



Australian
Competition &
Consumer
Commission

Draft Determination

Application for authorisation

lodged by

ihail Pty Ltd

in respect of

joint venture arrangements between taxi companies
and other participants in the taxi industry to launch the
ihail smartphone taxi booking application

Date: 12 October 2015

Authorisation number: A91501

Commissioners: Sims
Rickard
Cifuentes
Court
Featherston
Walker

Summary

The ACCC proposes to deny authorisation to ihail Pty Ltd (ihail) to make and give effect to joint venture arrangements to launch and operate a smartphone taxi booking app for use by domestic and international taxi companies. The arrangements, if authorised, would allow the entire fleets of competing taxi networks to jointly participate in a single booking app.

On 26 May 2015 ihail sought authorisation for a joint venture between a number of Australian and international taxi companies and other participants with an interest in the taxi industry to launch and operate a new smartphone taxi booking app – the ‘ihail app’.

The ihail app is proposed to operate in major metropolitan and regional centres across Australia and in some cities overseas. It will provide passengers with the closest available taxi in their area from taxi networks using the ihail app regardless of the taxi network the driver belongs to.

Current ihail shareholders include:

- Yellow Cabs (Qld) Pty Ltd – operating in Queensland and Tasmania
- Silver Top Taxi Service Ltd – operating in Sydney and Melbourne
- Black and White Cabs Pty Ltd – operating in Brisbane, Perth, Redcliffe and Toowoomba
- Suburban Taxis – operating in Adelaide and
- Cabcharge Australia Ltd – as well as providing taxi payment processing terminals to around 95 per cent of taxis in Australia, it also has taxi networks in Sydney, Melbourne, Adelaide and Newcastle.

The taxi networks operated by ihail shareholders represent more than half of all taxis in Australia and a larger share again in most major metropolitan areas. Consequently, from its launch the ihail app would have a larger fleet of taxis, in a broader range of locations, than any existing taxi booking app. Other taxi networks, and individual drivers, will also be able to join ihail without becoming a shareholder in ihail. Therefore, the proposed arrangements will allow all taxi networks in any area to come together on a single app (if they all decide to participate).

Two of ihail’s shareholders are overseas taxi companies, Texas Taxis and Taxi Services Incorporated Minneapolis. ihail proposes that other taxi companies outside of Australia will also join the app so that passengers will be able to book a taxi through the ihail app, not just in major Australian cities and regional centres but also overseas.

All ihail fares can only be paid through the app, with in-taxi payment not permitted. As such, passengers will only be able to pay for fares using their registered credit card or Cabcharge card. Cabcharge will provide all payment processing services.

Passengers using the ihail app will be able to offer an upfront priority dispatch payment (that is, an extra amount over and above the cost of the fare) at the time of booking a taxi in order to encourage drivers to accept their booking request.

Each of the major taxi networks in Australia currently has their own smartphone booking app. There are also a number of third party booking apps such as goCatch and ingogo which individual taxi drivers sign up to use. These third party apps provide the convenience of being able to book taxis from a large fleet across a number of major cities throughout Australia.

The ACCC considers that the ihail app is likely to result in some public benefits by providing an additional, convenient single platform for consumers to book taxis from a pool of taxi networks and drivers that is likely to be broader than that provided by any existing taxi booking app.

The ACCC also considers that the ihail app is likely to result in a public benefit by providing a single app that can be used in more cities than third party taxi booking apps currently available, including potentially internationally.

However, the ACCC also considers that the proposed arrangements are likely to result in significant public detriment.

The ACCC considers that the ihail app is likely to result in a public detriment by reducing competition between taxi companies in supplying services to customers using the app. As jobs are given to the first driver to accept the fare, regardless of network, each taxi network could expect to receive a share of ihail bookings roughly equal to their share of taxis using the app (that is, the number of taxis in their network as a share of all taxis using the app). Differences in the price of fares or quality of service offered by taxi companies will have no bearing on the share of ihail fares they receive.

The ACCC also considers that the ihail app may reduce competition between taxi companies and between taxi networks more broadly. Smartphone booking apps are an increasingly important element of competition between taxi networks. However, the proposed ihail app would potentially reduce the viability of taxi networks' own apps. In particular, being a joint venture between a number of large taxi networks, and allowing others to join, ihail will have a larger network than any competing taxi booking app in most areas of Australia. Unless a customer has a preference for a particular taxi network, they are likely to use ihail over competing apps. If ihail attracts more customers this will likely attract even more taxis to ihail's network and vice versa. This would result in ihail becoming the dominant taxi booking app. Competition between taxis (on price and service) and the ability of other taxi booking apps to compete would be reduced. If this were the case, there would be substantial detriment to consumers.

Similarly, if ihail became the dominant taxi booking app, it would also reduce the competitive constraint provided by third party booking apps, such as goCatch and ingogo. In particular, the ACCC considers it could reduce the viability of existing third party apps and increase barriers to entry for new third party providers.

If ihail's dominance was due to a superior service offering this would reflect a competitive market outcome. However, under the proposed conduct, ihail is likely to achieve this position by virtue of its ownership structure.

The ACCC also considers that by foreclosing opportunities for payment processing providers other than Cabcharge to supply services to customers using the ihail app, the proposed arrangements are also likely to impact competition between taxi payment processing providers. In particular, as the proportion of fares booked through ihail increases, the amount of in-taxi non-cash payment processing will decline, which may limit emerging competition between Cabcharge and other providers of taxi payment processing services.

The ACCC believes the proposed priority dispatch payment function could also adversely impact access to taxis for financially disadvantaged sections of the community in periods of peak demand. Further, interested parties have expressed concern that such a priority dispatch payment function is arguably in breach of regulations governing maximum taxi fares in some jurisdictions and/or at the very least, against the intent of such regulations.

On balance, the ACCC considers that the likely public benefit from the proposed conduct does not outweigh the likely public detriment. Therefore, the ACCC proposes to deny authorisation.

The ACCC will seek submissions in relation to this draft determination before making its final decision. The applicant and interested parties may also request the ACCC to hold a pre-decision conference to allow oral submissions on the draft determination.

Contents

Summary	i
Contents	iv
Abbreviations and definitions	v
The application for authorisation	1
The conduct	1
Background	3
Taxi industry	3
Smartphone taxi booking apps	8
The operation of the proposed ihail app	11
Current ihail shareholders	15
Submissions received by the ACCC	18
ACCC assessment	20
The relevant areas of competition	20
The future with and without	22
Public benefit	22
Increased convenience	23
Increased competition	24
ACCC conclusion on public benefits	26
Public detriment	26
ACCC conclusion on public detriments	39
Balance of public benefit and detriment	39
Draft determination	40
The application	40
The net public benefit test	41
Interim authorisation	41
Further submissions	41
Attachment A - Summary of relevant statutory tests	42

Abbreviations and definitions

ACCC	Australian Competition and Consumer Commission.
the Act	<i>Competition and Consumer Act 2010.</i>
Cabcharge	Cabcharge Australia Limited
GPS	Global Positioning System
ihail	ihail Pty Ltd.
ihail app	ihail smartphone taxi booking app.
in-app payment	payment made through a smartphone app or other electronic device (via a pre-registered payment method such as a credit card) without physically presenting a payment card to a taxi driver.
MTData	Mobile Tracking and Data Pty Ltd
Network Service Provider	businesses that facilitate the booking of taxi services by passengers. Passengers use a variety of methods to make bookings, from phone bookings to mobile phone applications and online. Once a passenger makes a booking, the Network Service Provider dispatches a vehicle to the passenger.
network effects	In economics a network effect (also called network externality) is the effect that one user of a good or service has on the value of that product to other people. When network effects are present, the value of a product or service increases with the number of others using it. The classic example is the telephone. The more people own telephones, the more valuable the telephone is to each owner.
Point to point transport	transport services that operate from the passenger's pick up point to the passenger's ultimate destination, including hire cars with drivers, rental cars, commercial ridesharing and taxis.
priority dispatch payment	an optional function within the proposed ihail app which allows passengers to offer drivers an upfront payment over and above the standard fare when requesting a taxi to incentivise priority pick up.
Ridesharing	This term has been used throughout the draft determination to describe booking apps which involve consumers accessing transport services from private drivers, as opposed to licensed taxis.

The application for authorisation

1. On 26 May 2015 ihail Pty Ltd (**ihail**) lodged an application (A91501) with the Australian Competition and Consumer Commission (**ACCC**) seeking authorisation, for and on behalf of itself, ihail Holdings Limited and the existing shareholders of ihail Holdings Limited to make and give effect to joint venture arrangements. In particular, the proposed joint venture is between a number of taxi companies and other participants with an interest in the taxi industry to develop and operate a smartphone taxi booking application (**ihail app**) for use by domestic and international taxi companies. On 18 June 2015 ihail provided further information confirming the scope of the proposed conduct.
2. ihail seeks authorisation for a period of five years. It also seeks authorisation for 'any new shareholders, licensees, employees or contractors or any other party to the existing contracts or contracts on substantially similar terms during the proposed period of authorisation.'¹
3. Authorisation is a transparent process whereby the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (**the Act**). The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Before making its final decision on an application for authorisation the ACCC must first issue a draft determination.²
4. 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.³
5. At the time of lodging their application ihail also requested interim authorisation to enable it to commence the launch of the ihail app while the ACCC was considering the substantive application for authorisation. On 17 July 2015 the ACCC decided not to grant interim authorisation. In particular the ACCC considered that granting interim authorisation may have a lasting impact on competition in the taxi industry and that ihail had not demonstrated clear reasons to support urgent interim authorisation.⁴ The ACCC indicated that it would reconsider whether to grant interim authorisation at the time of issuing its draft determination.

The conduct

6. ihail seeks authorisation for a joint venture between taxi companies and other participants with an interest in the taxi industry to develop and operate the ihail app for use by domestic and international taxi companies.

¹ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 2.

² Detailed information about the authorisation process is contained in the ACCC's Guide to Authorisation available on the ACCC's website www.accc.gov.au.

³ Section 91 of the Act.

⁴ Ihail Pty Ltd, Authorisation A 91501, Interim authorisation decision:
<http://registers.accc.gov.au/content/index.phtml/itemId/1186905/fromItemId/278039/display/acccDecision>

7. The ihail app will allow passengers to electronically hail a taxi using their smartphone's Global Positioning System (**GPS**) from a 'global range of networks from the one application interface.'⁵ ihail advises that the target market for the proposed app is passengers who wish to book a taxi when travelling in a city other than their normal place of residence. The ihail app is designed to work in multiple locations, including outside Australia, and all available taxis from any participating taxi company within the passenger's area will be available through the app. When hailing a cab through the app, the first available taxi to accept the job, regardless of taxi company, will be allocated the job.⁶
8. The Applicant (ihail Pty Ltd) will be an Australian based subsidiary of a United Kingdom holding company, ihail Holdings. There are currently nine shareholders in ihail Holdings, six of which are traditional taxi companies, namely:⁷
 - Yellow Cabs (Qld) Pty Ltd – operating in Queensland and Tasmania
 - Silver Top Taxi Service Ltd – located in Sydney and Melbourne
 - Black and White Cabs Pty Ltd – operating in Brisbane, Perth, Redcliffe and Toowoomba areas
 - Suburban Taxis – operating in the Adelaide area
 - Texas Taxis Inc – a US based taxi company, operating in Houston, Austin and San Antonio areas
 - Taxi Services Incorporate Minneapolis – a US based taxi company, operating in the Minneapolis areas
 - Mobile Tracking and Data Pty Ltd
 - New South Wales Taxi Council and
 - Cabcharge Australia Ltd (**Cabcharge**) – with, among other things, taxi network operations in Sydney, Melbourne, Adelaide and Newcastle.
9. Further details about ihail's ownership structure are provided in the Background section of this draft determination.
10. Taxi companies and drivers do not have to be ihail shareholders to use the app. Any taxi company will be able to join ihail as a user, subject to entering into a Licence and Services Agreement with ihail. In this respect ihail submits that the success of the app requires broad usage and acceptance which is achieved by ensuring that as many taxi companies as possible accept and use the ihail app.⁸
11. The ihail app is intended to operate in major capital cities in Australia, the United Kingdom and the United States for the first two years. That is, passengers that sign up to the ihail app will be able to request taxis using the app in any city in

⁵ ihail supporting submission to the application for authorisation A91501, 26 May 2015 p. 7.

