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**Date** 17 December 2015  
**From** Carolyn Oddie / Lincoln Verass  
**To** **Gavin Jones**, Director, Adjudication, Australian  
Competition and Consumer Commission, Canberra  
**Email** [Adjudication@accc.gov.au](mailto:Adjudication@accc.gov.au)

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Dear Mr Jones

**ihail Pty Ltd application for authorisation [A91501] - submission**

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Attach

**Our Ref** 120539571:120539571

**Your Ref** 57520

lvvs A0135135078v1 120539571 17.12.2015

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17 December 2015

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

**By Email**

Dear Mr Jones

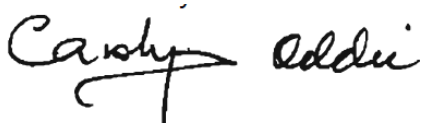
**ihail Pty Ltd application for authorisation [A91501] - Submission**

We act for Uber and respond on its behalf to the ACCC's invitation for further submissions on the proposed changes by ihail Pty Ltd (**ihail**) to its service.

Uber provides its submission in Annexure A.

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

Yours sincerely,

**Carolyn Oddie**

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## Annexure A - Uber's submission on ihail Pty Ltd's proposed changes to its service

### 1 Overview

Uber is strongly of the view that the amendments proposed by ihail in its 6 November 2015 submission (**Proposed Amendments**) do not address the fundamental public detriments raised by the ACCC in the draft determination published on 12 October 2015 (**Draft Determination**).

In particular, the Proposed Amendments do not change the corporate structure of ihail. This means that from launch ihail will still have access to by far the largest driver network of any point-to-point transport application operating in Australia. As the ACCC points out in the Draft Determination, access to this network will have nothing to do with the level of service or benefits that ihail offers to consumers. It will flow directly from ihail's corporate relationship with its shareholder taxi companies.

These points are addressed further under the headings below.

### 2 Network effects are key

Uber understands that network effects are the ACCC's fundamental concern with ihail. The ACCC noted in the Draft Determination that:

"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."

Uber has already expressed in its 30 October 2015 submission in response to the Draft Determination that it shares the ACCC's concern that public detriment will flow from ihail's unique access to driver networks controlled by its shareholder taxi companies. Privileged access to this network will have the effect of stalling emerging competition to traditional taxi operators from a range of third party point-to-point transport booking applications.

### 3 ihail's network effects arguments do not hold

#### 3.1 Overview

ihail raises in its most recent submission a number of points that Uber interprets as arguments to refute the ACCC's finding that the network ihail gains through its shareholders will have a detrimental effect on competition - and would as such be against the public interest. On proper analysis these arguments do not hold. The relevant arguments are that:

- competition from other industry players will constrain ihail;
- taxi companies that use ihail will have an economic incentive to retain and maintain their own apps; and
- the market conditions following the entry of similar apps can be used as examples of what will happen when ihail enters the market.

Uber sets out below further detail as to why the ACCC should not accept these arguments.

### 3.2 Competition from other applications will be insufficient to constrain ihail

Existing third party ride sharing applications cannot be relied upon to constrain ihail's dominance. These apps will have difficulty competing with ihail.

The difficulty in competing with ihail will not come from ihail offering a superior, more innovative service/product. As the ACCC points out in the Draft Determination:

[ihail's] 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.

This corporate arrangement is the core reason why ihail will cause significant public detriment. For the first time, Australian consumers are benefiting from competition in the point-to-point transport sector. Many of these benefits have come at the expense of ihail's shareholder taxi companies. However, ihail is not a move by these companies to respond to competition with innovation. It is a move to leverage their existing taxi networks, which have been built under protected monopolies, to stifle an emerging area of competition. Uber is concerned that this move will squeeze out nascent competition from the point-to-point transport industry and allow industry incumbents to consolidate market power.

ihail in its most recent submission goes to some length to present Uber as having a large presence in Australia. Uber is growing rapidly. However, in Australia Uber is still in the very early stages of establishing its service. It is far smaller than the taxi industry and Uber driver partners offer more limited services (eg: pre-bookings only) in far fewer Australian locations. For example, Uber recently celebrated its 10 millionth uberX ride in Australia since launch. By contrast, in 2014 there were over 227,208,000 taxi trips, with this figure excluding trips in Tasmania and Western Australia.<sup>1</sup> It is incorrect to paint Uber as anything close to a competitor of the scale that would be necessary to constrain a network the size of ihail's.

ihail lists in its most recent submission a range of other competing point-to-point transport apps, aside from Uber. These include inGogo and goCatch among others. ihail however fails to provide statistics to support its assertion that these services will be able to provide anything like a competitive constraint over time on a service with a network the size of ihail's.

