



Australian
Competition &
Consumer
Commission

Determination

Application for authorisation

lodged by

ihail Pty Ltd

in respect of

joint venture arrangements between taxi companies
and other participants in the taxi industry to launch
the ihail smartphone taxi booking application

Date: 22 March 2016

Authorisation number: A91501

Commissioners: Schaper
Cifuentes
Court
Featherston
Keogh
Walker

Summary

The ACCC has decided to grant conditional authorisation to ihail Pty Ltd (ihail) to make and give effect to joint venture arrangements to launch and operate a smartphone taxi booking app (as amended during the authorisation process) for use by domestic and international taxi companies.

The ACCC grants conditional authorisation for three years, until 12 April 2019.

On 26 May 2015 ihail sought authorisation for a joint venture between ihail and a number of Australian and international taxi companies and other participants with an interest in the taxi industry to launch and operate a new smartphone taxi booking app – the ‘ihail app’. ihail sought authorisation for five years.

The ihail app is proposed to operate in major metropolitan and regional centres across Australia and in some cities overseas.

The proposed ihail shareholders include:

- Yellow Cabs (Qld) Pty Ltd – operating in Queensland and Tasmania
- Silver Top Taxi Service Ltd – operating in Sydney and Melbourne
- Black and White Cabs Pty Ltd – operating in Brisbane, Perth, Redcliffe and Toowoomba
- Suburban Taxis – operating in Adelaide and
- Cabcharge Australia Ltd – as well as providing taxi payment processing terminals to around 95 per cent of taxis in Australia, it also has taxi networks in Sydney, Melbourne, Adelaide and Newcastle.

The taxi networks operated by the proposed ihail shareholders represent more than half of all taxis in Australia and a larger share again in most major metropolitan areas. Other taxi networks will also be able to join ihail without becoming a shareholder. Drivers affiliated with participating networks will need to ‘opt-in’ to be eligible to receive ihail bookings over their existing taxi dispatch systems.

The major taxi networks in Australia currently have their own smartphone booking apps (‘white label apps’). There are also a number of third party booking apps such as goCatch and ingogo in which individual taxi drivers can elect to participate, as well as ridesharing apps such as uberX.

Draft determination

In its draft determination, the ACCC expressed concerns about the impact on competition of the proposed ihail joint venture. The ACCC’s main concerns were that:

- ihail would have a larger network of taxis than any competing app by virtue of its ownership structure, rather than by offering a superior service, and through this advantage may become the dominant booking app to the point of ‘crowding out’ competing apps
- requiring all ihail fares to be paid via the app, with Cabcharge processing all payments, would limit emerging competition between Cabcharge and other providers of taxi payments processing services and

- the ihail app would reduce competition between participating taxi companies in supplying services to passengers using the app.

The ACCC also expressed concern that the priority dispatch payment function, which allows passengers to offer an upfront payment to encourage drivers to accept their booking, would impact access to taxis for financially disadvantaged sections of the community.

Changes to the application for authorisation

In response to the draft determination, ihail proposed significant changes to the way it intends to operate the app. These changes include extending the options for fare payments by passengers to include in car payments (by cash or credit card) in addition to in-app payments, and allowing passengers to select their preferred taxi network as part of the ihail in-app booking process. Competition between taxi networks will be incentivised within the app by publication to passengers of information comparing taxi networks' average waiting times and driver ratings.

ihail also modified the arrangements so that taxi drivers affiliated with participating networks will each need to 'opt-in' to participate in ihail, rather than being signed up automatically by their networks.

Public benefits

The ACCC considers that the proposed arrangements, as amended, are likely to result in some public benefits.

The ihail app provides a new convenient single platform for consumers to book taxis from a larger pool of taxi networks than any existing taxi booking app. It is likely that most drivers of those networks will opt in to receive taxi bookings via the ihail app. The ACCC considers this large pool of taxis is likely to reduce waiting times for passengers using the app, particularly in periods of peak demand.

The ihail app also provides a single app that can be used in more cities than third party taxi booking apps currently available, including potentially internationally.

The ACCC also considers that, on launch, the ihail app is likely to prompt a competitive response from other booking apps. In particular, the ACCC expects third party apps to react to the entry of ihail through improving functions, services and the promotional initiatives they offer to passengers and drivers.

Public detriment

The ACCC remains of the view that the underlying ownership structure of ihail will help it quickly establish a larger national fleet of taxis than any existing taxi booking app. This competitive advantage will be obtained as the result of ihail's ownership structure, rather than as the result of ihail offering a better and competitive product to drivers and passengers. This is likely to impact competition between booking apps.

