

16 December 2015

Mr Gavin Jones
Director
Adjudication
Australian Competition Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Jones,

Re: ihail Pty Ltd application for authorisation A91501 – draft determination

We refer to the Australian Competition and Consumer Commission's (ACCC) request for submissions in response to the supplementary submission ihail has put forward to the ACCC in respect of its application for authorisation and pleased to provide a response.

This submission is provided in addition to the NSW Taxi Council's submission of July 2015 (copy attached) and should be read in conjunction with that submission accordingly.

Proposed Amendments to ihail

We wish to advise that the NSW Taxi Council supports the proposed changes as submitted by ihail in its letter of 6 November 2015.

Whilst the NSW Taxi Council notes that other booking app providers in the personal transport sector provide premium service tipping features as a means to encourage drivers to provide higher priority service, we have no objection to ihail removing this function. Regulated taxi fares provides appropriate protection for consumers from price gouging and surge pricing however not including a tipping function is acknowledged as a customer leading benefit.

It is also considered that the principle applied by the ACCC in this draft determination be applied to other taxi and personal transport booking app providers. This will help ensure equity in the market place.

The NSW Taxi Council also believes that the proposed amendments to the ihail booking app as outlined in its letter of 6 November 2015 will further enhance the consumer benefit of the ihail booking app and address the competition issues that were highlighted in the ACCC's Draft Determination in respect of this matter.

ACCC Draft Determination

The NSW Taxi Council wishes to make the following comment on the ACCC Draft Determination on the application for authorisation by ihail dated 12 October 2015:

The NSW Taxi Council notes the comments made by the ACCC in respect of its draft determination; however, it believes the ACCC needs to give greater consideration to the rapidly changing nature of competition in the personal passenger transport service sector.

As the ACCC has highlighted, and as noted in submissions to the ACCC on this matter, the personal passenger transport service sector is far more dynamic than what has existed previously. The advent of ridesharing has significantly changed the market for personalised transport services and, as the major provider of ridesharing services in Australia, Uber is providing these services outside of the law in most States in Australia, there is a lack of competitive neutrality in the market place.

The uptake of Uber has been significant. Claims by Uber, combined with anecdotal evidence has indicated that many millions of passenger journeys are being undertaken with Uber X (its illegal ridesharing service).

As a consequence of the above, many sectors of the personalised passenger transport service providers have started to adjust their business models in order to compete more effectively. ihail is partly a manifestation of this; however, it is by no means the only initiative that is emerging in the market place.

Both of the major independent booking App providers, goCatch and Ingogo have responded to this uneven competitive playing field with specific product differentiation and public criticism of Uber, particularly its illegal Uber X service. It is also instructive to note that, in this context, even Government funded community transport is now citing Uber and illegal ridesharing as the reason for implementing structural reform and increased collaboration between respective CT organisations to address competitive disadvantage.

Authorised taxi networks

The ACCC has given significant weight to the possible reduction of competition between authorised networks as a consequence of ihail.

This matter was addressed at some length in the NSW Taxi Council's submission to the ACCC in October 2015 and it is not intended to substantially repeat these comments here.

It is important to note that the vast majority of authorised networks in NSW and around Australia are not involved in ihail. In Sydney there are 7 independently owned networks yet only two are directly involved with ihail. Across the State, there are approximately 100 authorised networks and therefore the number of taxi entities that are outside of the ihail ownership structure substantially outweigh those that are within.

Payment system provider

The NSW Taxi Council notes that the ACCC has raised concerns regarding the proposed payment system provider for ihail, ie Cabcharge. The choice of payment providers by ihail and any other booking app provider is beyond the remit of the NSW Taxi Council to provide substantive comment on, however it should be noted that all other booking app providers use dedicated payment providers, some of which have significant coverage in the taxi industry.

In the ridesharing sector, where there is significant market power for one entity (Uber), there is only one payment system provider which is the subject of a commercial agreement between the two relevant parties. In this context, it is requested that the ACCC apply this principle consistently across all entities in the personalised transport sector.

We trust that this information is of assistance. Please do not hesitate to contact the undersigned should you need to discuss this submission further.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Roy Wakelin-King', is written over the typed name and title.