⁶ ihail submission, 2 July 2015, p. 2.

⁷ ihail supporting submission to the application, 26 May 2015, pp. 4-5.

⁸ Ibid, p. 7.

which it operates. ihail advises that it currently has partners (that is, taxi companies proposing to use the app) in Australia in the following locations:⁹

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

12. Further detail about the operation of the ihail app is provided in the Background section of this draft determination.

Background

Taxi industry

13. A taxi licence is required in order to operate a taxi in Australia. Taxi licences or permits are granted by state and territory governments. A licence owner may own, operate and drive a taxi. However, many licence owners lease their taxi licence to an operator. Taxi operators range in size from operators of a single taxi to large fleet operators. A taxi operator is responsible for the taxi vehicle, including insurance and maintenance. Taxi operators can drive the taxi(s) themselves and/or engage drivers to do so.
14. To facilitate bookings, taxi operators affiliate with taxi booking services, also known as Network Service Providers or taxi networks. Typically, passengers book taxis through these networks by phone, over the internet or via a smartphone app. The Network Service Provider then dispatches the job to drivers whose taxis are part of its affiliated network. A number of ihail's shareholders – namely, Yellow Cabs (Qld), Silver Top Taxi Service, Black and White Cabs, Suburban Taxis and Cabcharge – are Network Service Providers.
15. Taxis play an important role in providing transport services to the community in general, as well as key sections of the community – including the elderly, people with disabilities, the young or vulnerable, disadvantaged socio economic groups

⁹ ihail submission, 2 July 2015, p. 3.

and business travellers. Approximately 12 per cent of the taxi fleet in Australia is wheelchair accessible.¹⁰

16. Traditionally, passengers have engaged the services of a taxi either by hailing the taxi in the street or at a taxi rank (called 'non-booked' services) or through a phone booking with a specific taxi network operator which then dispatches a taxi to the customer (called 'booked' services). In recent years, smartphone taxi booking apps have appeared. They have been developed by existing taxi networks, as well as by third parties such as ingogo and goCatch. As with phone bookings, all requests for pick up through a taxi network's smartphone app, whether for immediate pick up or pick up at a later time, are classified as 'booked services'
17. ihail submits that non-booked taxi services make up the largest share of industry revenue (around 70 per cent), with 30 per cent of taxi rides coming from booked taxi services.¹¹ There are approximately 21 000 taxis in Australia, with around 227 million taxi jobs taken in Australia annually.¹²
18. The taxi industry in Australia is heavily regulated in each state and territory. Regulation controls entry into the market; that is, by controlling the number of taxi licences that may be issued. The state governments are also responsible for the setting of taxi fares. States have regulated maximum fares and taxi companies are free to charge less than the regulated maximum. Since 2014, Victorian taxi operators in regional and country taxi zones have been able to set their own maximum fares under a price-notification scheme.
19. Table 1 provides an overview of current regulatory arrangements across Australia, including recent and ongoing reviews of the taxi industry undertaken by state and territory regulators. Notably, on 30 September 2015 the ACT Government announced a suite of reforms that include the introduction of new regulations to legalise ridesharing services, such as uberX, in the ACT. It is the first jurisdiction in Australia to do so.

Table 1: Taxi industry regulation in Australia

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
Victoria	Regulated maximum fares for metropolitan and urban areas. Notified fares for rural and regional areas. The Taxi Services Commission (TSC) regulates the taxi and hire vehicle industries with maximum fares determined by and or notified to the Essential Services Commission (ESC).	In 2011 the Victorian Government commenced a taxi industry inquiry to conduct a comprehensive investigation into service, safety and competition issues in the industry. The inquiry was completed in 2012. From 30 June 2014 a series of reforms took effect, including: <ul style="list-style-type: none"> • better conditions for drivers: taxi drivers will have better working conditions and pay under a new mandatory Driver Agreement, which will guarantee them at least 55 per cent of takings • a knowledge test for drivers • changes to fare structures – taxi operators in regional and country zones can notify their own maximum fares, and the ESC continues

¹⁰ Australian Taxi Industry Association, *submission to the Competition Policy Review*, p. 3.

¹¹ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 13.

¹² Australian Taxi Industry Association, *2014 State and Territory Taxi Statistics (as at 31 December 2014)*, viewed at <http://www.atia.com.au/wp-content/uploads/2014-State-Territory-Taxi-Statistics.pdf>, 22 September 2015.

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
		<p>to set regulated maximum fares for metropolitan, urban and large regional zones</p> <ul style="list-style-type: none"> • a new zoning system: taxis will operate within a new four-tier system of zones, being metro, urban (including large regional centres), regional, and country. Separate licence fees will apply for each of these zones. • it was previously a licence condition that taxis were affiliated with a network and these networks were limited to a particular zone / town. Across the four new zones, operators can 'go out but not in'. There is no longer a requirement for mandatory affiliation to a taxi network. • improved availability of licences: the TSC will issue new licences as the market demands. A 'consumer interest test' will apply to regional and country zones to consider the benefits of new licences for customers • a set annual fee for licences: this will relieve pressure on overheads and fares. The annual fee will be lower in regional and country areas, and for wheelchair-accessible vehicles • better information and complaints handling for consumers • improved safety for drivers and consumers and • changes to hire car regulations.
New South Wales	Regulated maximum taxi fares are recommended by IPART. Transport for NSW makes final decisions on fares. Roads and Maritime Services are responsible for enforcing the regulations.	On 1 July 2015 the NSW Government announced a taskforce to examine the future sustainability of taxis, hire cars and other emerging point to point transport providers in NSW, including ridesharing apps. The task force is to provide its report to the government by October. The annual review of fares by IPART has been postponed until the taskforce has reported back to the NSW Government and they have issued a response.

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
Australian Capital Territory	The maximum taxi fares that can be charged are determined by the Minister for Territory and Municipal Services.	<p>In early 2015, the ACT Government commenced a taxi industry innovation review. The innovation review focused on the evolution of the taxi industry, including new technologies, implementation of ride share models, level of surcharge of electronic taxi fare payments, compliance among taxi drivers with the disability standards etc.</p> <p>On 30 September 2015 the ACT government announced various reforms to the taxi and on-demand transport industry, including legalising ridesharing services such as uberX. The reforms will be introduced in two stages:¹³</p> <ul style="list-style-type: none"> • Stage 1 – an interim phase that allows authorised ridesharing and other innovative booking services to operate subject to safeguards such as criminal history and driver history checks. There will also be an immediate reduction of taxi license fees (of 50 per cent) on entry of ridesharing. This stage commences on 30 October 2015. • Stage 2 – new laws will be introduced into the Legislative Assembly to introduce the full suite of reforms, including driver accreditation requirements for rideshare and reduced regulation for taxis and hire cars. The new laws will be introduced by 30 October 2015, for commencement at a later date. <p>Under the reforms, taxis will retain sole access to the rank and hail market. Rideshare companies will be able to operate alongside taxi networks and other booking apps as Transport Booking Services. Under this structure, all business models will be regulated similarly and allow drivers (from taxi, hire cars and rideshare) the potential to accept bookings from more than one Transport Booking Service.</p>
Queensland	The Department of Transport and Main Roads determines maximum fares for Queensland taxis separated into 3 tiers, south-east Queensland, regional Queensland and exempted Queensland (for communities with sporadic demand).	

¹³ Chief Minister, Treasury and Economic Development Directorate, *2015 Taxi Industry Innovation Reforms*, viewed on website: <http://www.cmd.act.gov.au/policystrategic/regreform/2015-taxi-industry-innovation-reforms> on 30 September 2015.

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
South Australia	Department of Planning, Transport and Infrastructure is responsible for regulating and approving fares. There are regulated maximum fares for metropolitan areas. Regional operators can set their own fares – up to 20 per cent of above metropolitan fare (or higher with approval).	The SA Government has recently commenced a review into the taxi and chauffer vehicle industry. The review panel has broad scope to review the industry, noting that technologies and booking services like goCatch, Uber and ingogo, will also be examined.
Northern Territory	Regulated maximum fares are determined by the Department of Transport.	In November 2014 the NT Government released a position paper as part of its Commercial Passenger Vehicle Industry review. The paper sought comment on proposed reforms to the regulatory framework in order to make the commercial passenger vehicle industry more competitive, responsive to customer needs and create jobs and business opportunities. The consultation phase concluded in early 2015.
Western Australia	The taxi industry in WA is regulated by the Department of Transport. The Department of Transport sets maximum taxi fares. There are different taxi fares for the metropolitan area and for each of the nine different regional zones.	In July 2015 the WA Department of Transport released a green paper, <i>On-demand Transport - Discussion Paper for Future Innovation</i> . It is seeking feedback on a series of proposed taxi industry reforms, with submissions closing in mid-October.
Tasmania	Tasmania has regulated maximum taxi fares. The Department of State Growth sets fares based on advice from the Tasmanian Economic Regulator. One of the Tasmanian Economic Regulator's responsibilities is to undertake Taxi Fare methodology inquiries.	

Smartphone taxi booking apps

20. The development of smartphone technology now allows consumers to 'electronically hail' a taxi, and the popularity of individual taxi company and third party apps appears to be increasing. ihail advises that 'the average taxis booked per taxi company via a smartphone app is approximately 12 per cent.'¹⁴ The ACCC notes that this figure does not include bookings made through third party apps.
21. Features of smartphone apps for booking taxis vary, but generally include the use of a smartphone's GPS to identify nearby available taxis for a passenger and to identify the passenger's location for the driver once the taxi is hailed. To facilitate this, the apps have both a customer and a driver interface. In addition to taxi apps, a number of apps have been established that allow private transport providers to connect with passengers in the same way (for example, Uber).
22. The smartphone's GPS allows the customer to see on a map the location of taxis or private vehicles in their vicinity, and therefore how long it is likely to take a vehicle to arrive if they do request one. Once a vehicle is requested, the dispatch process differs depending on whether the booking request has been made with a taxi company app or a third party app. Where a taxi is requested through a taxi network app, the request is dispatched by the network in the same manner that a phone booking received by the network would be. That is, the job is offered to drivers in the area via the on-screen display in their vehicle. If the taxi is booked through a third party app (be it a taxi app or private car ridesharing app), the booking request will appear on the smartphone of drivers in the area who are logged onto the app. In either case, the job is allocated to the first eligible driver to accept it.
23. Once a request is made, the passenger is able to track the dispatched vehicle on their smartphone as it approaches their location. The passenger will also be provided with details about the driver including, in the case of private vehicles, the make and model of car, and the car's registration number. Similarly, the driver will be provided with the passenger's details, including a contact phone number.
24. Most apps also have automatic payment functions, which requires passengers to register their payment details when signing up for the app – for example, credit card or PayPal details – meaning no exchange of payment occurs between the driver and the passenger in the vehicle (that is, 'in-app payment'). If the passenger indicates through the app, once the fare is accepted, that they wish to utilise the in-app payment function the fare is automatically deducted via the passenger's chosen payment method at the completion of the journey. In the case of a taxi journey, the driver will inform the network operator or third party app of the fare. In the case of private vehicle transport, the journey will be tracked by GPS, the driver will use the app to indicate where and when the journey commenced and finished, and the fare will be calculated automatically.
25. Booking fees will apply to jobs booked through a smartphone app, as do credit card surcharges and other fees such as tolls and airport fees where applicable.
26. The ACCC understands that taxi company apps also allow in-taxi payment. That is, the passenger has the option of paying in cash or via card payment terminals in the taxi in the same manner that they would if they had hailed the taxi or booked the taxi via traditional means.

¹⁴ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 13.