However, the ACCC considers that because:

- other booking apps have established brand reputations and customer bases
- ihail drivers can continue to use other booking apps in conjunction with ihail and
- it is easy for passengers and drivers to switch between booking apps,

ihail will still face some competitive pressure from other established booking apps (including ridesharing apps) to offer a product which attracts and retains passengers and drivers.

The ACCC also remains of the view that ihail's priority dispatch payment function will adversely impact access to taxis for financially disadvantaged sections of the community in periods of peak demand, which the ACCC considers is likely to also result in some public detriment.

However, the changes to the app proposed by ihail following the draft determination reduce the extent of the other public detriments previously identified by the ACCC. In particular, while Cabcharge remains as the exclusive supplier of in-app payments processing services to ihail, passengers can now also pay in-car, meaning other payments processing providers can compete to process in-car payments. Further, because passengers are now able to choose a preferred taxi network when booking through the ihail app, and passengers will be provided with information about the performance of each network, incentives for participating taxi networks to compete to attract customers using ihail also remain.

Balance of public benefit and detriment

The ACCC remains concerned that authorisation of the ihail app may have a detrimental impact on competition between taxi networks and taxi booking apps. However, the ACCC recognises that the taxi industry is in a period of rapid change, and that it is difficult to predict how competition in the industry will evolve. On balance the ACCC has decided to authorise the ihail application subject to conditions. The ACCC considers the following conditions of authorisation will mitigate the likely public detriments arising from the ihail app and the joint venture arrangements:

- requiring drivers to be explicitly informed that they remain free to use any other booking services, and requiring ihail and its shareholder networks not to prevent or disadvantage drivers from using any other booking services in preference to or in addition to the ihail app
- preventing ihail from setting the default payment method option to 'in-app', unless the customer has explicitly chosen in-app payment as their default option, or manually selected this option as part of the booking process and
- requiring ihail to prominently disclose within the ihail app the relevant credit card service fee that may apply whenever passengers are making payment method choices.

Subject to these conditions the ACCC considers that on balance the proposed ihail arrangements are likely to result in public benefits that would outweigh the likely public detriments.

Length of authorisation

As already noted, the taxi industry is currently undergoing significant and rapid change, including emerging competition by non-traditional taxi booking service providers and ridesharing businesses. In this context there is potential for competition to develop in a number of different ways. In these circumstances, the ACCC considers it would be appropriate to review how the market evolves, and particularly the impact of the ihail arrangements on competition between booking apps, earlier than the five years proposed by ihail. Accordingly, the ACCC grants conditional authorisation for three years (until 12 April 2019).

In the event that ihail seeks re-authorisation of the arrangements at the end of the authorisation period, the ACCC will carefully review the competitive impact of the ihail arrangements in the taxi sector overall.

Contents

Summary	i
Contents	v
Abbreviations and definitions	vi
The application for authorisation	1
The conduct	2
Background	4
Taxi industry	4
Smartphone taxi booking apps	9
The operation of the proposed ihail app	13
Current ihail shareholders	20
Submissions received by the ACCC	23
Prior to the draft determination	23
Following the draft determination	25
ACCC assessment	29
The relevant areas of competition	29
The future with and without	32
Public benefit	32
Increased convenience	33
Increased competition	35
ACCC conclusion on public benefits	36
Public detriment	37
ACCC conclusion on public detriments	50
Balance of public benefit and detriment	51
Conditions	53
Length of authorisation	55
Determination	55
Attachment A - Summary of relevant statutory tests	59

Abbreviations and definitions

ACCC	Australian Competition and Consumer Commission.
the Act	<i>Competition and Consumer Act 2010</i> .
Cabcharge	Cabcharge Australia Limited.
GPS	Global Positioning System.
ihail	ihail Pty Ltd.
ihail app	ihail smartphone taxi booking app.
in-app payment	payment made through a smartphone app or other electronic device (via a pre-registered payment method such as a credit card) without physically presenting a payment card to a taxi driver.
MTData	Mobile Tracking and Data Pty Ltd.
network service provider	businesses that facilitate the booking of taxi services by passengers. Passengers use a variety of methods to make bookings, from phone bookings to mobile phone applications and online. Once a passenger makes a booking, the Network Service Provider dispatches a vehicle to the passenger.
network effects	In economics a network effect (also called network externality) is the effect that one user of a good or service has on the value of that product to other people. When network effects are present, the value of a product or service increases with the number of others using it. The classic example is the telephone. The more people own telephones, the more valuable the telephone is to each owner.
point to point transport	transport services that operate from the passenger's pick up point to the passenger's ultimate destination, including hire cars with drivers, rental cars, commercial ridesharing and taxis.
priority dispatch payment	an optional function within the proposed ihail app which allows passengers to offer drivers an upfront payment over and above the standard fare when requesting a taxi to incentivise priority pick up.
ridesharing	This term has been used throughout the draft determination to describe booking apps which involve consumers accessing transport services from private drivers, as opposed to licensed taxis.

