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6 November 2015

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

Dear Dr Chadwick

ihail Pty Ltd application for authorisation [A91501] - response to Draft Determination

We refer to the Australian Competition and Consumer Commission's (**Commission**) Draft Determination dated 12 October 2015 in relation to ihail Pty Ltd's (**ihail**) application for authorisation.

Although ihail does not agree with the comments made by the Commission in its Draft Determination, it, believes that the Commission's concerns about granting authorisation can be addressed through some proposed changes to the ihail business model. Further, ihail believes that the Draft Determination relied upon a few misconceptions about the competitive landscape. ihail has provided further information in this submission which also alter the analytical framework under which the Commission should view the ihail business.

ihail consents to the extension of time for determination of this matter.

1. Proposed changes to ihail to address the Commission's concerns

ihail proposes the following amendments to its operating model in order to address the concerns set out in the Draft Determination.

Payment processing - all payment methods

First, ihail will commit to enabling in-car payment in the ihail application. ihail notes that the Commission expressed concern that:

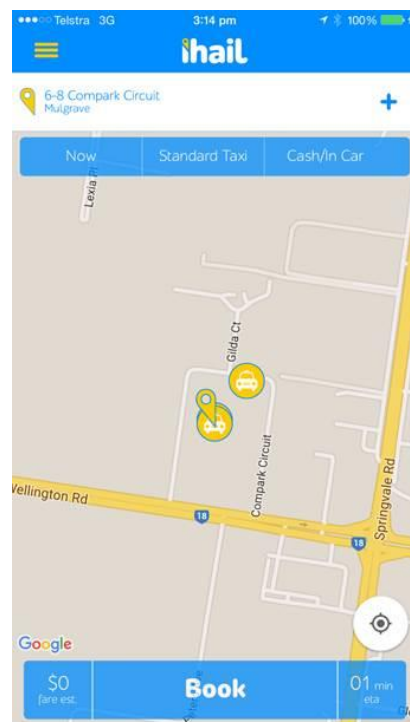
All ihail fares can only be paid through the app, with in-taxi payment not permitted. As such, passengers will only be able to pay for fares using their registered credit card or Cabcharge card. Cabcharge will provide all payment processing services... by foreclosing opportunities for payment processing 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 services.¹

In order to address this concern, ihail will commit to enabling in-car payment processing for users of the ihail application. This change will allow consumers to choose to pay in-car, using cash or any chosen credit or debit card (and using any of the installed payment systems in the car, which will include systems other than Cabcharge), or through the ihail application payment system.

To ensure that ihail retains protection for drivers from customers who flee fares, damage taxis or do not show (and will therefore be charged a No Job Fee), ihail will still require customers to register a credit card through the app at sign up. ihail has revised its app design so that the selection of payment option (including in-car) will be available through the main booking screen for every booking. Figure 1 shows a mock-up of the new main booking screen that customers will see upon accessing the app:

Figure 1: amended booking screen



Removal of the priority dispatch mechanism ("tipping")

ihail notes that the Commission expressed concern that:

¹ Australian Competition and Consumer Commission, *Draft Determination: Application for authorisation lodged by ihail Pty Ltd* (12 October 2015) i, ii.

...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... [a]rrangements 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.²

ihail does not agree with Commission's concern regarding the priority dispatch mechanism. However, ihail is committed to ensuring that transportation services are provided to the public on an equal opportunity basis. As such ihail has decided to be the market leader by committing to disabling Tipping/Fast Track Fees in all its operations within Australia. ihail will commit to not enable any form of priority dispatch mechanism.

ihail believes that this commitment should assist to address the Commission's concern regarding the public detriment created by the priority dispatch payment function.

Impact on service and price competition between taxi networks - choice of operator

ihail notes that another of the Commission's key concerns with authorising the ihail app was the impact that not allowing consumer choice of network would have on competition between taxi networks for price and service. Specifically, ihail notes the Commission's statements that:

If a consumer calls a specific taxi company, users 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...³

ihail understands that the Commission only views this as a concern depending on the level of dominance that the ihail app achieves in the smartphone booking market.⁴ While ihail does not know its likely level of success post-launch, it will allow consumers the ability to select which taxi network they wish to book with. If ihail enables this function, it cannot be argued that taxi networks will not have an incentive to compete on price and service that exists in the current market.

