

19 May 2015

Our ref: AUSJDP:AUSRKD

By hand

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2600

Dear Dr Chadwick

Application for authorisation to engage in ihail Pty Ltd

We refer to our recent correspondence with the Merger Review branch regarding the acquisition of shares in ihail Holdings Limited (and subsequently in ihail Pty Ltd, the Australian operating arm) by a number of taxi companies and operators within the taxi market (either themselves, or through holding companies or direct subsidiaries). These companies include:

- Silver Top Taxi;
- Black and White Cabs Pty Ltd;
- Yellow Cabs (Qld) Pty Ltd;
- Suburban Taxis;
- Texas Taxis, Inc;
- Taxi Services Incorporate Minneapolis;
- Mobile Tracking and Data Pty Ltd;
- the New South Wales Taxi Council; and
- Cabcharge Australia Limited.

ihail Pty Ltd seeks authorisation for the conduct of the shareholders in respect of the establishment and operation of ihail Holdings Limited and ihail Pty Ltd. Both companies will be a collaboration between the shareholders and potentially a number of other cab companies, both within Australia and overseas, in order to create a new technology for hailing and directing taxi cabs.

ihail Pty Ltd understands that the conduct of the shareholders, ihail Holdings Limited and ihail Pty Ltd will have little if any impact on competition in the relevant market and that there is substantial public benefit to be obtained from the current structure of

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Jakarta*
Kuala Lumpur*
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Singapore
Sydney
Taipei
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Amsterdam
Antwerp
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Baku
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Brussels
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Cairo
Casablanca
Doha
Dubai
Dusseldorf
Frankfurt/Main
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* Associated Firm
** in cooperation with
Trench, Rossi & Watanabe
Advogados

ihail Holdings Limited and ihail Pty Ltd. ihail Pty Ltd has outlined this substantial public benefit in detail in its supporting submission.

As such, ihail Pty Ltd submits this application under section 88(1A) of the *Competition and Consumer Act 2010* (Cth) (**Act**) for authorisation of the conduct described in the supporting submission which might be a cartel provision within the meaning of the Act.

We enclose the following documents in support of this application:

- a completed Form B: Agreements Affecting Competition or Incorporating Related Cartel Provisions: Application for Authorisation (**Application**);
- ihail Pty Ltd's submission supporting the Application; and
- a cheque for \$7,500.00 being the fee for the Application.

Please contact us on the details listed below if you have any questions in relation to the Application or the supporting submission.

Yours faithfully



Jo Daniels
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Jo.Daniels@bakermckenzie.com

Rowan Kendall
Associate
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Rowan.Kendall@bakermckenzie.com

Encl

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

ihail Pty Ltd

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

ihail Pty Ltd is a specific venture company established by MTData on behalf of the shareholders of ihail Holdings Limited (**ihail Holdings**), the United Kingdom holding company. ihail Pty Ltd was established for the purpose of developing and operating a smartphone application for use by international taxi cab companies.

A91501

ihail Pty Ltd will provide services specifically for regional taxi networks in Australia.

- (c) Address in Australia for service of documents on the applicant:

Jo Daniels

Baker & McKenzie

Level 8

175 Eagle Street

Brisbane QLD 4000

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

(Refer to direction 4)

ihail Pty Ltd is seeking authorisation as a joint venture between a number of Australian regional taxi cab companies and other operators with an interest in the taxi market. ihail Pty Ltd has provided the relevant contractual documents with this Application, and has outlined further specific details in Schedule 1.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

(Refer to direction 4)

Please refer to Schedule 1.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

ihail Pty Ltd will provide licencing, operational and support services to regional taxi networks using the ihail smartphone application. The ihail smartphone application will allow consumers to hail the closest available taxi (from the regional taxi networks that choose to participate in ihail) to the consumer's position.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

ihail Pty Ltd seeks authorisation of this conduct for a period of five years. ihail Pty Ltd believes that this is an appropriate period of time to show the public benefit obtained from the joint venture of the ihail smartphone application.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

ihail Pty Ltd has provided details of the parties to the proposed conduct in Schedule 1.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Please refer to Schedule 1.

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

ihail Pty Ltd has outlined the potential public benefits of the proposed conduct in Schedule 1.

- (b) Facts and evidence relied upon in support of these claims:

ihail Pty Ltd has provided facts and evidence in Schedule 1 to support the public benefits that it has identified.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

ihail Pty Ltd has provided details of the relevant market in Schedule 1.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

ihail Pty Ltd has acknowledged any potential public detriments in Schedule 1.

