has noted a number of the key public benefits that it believes will arise from the ihail app. Specifically, ihail Pty Ltd notes:

- (a) ihail provides the convenience of a single booking platform for consumers who do not have a particular taxi brand preference. This universality is ihail's biggest public benefit as it will allow target consumers to access the closest cab to them from any taxi network signed with ihail Pty Ltd (and only drivers who have opted-in), ensuring that the consumer gets a fast and reliable service, which they know will charge them no more than the regulated maximum price. Because of the user-rating system, ihail also creates another method for users to ensure that they receive a high level of service through taxis;
- (b) ihail also provides a single booking platform for business consumers who travel interstate or, importantly for ihail, internationally. The more users on the network, the more cab companies that are likely to be part of the ihail network, increasing the service offered to consumers. This network growth will happen over time and will provide an extremely convenient service for consumers that are new to a jurisdiction, meaning that they will not be required to carry local

currency for cab travel (as payment will be easily processed through the app), or download individual cab booking apps for likely short visit times;

- (c) ihail will increase the safety offered to passengers and drivers as it will operate directly through already installed taxi dispatch systems in the cars. This avoids the need for the driver to have a separate mobile phone with an app or other mechanism in the car, as the taxi dispatch system does not have other capabilities and is less likely to prove a distraction, increasing the safety offered to passengers because of the use of the ihail app;
- (d) ihail adds another potential revenue stream for cab drivers as it increases the methods that users can access taxi networks. This is obviously directly beneficial for cab drivers who will have access to more users because of the involvement of their taxi network in the ihail app; and
- (e) ihail represents an efficient allocation of resources between cab companies in order to provide a service to international consumers and consumers that are after the quickest and easiest method of accessing any cab available, without sacrificing competition between the cab companies or with ride sharing apps.

ihail Pty Ltd believes that these clear public benefits are all good evidence that the ihail app can provide real advantage to cab passengers, whether they are Australian residents, temporary visitors to Australia or Australian consumers travelling abroad, increasing their ease of obtaining private transport as well as increasing their safety and security.

6.2 Public detriments raised are not realistic

One potential public detriment that has been set out in interested parties' submissions to the Commission is that ihail will remove any downward pricing pressure that is currently placed on cab companies by third party applications. ihail Pty Ltd does not agree that this is likely, or even possible. First, ihail Pty Ltd does not have any intention (as already stated to the Commission) of attempting to prevent cab drivers from using third party booking applications. These applications are already a source of revenue for drivers and have existing customer and driver user bases, and a number are established in the booking market. As such, consumers will continue to be able to book through a variety of different apps and any competition that exists because of that fact will be enhanced with the introduction of the ihail app. Second, the majority of downward pricing pressure in relation to taxi prices currently comes from either competition between taxi drivers for jobs,

or competition by taxi drivers with ride sharing services.⁴ The ihail app will have no impact on this competition because:

- (a) drivers will still compete for a limited number of jobs, meaning that it will be in individual drivers' interests to negotiate lower prices with customers where necessary, whether or not those customers booked through ihail, a competitor's booking app, or a traditional booking mechanism such as a phone or rank booking;
- (b) ihail will have no involvement in the ride sharing market. Currently one of the major pressures facing taxi drivers is the increase in customers and drivers using the private UberX service at a lower cost than they are accessing taxi services. The launch of the ihail app will have no impact on the ride sharing market, which already has a significant consumer base across Australia. The ihail app will have absolutely no ability to impede the downward pricing pressure caused to taxi drivers by UberX services; and
- (c) ihail Pty Ltd does not have any involvement in setting or agreeing the prices charged by taxi drivers to consumers.

Due to these factors, ihail Pty Ltd does not believe that there can be any legitimate concern that ihail will have any impact on pricing in the taxi market.

ihail Pty Ltd notes that another major concern is that ihail will cause cab companies to foreclose the market for other competitive booking apps, including the cab companies' own labelled booking apps. As discussed elsewhere in this submission, ihail Pty Ltd submits that this is not the case. ihail Pty Ltd intends that the ihail app will be competitive with other booking services, and the ihail app has been designed with this concept in mind.

ihail Pty Ltd believes that the Swan Taxis and Uber submissions place an undue focus on what will be the role of the proposed shareholder companies. These companies have provided the capital investment necessary for ihail Holdings Limited to develop the technology required for the ihail app, and a reserve of capital required to promote and market the app to consumers upon launch. As such, the initial investment by the shareholder cab companies is purely a capital raising exercise, attracting companies with an interest in promoting a competitive service within the private transport services industry. ihail Pty Ltd is a separate company with its own Board and management, and will be required to pursue the goals set for the expansion and development of the ihail application. Its only ongoing involvement with cab companies will be through the Licence and Services Agreements that it will be utilising in order to licence the use of its technology to taxi companies and taxi drivers.