The application for authorisation

1. On 26 May 2015 ihail Pty Ltd (**ihail**) lodged an application (A91501) with the Australian Competition and Consumer Commission (**ACCC**) seeking authorisation, for and on behalf of itself, ihail Holdings Limited and the existing shareholders of ihail Holdings Limited to make and give effect to joint venture arrangements. In particular, the proposed joint venture is between a number of taxi companies and other participants with an interest in the taxi industry to develop and operate a smartphone taxi booking application (**ihail app**) for use by domestic and international taxi companies. On 18 June 2015, 6 November 2015 and 4 February 2016 ihail provided further information confirming the scope of the proposed conduct.
2. ihail seeks authorisation for a period of five years. It also seeks authorisation for 'any new shareholders, licensees, employees or contractors or any other party to the existing contracts or contracts on substantially similar terms during the proposed period of authorisation.'¹
3. Authorisation is a transparent process whereby the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (**the Act**). The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Before making its final decision on an application for authorisation the ACCC must first issue a draft determination.²
4. The Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.³
5. At the time of lodging their application ihail also requested interim authorisation to enable it to commence the launch of the ihail app while the ACCC was considering the substantive application for authorisation. On 17 July 2015 the ACCC decided not to grant interim authorisation. In particular the ACCC considered that granting interim authorisation may have a lasting impact on competition in the taxi industry and that ihail had not demonstrated clear reasons to support urgent interim authorisation.⁴
6. On 12 October 2015 the ACCC issued a draft determination⁵ proposing to deny authorisation to ihail for the proposed ihail app. A conference was not requested in relation to the draft determination.

¹ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 2.

² Detailed information about the authorisation process is contained in the ACCC's Guide to Authorisation available on the ACCC's website www.accc.gov.au.

³ Section 91 of the Act.

⁴ Ihail Pty Ltd, Authorisation A 91501, Interim authorisation decision: <http://registers.accc.gov.au/content/index.phtml/itemId/1186905/fromItemId/278039/display/acccDecision>

⁵ Subsection 90A(1) of the Act requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

7. In response to the draft determination, ihail proposed a number of significant changes to the operation of the ihail app.⁶ The operation of the proposed ihail app, as amended, is detailed from paragraph 46. An overview of how the ihail app is now proposed to operate compared to ihail's original proposal is provided at paragraph 101.
8. Given the proposed modifications to the operation of ihail's app, the ACCC conducted public consultation processes following the receipt of each set of amendments. In order to provide the ACCC and interested parties sufficient time to consider the proposed amendments to the ihail arrangements, on 6 November 2015 ihail agreed to the ACCC extending the relevant period for considering ihail's application for authorisation until 25 March 2016.⁷ A number of submissions were received from interested parties.

The conduct

9. ihail seeks authorisation for a joint venture between taxi companies and other participants with an interest in the taxi industry to develop and operate the ihail app for use by domestic and international taxi companies (the **proposed arrangements**). ihail has also sought authorisation for future parties to the arrangements.
10. The ihail app will allow passengers to electronically hail a taxi using their smartphone's Global Positioning System (**GPS**) from a 'global range of networks from the one application interface.'⁸ ihail advises that the target market for the proposed app is passengers who wish to book a taxi when travelling in a city other than their normal place of residence. The ihail app is designed to work in multiple locations, including outside Australia. When making bookings over the app, passengers will be able to select their preferred taxi network within their area, or select the closest taxi.⁹ If a passenger selects 'closest taxi', the next closest available taxi will be dispatched, regardless of which taxi network it is affiliated with.¹⁰
11. The Applicant (ihail Pty Ltd) will be an Australian-based subsidiary of a United Kingdom holding company, ihail Holdings¹¹. There are currently nine shareholders in ihail Holdings, six of which are traditional taxi companies, namely:¹²
 - Yellow Cabs (Qld) Pty Ltd – operating in Queensland and Tasmania
 - Silver Top Taxi Service Ltd – located in Sydney and Melbourne
 - Black and White Cabs Pty Ltd – operating in Brisbane, Perth, Redcliffe and Toowoomba areas

⁶ ihail submission of 6 November 2015 and ihail supplementary submission of 4 February 2016.

⁷ Section 90(10A)(b) of the Act.

⁸ ihail supporting submission to the application for authorisation A91501, 26 May 2015 p. 7.

⁹ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 5.

¹⁰ Ibid.

¹¹ Once ihail Holdings is fully established, it is intended that 100% of the shares in ihail Pty Ltd (currently held by Mobile Tracking Data Pty Ltd) will be transferred from Mobile Tracking Data Pty Ltd to ihail Holdings to be held on behalf of the shareholders of ihail Holdings.

