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30 October 2015

Gavin Jones
Australian Competition and Consumer Commission
GPO Box
Canberra ACT 2601

By email: adjudication@accc.gov.au

Dear Gavin

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

We act for Uber and respond on its behalf to the draft decision of the ACCC made on 12 October 2015 in relation to the application for authorisation by ihail Pty Ltd (ihail).

Attached to this letter is Uber's submission in response to the ACCC's draft decision. This submission assumes that ihail operates in the same way and include the same functions and features as was the case at the time the ACCC made its draft determination. If the ACCC is aware of changes to ihail since this time Uber requests that the ACCC make that information available publicly so it can be commented on.

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

Yours sincerely



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Uber's submission on the ACCC's draft ihail decision

1 Overview

As the ACCC is aware, Uber has significant concerns about the proposed ihail joint venture. In its draft determination the ACCC has recognised as a result of the ihail joint venture:

"Competition between taxis on price and service and the ability of other taxi booking apps to compete would be reduced"

This public detriment stems from ihail's corporate structure and cannot be overcome by the superficial changes suggested by ihail in the media.

Uber has already identified a number of significant public detriments in its prior submissions and does not propose to repeat those in detail again. However the ACCC will recall that these included concerns that:

- ihail's shareholders will be incentivised to further accelerate efforts to discourage taxi drivers from using the services of competing third party point-to-point booking applications, such as Uber, Ingogo and GoCatch;
- once ihail launches its shareholders are unlikely to continue to maintain and incur the costs associated with their individual booking applications. As consumers move to ihail and the network effect grows there will be insufficient booking traffic to justify the cost of these individual apps;
- the ihail application (and subsequent abandonment of individual apps) will result in coordination of taxi fares and limit price competition. Consumers will book through the ihail app on the basis of a maximum uniform quoted fee that will not reflect a competitive price, and there will be no incentive for taxis to offer discounts to this quote after the consumer enters the taxi; and
- the dominant position of Cabcharge in the Australian market will be further entrenched. Cabcharge has sought to retain its market dominance through a range of anti-competitive tactics over a number of years, and this position will only be strengthened under ihail's proposal.

Using the headings from the ACCC's draft decision Uber makes the additional submissions below.

2 Public benefit

Uber agrees with the ACCC's assessment that there is minimal public benefit the ihail venture.

2.1 Limited increased convenience

As the ACCC has said, it 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"

Although the ACCC identified some benefit to the public from the convenience of the ihail app it rightly identifies that the public already receives considerable benefit from similar existing taxi and ride-sharing applications. Uber submits that ihail will add marginal if any benefit over and above

what consumers already receive from such existing applications – and in fact will result in significant public detriment (as discussed below).

The ACCC notes in its draft determination that ihail will from inception by virtue of its corporate structure have a larger driver network than applications in the market. Uber accepts that in certain isolated cases this may make it quicker for a consumer to obtain a taxi using the ihail app compared one of ihail's competitor apps or other methods. The public benefit from such marginally shorter wait times is minimal. In most capital cities, apps available in the market have sufficient numbers of affiliated taxis to account for demand at peak and off peak times without excessive waits for consumers.

2.2 No real increase to competition

The ACCC considers "that the ihail app is likely to increase competition between existing smartphone booking apps in the short term". However, a short term increase in competition is of little benefit to consumers in the long run if competition generally is quashed. As the ACCC rightly points out in its draft determination, the effect on competition and benefits that accrue to the public from particular conduct must be assessed in the long term.

As the ACCC has noted:

"The ihail app will likely reduce competition between taxi companies in supplying services to consumers using the ihail app"

In addition, Uber is concerned that the introduction of the ihail app in circumstances where a large number of taxi companies are invested in its success will damage nascent competition, which has only recently emerged, and this will result in less consumer-focussed offerings in future.

3 Public detriment

Uber supports the ACCC's position that substantial public detriment is likely to flow from the ihail venture.

3.1 Competition between taxi networks and between taxi operators will reduce

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

Uber agrees with the ACCC that there is unlikely to be any price or other competition between taxi companies within the ihail app. Taxi operators cannot increase the bookings that their taxi company receives through the app (versus other taxi companies) by offering better services or lower prices. Any costs incurred to offer these benefits to consumers would almost certainly not be able to be recouped. This is because, as the ACCC points out, taxi companies will roughly receive booked jobs in accordance with their market share. Through ihail, taxis cannot compete to win bookings from consumers.

Another way to look at the proposed ihail scenario is to ask, if ihail were the only means by which to purchase or book a taxi, would there be any competition? That is, would there be any incentive for the taxis in that scenario to, for example, offer lower prices to consumers? It is very unlikely that they would.

As ihail points out in its submission, there is currently very little competition between taxis on price. This is to the detriment of consumers and has been the case for many years. It is imperative that, at this time of rapid industry change, where outdated taxi regulations are the subject of review across Australia, barriers to new market entrants (such as Uber, Ingogo and GoCatch) imposing a competitive constraint on existing taxi operators are not artificially created by powerful incumbent businesses seeking to band together as a

cartel. Uber is pleased to see that the ACCC recognises this point - and recognises the rapid change and benefits to consumers that are occurring in the industry.

The point-to-point transport industry is rapidly changing, and changing for the better. Uber expects that in future there will be more competition between taxi companies on price and service. It would be wrong to look only at the previous pricing practices of the industry - as it seems ihail has in its submissions. Those previous pricing practices and the previous competitive dynamic between taxi companies does not represent the case as it will be in the future. Indeed, one need only look to the consumer discounts offered through individual taxi network apps or through email marketing campaigns circulated by taxi networks to see the benefits slowly accruing to consumers that were not present in recent history. Uber has provided examples to the ACCC in previous submissions.