- (b) Facts and evidence relevant to these detriments:

ihail Pty Ltd has outlined the relevant facts and evidence in Schedule 1.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

Yes.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

ihail Pty Ltd does not intend that there will be significant differences between the contracts that the currently identified shareholders have entered and those agreements that any new shareholders would enter. Further, ihail Pty Ltd intends to offer standard licence terms and conditions for regional taxi networks to utilise the application.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

These parties are unknown.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

ihail Pty Ltd assumes that any parties accepting shareholdings or licencing arrangements in relation to the ihail smartphone application will be involved in the provision of taxi services. This could be as regional taxi networks, or as businesses which provide a service to, or have an interest in, regional taxi networks.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Jo Daniels

Baker & McKenzie

Level 8

175 Eagle Street

Brisbane QLD 4000

Ph: (07) 3069 6220

Dated: 26 May 2015

Signed by/on behalf of the applicant



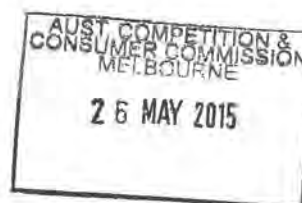
.....
(Signature)

Joanne Louise Daniels

(Full Name)

Partner, Baker & McKenzie

(Position in Organisation)



DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

ihail Pty Ltd

**Application to the Australian Competition and
Consumer Commission for Authorisation**

Schedule 1: supporting submission

May 2015

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1. Executive summary

This submission supports the application under section 88(1A) and (1) of the *Competition and Consumers Act 2010* (Cth) (**Act**) for authorisation to make and give effect to a provision of a contract, arrangement or understanding which may result in a substantially lessening of competition in a market is, or may be, a cartel provision, or which is, or may be, an exclusionary provision (**Application**).

The Application is made on behalf of and for the benefit of the following parties:

- (a) ihail Pty Ltd;
- (b) ihail Holdings Limited;
- (c) the existing shareholders of ihail Holdings Limited (**ihail Holdings**) (detailed below); and
- (d) any new shareholders, licensees, employees or contractors of any other party to the existing contracts or contracts on substantially similar terms during the period of the authorisation.

(collectively, the **Parties**).

The Parties seek authorisation for this conduct for a period of five years from the date of the Australian Competition and Consumer Commission's (ACCC) decision (the **Authorisation**).

2. Confidentiality

ihail Pty Ltd has drafted this Application with the intention of it being made publicly available for the purposes of the ACCC's consideration and public consultation. A number of the documents included as **Schedules** to this Application, however, are commercially sensitive and relate to a confidential commercial transaction between ihail Pty Ltd, ihail Holdings and its various shareholders. As such, those documents and any information relating to those documents discussed in this Application have been provided to the ACCC on a confidential basis, subject to the ACCC's usual exceptions relating to the disclosure of such information to its advisors, when required to do so by law and pursuant to section 155AAA of the Act.

3. Period of authorisation

ihail Pty Ltd applies for authorisation for a five year timeframe.¹

4. Request for interim authorisation

ihail Pty Ltd also seeks interim authorisation on a limited basis for ihail Holdings, ihail Pty Ltd and the shareholders to:

- execute the ihail Holdings documents; and
- commence the launch of the ihail smartphone application within the Australian market (which ihail Pty Ltd currently plans to do within a relatively short period of time).

¹ Australian Competition and Consumer Commission, *Authorisation Guidelines* (June 2013) [7.12].

ihail Pty Ltd is requesting this interim authorisation as it believes that:

- the launch of the smartphone application will result in an immediate benefit to the public as outlined in this submission; and
- the launch will not involve the execution of any contractual instruments which could not be amended to conform with the ACCC's final recommendations or decisions.

5. The Parties

5.1 ihail Pty Ltd and ihail Holdings

ihail Pty Ltd is a specific venture company established by MTData on behalf of the shareholders and future shareholders of ihail Holdings for the purpose of developing a smartphone application for use by international taxi cab companies. Once the United Kingdom holding company (ie, ihail Holdings) is fully established, it is intended that 100% of the shares in ihail Pty Ltd will be transferred from MTData to ihail Holdings to be held on behalf of the shareholders of ihail Holdings.

ihail will have a corporate structure divided specifically by the regions that the company and its subsidiaries will operate in. The parent company will be ihail Holdings, a United Kingdom registered company, with three subsidiaries, specifically:

- (a) ihail Pty Ltd, providing services for regional taxi networks in Australia;
- (b) a United States operating company, providing services for regional taxi networks in the United States; and
- (c) a United Kingdom operating company, providing services for regional taxi networks in the United Kingdom.

ihail Pty Ltd notes that it is also considering establishing a New Zealand operating company within the near future.

5.2 Shareholding taxi companies

ihail Holdings currently has six traditional taxi companies who have purchased shares in the company (either themselves, or through holdings companies or subsidiaries). These are:

- (a) Silver Top Taxi Service Ltd (in the Melbourne and Sydney areas);
- (b) Black and White Cabs Pty Ltd (in the Brisbane, Perth, Redcliffe and Toowoomba areas);
- (c) Yellow Cabs (Qld) Pty Ltd (operating in Queensland and Tasmania. Yellow Cabs has extensive operations in both those States, owning and operating taxi licences. Its traditional yellow cab service has been operating since 1924);
- (d) Suburban Taxis (in the Adelaide area);
- (e) Texas Taxis, Inc (in the Houston, Austin and San Antonio areas); and
- (f) Taxis Services Incorporated Minneapolis (in the Minneapolis areas).