⁴ For example, the NSW Independent Pricing and Regulatory Tribunal recently found that about 50% of ride-share users chose to use the service because it was cheaper than a traditional taxi.

ihail Pty Ltd notes that one of the publicly available submissions against the ihail app was provided by Swan Taxis, a cab company in an extremely dominant market position, which might be required to compete for its services and market share if ihail is authorised. ihail Pty Ltd believes that this provides some evidence for the fact that the ihail app is a competitive product in a number of markets, and has the ability to allow smaller operators and owners to compete with larger taxi networks on a local basis as they are not required to maintain the same level of infrastructure or consumer ownership.

6.3 No co-ordination of prices

ihail Pty Ltd does not have any role in setting or negotiating the price charged by the taxi driver to the consumer. The ihail app is specifically intended to be a means of booking and obtaining dispatch of a taxi to a consumer's precise location. While the ihail app will also process the payment at the end of the trip, the price (whether negotiated or regulated) will be entered by the driver.

ihail Pty Ltd notes that the Swan Taxis and Uber submissions have suggested that the ihail app alone will eliminate any possibility that taxi companies will compete on price. There is no evidence that this will be the case.

First, price competition will continue to increase from other private transport booking applications. While many taxi companies are large and well-established, the current global worth of Uber is widely stated to be somewhere between USD40 and USD50 billion.⁵ ihail Pty Ltd believes that price competition from outside the traditional taxi industry will continue to increase, and that cab companies will be required to respond to that pressure: as that occurs, the only involvement that the ihail app will have is when the driver enters the price into the app for payment at the end of a trip.

Second, ihail Pty Ltd is a separate company and reports to its own Board and management. ihail Pty Ltd has no intention of disaggregating pricing information for specific cab companies and then providing that information directly to shareholders (much as any company does not continually provide commercially sensitive material to shareholders). Indeed, this would be a disincentive for any cab company that was licenced with ihail as their commercially sensitive information would be made available to competing companies. This is not of benefit to those companies, nor does it assist ihail Pty Ltd to attract new licensees because of the fear of leaking commercially sensitive information. As such, there is no rational economic or business reason for ihail Pty Ltd to share this confidential pricing information.

Third, drivers control the negotiation of prices on a trip-by-trip basis. Each driver competes with each other driver for a limited number of taxi jobs, even

⁵ "Behind Uber's soaring value" (11 December 2014) *Fortune* <<http://fortune.com/2014/12/11/behind-ubers-soaring-value/>>; "Microsoft said to invest big sum in Uber" (31 July 2015) *The New York Times* <http://www.nytimes.com/2015/08/01/technology/microsoft-is-said-to-invest-in-uber.html?_r=1>; "Uber may now be worth \$50 billion. Really?" (11 May 2015) *CNN* <<http://money.cnn.com/2015/05/11/investing/uber-50-billion-valuation/>>; "The billion dollar startup club" (18 February 2015) *The Wall Street Journal* <<http://graphics.wsj.com/billion-dollar-club/>>.

where those drivers use the same taxi network affiliation. Because of this there is strong competition between drivers and, as the ihail app is not involved in any way in setting the price for trips, drivers are free to act as they always have. While the ihail app fare estimator uses the metered price to determine an estimated fare for a trip, it does not believe that there is any other appropriate way to give the customer a non-binding estimate of the likely cost. Further, both Ingogo and goCatch use similar methods for estimating fares, and instruct drivers to "input the metered fare" at the conclusion of the trip to determine the price.⁶ ihail Pty Ltd does not see how the ihail app will have an impact that is any different to that.

Because of these factors, ihail Pty Ltd does not believe that there is a significant risk that cab companies will be able to use ihail in order to share commercially sensitive information (and certainly no more significant than the risk posed by the use of any other cross-network booking app).

Please do not hesitate to contact us if you have any further questions about this submission, or about any aspect of ihail Pty Ltd's application for authorisation.

Kind regards



Jo Daniels
Partner
+61 7 3069 6220
Jo.Daniels@bakermckenzie.com

Rowan Kendall
Associate
+61 7 3069 6223
Rowan.Kendall@bakermckenzie.com

Cc: Gavin Jones
Australian Competition and Consumer Commission
By email: Gavin.Jones@accc.gov.au

Natalie Plumridge
Australian Competition and Consumer Commission
By email: Natalie.Plumridge@accc.gov.au

⁶ See <http://www.gocatch.com/faqs-and-help-for-gocatch-users/faqs-help-for-gocatch-drivers/>; and <http://www.ingogo.mobi/driver-training/>.