27. The ACCC understands that generally, if in-app payment is used then at the conclusion of the journey, a receipt will be emailed to the passenger (usually instantaneously). As well as including details of the fare, the receipt may include details of the driver, the pick-up and drop off location, and in some cases a map of the route taken based on the GPS data collected during the journey. Passengers are often provided with an opportunity to rate the driver through the app.
28. Most taxi networks have their own smartphone apps – for example, Black and White Cabs, Yellow Cabs, 13CABS, Silver Top, Swan Taxis, Silver Service, Apple Taxis, mTAXI 2 (operated by Cabcharge), Legion Cabs, Premier Cabs, Geelong Taxi Network, Gold Coast Cabs and Whitsunday Taxi.¹⁵
29. While most taxi companies have their own smartphone apps, much of the growth in the adoption of smartphone apps for hailing taxis and ridesharing services has been driven by third party operators such as Uber, goCatch and ingogo.

goCatch and ingogo

30. goCatch and ingogo are examples of third party taxi booking and payment services apps that are not affiliated with any taxi company. Rather, individual taxi drivers, during their shifts, can log on to goCatch or ingogo through their own smartphones and pick up jobs in addition to sourcing jobs through their usual channels (hailing, taxi ranks and network dispatch). The driver uses the taxi meter to determine the fare payable in the same manner as they would if they picked up a passenger in any other way.
31. The ACCC understands that *goCatch* has a large network of 35 000 registered taxi drivers¹⁶ registered across most major taxi networks and all capital cities across Australia.
32. Passengers using the goCatch app can choose to pay via the app using either their stored credit card details or via a PayPal account. Alternatively, customers may choose to use an in-taxi payment method such as cash.¹⁷ goCatch recently reported that it has signed a new deal with Mint Payments for their in-app payment processing.
33. goCatch allows the customer to offer an upfront payment to the driver to provide an incentive for drivers to accept the job in peak times.¹⁸ At the time of requesting the taxi the customer can include a message which will be seen by drivers indicating, for example, what amount they are willing to pay above the metered fare to the first driver that accepts their job.
34. *ingogo* currently operates in Sydney, Melbourne and Brisbane.¹⁹ It is reported to have a network of 5000 active drivers.²⁰ Passengers can book taxis up to 48 hours ahead of time.

¹⁵ Australian Taxi Industry Association website: <http://www.atia.com.au/best-taxi-apps/iphone/#>, viewed on 23 September 2015.

¹⁶ Patrick Durkin, Australian Financial Review, *goCatch hitches a ride with Mint Payments as taxi wars heat up*, <http://www.afr.com/news/economy/gocatch-hitches-a-ride-with-mint-payments-as-taxi-wars-heat-up-20150904-gjf5yq> viewed on 8 September 2015.

¹⁷ goCatch website: <http://www.gocatch.com/faqs-and-help-for-gocatch-users/faqs-help-for-gocatch-drivers/#tab-1430204068421-5-7> viewed on 25 September 2015.

¹⁸ Ibid.

¹⁹ ingogo website: <http://www.ingogo.mobi/faqs/>, viewed on 23 September 2015.

35. Passengers using ingogo can pay from within the app or within the taxi by credit or debit card or in cash. ingogo also provides a \$10 credit to a passenger's account if a taxi cancels a fare and a replacement taxi is not located in time.²¹
36. For in-app payment, ingogo recently announced a partnership with ANZ and payment platform provider Ingenico.
37. Other third party booking apps include:
- CabCue – offers a consolidated account system for taxi payments within the app, allowing persons or businesses to create an account and add any number of people to the list of users, and
 - SmartHail – operates in over 60 regional centers around Australia, as well as major metropolitan centers.

Uber

38. Uber operates in 54 countries around the world and in most Australian capital cities. It was launched in Australia in 2012 and now operates three services under its app.²²
- uberBlack – which connects customers with drivers offering rides from commercial, registered luxury/private hire vehicles
 - uberTaxi – which connects consumers with drivers offering rides from licensed taxi cabs. The ACCC understands this service, which operates similarly to other third party booking apps, is currently only offered in Sydney, and
 - uberX – which connects consumers with drivers offering rides in their private vehicles (launched in January 2014). The ACCC notes that the legality of uberX services is currently unresolved in most Australian states and territories. The ACT Government has announced that as from 30 October 2015 it will legalise and regulate ridesharing services such as uberX.²³
39. Passengers using the Uber app are required to register their credit card details in the app. For uberBlack and uberX trips, payment is automatically deducted at the conclusion of the trip, with no in-car payment or cash transfer to an Uber driver. As uberBlack and uberX drivers use their own vehicles there are no meters or payment processing facilities available. Rather, the fare is calculated by reference to a GPS record of the trip undertaken.
40. Fares for the most popular Uber service, uberX, where the driver offers rides in their private vehicle, are generally lower than standard taxi fares. However, Uber also employs a surge pricing system, where its prices rise in periods of high

²⁰ BRW, R. Powell, *Ingogo smashes Australia's equity crowdfunding record*, published 29 May 2015, viewed at http://www.brw.com.au/p/entrepreneurs/ingogo_smashes_australia_equity_EgieYlc3Maqoly7hI Cz7BO on 10.9.15.

²¹ Ingogo website: <http://www.ingogo.mobi/faqs/>, viewed on 23 September 2015.

²² Uber submission, 10 July 2015, p. 4.

²³ http://www.cmd.act.gov.au/__data/assets/pdf_file/0005/778568/150929_ACT-TaxiIndustryReforms_Rideshare.pdf

demand. When booking requests from passengers are outstripping available drivers, the Uber app will indicate that surge pricing is in operation. For example, the app will indicate that 1.7 times or 2.5 times the standard rate will apply to all journeys. This information is disclosed before the customer makes a booking. Uber's rationale for surge pricing is that it is designed to incentivise more drivers to make themselves available in periods of peak demand/short supply.

41. There are no designated surge pricing periods. Rather, surge pricing periods are determined in real-time based on supply (available drivers) and demand (requested jobs).

Backseat

42. Backseat operates in a similar manner to uberX; it connects passengers with private car drivers. Backseat currently only operates in Sydney.

The operation of the proposed ihail app

43. As noted, taxi companies and drivers do not have to be ihail shareholders to use the app. Any taxi company will be able to join ihail, subject to entering into a Licence and Services Agreement with ihail. In this respect, ihail submits that the app will increase in attractiveness to both consumers and taxi companies the more taxi companies that use it.²⁴
44. The proposed conduct does not include any restriction on taxi drivers or taxi networks from using any other taxi booking apps.

Taxi booking and dispatch

45. The ihail app does not allow a passenger to select a particular taxi company. A passenger's request, made via the ihail app, will be passed on to all nearby taxis that are registered with ihail regardless of network, operator or driver, and the job will be given to the first taxi driver to accept the request.

²⁴ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 15.

46. In particular, ihail advises that taxi jobs will be dispatched to drivers in accordance with the following steps:²⁵

- A passenger submits a booking in their chosen location through the ihail app.
- The passenger's booking is sent to the ihail cloud.
- The cloud simultaneously sends a booking request to all participating taxi networks.
- Each participating taxi network then dispatches the booking automatically to the most appropriate driver(s), separately and in isolation from one another, via the separate ihail fleet setup in each taxi dispatch system based on ihail's common dispatch parameters. These dispatch parameters are:
 - for the CBD – vacant taxis within a 200 meter radius, and if no taxi accepts then within a 400 and 600 metre radius
 - for inner suburbs of a city – vacant cars within a 1 then 2 and 4 kilometre radius
 - for outer suburbs of a city – vacant cars within a 2 then 4 and 6 kilometre radius and
 - for rural areas – vacant cars within a 3 then 6 and 9 kilometre radius.
- Drivers whose network is not affiliated with ihail are also able to register to use the app. Available jobs are sent to these drivers via an ihail driver smartphone app at the same time as they are sent to participating taxi networks.
- The first driver to accept the job through their taxi dispatch system or via the driver app receives the work.
- The cloud receives the relevant information from the accepting taxi network or driver app, which is then relayed to the passenger. These details include the vehicle registration number, vehicle make and model and the details of the taxi network (if relevant).
- Participating taxi networks pay ihail \$0.20 for each booking. ihail also receives a portion of the credit card surcharge fee payable on each fare.²⁶

47. The ihail app will also allow passengers to pre-book taxis.²⁷

48. The ihail app has been designed to operate with any existing taxi dispatch system used by taxi companies. In this regard, ihail has developed a generic system that allows third party dispatch systems to push ihail bookings to registered drivers.²⁸ Given this, the ACCC considers that the proposed ihail app is unlikely to raise competition concerns in relation to the provision of bookings management and dispatch services.

²⁵ Ibid, pp 3-4.

²⁶ ihail submission, 4 August 2015, p. 6.

²⁷ ihail submission, 11 September 2015, p. 4.

²⁸ ihail submission, 3 September 2015, p. 4.

49. An ihail driver whose network is affiliated with ihail will receive notification of an available ihail job through their existing 'job screens' within the taxi in the same way as they would receive notification of an available job made directly to the network (by phone, online or through the network's own smartphone app). For an ihail booking, it is proposed that the job screen will include the fleet name (that is, ihail), and display the pick-up compass, customer's phone number and distance to pick up.²⁹ Once a driver accepts the job this is communicated to ihail by the driver's network and ihail will separately communicate to all other participating networks in the relevant area that the job is no longer available.
50. According to ihail's dispatch rules, if a taxi driver accepts a job from ihail they cannot recall the job. Customers can also use the ihail app to rate drivers at the completion of a journey. Low scoring drivers may be removed from ihail in order to maintain a high standard of service.³⁰

Calculation and payment of taxi fares

51. ihail has no involvement in setting the price that is charged to passengers.³¹ Fare prices are determined independently by every taxi company that has an agreement with ihail, including whether or not the taxi company or an individual driver wants to provide passengers with a discounted price from state and territory government regulated maximum fares.³²
52. At the conclusion of an ihail trip, the taxi driver will be required to enter the value of the fare that is charged to the passenger, which may be below the metered fare if the driver has negotiated a lower price with the passenger. ihail only takes the price that has been entered by the driver, and will not take price information directly from the meter.³³
53. Passengers using the ihail app will only be able to pay via credit card or Cabcharge card though ihail's in-app payment processing system.³⁴ ihail's in-app payment processing will be managed by Cabcharge. ihail submits that, among other things, it requires all payments to be processed via credit card in order to charge passengers a 'no job fee'. A 'no job fee' is charged to consumers if they fail to show for a booking, without cancelling the booking request. ihail advises that this fee is intended to provide greater certainty to drivers when travelling to a booking, which will help the industry raise its service standards.³⁵

²⁹ ihail submission, 3 September 2015, p. 4.

³⁰ Ibid, p. 5.

³¹ In every jurisdiction in Australia that ihail proposes to launch in, there is a government-regulated maximum price that taxi companies can charge consumers.

³² ihail submission, 18 June 2015, p. 1.

³³ Ibid.

³⁴ ihail submission, 3 September 2015, p. 5.

³⁵ Ibid.

54. At the time of signing up to use the ihail app, passengers will be required to register their credit card details. ihail advises that when signing up for an ihail account, a consumer agrees that:

By signing up you agree to the Terms and Conditions and Privacy Policy, including in relation to marketing communications which you may unsubscribe from at any time.³⁶

55. ihail advises that the Terms and Conditions will state that a credit card processing fee will be charged for each fare. The credit card surcharge depends on which state the passenger is in – it will be 5 per cent in NSW, Victoria and Western Australia, and 10 per cent in all other states and territories. ihail advises that these different credit card fees will also be set out in the 'FAQ's section' of its website.³⁷
56. Passengers will not be able to access government subsidy schemes through the ihail app. Like passengers that do not have a credit card, ihail submits that these passengers will continue to be able to access taxi services via existing methods.³⁸ That is, these customers will not be able to book at taxi using the ihail app.

Fare estimator

57. The ihail app will also include a 'fare estimator' function, similar to those seen in a number of other taxi or ride sharing apps. The fare estimator will calculate an estimate of the fare based on the standard government regulated maximum price, the distance between the passenger's location and the selected destination, time of pick up, selected route, car type, the relevant credit card surcharge fee and GST. As noted, passengers are only able to pay for fares booked through ihail via their registered credit card or Cabcharge card. Therefore fare estimates provided by the ihail app will include the applicable credit card surcharge fee.³⁹
58. The fare estimator is proposed to include the following disclaimer:

The amount displayed is an estimate only, calculated on the basis of distance, the time of pickup, route and car type, and includes GST for a booking processed via Credit Card. The amount excludes any discounts that may be applicable for any payment type, any applicable extras, tolls, airport charges or the journey time. Actual fares may vary based on the route chosen.⁴⁰

Priority dispatch payment⁴¹

59. ihail proposes that passengers using the ihail app will also be able to offer an upfront priority dispatch payment. This will allow passengers to offer a sum of money to drivers in their area in order to incentivise priority pick up. For example, when requesting a taxi using the ihail app the passenger will be able to indicate that they are prepared to pay an additional amount over and above the applicable fare, which the passenger determines. Drivers will see this message when the fare is dispatched, via their network or the driver ihail app, meaning that they are more likely, all else being equal, to accept the fare in preference to other fares that may be available at the time. This payment is optional and the passenger will only be able to offer it before a job is accepted.