¹² ihail supporting submission to the application, 26 May 2015, pp. 4-5.

- Suburban Taxis – operating in the Adelaide area
 - Texas Taxis Inc – a US based taxi company, operating in Houston, Austin and San Antonio areas
 - Taxi Services Incorporate Minneapolis – a US based taxi company, operating in the Minneapolis areas
 - Mobile Tracking and Data Pty Ltd
 - New South Wales Taxi Council and
 - Cabcharge Australia Ltd (**Cabcharge**) – with, among other things, taxi network operations in Sydney, Melbourne, Adelaide and Newcastle.
12. Further details about ihail’s ownership structure are provided in the Background section of this determination.
13. The ihail app is intended to mainly operate in major capital cities in Australia, the United Kingdom and the United States for the first two years. That is, passengers that sign up to the ihail app will be able to request taxis using the app in any city in which it operates. ihail advises that it currently has partners (that is, taxi companies proposing to use the app) in Australia in the following locations:¹³
- Sydney
 - Melbourne
 - Brisbane
 - Adelaide
 - Perth
 - Newcastle
 - Toowoomba
 - Yeppoon
 - Warwick and
 - Maryborough.
14. Further details about the operation of the ihail app are provided in the Background section of this determination.

¹³ ihail submission, 2 July 2015, p. 3.

Background

Taxi industry

15. A taxi licence is required in order to operate a taxi in Australia. Taxi licences or permits are granted by state and territory governments. A licence owner may own, operate and drive a taxi. However, many licence owners lease their taxi licence to an operator. Taxi operators range in size from operators of a single taxi to large fleet operators. A taxi operator is responsible for the taxi vehicle, including insurance and maintenance. Taxi operators can drive the taxi(s) themselves and/or engage drivers to do so.
16. To facilitate bookings, taxi operators affiliate with taxi booking services, also known as Network Service Providers or taxi networks. Typically, passengers book taxis through these networks by phone, over the internet or via a smartphone app. The Network Service Provider then dispatches the job to drivers whose taxis are part of its affiliated network. A number of ihail's shareholders – namely, Yellow Cabs (Qld), Silver Top Taxi Service, Black and White Cabs, Suburban Taxis and Cabcharge – are Network Service Providers.
17. Taxis play an important role in providing transport services to the community in general, as well as key sections of the community – including the elderly, people with disabilities, the young or vulnerable, disadvantaged socio economic groups and business travellers. Approximately 12 per cent of the taxi fleet in Australia is wheelchair accessible.¹⁴ Under state and territory licence conditions and/or regulations, wheelchair accessible taxis are required to give priority to passengers in wheelchairs over a standard taxi hiring. Some state and territory governments also pay a bonus or lift fee for transporting passengers in wheelchairs.
18. Traditionally, passengers engage the services of a taxi either by hailing the taxi in the street or at a taxi rank (called 'non-booked services') or through a phone booking with a specific taxi network operator which then dispatches a taxi to the customer (called 'booked services'). In recent years, smartphone taxi booking apps have appeared. They have been developed by existing taxi networks, as well as by third parties such as ingogo and goCatch. As with phone bookings, all requests for pick up through a taxi network's smartphone app, whether for immediate pick up or pick up at a later time, are classified as 'booked services'.
19. ihail submits that non-booked taxi services make up the largest share of industry revenue (around 70 per cent), with 30 per cent of taxi rides coming from booked taxi services.¹⁵ There are approximately 21 000 taxis in Australia, with around 227 million taxi jobs taken in Australia annually.¹⁶
20. The taxi industry in Australia is heavily regulated in each state and territory. Regulation controls the number of taxi licences that may be issued. The state governments are also responsible for the setting of taxi fares. States have regulated maximum fares and taxi companies are free to charge less than the regulated maximum. Since 2014, Victorian taxi operators in regional and country

¹⁴ Australian Taxi Industry Association, *submission to the Competition Policy Review*, p. 3.

¹⁵ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 13.

¹⁶ Australian Taxi Industry Association, *2014 State and Territory Taxi Statistics (as at 31 December 2014)*, viewed at <http://www.atia.com.au/wp-content/uploads/2014-State-Territory-Taxi-Statistics.pdf>, 22 September 2015.

taxi zones have been able to set their own maximum fares under a price-notification scheme.