These shareholders are all taxi cab businesses and the services they provide currently include booked and non-booked taxi services for:

- (g) the traditional standard cab;
- (h) maxi taxis;
- (i) the multi-passenger taxi which fills the void between the traditional yellow cab and maxi taxi;
- (j) silver service.

The majority also operate courier services.

A recent development for these traditional taxi companies is that the majority also offer booking via a smartphone application, allowing consumers to see the location of the taxi that they have flagged, to book without using a calling centre, and to pay by credit card through the application. These smartphone applications are specific to hiring taxis through the individual company operating the application.

5.3 Mobile Tracking and Data Pty Ltd (MTData)

MTData is an Australian-owned company that now operates globally in six countries globally, including offices in New Zealand, the United States of American and the United Kingdom.

MTData specialises in providing transport, logistics, mining, oil and gas, government department and service organisations with GPS fleet management solutions and dispatch systems, including having strong experience in providing these services to various members of taxi industries.

MTData has been involved in the development of the ihail application and the various support services required to operate the app, including dispatch and GPS locating services.

5.4 NSW Taxi Council

The NSW Taxi Council is the operating arm for the NSW Taxi Association and the NSW Country Taxi Operators Association, representing authorised taxi networks in NSW. The NSW Taxi Council advocates for better outcomes for the taxi industry in areas such as applications for fare adjustments, rank and traffic negotiations, industry training and industry policy.

The NSW Taxi Council holds this shareholding on behalf of all its members.

5.5 Cabcharge Australia Limited (Cabcharge)

Cabcharge was founded in 1976 as a financial services provider for the industry. Cabcharge is now a diversified Australian technology, financial services, taxi payments and passenger land transport company. Cabcharge also develops and manufactures some forms of in-taxi equipment, including (but not limited to) payment systems.

Cabcharge's customer base spans accounts ranging from large corporations and government bodies to small businesses and individuals. Cabcharge holds merchant agreements with a range of taxi companies, and many of the major taxi companies are shareholders in Cabcharge.

As well as processing Cabcharge products, the Cabcharge EFTPOS terminals process all credit and debit cards, including bank issued cards such as MasterCard and Visa and third party cards such as AMEX.

Cabcharge has been involved in ihail for the purpose of developing a simple, convenient and easy-to-use payment system for consumers of the smartphone application. ihail Holdings sees this as a necessary component of the service provided through the ihail smartphone app in order to allow it to compete with the new technologies competing with the taxi industry which employ similar payment mechanisms.

6. Background

6.1 Regulation of the taxi industry in Australia

A taxi licence is required in order to operate a taxi in Australia. Taxi plate owners may then subcontract vehicle operation to a driver, either directly or through an intermediary that operates many taxis. The driver pays the plate owner a share of their takings while the owner pays for the vehicle and maintenance.

The taxi industry in Australia is heavily regulated in each State/Territory according to each of their respective legislative instruments. State Governments are highly involved in the regulation of the industry, setting the operating conditions, participant numbers and standards for quality measures and safety.

Regulation in most States/Territories includes the entry into the market; ie, by controlling the number of taxi licences which may be issued. The State Governments are also involved in the setting of maximum taxi fares.

For example, in Queensland the taxi industry is regulated by the Queensland Department of Transport and Main Roads through its administration of the *Transport Operations (Passenger Transport) Act 1994* (Qld). The department also regulates the number of licenses and maximum taxi fares which may be charged by the industry. Section 36 of the *Transport Operations (Passenger Transport) Act 1994* (Qld) relates to market entry restrictions and maintains that the Queensland Government must ensure that there are sufficient taxi service licences for an area to meet public demand.

In New South Wales, the governing legislation is the *Passenger Transport Act 1990* (NSW) which is administered by the Department of Transport. Each year the NSW Independent Pricing and Regulatory Tribunal reviews the maximum fares for taxi services in the State and recommends new maximum fares to the New South Wales Government. It may also make similar recommendations in relation to the number of new annual taxi licences to be released in Sydney.

The taxi and hire car industry in Victoria is regulated by the Taxi Services Commission in accordance with the various legislative instruments. Victoria is the only jurisdiction so far to have recently undergone regulatory reform to improve the fare structure in the industry and open up the licensing market by removing the restriction on licence numbers.

6.2 Developments in the taxi industry

The taxi industry is currently undergoing structural change, in part due to technological disruption, and more generally has been experiencing a number of significant pressures and changes in recent years. In respect of the introduction of new technology, there has been a significant increase in development of smartphone applications to connect customers directly with drivers.