³⁶ ihail submission, 16 September 2015, p. 2.

³⁷ Ibid, p. 2.

³⁸ Ibid, p. 3.

³⁹ ihail submission, 24 September 2015, p. 1.

⁴⁰ Ibid, p. 2.

⁴¹ ihail submission, 18 June 2015, p. 4.

Current ihail shareholders

60. ihail is a 'specific venture company' established by Mobile Tracking and Data Pty Ltd (**MTData**) on behalf of the shareholders and future shareholders of ihail Holdings Limited (**ihail Holdings**), a United Kingdom holding company. ihail was established for the purpose of developing and operating the ihail app in Australia for use by local and international taxi companies.⁴²
61. ihail advise that once ihail Holdings is fully established, it is intended that 100 per cent of the shares in ihail will be transferred from MTData to ihail Holdings. ihail Holdings will have three subsidiaries, operating in three countries. Specifically:⁴³
- ihail – will provide licencing, operational and support services to regional taxi networks in Australia
 - a United States operating company – will provide services for regional taxi networks in the United States and
 - a United Kingdom operating company – will provide services for regional taxi networks in the UK.
62. ihail advises that it is also considering establishing a New Zealand operating company in the near future.⁴⁴
63. ihail Holdings currently has six traditional taxi network shareholders, four of which are based in Australia. The services they provide currently include booked and non-booked taxi services for passengers in:
- the traditional standard taxi
 - maxi taxis
 - multi-passenger taxis and
 - silver service taxis.⁴⁵
64. Cabcharge is also a taxi network service provider in some cities – as set out in more detail below.
65. The Australian-based taxi networks all currently have their own individual smartphone apps. ihail submits that current taxi company shareholders intend to continue to run their own individual taxi booking apps.⁴⁶ In particular:⁴⁷
- *Silver Top Taxi Services Pty Ltd*: has an app for Blackberry, Apple, Windows and Android devices. The app allows users to book various forms of taxis to their current location or in the future, live GPS track the approaching taxi and calculate fare estimates. The app allows passengers to book standard taxis,

⁴² ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 3.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid, p. 4.

⁴⁶ Ibid, p. 8.

⁴⁷ Unless otherwise stated, the information was obtained from ihail's supporting submission to the application for authorisation A91501, 26 May 2015 p. 12.

maxi taxis, silver service taxis, wheelchair accessible taxis and station wagons.⁴⁸

- *Black and White Cabs Pty Ltd*: has an app available for Apple and Android devices. The app allows users to book various forms of taxis, live GPS track the taxi that accepts the booking, estimate fares and pay fares through the app.
- *Yellow Cabs (Qld) Pty Ltd*: has an app available for Apple and Android devices and is available for its customers in Brisbane (including Redcliffe, Ipswich and Caboolture), Warwick, Rockhampton and Yeppoon.⁴⁹ The app allows users to book various forms of taxis, live GPS track the taxi that accepts the fare and pay fares through the app.
- *Suburban Taxis*: has an app available for Apple, Android and Windows devices. The app allows users to book various forms of taxis, live GPS track the taxi that accepts the fare and to estimate the fare for a particular trip.

66. The other current shareholders are:

- *Texas Taxis Inc and Taxi Services Incorporate Minneapolis* – US based taxi companys, operating in Houston, Austin and San Antonio areas (Texas Taxis) and in the Minneapolis area.
- *MTData* – an Australian-owned company that specialises in providing GPS fleet management solutions and dispatch systems, including to the taxi industry. GPS location services allow hardware (such as phones, tablets and in-built car systems) to use information from cellular and GPS networks to determine the hardware's approximate location. The hardware provides a latitude and longitude which is relayed by the software to a mapping provider, which provides a current location to be displayed.⁵⁰

A dispatch service is the hardware and software used to communicate work to taxis in accordance with fleet business rules. The rules are common for all taxis in a network and refer to the ability for taxis to work in ranks, areas/zones and accept all job requests provided automatically by the taxi network to which they subscribe.⁵¹

MTData has been involved in developing the ihail app and the various support services required to operate the app including dispatch services. MT Data does *not* provide GPS location services for the ihail application. These services are provided by the relevant operating system on the user's chosen device (that is, phone, tablet or in-built car system).⁵²

- *The New South Wales Taxi Council* – is the operating arm of the NSW Taxi Association and the NSW Country Taxi Operators Association, representing authorised taxi networks in NSW.

⁴⁸ Silver Top Taxi's website: <http://www.silvertop.com.au/news/35-new-iphone-app> viewed on 22 September 2015.

⁴⁹ Yellow Cabs (Qld) Pty Ltd's website: <http://www.yellowcab.com.au/customer-services/smartphone/> viewed on 22 September 2015.

⁵⁰ ihail submission, 3 September 2015, pp. 2-3.

⁵¹ Ibid.

⁵² Ibid, p. 3.

- *Cabcharge* – is a participant in the taxi industry. It operates a taxi charge account system which allows customers to pay for taxis without using cash. Cabcharge facilitates non-cash payments in taxis via its electronic terminals (called the ‘EFTPOS Fareway System’), for a service fee. As at 30 June 2014, Cabcharge is reported to have approximately 21 500 payment terminals in taxis nationwide⁵³, some 95 per cent of taxis nationwide.⁵⁴ Cabcharge holds merchant agreements with a range of taxi companies, and many of the major taxi companies are shareholders in Cabcharge.⁵⁵

Cabcharge has been involved in the development of ihail’s in-app payment system and will process payments for bookings made through the ihail app.

Further, Cabcharge is a taxi network service provider in Sydney, Melbourne, Adelaide and Newcastle. Cabcharge’s network services include bookings and dispatch, licence leasing, insurance brokerage, provision of taxi vehicle communications equipment, taxi fitouts and repairs, and driver training. As at 30 June 2014, 50 per cent of Cabcharge’s revenue came from network services.⁵⁶ Table 2 summarises Cabcharge’s network operations.

Table 2 Cabcharge’s network operations:⁵⁷

City	Network operator name(s)	No. of affiliated taxi as at 30 June 2014
Sydney	Taxis Combined Services, Silver Service, Apple Taxi, 13Lime, ABC Cabs, South Western Cabs	3931
Melbourne⁵⁸	13 Cabs, Black Cabs, North Suburban Taxis, Arrow Taxis, Embassy Taxis	2247
Adelaide	Yellow Cabs	299
Newcastle	Newcastle Taxis	173

⁵³ Cabcharge, *Annual Report 2014*, p. 5.

⁵⁴ Stephen Gargano, IBISWorld, *IBISWorld Industry Report 14626 Taxi and Limousine Transport in Australia*, January 2015, p. 24.

⁵⁵ ihail supporting submission to the application A91501, 26 May 2015, p. 5.

⁵⁶ Cabcharge, *Annual Report 2014*, p. 2.

⁵⁷ Cabcharge, *Annual Report 2014*, p. 2.

⁵⁸ Cabcharge recently acquired Dandenong Taxis in south east Melbourne.

Submissions received by the ACCC

67. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.
68. ihail submits that the proposed app will offer consumers a new product and has been designed to respond to shifts in consumer preferences for point-to-point travel – such as, cardless payment, GPS tracking, user review mechanisms and multi-jurisdictional functionality.
69. Further, ihail states that the purpose of the ihail app will be to ‘focus on international connectivity to allow users of the ihail app to obtain taxi services in jurisdictions other than their home jurisdictions.’⁵⁹ It notes that the ihail app has been designed to compete with other booking and dispatch apps, and the proposed arrangements do not restrict individual taxi companies from developing and operating their own taxi booking apps and dispatch systems. ihail submits that its app will provide a means for passengers to have access to a larger fleet of taxis, in a greater range of locations, than any existing app.
70. The ACCC sought submissions from around 50 interested parties potentially affected by ihail’s application for authorisation, including taxi companies, taxi industry associations, consumer groups, as well as government departments and regulators. Public submissions were received from six interested parties, including two current shareholders of ihail Holdings. A summary of the public submissions received from interested parties follows:
- *MTData* (shareholder) – supports the arrangements. It submits that the taxi industry is currently experiencing an unparalleled level of competition from technology companies, both domestic and abroad. These entrants are altering the market’s expectations and forcing an evolution of the traditional taxi service delivery model. MTData submits that ihail, being industry owned and operated, offers the best opportunity for taxi companies to compete within this environment.
 - *Australian Taxi Industry Association* – supports the arrangements. It submits the ihail app will benefit consumers. The ability for customers to access nearby available taxis, irrespective of fleet or network, will be particularly attractive to consumers, especially for non-regular taxi users who may not hold a preference for one taxi company over another.
- Further, the Australian Taxi Industry Association submits that the operation of ihail nationally will benefit business and leisure travellers who may wish to maximise their choice and access to all available taxis in the cities that they visit.
- *NSW Taxi Council* (shareholder) – supports authorisation. It notes that there is no compulsion on taxi networks to use ihail, and there is no requirement on taxi networks that do choose to use ihail to not use other apps. It remains in the best interests of authorised taxi networks to diversify their booking service options to consumers to maximise the revenue potential of their taxi drivers.
 - Further, the NSW Taxi Council considers the ihail app will promote consumer choice. It will also promote competition, by increasing the number of taxi

⁵⁹ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 13.

booking service providers in the market and it will be focused on encouraging taxi service providers to deliver a higher level of service to consumers.

- *Swan Taxis* – opposes authorisation. It considers the potential dominance of ihail will ultimately reduce consumer choice.
- *Uber* – opposes authorisation. Uber considers that the proposed conduct will adversely impact competition between mobile taxi booking applications, which is a rapidly evolving market. In particular, if taxi companies are permitted to operate their own collective app (as opposed to apps operated by the individual taxi companies) this will reduce the incentives that individual taxi drivers have to participate in the apps provided by third parties. Further, Uber claims that once the ihail app is launched and secures its position in the market, there will be no incentive for individual taxi companies to maintain and incur the costs associated with their individual mobile booking apps.

Uber considers the combination of access to entire taxi networks, as well as ‘network effects’ that the ihail app would generate, will become a substantial barrier for new entrants. Through its equity position in ihail, Uber is also concerned about Cabcharge being the only taxi payment processing provider.

Uber considers the public benefit generated by the ihail app is minimal, and is already provided to a large extent by other providers.

- *CellTrack Systems Pty Ltd* – provides the SmartMove dispatching system used in approximately 60 regional taxi fleets. It submits that any authorisation should be subject to the ihail app supporting other dispatch systems.

71. The ACCC also received a number of submissions that were excluded from the public register at the request of the parties making these submissions. Broadly, these submissions raised concerns that:

- Cabcharge, being the exclusive supplier of in-app payment processing services to ihail, along with ihail not allowing payment other than through the app, has the potential to significantly impact competition between payment processing providers.
- The priority dispatch payment option proposed to be offered by ihail appears to be against the intent of maximum taxi fare regulation in the various states and territories, and may disadvantage financially vulnerable consumers.

72. ihail provided additional submissions in response to concerns raised by interested parties and requests for further information from the ACCC.

73. The views of ihail and interested parties are considered as part of the ACCC’s assessment of the application for authorisation and reproduced where relevant in the ‘ACCC assessment’ section below.

74. Copies of public submissions may be obtained from the ACCC’s website [ihail public register](#).

ACCC assessment

75. The ACCC's assessment of the application for authorisation is in accordance with the relevant net public benefit tests contained in the Act.⁶⁰ Generally, the ACCC shall not grant authorisation unless it is satisfied that the likely benefit to the public would outweigh the detriment to the public, including from any lessening of competition.
76. In order to assess the public benefits and detriments likely to result from the application, the ACCC identifies the relevant areas of competition and the likely future should authorisation not be granted.