21. Table 1 provides an overview of current regulatory arrangements across Australia, including recent and ongoing reviews of the taxi industry undertaken by state and territory regulators. Notably, on 30 September 2015 the ACT Government announced a suite of reforms that included the introduction of new regulations to legalise ridesharing services, such as uberX, in the ACT. Since then, New South Wales and Western Australia have also legalised ridesharing. However, the Northern Territory Government recently announced that it would not make any regulatory changes to authorise point-to-point ridesharing services.¹⁷

Table 1: Taxi industry regulation in Australia

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
Victoria	Regulated maximum fares for metropolitan and urban areas. Notified fares for rural and regional areas. The Taxi Services Commission (TSC) regulates the taxi and hire vehicle industries with maximum fares determined by and or notified to the Essential Services Commission (ESC).	<p>In 2011 the Victorian Government commenced a taxi industry inquiry to conduct a comprehensive investigation into service, safety and competition issues in the industry. The inquiry was completed in 2012. From 30 June 2014 a series of reforms took effect, including:</p> <ul style="list-style-type: none"> • better conditions for drivers: taxi drivers will have better working conditions and pay under a new mandatory Driver Agreement, which will guarantee them at least 55 per cent of takings • a knowledge test for drivers • changes to fare structures – taxi operators in regional and country zones can notify their own maximum fares, and the ESC continues to set regulated maximum fares for metropolitan, urban and large regional zones • a new zoning system: taxis will operate within a new four-tier system of zones, being metro, urban (including large regional centres), regional, and country. Separate licence fees will apply for each of these zones. • it was previously a licence condition that taxis were affiliated with a network and these networks were limited to a particular zone / town. Across the four new zones, operators can 'go out but not in'. There is no longer a requirement for mandatory affiliation to a taxi network. • improved availability of licences: the TSC will issue new licences as the market demands. A 'consumer interest test' will apply to regional and country zones to consider the benefits of new licences for customers • a set annual fee for licences: this will relieve pressure on overheads and fares. The annual fee will be lower in regional and country areas, and for wheelchair-accessible vehicles • better information and complaints handling for consumers

¹⁷ Media Release, Peter Chandler, Minister for Transport, *New reforms for Commercial Passenger Vehicle industry*, 22 February 2016.

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
		<ul style="list-style-type: none"> • improved safety for drivers and consumers and • changes to hire car regulations. <p>The Victoria Government is currently considering the broader issue of ridesharing.</p>
New South Wales	<p>Regulated maximum taxi fares are recommended by IPART. Transport for NSW makes final decisions on fares. Roads and Maritime Services are responsible for enforcing the regulations.</p>	<p>On 1 July 2015 the NSW Government announced a taskforce to examine the future sustainability of taxis, hire cars and other emerging point to point transport providers in NSW, including ridesharing apps. The taskforce provided its findings to the government in November 2015.</p> <p>On 17 December 2015 the NSW Government announced a package of reforms which included:¹⁸</p> <ul style="list-style-type: none"> • ridesharing services will be legalised • the immediate repeal of more than 50 taxi and hire car regulations • a new regulator and Commissioner to oversee the industry to improve customer safety and • the establishment of a \$250 million industry adjustment package for taxi and hire car licence plate owners (funded, in part, by a temporary levy on all point to point transport providers, equivalent to \$1 per trip for a maximum of 5 years). <p>Under the reforms, taxis will continue to have exclusive access to rank and hail jobs.</p>

¹⁸ Andrew Constance, Minister for Transport and Infrastructure (NSW), Media Release, *A new transport economy: consumer choice, competition and downward pressure on fares*, 17 December 2015.

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
Australian Capital Territory	The maximum taxi fares that can be charged are determined by the Minister for Territory and Municipal Services.	<p>In early 2015, the ACT Government commenced a taxi industry innovation review. The innovation review focused on the evolution of the taxi industry, including new technologies, implementation of ride share models, level of surcharge of electronic taxi fare payments, compliance among taxi drivers with the disability standards etc.</p> <p>On 30 September 2015 the ACT government announced various reforms to the taxi and on-demand transport industry, including legalising ridesharing services such as uberX. The reforms will be introduced in two stages:¹⁹</p> <ul style="list-style-type: none"> • Stage 1 – an interim phase that allows authorised ridesharing and other innovative booking services to operate subject to safeguards such as criminal history and driver history checks. There will also be an immediate reduction of taxi licence fees (of 50 per cent) on entry of ridesharing. This stage commenced on 30 October 2015. • Stage 2 – new laws will be introduced into the Legislative Assembly to introduce the full suite of reforms, including driver accreditation requirements for rideshare and reduced regulation for taxis and hire cars. <p>Under the reforms, taxis will retain sole access to the rank and hail market. Rideshare companies will be able to operate alongside taxi networks and other booking apps as Transport Booking Services. Under this structure, all business models will be regulated similarly and allow drivers (from taxi, hire cars and rideshare) the potential to accept bookings from more than one Transport Booking Service.</p>
Queensland	The Department of Transport and Main Roads determines maximum fares for Queensland taxis separated into 3 tiers, south-east Queensland, regional Queensland and exempted Queensland (for communities with	A Door to Door Personalised Transport review is currently being conducted by an independent taskforce. One of the focuses of the review is to ensure the 'delivery of a flexible legislative framework that supports competition and innovation.' The taskforce is expected to report to the Queensland Government in August 2016. ²⁰

¹⁹ Chief Minister, Treasury and Economic Development Directorate, *2015 Taxi Industry Innovation Reforms*, viewed on website: <http://www.cmd.act.gov.au/policystrategic/regreform/2015-taxi-industry-innovation-reforms> on 30 September 2015.