In order to achieve this, ihail proposes to amend its booking process so that users of the app are required to choose which taxi network services they are booking when they submit a booking request. Under this proposed change, a

² Australian Competition and Consumer Commission, *Draft Determination: Application for authorisation lodged by ihail Pty Ltd* (12 October 2015) 38.

³ Australian Competition and Consumer Commission, *Draft Determination: Application for authorisation lodged by ihail Pty Ltd* (12 October 2015) 28.

⁴ Australian Competition and Consumer Commission, *Draft Determination: Application for authorisation lodged by ihail Pty Ltd* (12 October 2015) 31.

customer would make a booking request with ihail, which would then show the estimated time for the booking to be serviced by all available networks at the customer's location. Customers would then submit their booking to the chosen network which would then be dispatched in accordance with ihail's dispatch rules and quality standards.

ihail believes that it would add a public benefit at this point of the transaction as well, as it has amended its app to show the average consumer rating for each taxi network that is available to service the customer's request, meaning that the consumer (whether knowledgeable in the local taxi market or not) will be able to make a more informed choice regarding the taxi service it is choosing, and creating further competition between taxi networks at this level. In effect ihail would operate as a comparator gateway in the same manner as Expedia or iSelect. This feature would be a first for the taxi booking market and would create robust competition between networks as consumers would be able to compare and select their provider in real time.

Figure 2 shows the proposed amendment to the booking screen to enable the taxi network selection function.

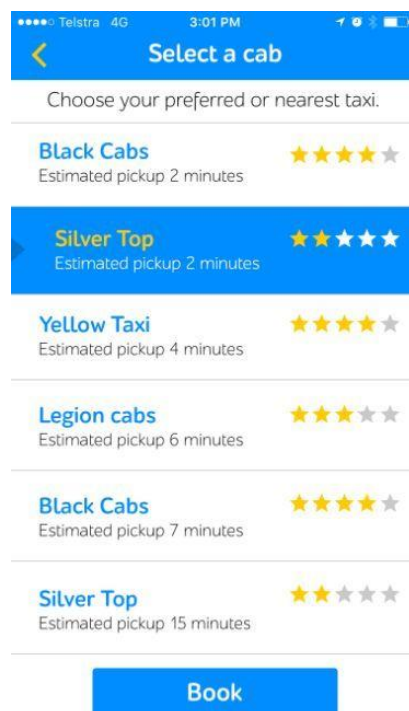


Figure 2: network selection screen

ihail believes that these proposed remedies should address the Commission's key concerns regarding the operation of the ihail app as expressed in the Draft Decision.

ihail wishes to take this opportunity to note that it has been willing to amend its business plan and to understand and implement the comments of the Commission. Should the Commission wish to engage with ihail on further remedies that might address the concerns that the Commission has raised, ihail would further welcome this opportunity.

2. ihail's net consumer benefit

ihail offers customers considerable benefits that they cannot attain from any other platform in the market. Most notably, ihail allows customers to:

- compare and select transportation from a range of taxi networks throughout Australia and overseas;
- book taxis in many locations both domestically and abroad;
- select which taxi network services its booking based on price and quality, enhancing competition within the market;
- book high quality taxis from a range of providers due to ihail's use of smart dispatch and driver ratings; and
- conveniently pay through the application or in-car, increasingly customer choice

ihail helps create further competition within the market by allowing taxi networks to offer national and global coverage. This is key to maintaining the competitive ethos within the market as currently taxi networks have no means to offer their customers interstate or overseas coverage, hence they inevitably lose customers to competitors. By denying ihail the chance to compete networks and passengers are denied the considerable benefits that arise through the added competition as well as the innovative features offered by ihail.

3. An overview of ihail's path to market

In recent years the taxi industry has seen a flood of new mobile applications enter the market, from small start-up companies through to large multinationals. These applications have created fierce competition in the transportation industry.

There are three types of Booking Apps which operate globally in the Taxicab space. These are:

- (a) **White Label Apps** (or specifically taxi company branded) which only book taxis with each individual taxi company (for example, Silver Top App, 13Cabs App, or Yellow Cabs App);
- (b) **Aggregator Apps:** these are typically third party companies (either owned by technology companies, investors and/or taxi companies) who invest in an app company that will, for a fee, offer booking

services to multiple taxi companies in one city or across multiple cities worldwide, and often dispatch the trips to the drivers via existing dispatch systems. Companies already in this space include Curb (partially-owned by all three investor types), ECab from Paris (owned by a taxi company), zTrip from California (owned by Transdev), UbiCabs from London (investor-backed), Karhoo from New York (with a valuation of \$175m and about to launch globally), as well as many more; and

- (c) **Driver Direct Apps:** these include Uber, Sidecar, Lyft, Hailo, Gett, Ingogo, GoCatch and many more.