The relevant areas of competition

77. The ACCC considers that precise identification of the relevant markets is not required for the purpose of assessing ihail's application for authorisation. The ACCC can consider the areas of competition in a broad sense when assessing any public benefits and public detriments that would likely result from the proposed arrangements.
78. ihail submits that the relevant areas of competition affected by the proposed arrangements are:⁶¹
- the supply of taxi booking services – this includes all other taxi and ridesharing booking apps, as well as traditional methods for hiring a taxi (for example, hailing from a taxi rank or making a telephone booking)
 - the provision of in-car taxi payment processing systems – ihail acknowledges that Cabcharge 'has been a leading payment processing provider for in-taxi payment systems' and
 - the provision of electronic in-app payment processing systems – ihail submits this is a broad market and includes any business that has designed software for processing payments through smartphone apps (for example, PayPal, Braintree (a subsidiary of PayPal), CommBank (used in the Black and White Cabs app), Secure Pay and Visa). It also submits that Cabcharge does not currently provide any services that facilitate payments through smartphone apps, and as such, its involvement in the ihail app will be its entry into this market.

Further, ihail submits that the systems for in-app payment uses fundamentally different technology to card-present systems. ihail contends that in-app payments for most retail and service environments use the same fundamental platforms, equipment and methodology for transaction processing. Therefore, it considers there is no difference between processing an in-app payment for groceries, pizzas, clothing or taxis.

⁶⁰ Subsections 90(5A), 90(5B), 90(6) and 90(7). The relevant tests are set out in Attachment A.

⁶¹ ihail submission, 4 August 2015, pp. 2,8.

79. The ACCC considers the following areas of competition are relevant to its assessment of the ihail app:

- competition between taxi networks and between taxi operators
- competition between ihail and third party apps and
- competition between taxi payment processing providers.

80. In this regard, the ACCC notes:

- Taxis have traditionally competed for passengers via telephone bookings or on the spot hailing on the street or at a taxi rank. Currently, the majority of taxi revenue comes from un-booked services (70 per cent), with 30 per cent of taxi rides coming from booked taxi services.⁶² An increasing trend is the use of smartphone taxi booking apps, both as a means of replacing traditional booking methods and as an alternative to hailing a taxi. These apps are operated by the individual ihail taxi networks themselves (around 12 per cent of taxi company bookings⁶³) or by new third party entrants, such as goCatch and ingogo.
- Private ridesharing apps appear to be capturing a growing share of the point to point transport sector. For example, a recent report notes that around 11 per cent of people in Sydney had recently used ridesharing services.⁶⁴ Having said this, the ACCC notes that many jurisdictions are currently considering the legality of ridesharing services.
- Passengers in taxis currently have the option of paying the driver with cash, by EFTPOS within the taxi (including via debit, credit and charge cards, including Cabcharge), or an in-app payment method.
- Cabcharge supplies EFTPOS payment terminals to around 95 per cent of taxis in Australia.
- Cabcharge also operates taxi networks in Sydney, Melbourne, Adelaide and Newcastle.

81. The ACCC estimates that the taxi networks operated by ihail shareholders comprise more than half of the taxis in Australia and a larger share again in most major metropolitan regions. In particular:

- more than half of the taxis in NSW, with a larger share in Sydney
- more than half of the taxis in Queensland, with a larger share in Brisbane (including Brisbane's two largest taxi networks)

⁶² ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 13.

⁶³ Ibid.

⁶⁴ Independent Pricing and Regulatory Tribunal, *Final Report: Sydney taxi fares to apply and new licences to be released from July 2015*, February 2015, p. 14.

- almost three-quarters of taxis in Victoria, and over 85 per cent of taxis in Melbourne (including Melbourne's two largest taxi networks) and
- around half of the taxis in South Australia, with a larger share in Adelaide.

The future with and without

82. The ACCC will compare the public benefits and detriments likely to arise in the future where ihail's proposed arrangements for which authorisation is sought occurs against the future in which the proposed conduct does not occur.
83. The ACCC considers that in the future without the proposed conduct, the ihail joint venture will not jointly launch the proposed app which seeks to aggregate taxi networks across Australia and in some overseas locations via a single smartphone interface. Accordingly, the current circumstances would continue – namely, passengers would continue to book or hail taxis via traditional means, through individual taxi network apps or via third party apps that are not affiliated with any taxi network.

Public benefit

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

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.⁶⁵

85. ihail submits that while app-booking technology is already being used in the taxi industry 'the ihail technology is a new and innovative product designed specifically for the purposes of ihail and its related entities in other jurisdictions.'⁶⁶ It submits that the ihail app will have the following public benefits.⁶⁷

- the smartphone app will allow taxi users to access taxi services in a number of cities or regional locations, both within Australia and globally, which no other licensed taxi booking app currently does
- ihail has been designed to present the passenger's request to the closest available taxis in a defined zone. Given the broader network of taxis that will be using ihail compared with other existing apps, this should mean that more taxis are likely to be in the passenger's vicinity, which should reduce dispatch times and
- the app will improve competition within local taxi markets and allow taxi operators to compete with the services currently offered by Uber and other ride-sharing applications.

86. The ACCC's assessment of the likely public benefits from the proposed conduct follows.

⁶⁵ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

⁶⁶ ihail submission, 4 August 2015, p.11.

⁶⁷ ihail supporting submission to the application A91501, 26 May 2015, p. 14.

Increased convenience

87. ihail considers the main public benefit generated by the proposed app will be increased convenience for consumers. Specifically, ihail submits that its new app will provide a single booking platform across multiple cities:⁶⁸
- for passengers that do not have a preference for a particular taxi network this will allow passengers to access the closest taxi to them from any participating taxi network which should ensure a fast and reliable service and
 - for travellers, who will not need to download individual taxi network apps depending on where they are visiting and potentially for short visits.
88. The Australian Taxi Industry Association agrees that many consumers will be attracted by the convenience of a single national taxi booking platform under the ihail app. In particular, it considers that:
- ...many consumers may find such a feature particularly attractive, especially business and leisure travellers (international, interstate and intrastate) who may wish to maximise their choice and access to all of the available taxis in the cities that they visit.⁶⁹
89. Conversely, Uber considers that in its experience, the vast majority of consumers that book journeys using point to point booking apps are not business or travelling consumers. Rather, the majority of these consumers book journeys in their location of residence. In any event, Uber considers the public benefits claimed by ihail are already provided by current players in the market.⁷⁰
90. The ACCC considers that the introduction of the ihail app does not represent a new type of product for the taxi industry. Existing booking apps, including third party apps such as goCatch and ingogo, already provide access to large networks of taxis in individual locations, as well as access to taxis across a variety of locations.
91. The ACCC considers that ihail represents an additional booking platform available for consumers, in competition with existing individual taxi network apps and third party apps. The key differences between ihail and existing booking apps is that ihail is likely to have, from its launch, a larger network of taxis available in most locations than existing apps, and is also likely to be able to be used in more locations than any existing taxi booking app. ihail's ability to have a very large network from its launch arises from its ownership structure, with ihail shareholders' networks representing more than half the number of taxis in Australia and a significantly higher number again in most major metropolitan cities.
92. The ACCC considers that the ihail app is likely to result in a benefit to the public to the extent that the aggregation of taxi networks signing up to use the app provides consumers with access to a potentially broader pool of taxis in a location via a single booking platform. Given the participation of many of Australia's largest taxi networks, ihail is likely to have a greater pool of taxis to draw on in most locations to meet booking requests than apps operated by individual networks or third party apps (which rely on individual drivers signing up to them). This is likely to reduce wait times for taxi passengers, particularly in busier periods.

⁶⁸ ihail submission, 4 August 2015, p. 11.

⁶⁹ Australian Taxi Industry Association submission, 3 July 2015, p. 1.

⁷⁰ Uber submission, 10 July 2015, p. 11.

93. Further, the ACCC considers that to the extent that access to a greater pool of taxis across multiple locations is valued by consumers, network effects (that is, the more passengers who use the app, the more popular it will become with taxi companies, and the more taxi companies that use it, the more popular it will become with passengers) mean that the pool of available taxis (and users) is likely to grow over time.
94. Having said this, the ACCC notes that in most large cities many taxi networks also have a large pool of taxis to draw on, as do the popular third party booking apps.
95. The ACCC also considers that the ihail app is likely to provide passengers with access to taxis across a greater range of locations through a single app than existing apps operated by individual taxi networks or third parties. This would be particularly beneficial to domestic travellers who will be able to access taxis in most major Australian cities through a single booking platform. The key reason that the ihail app will be able to offer this reach is because the networks of its shareholders represent more than half the number of taxis in Australia and a significantly higher number again in most major metropolitan cities. In addition, the proposed arrangements will also allow the entire fleets of all taxi networks in any area to come together on a single app (if they all decide to participate).
96. The ACCC notes that some existing third party taxi booking apps currently provide consumers with access to taxi drivers across multiple locations, in particular major cities on Australia's east coast. Like ihail, these apps have the potential to further expand the locations in which they operate in the future. However, the geographic scope of coverage of these third party apps is currently narrower than that ihail submits it will achieve. In relation to ride sharing, Uber already has a global presence, and would be likely to maintain a larger geographic scope than the ihail app.
97. If the ihail app is successfully rolled out overseas, it could also potentially benefit Australian consumers when travelling to these locations. However, to date ihail has not provided evidence of extensive proposed take up of the ihail app by taxi networks and operators outside of Australia.
98. Therefore the ACCC considers that the ihail app is likely to result in a public benefit by providing a single taxi booking app that can be used across multiple cities, including potentially internationally. Having said this, the ACCC recognises that a number of existing taxi booking apps already provide this service, albeit currently on a more limited scale than proposed by ihail.

Increased competition

99. Due to passengers being able to use the ihail app in multiple locations and using a single set of log in and payment details, ihail considers the proposed arrangements will allow traditional taxi operators to compete more effectively with the services currently offered by Uber and other ride-sharing apps. For example, ihail submits that it is currently simpler for an Uber user from London to access Uber services within Melbourne because they already have the smartphone app installed and their payment details are already provided. On the other hand, if a consumer wishes to hail a licensed taxi using his or her smartphone, they will need to find and download the relevant app for the local taxi company, create an account through the smartphone app and register their payment details. Further, this may not

provide them the closest available taxi, as it will only show available cabs affiliated to that particular taxi network.⁷¹

100. Further, ihail considers the proposed joint venture provides another way 'for taxi companies to engage in a developing technological environment, and to compete in what is a very competitive market.'⁷²

101. The NSW Taxi Council notes that the ihail app will add to the suite of booking applications available to consumers. It considers that it will:

...provide further choice to taxi drivers in terms of which booking service they wish to use. Drivers currently have available a number of booking services that they can select to provide them with opportunities to receive bookings...and it is not uncommon for taxi drivers to be using multiple systems...⁷³

102. Further, the NSW Taxi Council considers that:

Authorised Taxi Networks will look to diversify their offerings to accredited taxi-cab operators....Maximising the number of booking services which will promote the use of the network...thereby enhancing revenue opportunities for the driver...will be a factor upon which accredited taxi-cab operators will consider when choosing which authorised taxi networks to affiliate with.⁷⁴

103. The ACCC considers that the ihail app is likely to increase competition between existing smartphone booking apps in the short term. It will allow taxi networks to compete more effectively in providing booking services with third party booking platforms that might offer greater coverage in terms of geographic scope and the pool of taxis available, as compared to individual taxi network booking apps. Similarly, uberX offers greater geographic coverage than individual taxi network booking apps.

104. The ACCC also notes that various existing taxi booking apps are currently offering consumers incentives to use their apps, such as sign up bonuses and credits towards future trips for referring friends. In this regard, ihail may further stimulate competition in the form of promotional activities to attract customers.

105. However, as discussed in the ACCC's consideration of the likely public detriments to follow, the ACCC has concerns that the ihail app will likely reduce competition between taxi companies in supplying services to customers using the ihail app.

106. The ACCC is also concerned that if, due to network effects, ihail becomes the dominant smartphone booking app (and smartphone booking apps become the primary means of booking taxis) this could reduce competition between taxi companies and booking apps more broadly in supplying services to passengers, and increase barriers to entry for new third party app providers.