²⁰ Submission from Queensland Department of Transport and Main Roads, 2 December 2015, p. 2.

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
	sporadic demand).	
South Australia	Department of Planning, Transport and Infrastructure is responsible for regulating and approving fares. There are regulated maximum fares for metropolitan areas. Regional operators can set their own fares – up to 20 per cent of above metropolitan fare (or higher with approval).	The SA Government commenced the 'Taxi and Chauffeur Vehicle Review' in June 2015. The terms of the review are broad, including the industry's performance against principles such as service standards, safety and security for passenger, fares and surcharges, vehicle standards and requirements, centralised booking services and regional services. The opportunity for new technologies and booking services like goCatch, Uber and ingogo, will also be examined. ²¹ Public consultation for the review closed in October 2015.
Northern Territory	Regulated maximum fares are determined by the Department of Transport.	<p>In November 2014 the NT Government released a position paper as part of its Commercial Passenger Vehicle Industry review. The paper sought comment on proposed reforms to the regulatory framework in order to make the commercial passenger vehicle industry more competitive, responsive to customer needs and create jobs and business opportunities. The consultation phase concluded in early 2015.</p> <p>On 22 February 2016 the NT Government announced its reforms, which included measures to improve passenger safety and services. It will also release 13 new licences via ballot in Darwin and will maintain a cap on licences in Darwin and Alice Springs for the next 12 months.²²</p> <p>As part of the reforms the NT Government announced that it will not be making any regulatory changes authorising point to point ridesharing transport services, but will continue to monitor the outcome of reviews in other jurisdictions across Australia where ridesharing has been operating.</p>
Western Australia	The taxi industry in WA is regulated by the Department of Transport. The Department of Transport sets maximum taxi fares. There are different taxi	<p>In July 2015 the WA Department of Transport released a green paper, <i>On-demand Transport - Discussion Paper for Future Innovation</i>. Submissions on the green paper closed in mid-October.</p> <p>On 18 December 2015, the Western Australian Government announced a number of reforms to</p>

²¹ Government of South Australia, Department of Planning, Transport and Infrastructure, news release, *Review of taxi and chauffeur vehicle industry set to commence*, 9 June 2015.

²² Peter Chandler, Minister for Transport, Media Release, *New reforms for Commercial Passenger Vehicle industry*, 22 February 2016.

State/Territory	Regulatory arrangements in relation to fares	Reviews and reforms
	fares for the metropolitan area and for each of the nine different regional zones.	<p>the industry, which are proposed to commence in July 2016, including:²³</p> <ul style="list-style-type: none"> • creating a new omnibus licence category to encourage new market entrant drivers and vehicle owners to comply with essential requirements • encouraging metropolitan and regional taxi operators to use technology to grow their charter, as well as rank and hail business • reducing metropolitan government-leased taxi plate fees • introducing mandatory standards for all drivers • removing certain licence conditions, including restrictions on operating times and mandatory operating hours on weekends and public holidays and • developing a transition package to support industry innovation and a hardship fund for taxi plate owners. <p>Under the reforms, rank and hail work will remain only for traditional taxis.</p>
Tasmania	Tasmania has regulated maximum taxi fares. The Department of State Growth sets fares based on advice from the Tasmanian Economic Regulator. One of the Tasmanian Economic Regulator's responsibilities is to undertake Taxi Fare methodology inquiries.	After consulting stakeholders, in March 2016, the Tasmanian Government announced the introduction of legislation that will provide for the legal operation of ridesharing businesses in Tasmania, such as Uber.. ²⁴ The Taxi and Hire Vehicle Industries and Amendment Bill 2016 was introduced on 8 March 2016.

Smartphone taxi booking apps

22. The development of smartphone technology now allows consumers to 'electronically hail' a taxi, and the popularity of individual taxi company and third party apps appears to be increasing. iHail advises that 'leading [taxi] companies dispatch at most 12 per cent of their bookings via app...therefore...the total number

²³ The Hon Dean Nalder, Minister for Transport (Western Australia), media statement, *Green light for on-demand transport industry reforms*, 18 December 2015.