There is clear global evidence that taxi companies will continue to operate and promote their whitelabel offering, and that this is the preferred mode of receiving bookings as all the goodwill from the customer vests with their brand. Conversely, many taxi companies are also happy to pay a fee to utilise an Aggregator app, which provides further customer choice and convenience.

MTData, as a supplier of Taxi and Private Hire Booking Systems, has firsthand experience integrating and competing with these companies, and has currently fully integrated with Karhoo, Curb, zTrip, ECab, The Ride and OneTransport. All of these brands can commence dispatching in Australia via the MTData Dispatch System providing they enter commercial arrangements with taxi networks.

Therefore in 2014, Matthew Bellizia owner and CEO of MTData, commissioned Deloitte to undertake a feasibility study to ascertain the viability of MTData designing a competing app which would be developed in Australia and deployed around the world as a vehicle to compete in the Aggregator space.

Matthew invited companies around the world to participate in a high risk venture and a group was formed to provide an Australian aggregator app to compete globally.

4. Responding to the Commission's Draft Decision

In an increasing number of cities, many Aggregator Apps already support multiple taxi companies. None of these Aggregator Apps have yet taken more than a small market share, particularly as taxi companies continue to promote their White Label Apps first in order to continue owning the goodwill of the customer and building value in their brand. This is amplified by the fact that taxis are completing a diminishing volume of On-Demand For-Hire work, as Uber, SideCar, Lyft (and many others) have changed the traditional "Taxi Services" market, so that taxis are now only part of a much broader "Point-to-Point Transport" market.

ihail submits that the Commission is incorrect to assume that SilverTop, Cabcharge, Black and White Taxis, and Suburban Taxis would stop competing in their local markets and only use ihail as their single smartphone

booking app. In fact, all evidence locally and globally supports the conclusion that they will continue to operate and promote their Whitelabel apps. For example:

- (a) The four companies, along with many other established taxi companies, are already shareholders of 131008 Pty Ltd. 131008 Pty Ltd operates an existing app that has operated Australia-wide for the past two years, and currently that app only receives 30 trips booked a day. Throughout this two year period these companies have not discontinued their own apps, have not colluded on pricing or service, have not acted anti-competitively and have not acted in the public detriment (nor been able to) that the Draft Decision outlines. This app is actively promoted. See www.awtaxi.com.au. It pays for google promotion see under "Ads" when you google "Australia-wide taxis".
- (b) There is every economic incentive for taxi companies to continue to trade and maintain independent value, they must maintain customers (including a dedicated customer base), as this is the company's goodwill and the reason that drivers subscribe to operate for that company. Therefore, it does not make commercial sense for taxi companies to put all their goodwill and recognition into an app of which they only own 10% (at this stage; a figure which is likely to be diluted with further investment). This would devalue the taxi companies' own offerings and company valuations.
- (c) International experience also demonstrates that individual cab companies will continue to operate and promote their Whitelabel apps.

ihail's Board and Management do not share the Commission's optimism of the extreme immediate success of the ihail app. ihail believes that a more realistic view would be a 1% market share in its earlier days.

5. The shift in the competitive landscape

The impact of ride-sharing

The taxi industry has fundamentally changed. Ride-sharing has permanently altered consumers' expectations in relation to service, cost and convenience. Customers can now directly substitute taxis with ride-sharing and other private vehicle services.

ihail notes that the Commission is hesitant to consider the impact of ride-sharing services, such as Uber, on the traditional taxi market, primarily because of ongoing concerns regarding the legality of those services. Specifically in relation to the constraint that ride-sharing will have on ihail's market position, the Commission states:

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 restraint they impose is also uncertain.⁵

ihail submits that this ignores the practical reality that is currently occurring in the taxi market. While governments, regulatory bodies and traditional taxi services continue to contest the "legality" of services such as Uber, they are fast growing in public popularity and, more importantly, global impact. Uber alone has become one of the largest companies in the world within 6 years of its launch, with a suggested market value of over USD\$50 billion and operates in more than 300 cities worldwide,⁶ back by established international names like Google and PayPal. Further, it is expected to have added more than 20,000 new drivers this year in Australia alone, making it one of Australia's largest employers.⁷ While the Commission is concerned that "ihail will likely have the largest pool of taxis in most areas in which it operates"⁸, ihail notes that Uber already has a broader reach and larger number of drivers than any taxi network in the world.