The smartphone applications which by-pass taxi networks that have been already set up in Australia include Uber, goCatch, ingogo and Backseat.

ihail Pty Ltd also understands that there may be some legislative and regulatory policy developments in the Australian taxi industry in the near future. In particular, ihail Pty Ltd notes that the Harper Review of Australian competition and consumer law recently noted the impact of new technology in relation to markets in general, commenting that there has recently been a "diffusion of digital technologies with the potential to disrupt established patterns of economic activity."² In particular, ihail Pty Ltd notes that the ACCC has recently expressed views regarding the increased level of competition in the taxi industry, mainly because of the rise of new technologies such as Uber and goCatch.³

7. The Proposed Conduct

The Proposed Conduct involves the commercial arrangements relating to the business of ihail Holdings. Currently, the proposed shareholders of ihail Holdings are:

- (a) MTData;
- (b) NSW Taxi Council;
- (c) Cabcharge;
- (d) Silver Top Taxi;
- (e) Black and White Cabs;
- (f) Yellow Cabs Brisbane;
- (g) Suburban Taxis;
- (h) Texas Taxis; and
- (i) Taxi Services Incorporated Minneapolis.

It is proposed that ihail Holdings will develop a smartphone application for use by local and international licenced taxi cab companies. Users of the smartphone application are directed to the nearest accessible taxi cab that has signed up to the ihail Holdings Limited service

² Commonwealth Government, *Competition Policy Review: Final Report* (March 2015) 20.

³ Rod Sims, "The need to elevate competition in our public policy" (Speech delivered at the CEDA State of the Nation Conference, Canberra, 23 June 2014); Michael Janda and Kathryn Diss, "Harper competition inquiry recommends changes to shopping hours, taxi regulation, parallel importation restrictions", *ABC News* (online), 31 March 2015 <<http://www.abc.net.au/news/2015-03-31/harper-review-recommends-crackdown-on-market-power-abuse/6362476>>; Benjamin Purvis, "Uber wins Australia regulator praise on taxi competition", *Bloomberg* (online), 6 February 2015 <<http://www.bloomberg.com/news/articles/2015-02-06/uber-solves-taxi-competition-concerns-for-australian-regulator>>.

(through its regional operating companies), regardless of the brand or ownership of that taxi cab.

It is intended that the smartphone application will operate in the major capital cities in Australia, the United Kingdom and the United States of America for the first two years. That is, if a user in Australia travels to London, he or she can use the same app, access the local licenced taxi cab company (which will be a shareholder or licensee of ihail Holdings or one of the regional operating companies) and may choose to use the service provided by the app for hiring a taxi cab. The travelling public (especially the business community) is expected to be the biggest user of the smartphone app.

Each cab company and operator who wishes to sign up to the app will also be required to enter into a Licence and Services Agreement with their relevant regional operating company; for example, an Australian taxi company would enter into a Licence and Services Agreement with ihail Pty Ltd (it is intended that there will be a different Licence and Services Agreement for each regional operating company for jurisdictional reasons).

Entering into a Licence and Services Agreement is intended to be a simple process and, where a cab company has an existing taxi dispatch network, can allow its drivers access to the ihail app functionality within the space of a few hours. Where the cab company does not have an existing taxi dispatch network, drivers can still access the functionality of the app within a short space of time, however, there may be some delay in the processing of jobs due to the lack of an existing dispatch system.

ihail Holdings has not placed any restrictions on which cab companies can utilise the app. Importantly, ihail is intended to be a universal application meaning that it allows users to book cabs from a global range of networks from the one application interface. This requires broad usage and acceptance which is achieved by ensuring that as many cab companies as possible accept and use the ihail app. From a consumer perspective, the more cab companies using the ihail app, the more attractive the app is, therefore incentivising ihail to ensure that cab companies support and sign up for the ihail application.

However, it is important to note that the cab companies will retain their own individual apps.

8. The relevant market

8.1 The traditional taxi cab market

Typically, the standard taxi cab industry operates as follows:

- (a) booked taxi services - where taxi drivers connect with customers directly and via network service providers or depots; and
- (b) non-booked taxi services - this makes up the largest share of industry revenue. Services are provided by taxi drivers picking up passengers at taxi ranks (most commonly at airports and busy areas within the CBD) or through passengers hailing a taxi cab.

In past acquisition proposals and competition reviews, the ACCC has considered the scope of the taxi market to include metropolitan, regional and state-wide areas. In a decision made in 2009, the ACCC ruled that the proposed acquisition of West Suburban Taxis by Gange

Propriety Limited would be limited to the Melbourne metropolitan zone.⁴ In 2010 the ACCC ruled that in Black and White Cabs' proposed Acquisition of Palcrest,⁵ the zone extended further to reach the regional markets for the supply of taxi and taxi depot services, and the state-wide market for the supply of booking dispatch services.

The market reach was further extended by the ACCC in the 2012 decision regarding the proposed acquisition of Yellow Cabs Holding by Cabcharge Australia.⁶ The ACCC considered that while the market for the supply of taxi services and bookings would be limited to metropolitan Adelaide, the provision of taxi related non-cash payments, payment processing services and the supply of taxi equipment was a nation wide market.

Most recently in 2014, Black and White Cabs proposed to acquire Toowoomba Yellow Cabs.⁷ In making its decision, the ACCC considered a limited market area in contrast to previous decisions. The ACCC noted only the impact on the regional market in Toowoomba for the supply of taxi network services to operators and consumers, and a state wide market stretch for the supply of booking and dispatch services to taxi operators.