Roy Wakelin-King, AM
Chief Executive Officer



This Submission is provided in response to the Australian Competition & Consumer Commission's requests for submissions on the Application by ihail Pty Ltd authorisation

NSW TAXI COUNCIL SUBMISSION

**Application by ihail Pty Ltd for
Authorisation**



EXECUTIVE SUMMARY

The NSW Taxi Council welcomes the opportunity to provide a submission in response to the Australian Competition and Consumer Commission's (ACCC) interim determination on the ihail application.

The NSW Tax Council is a shareholder in ihail.

The NSW Taxi Council supports the authorisation of ihail. The interests of the NSW Taxi Council lie in the long term sustainability and viability of the NSW Taxi Industry and as such views ihail as an important development in this context.

The investment by the NSW Taxi Council Ltd in ihail aligns with its objectives is therefore considered entirely appropriate in this regard.

ihail is a booking service app that will be made available to authorised taxi networks. There is no compulsion on an authorised network to use ihail. Furthermore, should an authorised taxi network choose to use the ihail booking service product, there is no compulsion on that network to stop using any other booking service it operates and/or is connected to. As outlined in this submission, its is in fact in the best interests of an authorised taxi network to diversify its booking service options to consumers to maximise the revenue potential of taxi drivers.

ihail will promote consumer choice. It will be another booking service that will operate in a highly efficient and dynamic market. This will provide consumers with greater choice when choosing a taxi service which is in the public interest.

ihail will also promote competition. It will increase the number of taxi booking service providers in the market and will be focussed on encouraging taxi service providers to deliver a high level of service to the consumer. This will place further competitive pressure on other booking service providers to compete in the market for consumer choice which will have longer term benefits for the customer.

This is the essence of the reform of the NSW Taxi Industry that was introduced by the NSW Parliament in 2014, further details of which are outlined in this submission.

The authorisation of ihail will not entrench any one service provider, including those who provide taxi payment services. The market for taxi payment services is efficient and competitive, particularly since the determination of the Australian Competition Tribunal on 27 June 2006. There are many payment service providers in the market, and this is likely to increase, not diminish, into the future.

It is noted that some stakeholders have put forward submissions that have used pejorative language and provided misleading information. Whilst these matters will be dealt with separately to this process, it is important that the review of the application for authorisation of ihail be done in a

dispassionate manner that considers the application objectively based on fact and on its respective merits. In this context it is strongly contended that ihail will

- Promote competition in the market for taxi booking services
- Provide additional choice for consumers
- Enhance choice for taxi drivers
- Provide long term consumer benefit
- Promote competition in the taxi payment service market
- Be in the interest of customers of taxi services

These matters are addressed in the submission below. The NSW Taxi Council would also be pleased to brief the staff of the ACCC on this submission at a meeting.

INTRODUCTION

The NSW Taxi Industry is a major contributor to the State's public transport system. It provides approximately 170 million passenger journeys each year and it meets customer travel needs right across NSW. It functions as a door to door transport service that operates 24 hours a day seven days a week. The NSW taxi industry also provides services at times when other forms of public transport either significantly reduce service levels or cease operations altogether. Taxis are often the only form of public transport for some members of the community, and they provide essential transport services to some of the most disadvantaged people in the State.

The NSW Taxi Industry is also a significant contributor to the State's economy, providing employment opportunities for tens of thousands of drivers and operators, network management staff as well as for other industries which rely on the economic activity that the NSW taxi industry generates. The taxi industry contributes to the economic generation of the State by connecting people efficiently and effectively for business, education, tourism and essential lifestyle activities. The highly respected international accounting firm Deloitte Access Economics has undertaken an independent assessment of the economic contribution of the NSW Taxi Industry and has estimated the annual contribution of the industry to the NSW economy to be in the order of \$1.15 billion per annum.

The NSW Taxi Industry is made up of a complex array of providers, ranging from the licence owner (the licence being the principal legal instrument to provide a taxi service), through to operators and drivers. A licence owner may own, operate and drive a taxi, where as some elect only to own and be the operator of the vehicle. Some licence owners have chosen to invest in a licence and then subsequently lease the licence to an operator. Authorised Taxi Networks are the principal means through which taxi services are coordinated. They provide direct booking services to the public and a range of key safety and other customer services to passengers, operators and drivers.