Uber alone has just announced that it has provided 10,000,000 rides within seven Australian cities since it launched only 18 months ago.⁹ ihail notes that this contrasts with only 20 million taxi jobs that have been dispatched by smartphone bookings by all taxi booking apps since their introduction.

Further, while there is a question of its legality, ride-sharing continues to gain legitimacy with the various State Governments committed to legalising these services. The ACT was the first State to approve ride-sharing, with Chief Minister Andrew Barr stating:

The ACT Government supports the introduction of ridesharing in Canberra to improve transport in our city... I'm please we were able to work with Uber to design and implement a clear light-touch set of regulations for ridesharing services. These are world-leading reforms and I hope other governments around the world follow in our footsteps.¹⁰

Daniel Andrews (Victoria - "In some respects technology has got ahead of the law and we need to update that and the [transport] minister has been working

⁵ Australian Competition and Consumer Commission, *Draft Determination: Application for authorisation lodged by ihail Pty Ltd* (12 October 2015) [125].

⁶ Douglas MacMillan and Telis Demos, "Uber valued at more than \$50 billion" (31 July 2015) *The Wall Street Journal* <<http://www.wsj.com/articles/uber-valued-at-more-than-50-billion-1438367457>>.

⁷ Chris Pash, "1 million Australians are now registered with Uber" (10 August 2015) *Business Insider Australia* <<http://www.businessinsider.com.au/1-million-australians-are-now-registered-with-uber-2015-8>>.

⁸ Australian Competition and Consumer Commission, *Draft Determination: Application for authorisation lodged by ihail Pty Ltd* (12 October 2015) [136].

⁹ "uberX hits 10 million rides in Australia!" (22 October 2015) *Uber* <<http://newsroom.uber.com/australia/2015/10/10millionrides/>>.

¹⁰ "Canberra, your Uber is arriving now!" (29 October 2015) *Uber* <<https://newsroom.uber.com/australia/2015/10/canberra-your-uber-is-arriving-now/>>.

very diligently to achieve that outcome")¹¹ and Mike Baird (New South Wales, which is currently waiting on a Roads and Maritime Service review of the taxi industry and regulation),¹² as well as various opposition leaders in those States,¹³ are on the public record with their support to shortly introduce legislation to legalise these services, and are under constant pressure to do so.¹⁴

Many international jurisdictions have already passed this legislation, including a number of US States ("with ride-sharing agreements in 42 cities and states, and pacts in another four states and four cities temporarily permitting it to operate before formal regulations are introduced")¹⁵, and i hail believes that it is only a matter of time before the legality of ride-sharing is confirmed. Because of this, i hail does not believe that it is appropriate for the Commission to give such little regard to the inevitably increasing impact of ride-sharing which is not only competing with traditional taxi services, but also altering and expanding the traditional taxi market to include new technologies and services that have simply not been considered to compete with taxis in the past. It is not a hypothetical unforeseeable future for taxis to need to compete on price and service offerings with ride-sharing and personal car services, but rather the existing market situation.

One of the key elements that Uber provides to consumers, which i hail is attempting to replicate so that taxi drivers can have the same opportunities, is the opportunity for international (or even interstate) travellers to have a "familiar and safe" method to access transport when they arrive in a foreign city.¹⁶ Uber itself acknowledges its global reach and its ability to service customers all over the world, as well as those from all over the world.

Image 1 (below) was recently produced by Uber showing where its Australian international users have come from.

¹¹ Tom Cowie, "UberX customers ramp up pressure on Andrews government to legalise ride-sharing" (30 September 2015) *The Age* <<http://www.theage.com.au/victoria/uberx-customers-ramp-up-pressure-on-andrews-government-to-legalise-ridesharing-20150930-gjy6rn.html>>.

¹² Melanie Kembrey, "Task force to look at Uber and taxi industry in NSW" (1 July 2015) *The Sydney Morning Herald* <<http://www.smh.com.au/digital-life/digital-life-news/task-force-to-look-at-uber-and-taxi-industry-in-nsw-20150701-gi27oe.html>>.