As IBISWorld notes, however, "[O]perators in the industry face competition internally and from substitute forms of transport."⁸ Within the industry, competition with standard taxi cabs comes from other luxury sedans and silver service taxis, based on higher levels of customer service, better quality of vehicle and reliability. Other external competition comes from public transport, private vehicles, car hire, shuttle buses and airport shuttles.

The NSW Independent Pricing and Regulatory Tribunal recently also observed that, *"Demand for point-to-point transport is linked to population growth and business and tourism activity, and all the indications are that these sources of demand have continued to grow in Sydney since 2011, yet demand for taxi services has dropped over the same period. We can only conclude that this demand is being taken up by competitors to taxis."*⁹

Competition is also growing with the introduction of new technology; that is, the increase in development of smartphone applications to connect customers directly with drivers, also known as an 'electronic hail', as set out further below.

As such, ihail Pty Ltd believes that there is likely to be a broader market for this transaction than is traditionally viewed when considering the taxi cab industry. While competition and substitutability is generally only possible between taxi cab companies in localised geographic

⁴ Australian Competition and Consumer Commission, *A Gange Proprietary Limited - proposed acquisition of West Suburban Taxis Pty Ltd* (13 May 2009).

⁵ Australian Competition and Consumer Commission, *Black and White Cabs - proposed acquisition of business and assets of Palcrest Pty Ltd and related entities* (10 August 2010).

⁶ Australian Competition and Consumer Commission, *Cabcharge Australia Limited - proposed acquisition of Yellow Cabs Holdings Pty Ltd* (24 January 2012).

⁷ Australian Competition and Consumer Commission, *Black and White Cabs (Queensland) Pty Ltd - proposed acquisition of Toowoomba business of Yellow Cabs (Queensland) Pty Ltd* (5 March 2014).

⁸ Stephen Gargano, *IBISWorld Industry Report 14626: Taxi and Limousine Transport in Australia* (January 2015) 21.

⁹ Independent Pricing & Regulatory Tribunal, 'Taxi fare freeze recommended as industry faces increasing competition - 18 December 2014' (Media Release, 18 December 2014),

http://www.ipart.nsw.gov.au/Home/Industries/Transport/Reviews/Taxi/Review_of_taxi_fares_to_apply_and_number_of_new_annual_taxi_licences_to_be_issued_in_Sydney_from_1_July_2015/18_Dec_2014_-_Media_Release/Taxi_fare_freeze_recommended_as_industry_faces_increasing_competition_-_18_December_2014

areas (because of obvious constraints)¹⁰, the presence of other similar smartphone applications which operate in a number of cities throughout the country also brings about a broader localised market and a national market for the provision of door-to-door transport services at short notice.¹¹

Irrespective of the precise market definition in respect of taxi services, the payment processing market and supply of taxi equipment is a national market.

8.2 The introduction of new technology

The development of smartphone technology is allowing customers to effectively "electronically hail" drivers, connecting customers directly with drivers by using a phone's GPS, thereby circumventing the more traditional ways of using taxis. This is being achieved through the development of other apps such as Uber, goCatch, ingogo and Backseat. Where ingogo and goCatch operate using the existing taxi cab services (in an increasingly more efficient and user directed sense), Uber and Backseat are examples of true market disruptive technologies in that they allow private transport providers to skip the usual sunk costs and overheads and to enter the market with little cost or time.

The growth of Uber and other competing technologies is based solely on the development of the "smartphone". Without the extensive growth of smartphone usage, it would be impossible for these applications to compete with the traditional taxi market. This is a redundant point now, however, as the smartphone industry has exploded over the last decade. The Australian Communications and Media Authority (ACMA) reported that in May 2013 there were 11.19 million smartphone users in Australia, and that 53% of adult Australians considered that their mobile phone was their most used communication device,¹² and Deloitte's 2014 data showed a continuing rise to 81% of Australian adults owning a "smartphone", and 57% considering it their "go-to" device.¹³

The result of this explosion in the smartphone market means an explosion in the number of consumers able to access competing technologies to the taxi industry, such as Uber. Using the ACMA data, the market for this app transport technology is the same as the smartphone market - it can reach anyone with a device, meaning coverage of over 11.19 million Australians. This significantly expands the concept of the market that Uber, and the ever-growing number of similar services, operate in.

The nature of this kind of disruptive technology is that its growth is immense, generally unpredictable and usually over a short timeframe. As a company, Uber was only founded in early 2009, however, six years later its market value is understood to be about US\$41 billion

¹⁰ See for example the decisions of the informal reviews by the ACCC in Silver Top Taxi Service Limited - proposed acquisition of Murrell Enterprises Pty Ltd trading as Bay City Cabs (BCC), Arrow Taxi Services Limited proposed to acquire Embassy Taxis, File Number S2004/119 and Black & White Cabs (Queensland) Pty Ltd - proposed acquisition of Toowoomba business of Yellow Cabs (Queensland) Pty Ltd, File Number 52699.