In a competitive market environment third party point-to-point transport apps will grow in the future. Uber is confident of the benefits that its service offers to consumers. This growth will be stalled significantly if taxi operators are permitted to leverage their market power in an anti-competitive way to jointly provide a national service with instant access to a driver network of a scale that Uber and other point-to-point transport applications could only hope to achieve after years of hard fought competitive business through innovation and responding to consumer needs.

### 3.3 There will be minimal economic incentives for taxi companies to maintain and improve their own apps

As has been set out previously by Uber in particular in its substantive submission and its submission in response to the Draft Determination, Taxi companies will have less incentive to invest in their own competing individual apps once ihail launches. Uber does not seek to repeat those submissions here, but reiterates that:

- there are baseline costs associated with developing and maintaining a successful point-to-point transport booking application. These costs are not simply the cost of buying an off-the-shelf application and adding a proprietary brand label;

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<sup>1</sup> <http://www.atia.com.au/taxi-statistics/>

- in respect of taxi booking applications, there are costs associated with: adapting app technology to better meet consumer needs; conducting research with users to ensure that the app is providing a positive consumer experience; considering new developments in technology and integrating those into an application; and marketing and showing consumers the benefits of your applications;
- once ihail's network begins to draw consumers there will be little justification for affiliated taxi companies to continue to incur these costs. In certain cases, applications may notionally remain available to consumers, but they will exist for the purpose of maintaining a presence in this space only and will not be improved; and
- looking at the incentives to maintain an application on a transaction-by-transaction basis ignores the many costs associated with running and continually improving a consumer application. It takes a substantial number of app-related bookings before the costs of having and continuously improving an application are recouped. As bookings increasingly go through ihail, covering these costs is unlikely. Individual apps will stop being a means by which taxis compete.

### 3.4 ihail's comparison products differ from ihail in fundamental ways

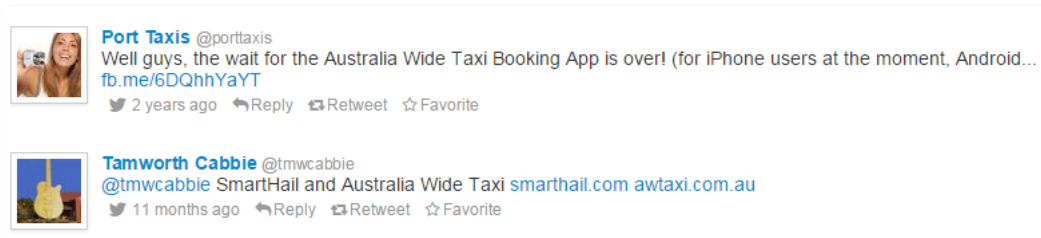
#### (a) Australia Wide Taxis

ihail uses the example of 'Australia Wide Taxis' (**AWT**) to demonstrate that ihail's gains cannot be attributed to its network alone. ihail's argument seems to be that:

- AWT has largely failed as a venture;
- ihail involves the same members as AWT;
- therefore any success that ihail achieves cannot be attributed to the network of drivers it gains through its shareholders.

Uber understands that AWT was only ever an adjunct offered to members of the 131008 booking service. The app was never truly developed as a competitor to existing third-party booking applications. Rather, it was an attempt to ensure that taxi companies continued to use the more lucrative phone booking service.

ihail claims that AWT has been 'actively promoted'. Uber can find no evidence of this. For example, there are no Google Adwords taken out in the name of Australia Wide Taxi, nor for variations of that name. A Google image search brings up no advertising copy. The app has no Facebook page and no Twitter handle. Indeed, the app appears to have only two mentions on Twitter at all since launch, as below:

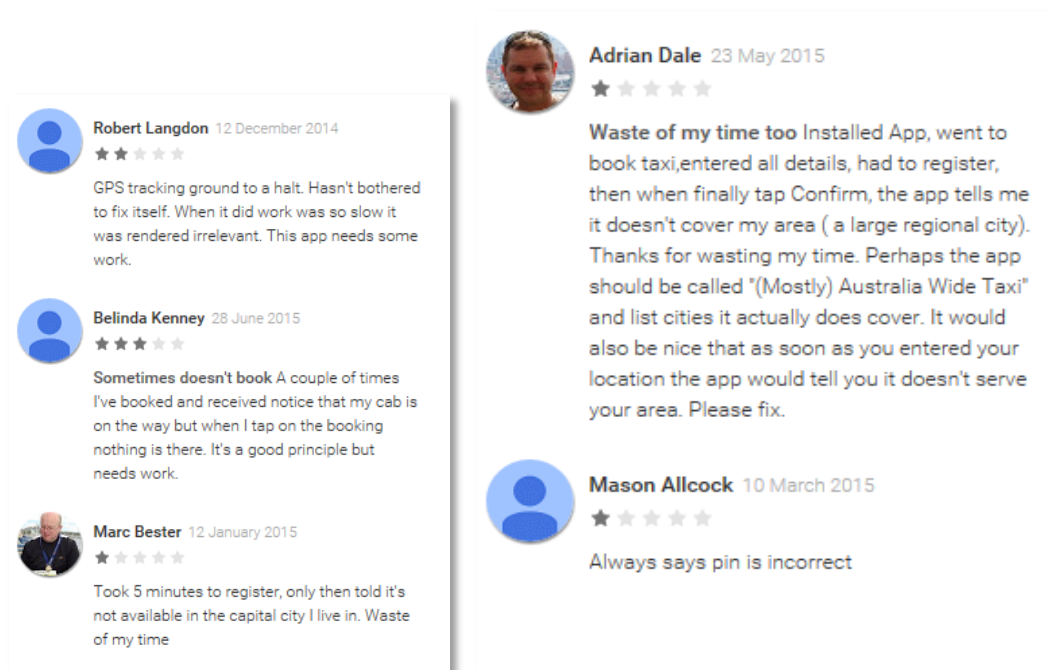


It is hard to think of a way that an application backed by some of Australia's largest taxi applications could have launched and continued with less publicity. Certainly none of the publicity appears to be aimed at consumers.

Uber would have expected at least some mention on taxi industry sites and publications. It can find no such mention of the application even there. For example, the Australian Taxi

Industry Association contains a search feature on its site where users can find apps for taxis in their area. Approximately 50 apps feature in this database.<sup>2</sup> The 'actively promoted' Australia Wide Taxi app is absent.

Despite the lack of advertising, it appears that some consumers have managed to download the AWT app. Some have reviewed the latest version. These are not favourable:



Despite unfavourable reviews, the AWT has not been updated since October 2014 – over a period where there has been rapid expansion of other point-to-point transport booking apps.

The above paragraphs show quite clearly that AWT was never a commercial focus for its owners and is not a realistic comparison case against which the ACCC should judge the future of ihail.

#### (b) Other Apps

In its most recent submission ihail lists a number of apps that it claims are similar to ihail. It does not list whether these apps have the same shareholding structure as ihail, or whether its shareholders have anything like the same network of drivers as the ihail shareholders. Without this information it is not possible to do a like-for-like comparison with ihail.

## 4 Ihail's changes do nothing to address network effect concerns

Finally, Uber reiterates the submission it made in its introduction - that the changes proposed by ihail in their recent submission in no way address the network issues raised by the ACCC in its Draft Determination. Those changes tidy around the edges of the core issue associated with the ihail joint venture, for example:

- ihail now proposes to accept all payment methods, with Cabcharge remaining the exclusive in-app payment provider. This will only further entrench the penetration of Cabcharge as a payment processing service. Moreover, irrespective of how users pay for their taxi bookings

<sup>2</sup> It appears that some apps are the same operator, but relating to different locations.

ihail will still retain its ability to access a far larger network of drivers than its legitimate competitors;

- ihail now allows users to choose from operators on the service and rate that operator. Given the time sensitive nature of taxi services, the ability to choose a network up-front is unlikely to have any material positive effect on the competitive behaviour of taxis affiliated with ihail. This is because taxi proximity is frequently a sole or primary motivating factor in selecting a taxi and the proximity and availability of a particular type of taxi service is correlated with the size of its taxi network.

Further, ihail has suggested that it will be operating as a “comparator gateway” and creating further competition in showing average consumer ratings for each taxi network in the app. It has likened this feature to Expedia or iSelect. An important distinction needs to be made between these services and the ihail feature as Expedia and iSelect are independent platforms advertising third party products and services, whereas ihail would compare services provided by its own shareholders; and

- any ability to select a particular operator with the ihail application does not address the broader competitive harm that occurs outside the app (ie: between ihail and other point-to-point transport apps).