107. In this respect, as discussed in the ACCC's consideration of the likely public detriments resulting from the proposed conduct, it is ihail's ownership structure, which would allow it to launch with a larger fleet of taxis than competing apps rather than sustained competition between taxi booking apps, that would be its source of competitive advantage in the market.

⁷¹ ihail supporting submission to the application for authorisation, 26 May 2015, p. 14.

⁷² Ibid.

⁷³ NSW Taxi Council submission, p. 6.

⁷⁴ NSW Taxi Council submission, p. 7.

ACCC conclusion on public benefits

108. The ACCC considers that the ihail app is likely to result in some public benefits by providing an additional, convenient single platform for consumers to book taxis from a pool of taxi networks and drivers that is likely to be broader than that provided by any existing taxi booking app. It also provides a single app that can be used in more cities than third party taxi booking apps currently available, including potentially internationally.

Public detriment

109. Public detriment is not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁷⁵

110. As noted, the networks operated by ihail shareholders comprise more than half of the taxis in Australia and a larger share again in most major metropolitan regions. This would allow ihail to commence operations with a larger fleet of taxis than any individual taxi network's app. Further, the arrangements for which authorisation is sought allow the entire fleets of taxi operators and networks in any area who are not ihail shareholders to also join their app. The ACCC has assessed the likely impact of the arrangements in the areas of competition noted above on this basis.
111. The ACCC considers that the potential public detriments associated with the ihail application for authorisation fall into the following categories:
- competition between taxi networks and between taxi operators
 - competition between ihail and third party apps
 - competition between taxi payment processing providers and
 - allowing customers to offer an additional payment when booking to incentivise priority pickup.

Competition between taxi networks and between taxi operators

112. Broadly, the ACCC considers that the ihail app could affect competition between taxi companies in three ways:
- competition between taxis on price and/or service when providing services to passengers using the app
 - incentives for taxi companies to compete more broadly and
 - incentives to maintain individual taxi company apps.

⁷⁵ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

Competition between taxis on price and/or service when providing services to passengers using the ihail app

113. ihail states that it will not agree any pricing information with taxi companies. That is, drivers using ihail will remain free to set their own prices and ihail will only receive information about the price charged at the conclusion of the transaction.
114. ihail also states that there is currently very little price competition between taxi companies below the regulated prices set by the relevant authorities. ihail submits that to the best of its knowledge in all major capital cities in Australia the active taxi companies charge the maximum metered fare permitted under regulation.⁷⁶ ihail also notes that price sensitive consumers can book taxis through other means, including individual companies' smartphone apps.⁷⁷
115. While the ihail app does not preclude taxi operators or networks offering different prices to customers using the app or differentiating their level of service, the ACCC considers that incentives for taxi operators and/or networks to compete on price or quality of service when providing services to passengers who book through the ihail app are likely to be limited. This is because jobs are given to the first qualifying driver who accepts a job, rather than on the basis of the price being proposed by the driver, who the driver is, or who the driver works for (the latter two may reflect quality of service).
116. That is, consumers using the ihail app have no ability to choose between drivers or networks; they are simply allocated the driver that first accepts the job, regardless of the taxi operator or network. Therefore, taxi operators and networks will not be able to increase the number of jobs they get through the ihail app by competing on price or quality of service. Each taxi network could expect to receive a share of ihail bookings roughly equal to their share of taxis using the app (that is, the number of taxis in their network as a share of all taxis using the app). The only thing that charging a lower fare would guarantee is less revenue for each booking allocated to them. Similarly, a higher quality of service will not have any effect on the ability to attract jobs through the ihail app. Hence, it would appear that taxi operators' and networks' incentives to compete on price and quality, in respect of customers booking through the ihail app, is limited.
117. Some incentive to compete on price and quality of service may remain however where taxi operators and networks continue to offer other means of booking, for example, their own apps and traditional phone booking services. There may be some incentive to offer a better service or lower fare to customers using the ihail app in order to direct future jobs to the operator or network directly. That is, a customer using the ihail app who is charged less by the driver accepting the job, or who experiences a higher level of service, may be more likely to book with the driver (or their company) directly in the future, where they are guaranteed the lower fare or better service. The strength of this incentive will depend on what proportion of fares comes from the ihail app as compared to through other means, and on the broader competitive environment. This is discussed in more detail below.

⁷⁶ ihail submission, 2 July 2015, p. 2.

⁷⁷ Ibid.

118. In practice, while incentives to compete on price when providing services to passengers who book through the ihail app are likely to be limited, the potential reduction in price competition may not cause significant public detriment in the short-term. This is because in most jurisdictions taxi fares, or maximum taxi fares, are regulated. Even in jurisdictions where price competition is allowed up to a maximum regulated charge, it appears that taxi operators generally charge the maximum allowed price, meaning price competition is currently limited.
119. However, the potential detriment generated by the reduced incentives for taxi networks and operators to compete on price for customers using the ihail app would increase if there were further moves to industry deregulation or if pricing competition were to otherwise increase (for example, in response to ride-sharing services). It is quite possible that further deregulation will occur – for example, the ACT has just announced new regulations allowing ridesharing companies to legally operate alongside taxi networks, taxi charges have already been deregulated in regional and country Victoria (with regulated fares in metropolitan, urban and large regional zones subject to review in three years' time), and taxi regulation is currently under review in South Australia, New South Wales and the Northern Territory..
120. Further, the success of uberX, whose appeal is based to a significant extent on the cheaper fares it offers (outside of surge pricing periods), suggests that reducing prices could be a successful strategy for a taxi company seeking to expand its market share.
121. To the extent that price competition between taxi networks and/or operators may otherwise increase in the future – due to further deregulation, competition from ridesharing apps, or both – incentives for any individual taxi company to compete on price, or service in respect of customers using the ihail app, will be significantly reduced.
122. The ACCC notes that, as submitted by ihail, consumers will still be able to book taxis through other means. Hence, if price competition is only affected for consumers using the ihail app, there may be other options for price sensitive consumers if the app does not impact competition between taxis more broadly. The extent to which the ihail app may impact competition between taxi companies more broadly and their incentives to maintain their own smartphone apps are discussed below.

Incentives for taxi companies to compete more broadly

123. The ACCC considers that the incentives for taxi companies using the ihail app to compete on price and service more broadly will depend on their ability to attract jobs outside of the ihail app, and on competition from other ride-sharing services.
124. If a consumer calls a specific taxi company, uses their online booking system, or places a booking using a taxi company's app, the taxi network or operator is essentially guaranteed that job. This compares with the situation under ihail (and third party booking apps), in which a taxi company will only pick up a share of the bookings made through the app roughly equal to their share of taxis using the app. Accordingly, the ACCC considers that taxi companies' incentives to compete on price and service, so as to increase the number of consumers that request bookings directly, are unlikely to be significantly impacted by the ihail app unless the ihail app becomes a dominant means of booking taxis. That is, both operators and networks will continue to have incentives to compete for jobs booked outside

of the ihail app unless a majority of taxi bookings are made through the ihail app. Whether or not ihail is likely to become a dominant means of booking taxis is discussed in more detail below.

125. Alternative transport options such as Uber and other ridesharing services may also place a competitive constraint on taxis more broadly, which could lead to better outcomes for consumers in terms of price and service. The extent of the competitive constraint imposed by ridesharing services will depend on the level of penetration achieved by them. However, the legality of these services in many jurisdictions is an unresolved issue and accordingly, until there is greater regulatory certainty around the operation of ride-sharing services the extent of the competitive constraint they may impose is also uncertain.

Incentives to maintain individual taxi networks apps

126. ihail submits that there is no reason for individual taxi companies that are participating in the ihail app to discontinue their own apps. Rather, ihail believes that there is still a strong incentive for individual taxi companies to continue to develop and attempt to expand their own taxi booking apps in competition with ihail. ihail argues this is the case because fares booked through ihail will cost the individual taxi company 20 cents (the ihail fee) and the taxi company will not receive any portion of the credit card surcharge fees. When a passenger books through the network's own app, no fee is payable to ihail and the taxi company may receive a portion of the credit card surcharge (if applicable).⁷⁸
127. However, Uber submits that should the proposed ihail app be approved, the current ihail shareholders are unlikely to maintain and incur the costs associated with their individual booking and payment apps. In particular, uber submits that:
- ...taxi companies currently use their individual apps to compete with other taxi companies and payment networks. This results in discounts and improvements to services...ihail technology is already licensed 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.⁷⁹
128. The ACCC considers that the ability to retain all of the fares booked through their own apps, as compared to a proportion of fares booked through the ihail app (or a third party app),— will provide an incentive for taxi networks to maintain their own smartphone booking apps.
129. Further, as noted by ihail, when accepting a booking made through ihail a 20 cent fee is payable to ihail. In addition, ihail receives a portion of the Cabcharge payment processing surcharge.⁸⁰ For bookings made directly with a network, whether payment is processed through the app or in taxi, the taxi network or operator is able to negotiate its own arrangements with payment processors which may include receiving a proportion of any surcharge imposed for using a particular payment method. Therefore, jobs allocated through ihail impose a cost on taxi companies (the fee) and foreclose a potential revenue opportunity that would be available to them if the passenger booked through the individual taxi company's app (that is, their share of any applicable payment processing fee).

⁷⁸ ihail submission, 4 August 2015, p 6.

⁷⁹ Uber submission, 10 July 2015, p, 8.

⁸⁰ ihail submission, 4 August 2015, p 6.

130. The four Australian taxi networks who are ihail shareholders – namely, Silver Top Taxi Services, Black and White Cabs, Yellow Cabs (Qld) and Suburban Taxis – will have different incentives to taxi networks and operators who use the ihail app but do not have an ownership stake in ihail. This is because shareholders in ihail may receive a share of the revenue generated by ihail through bookings made using the app. However, a taxi network encouraging passengers to book through ihail rather than the networks own app would still be subject to the fee noted above, as well as risking foreclosing a potential revenue opportunity (their share of the credit card surcharge). This cost, and potential revenue forgone, is likely to be greater than the taxi network's share of any profits made by ihail for the booking.
131. Accordingly, it may be in the interest of ihail's shareholders that passengers who would have otherwise booked using any of their competitor's smartphone apps instead book through the ihail app. However, it is not in the interest of ihail's taxi company shareholders to encourage passengers who would have otherwise booked using the shareholders' own smartphone app to instead book through ihail. This is because ihail's taxi company shareholders are guaranteed bookings made through their own apps, but would only receive a portion of bookings made through the proposed ihail app. Although, the ACCC considers that if all taxi networks within an area were to agree to discontinue their own app in favour of ihail, each could discontinue their own app without losing customers. That is, each taxi network would receive bookings through ihail proportionate to the size of their fleet as a share of all taxis in the area. The incentives to do so would be stronger for ihail shareholders who receive some benefit through their shareholding from all bookings made through ihail, than for participating networks that do not own part of ihail.
132. However, regardless of their incentives to maintain their own apps, whether or not individual taxi company apps remain viable is likely to depend on how popular ihail (and other third party apps) become as compared to the taxi company's own app. Maintaining an app is not a cost-free exercise and so taxi companies will only choose to do so to the extent that it is commercially beneficial.
133. ihail estimates that the number of taxi bookings made through smartphone apps is currently around 12 per cent for each taxi company. However, the ACCC notes that this is likely to grow as consumers become more comfortable with smartphone app technology and as smartphone use continues to grow.
134. The more passengers who use a particular smartphone app, the more popular this app will become with taxi companies seeking to access a wider range of passengers. Similarly, the more taxis available on an app, the more popular it will become with passengers seeking the most convenient and fastest access to the widest range of taxis. These network effects mean that it is possible that one app will become the dominant smartphone booking platform.
135. ihail submits that its app is aimed at a 'targeted and convenience-conscious niche market' being travellers seeking a convenient method of booking a taxi without knowing taxi companies in the area, and that a product offering aimed at these customers will not impact competition more broadly.⁸¹

⁸¹ ihail submission, 2 July 2015, p 2.