¹¹ See for example the decision of the informal review by the ACCC in Cabcharge Australia Limited - proposed acquisition of Yellow Cabs Holdings Pty Ltd, Reference 46775.

¹² Australian Communications and Media Authority, "Australia's mobile digital economy - ACMA confirms usage, choice, mobility and intensity on the rise" (11 December 2013) available at <<http://www.acma.gov.au/theACMA/Library/Corporate-library/Corporate-publications/australia-mobile-digital-economy>>.

¹³ Deloitte, *Media Consumer Survey* (2014) 3, 18-9.

(doubling in the space of six months before), including operations in Australia estimated to be just short of \$1 billion.¹⁴ Uber is yet to go to a public offering.

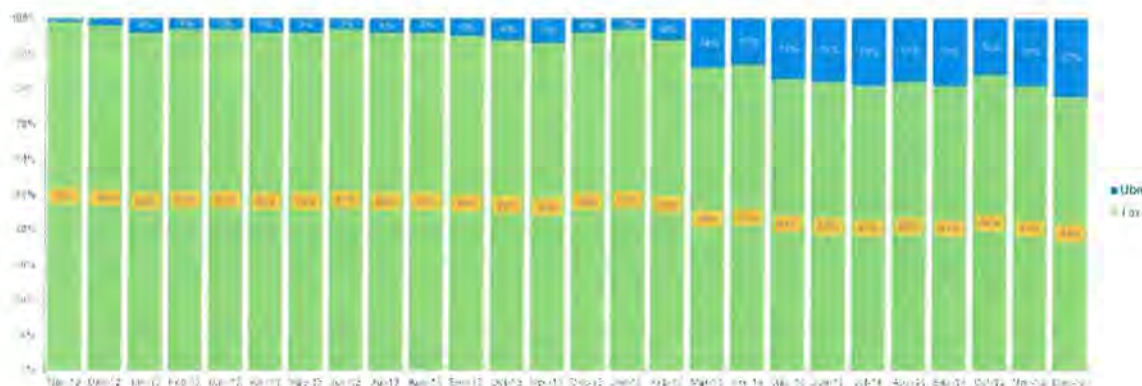
The broader private transport market, traditionally a strictly government-regulated taxi cab market, is becoming more and more interactive, and with that its competitive environment is sifting rapidly. As such, ihail Pty Ltd believes that the nature of this market has changed significantly and, rather than being the strict market with high barriers to entry, ihail Pty Ltd believes that this is now a highly competitive and effective national marketplace.

Uber

Uber has produced an app that allows users to book taxis, limousines or ride with a private driver and car. It currently operates in 54 countries. Within Australia Uber operates in most of the major capital cities. Uber first launched as UberBlack which is a fleet of black cars which chauffeurs people around. In June 2013, UberTaxi was launched which allows taxis to become Uber cars. Finally in January 2014 UberX was launched. Customers set their pickup location and request a ride which a private driver will accept.¹⁵

At the moment, Uber is a competitive substitute to the typical taxi service. The following table sets out Uber's market share in electronic transactions versus taxi cabs in Australia over the period from March 2012 to December 2014:

Uber vs Electronic Taxi Transaction in Australia¹⁶



By December 2014, Uber had captured 22 percent capture of electronic payments. This is significant growth from less than 4 per cent in the 12 months prior. This shows an almost monthly increase in the usage of these technologies, showing a very significant shift toward alternative transport technologies and the massive growth of that market.

One of the other factors driving the popularity of Uber is the attractiveness of price. This is demonstrated in the following table:

¹⁴ Douglas MacMillan, "Uber's investor club adds two hedge funds, Qatar's sovereign wealth fund" (5 December 2014) *The Wall Street Journal*, available at <http://blogs.wsj.com/digits/2014/12/05/ubers-investor-club-adds-two-hedge-funds-qatars-sovereign-wealth-fund/?mod=WSJ_Opinion_LatestHeadlines>.

¹⁵ <<https://www.uber.com/features>>

¹⁶ Gizmodo Australia, '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/>>.

What does this mean for me? ¹⁷	uberTAXI	Taxi
Hyde Park to Newtown Fare split with 3 friends and that's #CheaperThanABus	\$14	\$23
Bondi to Surry Hills Treat yourself to a tub of Gelato Messina	\$19	\$32
North Sydney to Sydney Airport You just saved \$20 off your corporate travel budget	\$31	\$51

Currently the Australian taxi market is estimated to be worth approximately \$5.4 billion annually and, as noted above, the operations of Uber in Australia are estimated just short of \$1 billion. Worldwide, Uber's activities dwarf the Australian taxi market, recently projected at around US\$41 billion.