The NSW Government does not, unlike other forms of public transport, procure taxi services from the NSW Taxi Industry. Whilst some financial support is provided to assist disadvantaged members of the community to access taxi services, on the whole the taxi transport system in NSW has been created and continues to operate as a consequence of the many people and organisations that have invested capital in the industry. The NSW Taxi Industry also generates revenue for the NSW Government through the sale of licences and stamp duty on third party licence sales. It also generates other revenue through authorisation/accreditation fees and indirect taxes.

The NSW Taxi Industry is a highly competitive environment. Every driver competes with each other for fares, taxi operators compete with each other for drivers, taxi networks compete with each other for operators. There are no statutory limits on the number of taxi businesses that can be established in NSW. In Sydney, new licence numbers are determined annually by the NSW Government, based on independent advice.

The introduction of ihail will have significant competition and consumer benefits for NSW and other jurisdictions in which it operates. It will provide a further authorised booking service that combines

the convenience and efficiency of a booking app with the structural and government endorsed safety and reliability systems that are provided by authorised taxi networks.

ihail will have no negative impact on the competitive environment in the NSW Taxi Industry. The aforementioned competition in the taxi services market will continue to operate efficiently and industry participants will continue to compete in a similar fashion. It is contended that in the context of booking apps, the competitive environment for taxi drivers, through the provision of additional booking services, will be enhanced.

In NSW, the Government has determined that a taxi driver may connect to a number of Accredited Booking Services (ABS). ihail will therefore represent a further opportunity for drivers to choose which ABS they will connect to. It is unlawful for ihail, or any other accredited booking service, to prohibit a driver from connecting with another booking service.

ISSUES FOR CONSIDERATION

The following are issues that the NSW Taxi Council wishes to raise in respect of the application for authorisation of ihail.

Authorisation will promote competition

The authorisation of ihail will promote competition in the market through the provision of additional taxi booking services for the consumer. ihail will provide a further option for consumers when booking a taxi and will promote competition with other booking services.

Furthermore, ihail 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 for fares, and it is not uncommon for taxi drivers to be using multiple systems in this regard. ihail will be a further option for drivers in this context and the decision by drivers to choose this service will be a function of the performance of ihail in the market.

This is the essence of the reforms introduced by the NSW Government for the taxi industry and ihail is a logical evolution in this context.

The Second Reading Speech of the former Minister for Transport when introducing the *Passenger Transport Bill, 2014* clearly states that one of the key objectives of the reforms was to encourage the market to innovate and develop technologies of the kind that ihail represents:

Bringing new booking services into the regulatory framework provides regulatory certainty for taxi booking service providers and a level playing field for all industry participants. It will also mean that when using new, convenient booking technologies that are rising in popularity, customers can be sure that they are booking a licensed taxi, with an authorised driver who has been through the appropriate background checks and training. This will benefit customers and, at the same time, promote a taxi industry that is focused on better ways of providing services, helping to ensure its ongoing viability and sustainability in an increasingly competitive environment. Developments in recent years have shown that where an industry is not delivering what customers want, others will innovate to meet unmet demand. The taxi industry has been working with the Government to ensure that it provides feedback on this important process and the additional flexibility that this bill provides will assist it.¹

ihail is therefore consistent with the objectives of the *Passenger Transport Act, 2014* and its authorisation will promote and foster competition as intended by the Act.

¹ NSW Parliament. Hansard, **Second Reading Speech - Passenger Transport Bill, 2014**, June 2014

Authorisation will encourage Authorised Taxi Networks to compete

Authorised Taxi-Networks compete for taxi-cab operators to affiliate to their respective networks. Price for affiliation is determined by individual networks based on their respective business models.

In Sydney alone, there are seven independently owned Authorised Taxi Networks. Each network competes in a market of over 5,900 taxis which are operated by in excess of 3,000 accredited taxi-cab operators. Taxi-cab operators choose which Authorised Taxi Network to affiliate with based on their own respective business models.