136. As noted, because of its ownership structure, ihail will commence operations with a fleet of taxis consisting of more than half of all taxis in Australia and a larger share again in most major metropolitan regions. Further, the ihail app will allow entire fleets of competing taxi operators and networks in any area to come together on a single app (if they all decide to participate). Accordingly, ihail will likely have the largest pool of taxis in most areas in which it operates, and is likely to become increasingly popular with most consumers who have a preference to book taxis by smartphone. Specifically, the pool of taxis available through the proposed ihail app will include all the taxis available on any individual network's app, as well as all the taxis available on any other network using the ihail app. Accordingly, unless large networks choose not to use the app or customers have a preference for a particular taxi network or wish to pay for the taxi through an in-taxi payment mechanism (which ihail does not allow), it is difficult to see why they would not favour ihail over any individual network's app. Importantly, it is ihail's ownership structure that would allow it to launch with a larger fleet of taxis than individual taxi networks' apps – it has not gained this broader network by being a better taxi booking app and competing with other apps. In this way, its advantage in the market would be due to its ownership arrangements rather than its ability to offer a better taxi booking app for both taxis and consumers.
137. If ihail's ownership arrangements allow it to reach a tipping point and become the dominant platform through which smartphone bookings are made, it may become unviable for taxi companies to maintain their own apps due to their smaller network of taxis and corresponding consumer base. If this were the case, taxi companies may choose not to maintain their own apps, which would likely reduce competition between taxi companies.
138. Even to the extent that individual network apps are maintained, unless passengers have a strong preference for that network, and the network is able to successfully differentiate itself based on price and/or service, these apps are unlikely to provide a significant competitive constraint on ihail, as a taxi booking platform, in the long run.

Conclusion on competition between taxi companies

139. In summary, the ACCC considers that the proposed conduct is likely to reduce competition between taxi companies in supplying services to customers using the ihail app, which is likely to result in a public detriment. Essentially, participating taxi networks will share between themselves passengers who choose to use the app. The extent of the reduction in competition and the associated public detriment will be dependent to some extent on how the taxi and ride-sharing industries evolve over the coming years – particularly the extent of any further deregulation of the taxi industry in the various jurisdictions and whether, and the manner in which, ridesharing services continue to operate in the future.
140. The extent of the public detriment resulting from a lessening of competition between taxi companies and networks more broadly will depend on how prominent a means of booking taxis the proposed ihail app becomes. In this respect, while taxi companies have incentives to continue to operate their own apps, due to network effects, ihail may become the main means of booking taxi fares (through smartphone apps). This would impact the viability of taxi companies' own apps which may further reduce competition. Such dominance would likely result from the conduct the subject of the application for authorisation which gives ihail a larger starting network and allows the entire fleets of taxi operators and networks in any area who are not ihail shareholders to also join

their network, rather than through it gaining market share slowly by offering a better app.

Competition between ihail and third party apps

141. ihail could also affect the ability of third party taxi apps to compete to provide taxi booking services to passengers.
142. ihail submits that the proposed arrangements will not place any restriction on drivers' ability to use third party apps.⁸²
143. Further, ihail's app has been designed to work with existing taxi dispatch systems. In terms of the marketing and promotion of the ihail app, ihail requires that when a taxi network or driver signs up to the app that the ihail brand will be displayed on the exterior of the taxi in accordance with branding guidelines. Other than this branding, ihail submits that it will be solely responsible for the marketing and promotion of the app, and will not impose any marketing or promoting obligations on taxi companies or drivers.
144. The ACCC considers that it is likely that drivers will want to use a variety of apps in order to increase their chances of securing a booking, particularly drivers who already access an existing customer base through third party apps such as ingogo or goCatch. Drivers' preferences for different apps will likely be driven by the ease of use of the app and its ability to provide jobs (that is, its popularity with consumers). Hence, drivers' incentives are unlikely to be impacted substantially by the entry of ihail, except to the extent that it may influence the popularity of third party apps (if ihail becomes the preferred taxi booking app).
145. On the other hand, the ACCC considers that taxi operators, who also have their own apps, will face slightly different incentives. In one sense, taxi operators' and drivers' incentives are aligned as they both wish to increase their exposure to jobs, which means that they will want to use any form of booking service that increases their chances of securing jobs. However, taxi operators will have a preference for their own apps because all bookings made through their own app will flow to them whereas, as with bookings made through ihail, bookings made through third party apps are allocated to the first available driver to accept the booking regardless of taxi company. However, while taxi operators will favour their own apps over third party apps (or ihail), these incentives are unlikely to be impacted substantially by the entry of ihail.
146. The ACCC considers that taxi networks (that is, taxi companies who provide booking services for taxi operators) will face different incentives again. They will favour their own apps over third party apps. If they choose to participate in ihail they will also favour ihail over third party apps. This is because in their role as a provider of booking services, the revenue from bookings made through their own app will flow entirely to them, and a proportion of bookings made through ihail will also flow to them whereas bookings made through third party apps will not. However, their incentives in this regard are unlikely to change because of the introduction of the ihail app. That is, taxi networks will always have a preference for booking platforms in which they have an interest, whether it is their own app or ihail, over third party apps.

⁸² ihail submission, 4 August 2015, p 7.

147. This preference is unlikely to be problematic unless taxi networks actively encourage or explicitly require drivers to only use their app and the ihail app. The ACCC notes that ihail does not propose to place any restriction on the use of third party apps, and any such conduct, if it was to be engaged in by ihail or any other party, would not be covered by any authorisation granted by the ACCC.
148. However, the introduction of the ihail app could still significantly impact the ability of third party apps to compete to supply taxi booking services. As discussed above in relation to competition between ihail and taxi networks and operators' own apps, ihail will likely have access to the largest taxi network in each region in which it operates by virtue of its ownership structure. Network effects could result in ihail becoming the dominant taxi app in these areas, which (similarly to taxi networks' own apps) could limit the ability of third party taxi booking apps to compete due to their smaller taxi network and corresponding consumer base. This could also raise barriers to entry, as new entrants seeking to provide taxi booking services may find it difficult to grow quickly without the network of taxis and customers that ihail would have. Over the long term, this could increase the likelihood of ihail raising charges, reducing service, or failing to continually innovate, which would lead to consumer detriment.
149. ihail's ability to act in this way may be somewhat tempered if private ride-sharing services such as Uber remain competitive (which in itself may not be independent of ihail's success). However, the legality of these services in many jurisdictions is an unresolved issue and accordingly, until there is greater regulatory certainty around the operation of ride-sharing services the extent of the competitive constraint they may potentially impose is also uncertain.
150. To the extent that ihail becomes the dominant taxi booking app and it achieves this dominance through offering the best taxi app available, this would lessen the potential detriment, especially in the short run. That is, if their dominance was due to a superior service offering, then this would reflect a competitive market outcome. However, under the proposed conduct, ihail's likely wider network, which would be the primary source of its competitive advantage, would be as a result of ihail's ownership structure, as opposed to sustained competition between taxi booking apps. That is, the ihail's ownership structure would instantly give it a large fleet of taxis from the launch of the app and allows ongoing coordination between taxi companies in adding to the fleet.

Competition between taxi payment processing providers

151. Some interested parties raised concerns that Cabcharge being the exclusive supplier of in-app payment processing services to ihail, along with ihail not allowing payment other than through the app, has the potential to foreclose competition between taxi payment processing providers.
152. ihail submits that there is a wide range of apps to which other payment providers can provide services, that customers can elect to pay by a variety of means for taxis not booked through ihail and that it does not anticipate that it will gain a significant market share in its first year of operation.⁸³
153. ihail also provided a number of reasons why it needs to limit payment options to in-app payment processed by Cabcharge. These reasons, and further details of ihail's submission about the impact of this restriction on competition, follow.

⁸³ ihail submission, 3 September 2015, p 6.

154. When a customer signs up to ihail they register their credit card details. Payment is deducted automatically from the customer's credit card, or Cabcharge card, at the end of the journey (that is, payment is through an in-app, card not present, transaction). Some other taxi booking apps also offer in-app payment options. However, other apps also generally offer other payment options. Some offer other card options and/or payment through other platforms such as PayPal (that is, other in-app payment options) while others offer the passenger the full suite of options including cash payment or card payment directly to the driver using payment terminals installed in the taxi (in-taxi payment options). ihail will not offer in-taxi payment options and would be the only taxi app that does not do so. The only option available to ihail customers will be in-app payment via automatic deduction from their credit card or Cabcharge card. In either case, these payments will be processed by Cabcharge and will attract a surcharge of 5 per cent in New South Wales, Victoria and Western Australia and 10 per cent in all other states and territories.
155. Most taxis in Australia are fitted with Cabcharge terminals for in-taxi card present payments. Many drivers also carry alternative payment devices. Other terminal providers include GM Cabs, Live TaxiEpay, Cabfare, Suncorp Bank and ingogo.
156. Under the proposed arrangements, as currently structured, these other payment processing providers will be precluded from offering services to ihail customers (that is, in-taxi card present payment options will not be available as a payment option for bookings made with ihail). If ihail was to gain a significant market share, this may also impact the ability of other payment processing providers to offer services to passengers more generally in competition with Cabcharge. That is, the remaining pool of potential customers may not be sufficient to justify the investment necessary to provide these services.
157. ihail submits that there are separate and distinct markets for in-taxi card payment processing and in-app payment processing. In particular, ihail submits that systems for facilitating in-app payments use fundamentally different technology from card present systems (including different hardware and software for data processing, storage and security). They also require different forms of input and installation for the driver and consumers.⁸⁴
158. ihail submits that the market for in-app payment processing is highly competitive and innovative with a number of large participants including the major banks and credit card providers. In this respect, ihail submits that the provision of in-app card not present payment services for passengers paying a taxi fare is not substantially different from the payment service provided in respect of the purchase of any other product or service through a smartphone via a registered credit card. ihail notes it will be the first business to which Cabcharge will provide in-app card not present payment processing. ihail therefore characterises Cabcharge as a new entrant into this market.⁸⁵
159. The ACCC considers that competition between providers of in-app payment services, in providing these services to the broad range of industries that use in-app payment processing, is likely to be strong. Payments undertaken through ihail will constitute a very small proportion of such transactions and Cabcharge providing these payment services to ihail is unlikely to impact competition between providers of in-app payment services.

⁸⁴ ihail submission, 4 August 2015, p 8.

⁸⁵ ihail submission, 4 August 2015, p 8.

160. However, the ACCC considers that, in relation to the provision of non-cash payment processing, the relevant area of competition likely to be affected by the proposed conduct is broader than in-app payment services. In particular, for many customers in-taxi card present payment options would be a close substitute for in-app payment options. While many customers would have a preference for one type of payment option, a significant proportion of those who may have a preference for in-app payment options would be prepared to switch to in-taxi card present payment options in response to changes in the relative cost of exercising each option, particularly as the same underlying payment instrument (for example, the credit card) can be used for both options so long as, in the case of in-taxi payment, the customer has the card in their possession when paying for the fare.
161. More generally, even if in-app payment processing and in-taxi payment processing are considered as separate markets, as discussed below, the ACCC considers that Cabcharge providing in-app payment processing for ihail has the potential to impact competition between taxi payment processing providers.
162. ihail submits that limiting available payment options to in-app payments is necessary for a number of reasons. In particular, it submits that customers will only be able to pay via credit card or Cabcharge card through ihail's app payment processing system (with the payment processed by Cabcharge) in order for ihail to be able to charge passengers a 'no job fee' for their failure to show for a booking without cancelling the request.
163. However, the ACCC notes that while collection of this fee would require the consumer's credit card details to be registered with ihail, once the customer is registered, precluding other payment options for bookings that are honoured by the passenger is not necessary in order to be able to collect this fee. Further, no other app charges such a fee for dishonoured bookings, and ihail has not presented any information to suggest that this is a significant problem as to necessitate such a fee.
164. Similarly, ihail argues that the use of in-app payments promotes better passenger behaviour because the customer's account is registered and traceable.⁸⁶ However, again, the ACCC notes that, as with other taxi booking apps, requiring customers to register their details achieves this without the need to limit payment options for the customer once they are registered.
165. ihail further submits that limiting payment options to automatic in-app deductions from the passenger's credit card will be safer and more convenient for customers and drivers.⁸⁷ With respect to drivers, the ACCC notes that they will be required to offer other payment options (for passengers who do not book through ihail) regardless of any payment restrictions imposed by ihail. With respect to customers, the ACCC considers that the individual customer is best placed to decide what the safest and most convenient payment method for them is.
166. ihail also submits that limiting payment options to in-app payments will provide administrative efficiencies for ihail and taxi networks. Specifically, as Cabcharge already has all the necessary driver information (ABN, operator, taxi number etc.) it can provide each network a single consolidated list of all ihail fares over the requisite period. ihail also argues that limiting payment options reduces the

⁸⁶ ihail submission, 3 September 2015, p 5.