Uber's emergence and rapid growth in Australia over the last 12 months has, rather than deterring or removing other competing smartphone taxi apps, has simply sparked a growth in other apps development, assumedly based on the understand that there is a strong market and public sentiment for app-driven taxi technology.

goCatch

goCatch has been released in Sydney, Melbourne and Brisbane. Passengers submit their pick up address and destination details in the app. Taxi drivers and passengers can see each other on a map on their smartphones, with passengers being able to watch the map to see the taxi approaching.¹⁸

goCatch has been engaging in growth campaigns over the two years since its inception, including being the first free taxi calling app to expand outside the epicentre of taxi app development in Sydney. Only recently goCatch has also attracted significant backing from major Australian entrepreneurs, including a \$4.5 million equity raising that the company has suggested is directed at breaking apart the Cabcharge network and model.¹⁹

ingogo

ingogo currently operates in Sydney, Melbourne and Brisbane and is currently engaged in a process of rapid national expansion.²⁰ Part of this national expansion process even involves

¹⁷ Gizmodo Australia, '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 goCatch, "How it works" (2014) available at <<http://www.gocatch.com/>>.

¹⁹ Adele Ferguson, "Taxi app goCatch teams rich-list backers to take on Cabcharge" (20 October 2014) *The Sydney Morning Herald*, available at <<http://www.smh.com.au/business/taxi-app-gocatch-teams-richlist-backers-to-take-on-cabcharge-20141020-118lj3.html>>.

²⁰ Peter Dinham, "It's all ingogo for expansion, public listing" (23 January 2015) available at <<http://www.itwire.com/it-industry-news/strategy/66737-it%E2%80%99s-all-ingogo-for-expansion-public-listing>>; Alex Heber, "Australian taxi app

plans to float the company for public listing, a step which would increase the size of, and capital behind, the company and its application.

This product operates similar to GoCatch, customers can book a taxi via the app and see their driver coming towards them on their smartphone map. ingogo has also announced plans to develop its own payment software which would assumedly rival the technology of Cabcharge. The market for this technology would undoubtedly increase with the growth of the market for ingogo itself.

Backseat

Backseat only operates in Sydney at the moment. As with Uber, customers set their pick up location and destination point. They are then connected with a private driver.²¹

8.3 Current taxi apps

The majority of the existing shareholders of ihail Holdings already have their own apps, particularly those based in Australia. Specifically:

- **Silver Top Taxi:** 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, can live GPS track the taxi approaching the consumer, allows consumers to calculate fare estimates;
- **Black and White Cabs:** has an app available for Apple and Android devices. The app allows users to book various forms of cabs, live GPS track the cab that has accepted the booking, estimate fares and pay fares through the app;
- **Yellow Cabs:** has an app available for Apple and Android devices. The app allows users to book various forms of cabs, live GPS track the cab that has accepted the booking and pay fares through the app; and
- **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 has accepted the request and to estimate the fare for a particular trip.

The Australian Taxi Industry Association also provides a website where users can search for individual companies' smartphone taxi booking apps for specific locations.²²

These companies intend to continue to have their own apps. Importantly, ihail Holdings and ihail Pty Ltd has ensured that both the Shareholders' Agreement and the Company Constitution of ihail Holdings place no restrictions on shareholder cab companies keeping or developing their own intellectual property similar to the ihail app, or to marketing competing products within their relevant jurisdictions. The current shareholders of ihail Holdings with interests in the Australian taxi markets have all indicated their ongoing intention to use and promote their own apps.

ingogo will list on the ASX and wants to launch payments tech for small businesses" (22 January 2015) *Business Insider Australia*, available at <<http://www.businessinsider.com.au/australian-taxi-app-ingogo-will-list-on-the-asx-and-wants-to-launch-payments-tech-for-small-businesses-2015-1>>.

²¹ Backseat, "How it works", available at <<http://backseat.me/how-it-works/>>.

²² "Apps for Booking Taxis" (2015) *Australian Taxi Industry Association* <<http://www.atia.com.au/best-taxi-apps/>>.

Further, the Licence and Services Agreement for ihail Pty Ltd to enter with Licensee cab companies to use the ihail app in Australia does not place any restrictions on whether or not Licensees have or operate their own smartphone apps.

ihail Pty Ltd believes that ihail Holdings and the regional operating companies will provide a new product which enables taxi cab companies to engage in a developing technological environment and to compete in an increasingly competitive market. In doing so, it increases competition, as it introduces a new product to market and provides users with additional choice. A customer wanting to obtain a point to point transportation service can do any of the following:

- hail a cab;
- book a cab by telephone;
- use a car app such as Uber, ingogo, goCatch or Backseat;
- use an individual taxi company app; or
- use the ihail app.

As will be clear from the above information the purpose of the ihail app is to focus on international connectivity and to allow users of the ihail app to obtain taxi services in jurisdictions other than their home jurisdiction. In that sense, the most likely users of the ihail app are domestic and international travellers who wish to easily obtain taxis in jurisdictions other than their own. Therefore it is expected that a significant number of users who currently use taxi apps will not migrate to the ihail app and will continue to use the taxi app relating to their own jurisdiction.

8.4 Break-up of the market

There are currently 227 million taxi jobs taken in Australia annually.²³ Of the total market, IBISWorld reports that approximately 30% of taxi rides are from booked taxi services.²⁴ ihail Pty Ltd understands that the average cabs booked per cab company via smartphone app is approximately 12%.