²⁴ Will Hodgman, Premier of Tasmania, media release *Sharing Economy Legislation* http://www.premier.tas.gov.au/releases/sharing_economy_legislation viewed on 15 March 2016. viewed on 2 March 2016.

of rides booked through an app is currently approximately 8.5 million rides annually.²⁵ This figure does not include bookings made through third party apps.

23. Features of smartphone apps for booking taxis vary, but generally include the use of a smartphone's GPS to identify nearby available taxis for a passenger and to identify the passenger's location for the driver once the taxi is hailed. To facilitate this, the apps have both a customer and a driver interface. In addition to taxi apps, a number of apps have been established that allow private transport providers to connect with passengers in the same way (for example, Uber).
24. The smartphone's GPS allows the customer to see on a map the location of taxis or private vehicles in their vicinity, and therefore how long it is likely to take a vehicle to arrive if they do request one. Once a vehicle is requested, the dispatch process differs depending on whether the booking request has been made with a taxi company app or a third party app. Where a taxi is requested through a taxi network app, the request is dispatched by the network in the same manner that a phone booking received by the network would be. That is, the job is offered to drivers in the area via the on-screen display in their vehicle. If the taxi is booked through a third party app (be it a taxi app or private car ridesharing app), the booking request will appear on the smartphone of drivers in the area who are logged onto the app. In either case, the job is allocated to the first eligible driver to accept it.
25. Once a request is made, the passenger is able to track the dispatched vehicle on their smartphone as it approaches their location. The passenger will also be provided with details about the driver including, in the case of private vehicles, the make and model of car, and the car's registration number. Similarly, the driver will be provided with the passenger's details, including a contact phone number.
26. Most apps also have automatic payment functions, which require passengers to register their payment details when signing up for the app – for example, credit card or PayPal details – meaning no exchange of payment occurs between the driver and the passenger in the vehicle (that is, 'in-app payment'). If the passenger indicates through the app, once the fare is accepted, that they wish to utilise the in-app payment function the fare is automatically deducted via the passenger's chosen payment method at the completion of the journey. In the case of a taxi journey, the driver will inform the network operator or third party app of the fare. In the case of private vehicle transport, the journey will be tracked by GPS, the driver will use the app to indicate where and when the journey commenced and finished, and the fare will be calculated automatically.
27. Booking fees apply to jobs booked through a smartphone app, as do credit card surcharges and other fees such as tolls and airport fees where applicable.
28. Taxi company apps also allow in-taxi payment. That is, the passenger has the option of paying in cash or via card payment terminals in the taxi in the same manner that they would if they had hailed the taxi or booked the taxi via traditional means.
29. Generally, if in-app payment is used then at the conclusion of the journey, a receipt will be emailed to the passenger (usually instantaneously). As well as including details of the fare, the receipt may include details of the driver, the pick-up and drop off location, and in some cases a map of the route taken based on the GPS data

²⁵ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 10.

collected during the journey. Passengers are often provided with an opportunity to rate the driver through the app.

30. Most taxi networks have their own smartphone apps – for example, Black and White Cabs, Yellow Cabs, 13CABS, Silver Top, Swan Taxis, Silver Service, Apple Taxis, mTAXI 2 (operated by Cabcharge), Legion Cabs, Premier Cabs, Geelong Taxi Network, Gold Coast Cabs and Whitsunday Taxi.²⁶
31. While most taxi companies have their own smartphone apps, much of the growth in the adoption of smartphone apps for hailing taxis and ridesharing services has been driven by third party operators such as Uber, goCatch and ingogo.

goCatch and ingogo

32. goCatch and ingogo are examples of third party taxi booking and payment services apps that are not affiliated with any taxi company. Rather, individual taxi drivers, during their shifts, can log on to goCatch or ingogo through their own smartphones and pick up jobs in addition to sourcing jobs through their usual channels (hailing, taxi ranks and network dispatch). The driver uses the taxi meter to determine the fare payable in the same manner as they would if they picked up a passenger in any other way.
33. goCatch has a large network of 35 000 registered taxi drivers²⁷ registered across most major taxi networks and all capital cities across Australia. The number of 'active' goCatch drivers, that is drivers who regularly use the goCatch app to pick up fares, is lower than the total network of registered drivers.
34. Passengers using the goCatch app can choose to pay via the app using either their stored credit card details or via a PayPal account. Alternatively, customers may choose to use an in-taxi payment method such as cash.²⁸ goCatch recently reported that it has signed a new deal with Mint Payments for their in-app payment processing.
35. goCatch allows the customer to offer an upfront payment to the driver to provide an incentive for drivers to accept the job in peak times.²⁹ At the time of requesting the taxi, the customer can include a message which will be seen by drivers indicating, for example, what amount they are willing to pay above the metered fare to the first driver that accepts their job.
36. ingogo currently operates in Sydney, Melbourne and Brisbane.³⁰ It is reported to have a network of 5 000 active drivers.³¹ Passengers can book taxis up to 48 hours ahead of time.