⁸⁷ ihail submission, 3 September 2015, p 5

administrative burden for drivers. In particular, by using Cabcharge, drivers can press a single button on their Cabcharge terminal at the end of the shift which prints out a consolidated receipt of all ihail jobs completed during that shift.⁸⁸

167. The ACCC accepts that limiting payment options to in-app payments would likely create administrative cost savings for ihail and taxi networks in reconciling and processing some payments. It may also potentially create some administrative efficiencies for drivers.
168. The ACCC also notes that ihail will receive a percentage of the Cabcharge surcharge on all fares booked through the app which represents an additional source of revenue to ihail that would not be available to it in instances where the passenger elected to pay in-taxi (if this were allowed). The ACCC considers that this is another reason why ihail wishes to limit payment options to in-app payment processed by Cabcharge.
169. However, while limiting payment options may result in some administrative cost savings and generate additional revenue for ihail, the ACCC does not consider that the other reasons submitted by ihail for limiting payment options (for example, allowing payment of a 'no job fee' and passenger safety) are justified.
170. Against this, the ACCC considers that ihail only offering in-app payments, with Cabcharge processing the payments, has the potential to significantly impact competition between taxi payment processing providers.
171. Cabcharge is the dominant incumbent provider of taxi payment processing services. Most taxis are fitted with a Cabcharge payment terminal. However, other providers are also seeking to establish themselves in the provision of these services and some taxis include terminals from other providers. To date, taxis wishing to have an alternative payment terminal to Cabcharge have had to continue to have a Cabcharge terminal in their taxi to process Cabcharge payments. This is because third party payment terminals have not been able to process Cabcharge cards. In June this year, the ACCC accepted a court enforceable undertaking from Cabcharge under which rival payment processors will be able to process Cabcharge cards on their own taxi payment terminals. This means taxis will now be able to have an alternative payment terminal instead of a Cabcharge terminal, rather than in addition to a Cabcharge terminal.
172. The ACCC considers the relevant question in respect of the proposed arrangements therefore, is the extent to which ihail only offering an in-app payment option, and Cabcharge processing these payments, will impact on emerging competition between Cabcharge and other providers of taxi payment processing services.
173. The ACCC notes that the impact of the proposed conduct on competition between taxi payment processing providers is difficult to quantify as it is likely to depend, to a large extent, on how popular ihail becomes as a taxi booking platform. As noted, other providers of taxi payment processing services will be precluded from offering services to customers who book taxis through ihail. Further, if customers booking taxis through ihail ultimately constitute a significant proportion of all taxi bookings, this is also likely to affect the ability of other providers of taxi payment processing services to provide this service to other customers. That is, if the remaining customer base was eroded to the point that it was not viable for

⁸⁸ ihail submission, 11 September 2015, p 2.

competing providers to continue to offer services there could be a significant effect on other taxi payment processing service providers.

174. ihail submits that given the wide number of other apps available, and other means of paying for taxis when using these apps or booking or hailing taxis through traditional means, ihail's market share is likely to be small.
175. However, the ACCC considers that ihail is likely to have a greater number of taxis available on its app than its competitors in many locations. This is likely to be valued by consumers, and hence, the popularity of ihail is likely to grow with both taxi companies and consumers alike. These network effects mean that there is a chance that the market will tend towards ihail becoming the dominant provider of smartphone app taxi booking services.
176. If this were the case, the ACCC considers that foreclosure of access to these customers for providers of taxi payment processing services (other than Cabcharge) could significantly impact competition in the provision of these services, which would be to the detriment of consumers.

Allowing customers to offer an additional payment when booking to incentivise priority pickup

177. Passengers using the ihail app will be able to offer a payment when requesting a taxi in order to incentivise priority pickup. This option will only be available before a job is accepted by a driver. ihail submits that this will encourage more drivers to offer their services during peak times.⁸⁹
178. The ACCC notes that some other taxi booking and ride sharing apps such as goCatch offer similar functions. The operators of these apps do not own or operate taxis. As such, these operators are not subject to state and territory taxi regulation (although the drivers using their apps are). uberX also uses surge pricing at busy times (which is a similar form of price discrimination to the priority dispatch payment function). However, the taxi companies' own booking apps do not offer the option of making an additional payment for priority pick up.
179. ihail submits that the priority dispatch payment function is unlikely to impact traditional taxi users (who will most likely book their taxis using the numerous other dispatch means), or disadvantage consumers any differently to the existing systems used by other smartphone apps.⁹⁰
180. Some interested parties raised concerns that the priority dispatch payment option appears to be against the intent of maximum fare regulation and may disadvantage financially vulnerable consumers.
181. When these concerns were originally raised by the ACCC with ihail at the time of considering interim authorisation, ihail stated that they were committed to removing the option of being able to offer a priority dispatch payment in markets where the relevant state government requests it to do so, noting that they had done so in Queensland.⁹¹

⁸⁹ ihail submission, 4 August 2015, p 10.

⁹⁰ ihail submission, 2 July 2015, p 4.

⁹¹ ihail submission, 2 July 2015, p 4.

182. ihail's current position as reflected in its most recent submission about this issue is that it does not have a view either for or against the availability of priority dispatch payment options for taxi bookings apps. However, ihail submits that a priority dispatch payment mechanism should either be available to all booking apps, or not available to any. ihail states that if it is unable to utilise a priority dispatch payment function, this would allow 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 is denied this option. ihail submits that it is not appropriate to distinguish between otherwise competitive apps in this way.⁹² Therefore, ihail will disable the priority dispatch payment function if all other taxi booking apps operating in the relevant jurisdiction are requested to do so and comply with the request.
183. The ACCC accepts that, all else being equal, the ihail app is likely to be less attractive to some customers than apps offered by some of its competitors, if some of these competitors offer a priority dispatch payment function and ihail does not.
184. However, the ACCC also notes that for some sections of the community, for example, persons with disabilities, older persons or those with limited mobility, taxis are an important, and in some case the only, transport option. The ACCC also notes that affordability is often a major concern for these sections of the community. Arrangements whereby in peak times scarce taxis could be allocated based on capacity or willingness to pay above regulated maximum prices may adversely impact on access to taxis for these sections of the community.
185. Further, while some third party taxi booking apps contain a priority dispatch payment function, the ACCC considers that there is a significant difference between individual taxi drivers deciding to use a third party app that has such a function and most, and potentially all, major taxi companies in a region collectively agreeing to such an arrangement. As noted above, the individual taxi companies' own apps do not offer this type of function.
186. Further, interested parties have raised concerns that a priority dispatch payment function such as those operated by some third party apps, and as proposed by ihail, is arguably in breach of regulations governing maximum fares in some jurisdictions and/or at the very least against the intent of such regulations.
187. For these reasons, the ACCC considers that the ihail app offering a priority dispatch payment function is likely to generate significant public detriment.

⁹² ihail submission, 4 August 2015, p 10.

ACCC conclusion on public detriments

188. The ACCC considers that the ihail app is likely to result in a public detriment by reducing competition between taxi companies in supplying services to customers using the app. It may also impact the viability of taxi networks' own apps and third party apps, reducing competition between taxi companies more broadly and increasing barriers to entry for new third party app providers. In particular, being a joint venture between a number of large taxi networks, and allowing others to join, ihail will have a larger network than any competing taxi booking app in most areas of Australia. This will appeal to consumers as it will likely reduce the wait time associated with booking a taxi. If ihail attracts more customers this will likely attract even more taxis to ihail's network. This may lead ihail to become the dominant taxi booking app which may impact on competition between taxis (on price and service) and the ability of other taxi booking apps to compete. If this were the case, there is the potential for substantial detriment to consumers. Importantly, it is ihail's ownership structure that allows it to launch with a larger fleet of taxis than individual taxi networks apps – it has not gained this broader network by being a better taxi booking app and competing with other apps. In this way, its advantage in the market would be due to its ownership arrangements, rather than its ability to offer a better taxi booking app for both taxis and consumers.
189. The ACCC also considers that by foreclosing opportunities for taxi payment processing providers other than Cabcharge to supply services to customers using the ihail app, the proposed arrangements are also likely to impact competition between taxi payment processing providers. In particular, if as more fares are booked through ihail, the amount of in-taxi non-cash payment processing will reduce, which may limit the ability of Cabcharge's competitors in the provision of this service to remain competitive.
190. The proposed priority dispatch payment function could also adversely impact access to taxis for financially disadvantaged sections of the community in periods of peak demand. Further, interested parties have raised concerns that priority dispatch payment functions are arguably in breach of regulations governing maximum fares in some jurisdictions and/or at the very least, against the intent of such regulations.

Balance of public benefit and detriment

191. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.
192. The ACCC considers that the proposed conduct is likely to result in some public benefits by providing an additional, convenient single platform for consumers to book taxis from a pool of taxi networks and drivers that is likely to be broader than that provided by any existing taxi booking app. It also provides a single app that can be used in more cities than third party taxi booking apps currently available, including potentially internationally.

193. However, the ACCC considers that the proposed arrangements are likely to result in significant public detriment, including:
- reducing competition between taxi companies in supplying services to customers using the app
 - potentially reducing the viability of individual taxi networks' own apps and third party apps, reducing competition between taxi companies more broadly and increasing barriers to entry for new third party app providers
 - by foreclosing opportunities for payment processing providers other than Cabcharge to supply services to customers using the ihail app, the proposed arrangements are also likely to impact competition between taxi payment processing providers and
 - the proposed priority dispatch payment function could also adversely impact access to taxis for financially disadvantaged sections of the community in periods of peak demand, and interested parties have expressed concern that it is arguably in breach of regulations governing maximum taxi fares or against the intent of maximum fare regulation.
194. For the reasons outlined in this draft determination the ACCC is satisfied that the likely benefit to the public would not outweigh the detriment to the public including the detriment constituted by any lessening of competition that would be likely to result.
195. Accordingly, the ACCC is not satisfied that the relevant net public benefit tests are met.

Draft determination

The application

196. On 26 May 2015 ihail Pty Ltd (ihail) lodged application for authorisation A91501 with the ACCC. Application A91501 was made using Form B Schedule 1, of the Competition and Consumer Regulations 2010.
197. The application was made under subsections 88(1) and 88(1A) of the Act by ihail on behalf of itself, ihail Holdings Limited and the existing shareholders of ihail Holdings Limited to make and give effect to joint venture arrangements. In particular, the proposed joint venture is between a number of taxi companies and other participants with an interest in the taxi industry to develop and operate a smartphone taxi booking application (**ihail app**) for use by domestic and international taxi companies.
198. ihail also seeks authorisation for 'any new shareholders, licensees, employees or contractors or any other party to the existing contracts or contracts on substantially similar terms during the proposed period of authorisation.
199. ihail seeks authorisation of these arrangements as they may contain a cartel provision and may have the effect of substantially lessening competition within the meaning of section 45 of the Act.

200. Subsection 90A(1) of the Act requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

201. The relevant tests for consideration of this application for authorisation are set out in subsections 90(5A), 90(5B), 90(6) and 90(7).
202. For the reasons outlined in this draft determination, the ACCC is not satisfied that the proposed conduct for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.
203. The ACCC therefore **proposes to deny** authorisation to application A91501.
204. This draft determination is made on 12 October 2015.

Interim authorisation

205. At the time of lodging the application, ihail requested interim authorisation to allow it to commence the launch of the proposed ihail app in Australia. The ACCC denied interim authorisation on 17 July 2015.
206. The ACCC indicated that it would reconsider whether to grant interim authorisation at the time of issuing its draft determination. As the ACCC is proposing to deny authorisation the ACCC has also decided not to grant interim authorisation.

Further submissions

207. The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

Attachment A - Summary of relevant statutory tests

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

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

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

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