There is also no lessening of competition in the payments market because although ihail will use cabcharge for its payment processing the majority of current cab companies use cabcharge and it is expected that the most likely customers of ihail will be current users of taxi apps. Further, ihail Pty Ltd has investigated the means of using other payment systems in the construction of its application, however, determined that Cabcharge has a significantly advanced level of support and systems which can operate and account for the number of revenue streams that will be required to ensure that the appropriate cab companies (shareholder or licensee) are reimbursed for jobs that they have operated. Cabcharge's level of service and support in this manner has been determined to place a significantly lower

²³ Australian Taxi Industry Association, *2014 State & Territory Taxi Statistics* (31 December 2014) <<http://www.atia.com.au/wp-content/uploads/2014-State-Territory-Taxi-Statistics.pdf>>.

²⁴ Stephen Gargano, *IBISWorld Industry Report 14626: Taxi and Limousine Transport in Australia* (January 2015) 13; Australian Taxi Industry Association, *2014 State & Territory Taxi Statistics* (31 December 2014) <<http://www.atia.com.au/wp-content/uploads/2014-State-Territory-Taxi-Statistics.pdf>>.

administrative, and subsequently cost, burden on ihail Pty Ltd, meaning that the charge to users and, most likely, the charge to end consumers is lower than it would otherwise be.

9. Public benefits

As ihail Pty Ltd has noted above, the ihail smartphone app is intended to allow taxi users to access services in a number of cities or regional locations, both within Australia and globally. No licenced taxi booking app currently does this. Further, barring a merger of taxi companies, it is unlikely that any other app will be able to provide this service: eg, the taxi booking app developed by Yellow Cabs does not have the functionality to allow consumers to book Silver Top Taxis in Melbourne.

ihail Pty Ltd also notes that the benefit will improve competition within local taxi markets. Rather than taxi users being required to use one company's app or another, they will be able to access the closest available cab to their location regardless of the company (although taxi users will obviously still be able to use the individual companies' apps if they have a preference for a particular taxi operator). As such, the ihail app has been designed to present the consumer's request to the closest taxis to the consumer (regardless of taxi network) and the consumer's request will be given to the first cab driver to accept the request (again, regardless of the taxi network). This means that taxi consumers will easily be able to access the quickest service to reach them, improving service and dispatch times for all taxi users in that area.

Further, ihail Pty Ltd notes that the ihail smartphone app will allow taxi operators to compete with the services currently offered by Uber and other ride-sharing applications. Currently, it is far 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 user wishes to hail a licensed taxi using his or her smartphone, it will require finding and downloading the relevant app for the local taxi company, creating an account through that smartphone app and then inserting payment details. Further, this may not give the user the closest available taxi as it will only show the available cabs for one of the taxi companies in the area. When that international traveller returns home, he or she might retain the particular taxi company's app on his or her phone, however, it is just as likely to be removed if the user does not intend to visit that city again.

On the other hand, the ihail app is designed to offer a seamless service to taxi users for wherever they travel around Australia or around the globe (obviously depending on the number of regional taxi companies that have elected to become part of the ihail network). Consumers will be able to use the one ihail app in multiple locations, will be able to use their existing login and payment details and will have access to the closest available taxis within that local taxi area. Consumers will be able to ihail Pty Ltd believes that this will result in significant efficiency benefits for taxi consumers, especially for ihail's target business traveller consumers.

ihail Pty Ltd believes that ihail Holdings (and its subsidiary regional operating companies) is another means for taxi cab companies to engage in a developing technological environment and to compete in what is a very competitive market and to provide these competitive services and efficiency benefits to consumers across Australia and globally. It also provides another way for customers to access the market through a technology that does not currently exist and

does not detract from or restrict any existing technologies or ways for consumers to access the market.

As such, ihail Pty Ltd does not believe that the Proposed Conduct creates any consumer detriment because of the weight of public benefits provided, including:

- (a) the joint venture is solely for the development of a brand new product, which may or may not be successful or achieve market share;
- (b) the cab companies are not restricted for designing and operating their own apps and dispatch systems (many of which already exist, eg, the apps for Black & White Cabs and Yellow Cabs in Queensland);
- (c) the Company Constitution, Shareholders Agreement and Licence and Services Agreement will not place any restrictions on cab companies developing technology to compete with the joint venture product;
- (d) network effects (that is, the app increase in attractiveness to both users and cab companies) the more cab companies who join and therefore there is no incentive to exclude any cab company from a joining and using the app;
- (e) there is a little expected impact on payment services as it is expected that the most likely users are current taxi app users who are most likely to use cabcharge and, in any event, the vast majority of taxi rides are hailed and the many use whatever payment system is offered by the driver.

Even if there was a small detriment it would be outweighed by the substantial public benefits of users obtaining a new product which may suit them in booking licenced taxi cab rides and the efficiencies associated with the app booking the closest cab company (irrespective of the branding of that cab).