It is well established that the introduction of Uber and similar new businesses has introduced much-needed competitive pressure on taxi operators to improve their standards and become more consumer-friendly. In the absence of legitimate competitive pressure, ihail and its participants will revert to the complacent position enjoyed by taxi operators for many decades.

(b) Incentives for taxi companies to compete more broadly will reduce

The incentives of taxi companies to compete against each other outside of the ihail app will be reduced by the presence of ihail. This is because ihail will aggregate a number of competing taxi companies under the same pricing structure. All taxi companies will share an application that will advertise their service at a uniform price. This is a dramatic difference from the case at present where individual taxi companies offer pricing in their individual taxis and this pricing is not shared with competitor taxi companies.

It is likely that in the absence of ihail, in future, taxi prices will move below the regulated maximum and taxis will finally begin to compete on price. ihail creates less incentive for taxis to reduce prices. This is because the ihail referenced price will be the mark by which all taxis price their services.

Further, taxi companies more broadly will have a reduced incentive to compete using their individual app offerings - as ihail is likely to draw a large number of consumers very rapidly. This is discussed further below.

(c) Incentives to maintain individual taxi networks apps

Uber agrees with the position put by the ACCC that, with the large network of taxis on the ihail application and associated consumer uptake, the ihail shareholders will very quickly favour ihail over their own apps. These network effects are rightly identified by the ACCC to be a fundamental problem with the ihail application. This is a problem that goes to the core of the ihail corporate model and which cannot be addressed by merely amending taxi identification features, or payment processing options available through the app.

As an aside, Uber again asks the question it put in its earlier submission – why can't ihail simply licence its application to the taxi companies that it proposes to include as shareholders? In so doing, ihail would expose its application to the same competitive forces as all other applications on the market. It would not be able to simply lean on its shareholders to gain market traction. Instead, it would have to compete to prove the benefits of its service.

With the vast initial roll-out afforded by virtue of ihail's taxi network shareholders, consumers are likely to use the ihail app as their first port of call when booking a taxi. This includes consumers resident in the locations in which the shareholder taxi

companies offer service and is not limited to the 'niche' travelling consumers that ihail submits are the target of its application.

As consumers of all kinds begin to use ihail they will necessarily stop using individual taxi apps. The flow-on effect is that the costs of running these apps will outweigh the value that is generated to the taxi companies by consumers using those app. Apps have material baseline fixed costs, which include technology licence fees and maintenance fees. The applications will therefore be shutdown, scaled back, not be supported or maintained, or improved at such marginal rates as to make them a very poor substitute for other applications on the market and an ineffective competitive constraint on ihail.

Finally, Uber is surprised at the ACCC's finding that, by virtue of their holdings, ihail's shareholder taxi companies are not disincentivised from maintaining their own applications. However, Uber cannot meaningfully make further submissions on this point without being provided with detail of the particular holdings of each of ihail's shareholders. However, even if the shareholders were not initially disincentivised from maintaining their own apps this will become a commercial reality as consumers move away from individual apps to ihail.

3.2 Reduced competition between ihail and third party apps

Uber agrees with the ACCC's view that:

"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, 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."

ihail's business strategy involves "broad usage and acceptance" of the ihail application. It believes that the more taxi companies that use the application, the more attractive it will be to consumers. Unlike its competitors however it will not gain this network through innovation. And, the public benefit that it claims is only available where it can leverage its unfairly gained network.

As Uber notes above, this is the fundamental problem with the ihail application. ihail's ability through its owners alone to gain immediate market dominance will stifle competition in the Australian point-to-point transport sector. Consumers will gravitate to the ihail service for its network – not for innovative features or lower pricing. Non-shareholder taxi networks will gravitate to ihail, not because it claims to offer more competitive booking rates, a better back-end interface, or faster payment processing. Rather, it is the network alone that will draw custom.

The presence of the large affiliated driver network will make it very difficult for other third party applications to compete. The combination of privileged access to taxi companies and network effects will become a substantial barrier to entry for new entrants. This would occur at a critical time for the industry when new entrants are seeking to develop networks of drivers and acquire acceptance from customers for their new business models. ihail will therefore become dominant and stay dominant - and so long as its taxi network shareholders are maintained, ihail will have almost no incentive to innovate and offer benefits to consumers. This is a familiar taxi industry picture of poor consumer outcomes – however it is a picture that can be avoided if the ACCC maintains its opposition to ihail and allows the continued development of real competition in the point-to-point transport industry in Australia.

Uber notes that the ACCC has said that taxi drivers and operators will not necessarily be incentivised to use ihail over other applications. It is wrong to look purely at economic incentives. If ihail is approved with its current shareholder structure, it is inevitable that those shareholders will intensely lobby taxi operators and drivers to use the ihail application to the exclusion of

unaffiliated applications. Taxi drivers and operators are strongly encouraged to accept the recommendations of industry players and can feel under pressure if they do not do so. Rightly or wrongly, drivers and operators will be led to believe that it is in their interest to only use ihail. Worse, the requirement to use ihail and/or to not use competing apps may even form part of the contractual requirements imposed by the ihail shareholders on their drivers under their bailee agreements.

3.3 Reduced competition between taxi payment processing providers

Uber is concerned that the introduction of the ihail app with its compulsory Cabcharge processing will further entrench Cabcharge's already dominant position in the taxi industry. The introduction of the ihail app would clearly undermine the impact of the enforceable undertakings that the ACCC has recently received from Cabcharge by diverting payment away from new in-taxi providers.

Even if there are other providers of in-app payment services the hold that Cabcharge has of payment processing in the taxi industry will be ensured with the launch of the ihail app.