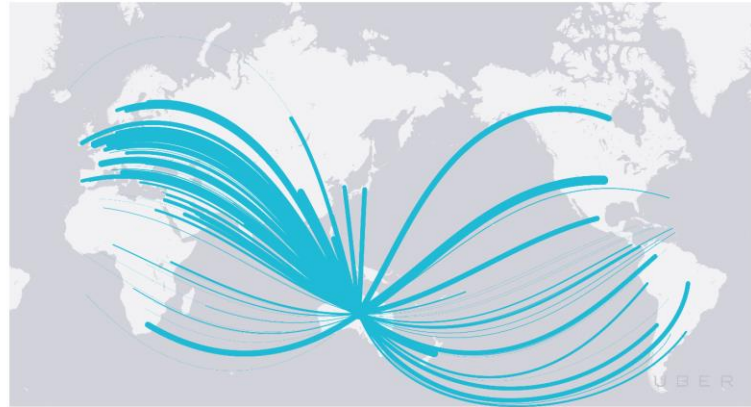
¹³ Claire Reilly, "NSW Opposition on board with Uber, proposes ride-sharing bill" (25 June 2015) *CNET* <<http://www.cnet.com/au/news/nsw-opposition-on-board-with-uber-proposes-ride-sharing-regulation/>>.

¹⁴ Tom Cowie, "UberX customers ramp up pressure on Andrews government to legalise ride-sharing" (30 September 2015) *The Age* <<http://www.theage.com.au/victoria/uberx-customers-ramp-up-pressure-on-andrews-government-to-legalise-ridesharing-20150930-gjy6rn.html>>.

¹⁵ Christine Hauser, "The State of Uber: How it operates in the U.S." (23 July 2015) *The New York Times* <http://www.nytimes.com/2015/07/24/business/the-state-of-uber.html?_r=0>.

¹⁶ "uberX hits 10 million rides in Australia!" (22 October 2015) *Uber* <<http://newsroom.uber.com/australia/2015/10/10millionrides/>>.

UBER IS USED IN AUSTRALIA BY VISITORS FROM ACROSS THE WORLD
Line thickness represents volume of users



Data from 01-10-2014 to 01-10-2015. Completed trips only.

Uber has already had a substantial effect on the Australian market alone. In less than four years of operation in Australia, and only two years of marketing, it has managed to:

- capture approximately 8.8% of Australian taxi spending – making it roughly one Uber dollar spent for every 12 taxi dollars;¹⁷ and
- process 22% of all taxi electronic transaction as of December 2014.¹⁸

On the 14th of October 2015 David Rohrsheim, General Manager of Uber in Australia and New Zealand, stated that Uber has 1 million active users of its app in Australia alone – double the total downloads of the 13Cabs app. To put this in perspective Roy Morgan research shows that there are 8 million smartphone users between the ages of 25-54, only 2.5 million of these travelled by taxi in the last three months and yet Uber has managed to capture 40% of this available demographic.¹⁹ There is clearly a strong substitution occurring within the market; something that the Commission must take into account.

The Commission's static market view that assumes customers will only utilise taxi services is flawed. This view ignores overseas trends (for example, in England 69% of all licensed vehicles are private hire vehicles), as well as the willingness of governments to legitimise or ignore ride-share operators (as discussed above). If the Commission were to consider the transportation market and the new substitute, ride-sharing, it would be clear that Uber has a substantial and growing market presence. Uber alone achieved 700% growth in 2014.²⁰ ihail's ability to compete, let alone dominate, against ride-sharing when ihail has substantially less capital, expertise or global reach is

¹⁷ The Rise and Rise of Uber In Australia, 16 January 2015, <http://www.gizmodo.com.au/2015/01/the-rise-and-rise-of-uber-in-australia/>

¹⁸ The Rise and Rise of Uber In Australia, 16 January 2015, <http://www.gizmodo.com.au/2015/01/the-rise-and-rise-of-uber-in-australia/>

¹⁹ Uber boss says ride-sharing service is 'litmus test' for government, 14 October 2015, <http://www.news.com.au/finance/business/uber-boss-says-ride-sharing-service-is-litmus-test-for-government/story-fnkgde2y-1227568340036>

²⁰ The Rise and Rise of Uber In Australia, 16 January 2015, <http://www.gizmodo.com.au/2015/01/the-rise-and-rise-of-uber-in-australia/>

questionable. ihail believes that the Commission has erred in finding that ihail will be dominate in this market.