The movement of taxi-cab operators between authorisation taxi networks is efficient and dynamic.

The authorisation of ihail will not alter this competitive environment. Authorised Taxi Networks will look to diversify their offerings to accredited taxi-cab operators based on their respective business models. Maximising the number of booking services which will promote use of the network by consumer, thereby enhancing revenue opportunities for the taxi driver (the accredited operator's customer) will be a factor upon which accredited taxi-cab operators will consider in choosing which authorised taxi network to affiliate with.

It is therefore in the interest of the Authorised Taxi Network to promote consumer choice for booking services, not diminish them. To reduce the number of booking services an Authorised Taxi Network offers would potentially eliminate their respective key points of difference in the market place and therefore would be counterproductive.

This again is the essence of the reforms introduced in NSW for taxi cab networks and booking services as outlined below:

These changes to the regulation of taxi networks and booking services will support innovation and competition in both markets.²

Authorisation will not alter taxi-cab fares and price setting

Given that taxis are part of the NSW public transport system, taxi-cab fares in NSW are regulated by the NSW Government.

In accordance with the *Passenger Transport Act, 2014*, taxi cab fares in NSW are determined each year by the NSW Government based on advice received from the Independent Pricing and Regulatory Tribunal (IPART).

² NSW Parliament. Hansard, **Second Reading Speech - Passenger Transport Bill, 2014**, June 2014

Upon the determination of fares, all accredited taxi cab operators in NSW are required to have the meters in their taxis to be calibrated to ensure that taxis fares are calculated in accordance with the fare schedule.

The standard for meters and the independent testing of these devices is set by the NSW Government. The standard and testing processes are subject to audit by the NSW Government's taxi regulator, RMS.

Drivers are not permitted to charge more than the metered fare. Clause 163 of the *Passenger Transport Regulations, 2007* states:

163 Fares for taxi-cabs

(1) The driver of a taxi-cab must not demand (or enter into an agreement to accept) more than the authorised fare for any hiring of the taxi-cab, unless:

(a) the taxi-cab is hired to convey a passenger to a place outside the taxi-cab's area of operation, and

(b) the fare is negotiated and agreed with the hirer before the start of the journey.

Maximum penalty:

Drivers charge the passenger the regulated metered fare. Authorised Taxi Networks do not set the fare.

The authorisation of ihail will not change the arrangements for the setting of taxi-cab fares. ihail will not enable individual networks to collude on taxi-cab fares.

Authorisation will enhance the choice of taxi drivers for booking services

There is an efficient and highly competitive market for booking services in NSW. Taxi drivers can choose, and often have, a number of booking service in their taxis. The authorisation of ihail will further enhance this competitive environment.

Furthermore, the choice of which booking service providers a taxi is connected to will continue to be the choice of the taxi cab operator and driver. This has been made clear in the reforms introduced in NSW through the Passenger Transport Act, 2014, as is highlighted below:

Taxi networks will continue to require accreditation, or "authorisation" as it is currently known, and networks will no longer be required to offer a booking service, but will be free to do so if they choose.However, there is no requirement for an operator to be part of a booking service nor are there limitations on the number of booking services to which an operator may belong.³

³ NSW Parliament. Hansard, **Second Reading Speech - Passenger Transport Bill, 2014**, June 2014

It is, and will continue to be, illegal for authorised taxi networks and other taxi booking providers to attempt to restrict the number of booking services taxi cab operators and drivers can connect to.

Authorisation will add to other booking apps

Importantly, ihail adds to the suite of booking applications available to consumers, not replace them. All accredited taxi networks, as well as accredited taxi booking services, have and will continue to operate and develop their own booking applications. It is in their interest to do so.

There is a significant number of booking apps available in NSW and this situation will be enhanced, not diminished by the implementation of ihail.

The Passenger Transport Act, 2014 encourages authorised taxi networks to not only maintain their own booking services, but also to continue to innovate and promote these.

The bill modernises the Act by bringing these services into the regulatory framework. Under the bill taxi booking services, whether provided by the current network booking apps or other new market entrants, will be able to provide booking and related services to taxi customers.....The Government encourages innovation and competition, and the bill provides for new taxi booking services to be recognised and to operate services subject to meeting safety standards.⁴

As highlighted above, it is in the Authorised Taxi Network's commercial interest to promote an increased number of booking services, including their own booking apps, as this will promote their competitiveness in the market place.

NSW Taxi Council objectives align with investing in ihail

The NSW Taxi Council's objectives are clear. It is to carry out all and any appropriate actions to further the interests of the NSW Taxi Industry and to help build a strong and viable taxi industry for the people of NSW. This is in the public interest.

Investing in a taxi based booking application that enhances consumer choice is highly relevant in this context. The successful implementation of ihail will build on the strong competitive culture that exists within the NSW Taxi Industry and provide consumers with greater choice in terms of taxi booking options.

Authorisation will not facilitate the inappropriate exchange of information between taxi companies

⁴ NSW Parliament. Hansard, **Second Reading Speech - Passenger Transport Bill, 2014**, June 2014

The authorisation of ihail will not result in the exchange of confidential commercial information between taxi networks/companies. There are strict legal provisions governing the management of commercially sensitive information which apply in this regard.

Furthermore, the Directors of ihail are required to act in the best interests of the company and carry out their duties for a proper purpose. Significant liabilities exist for directors should they breach these obligations.

Authorisation will not entrench any taxi payment service provider

This development also responds to the increased competition for taxi payment providers. ihail, like other booking app providers, have partnered with a payment provider to facilitate the efficient payment for customers. This again reflects the highly competitive nature of the market place in which these services operate.

Since the determination of the Australian Competition Tribunal of 27 June 2006⁵ to overturn the authorisations granted to eleven (11) networks by the former Trade Practices Commission in 1987-1990, there has been significant growth in the taxi payment provider market. Within NSW alone, there are over five payment providers operating, and this will only increase in the future.

CONCLUSION

The authorisation of ihail will provide significant consumer benefit and promote competition in the market for taxi booking services. It will also enhance competition within the taxi industry by providing taxi operators and drivers with additional booking services.

It is therefore considered to be in the public interest that ihail be authorised to operate in the Australian market.

⁵ <http://www.judgments.fedcourt.gov.au/judgments/Judgments/tribunals/acompt/2006/2006acompt0005>

Community transport co-op launches in NSW

By [Staff Writers](#) on December 10, 2015 in [Community Care Review](#)

Three Greater Western Sydney community transport organisations, Bankstown Canterbury Community Transport, Community Wheels Transport and Great Community Transport, have merged into a single shared services co-operative, in the first of its kind in the sector.

The groups behind the new Community Care and Transport Co-operative, which launched on Tuesday, provide services to 10,000 clients in Greater Western Sydney covering almost two-thirds of that region.

Dennis Hayward, chairman of the co-operative social enterprise, pointed to the consumer-directed reforms in aged care and disability as a major driver for the transition to a community-owned business model.

He said the model would facilitate the sharing of overheads and assets and increase organisational capacity.

Bankstown Canterbury Community Transport executive officer Jenny Paton said moving to a cooperative model sought to protect the viability of the organisations and their local identities.

“Under the umbrella of a co-operative, the three providers will be able to withstand competition through using economies of scale to increase efficiencies and reduce duplication. This will be done without losing local profile and local identity,” she said.

The merger, funded by Transport for NSW, was assisted by the peak body for co-operatives, the Business Council of Co-operatives and Mutuals (BCCM) and EY.

“These operators serve clients in areas of high need with an ever increasing strain on limited resources. This move will ensure that as a co-operative, the organisations are protecting the services which the communities depend upon,” said Melina Morrison, BCCM CEO.

“Local employment and voluntary labour will also be protected by being able to compete with established and new market entrants like Uber,” she said.

There are an estimated 1,700 co-operative and mutual enterprises in Australia representing 14.8 million memberships in many industry sectors including aged care, health, education, disability, child care, sports and hobbies and affordable housing.

“A senate inquiry is currently looking at the benefits of mutualising public services over traditional privatisations and this example in Western Sydney shows how this process can be a success for communities and not-for-profits,” said Ms Morrison.