Existing taxi booking applications

Even if the Commission were to exclude ride-sharing from its market analysis, it is clear that there are already many dominant and well-established players present in the taxi booking app space.

goCatch alone has 35,000 registered drivers.²¹ In 2015 there are 68,000 drivers Australia wide.²² This means goCatch has managed to capture more than 50% of all taxi drivers Australia wide in four years. This gives them a larger market share than ihail with an established and loyal customer base. In 2015 goCatch is estimated to have dispatched 2.5 million jobs meaning it has already captured at least 10% of the total app booking market. Ingogo has achieved similar levels of success and both continue to grow strongly as highlighted by their strong inroads into the car payment space.

This is also an extremely dynamic market, with new entrants emerging constantly. Most recently the Australian-based app "RideBoom" will have a similar smartphone private hire car booking function, competing directly with the services of Uber Black, but also with any existing taxi booking services.²³ Because of its focus on using licensed hire-car drivers, Rideboom will not experience any of the issues that Uber and other ride-sharing applications have in relation to government regulation (meaning that Rideboom will be legal and operational from the moment of its launch). The application will also offer a choice of vehicle, including vans and luxury cars, and will have the ability to offer international or interstate travellers easy to order airport transfers. While this service will not be as cheap for consumers as Uber rides, currently neither is taxi travel because of the numerous overheads (including extensive legislated costs, such as licence fees) that these drivers are required to pay which Uber does not. Rideboom also has the same international aims that Uber has already achieved, with plans to move the app to over 200 cities worldwide.²⁴

ihail will also have to compete with all existing whitelabel applications. The intense competition we are likely to face was highlighted by Andrew Skelton's recent quote to his shareholders that stated that they will be shortly

²¹ Taxi war hits the streets as goCatch grabs for hailing revenue, 7 September 2015, http://www.brw.com.au/p/tech-gadgets/taxi_war_hits_the_streets_revenue_c7eZd56dVAobrZ9FgNjPmN

²² ATIA State and Territory, 31 December 2014, Statistics <http://www.atia.com.au/wp-content/uploads/2014-State-Territory-Taxi-Statistics.pdf>

²³ Tom Cowie, "New Uber competitor wants to continue taxi industry shake-up" (25 August 2015) *The Sydney Morning Herald* <<http://www.smh.com.au/business/new-uber-competitor-wants-to-continue-taxi-industry-shakeup-20150825-gj71i8.html>>.

²⁴ Tom Cowie, "New Uber competitor wants to continue taxi industry shake-up" (25 August 2015) *The Sydney Morning Herald* <<http://www.smh.com.au/business/new-uber-competitor-wants-to-continue-taxi-industry-shakeup-20150825-gj71i8.html>>.

releasing their own national app, continuing to promote their independent apps and that ihail is a small niche play for them.²⁵

The true quantum of the challenge posed for ihail is effectively highlighted by the analysis of the Australia Wide Taxis app.²⁶ This application has over 50 locations Australia wide, it is owned by Cabcharge, Silvertop, Black and White, Suburbans, Gold Coast Cabs and many others but it only manages to achieve less than 30 bookings a day. AWT's lack of success demonstrates that just because taxi companies are a shareholder of a venture does not mean they will actively participate or promote it. Many of AWT's shareholders do not currently allow the app to book their taxis. ihail is facing a similar difficulty with only one network – Suburban Taxis Adelaide - presently signed up to the ihail app despite its shareholding.

ihail will have to continue to innovate and promote itself otherwise it will fail like AWT or Curb – a US application that recently folded despite having 38 million dollars in capital. This trend is mirrored around the world with e-cab, #taxi and hailo all struggling due to intense competition. If you do not innovate then competitors will exploit the gap in the market, the exact way Uber and Lyft have.

ihail has clearly demonstrated its commitment to innovation with our market leading quality standards – as outlined in previous submissions - and our use of common independent dispatch rules for each participating network. These rules will mean ihail tracks driver's reliability, accept rate, service standards and dispatches work in accordance with these ideals. ihail acknowledges that there are some varying service standards within the taxi industry and we are committed to changing these standards.

ihail strongly disagrees with the ACCC's assertion that it will ever be dominate in the market and that by seeking to deny our authorisation goCatch, Ingogo and Uber are being protected from competition.

Yours sincerely



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²⁵ Taxi groups mad as ACCC plans to block app, 12 October 2015, <https://au.news.yahoo.com/a/29784341/taxi-groups-mad-as-acc-c-plans-to-block-app/>

²⁶ About US, <http://www.131008.com/about/index.shtml>