²⁶ Australian Taxi Industry Association website: <http://www.atia.com.au/best-taxi-apps/iphone/#>, viewed on 23 September 2015.

²⁷ Patrick Durkin, Australian Financial Review, *goCatch hitches a ride with Mint Payments as taxi wars heat up*, <http://www.afr.com/news/economy/gocatch-hitches-a-ride-with-mint-payments-as-taxi-wars-heat-up-20150904-gjf5yq> viewed on 8 September 2015.

²⁸ goCatch website: <http://www.gocatch.com/faqs-and-help-for-gocatch-users/faqs-help-for-gocatch-drivers/#tab-1430204068421-5-7> viewed on 25 September 2015.

²⁹ Ibid.

³⁰ ingogo website: <http://www.ingogo.mobi/faqs/>, viewed on 23 September 2015.

³¹ BRW, R. Powell, *Ingogo smashes Australia's equity crowdfunding record*, published 29 May 2015, viewed at http://www.brw.com.au/p/entrepreneurs/ingogo_smashes_australia_equity_EgieYlc3Maqoly7hICz7BO on 10.9.15.

37. Passengers using ingogo can pay from within the app or within the taxi by credit or debit card or in cash. ingogo also provides a \$10 credit to a passenger's account if a taxi cancels a job and a replacement taxi is not located in time.³²
38. For in-app payment, ingogo recently announced a partnership with ANZ and payment platform provider Ingenico.
39. Other third party booking apps include:
- CabCue – offers a consolidated account system for taxi payments within the app, allowing persons or businesses to create an account and add any number of people to the list of users, and
 - SmartHail – operates in over 60 regional centers around Australia, as well as major metropolitan centers.

Uber

40. Uber operates in 54 countries around the world and in most Australian capital cities. It was launched in Australia in 2012 and now operates three services under its app.³³
- uberBlack – which connects customers with drivers offering rides using commercial, registered luxury/private hire vehicles
 - uberTaxi – which connects consumers with drivers offering rides using licensed taxi cabs. This service, which operates similarly to other third party booking apps, is currently only offered in Sydney, and
 - uberX – which connects consumers with drivers offering rides using their private vehicles (launched in January 2014). The legality of uberX services is currently unresolved in some Australian states and territories. The ACT, NSW and Western Australian Governments legalised ridesharing services such as uberX at the end of 2015.
41. Passengers using the Uber app are required to register their credit card details in the app. For Uber trips, payment is automatically deducted at the conclusion of the trip, with no in-car payment or cash transfer to an Uber driver. As uberBlack and uberX drivers use their own vehicles there are no meters or payment processing facilities available. Rather, the fare is calculated by reference to a GPS record of the trip undertaken.
42. Fares for the most popular Uber service, uberX, where the driver offers rides in their private vehicle, are generally lower than standard taxi fares. However, Uber also employs a surge pricing system, where its prices rise in periods of high demand. When booking requests from passengers are outstripping available drivers, the Uber app will indicate that surge pricing is in operation. For example, the app will indicate that 1.7 times or 2.5 times the standard rate will apply to all journeys. This information is disclosed before the customer makes a booking. Uber's rationale for surge pricing is that it is designed to incentivise more drivers to make themselves available in periods of peak demand/short supply.

³² Ingogo website: <http://www.ingogo.mobi/faqs/>, viewed on 23 September 2015.

³³ Uber submission, 10 July 2015, p. 4.

43. There are no designated surge pricing periods. Rather, surge pricing periods are determined in real-time based on supply (available drivers) and demand (requested jobs).

Backseat

44. Backseat operates in a similar manner to uberX; it connects passengers with private car drivers. Backseat currently only operates in Sydney.

GoCar

45. goCatch recently announced the launch of a new ridesharing service, called GoCar. It will initially launch in Sydney, following the NSW Government's decision in December 2015 to legalise ridesharing services. It is reported that GoCar will not use surge pricing, but it will offer different prices during peak periods and off-peak periods. In particular, GoCar reports that it will price match uberX during off-peak times. For example, GoCar states that a typical 20 minute cab ride would cost \$32.25 with uberX and GoCar during off-peak times, but would be locked in at \$47.09 with GoCar during peak periods (namely, morning and after work peak hours, as well as Friday and Saturday nights).³⁴

The operation of the proposed ihail app

46. As previously noted, ihail has proposed significant modifications to the operation of the app since the ACCC released its draft determination. This section of the Determination focuses on how the ihail app is now proposed to operate. A comparison of how the ihail app was originally proposed to operate and how it is now proposed to operate is provided at paragraph 101.
47. Taxi networks and drivers do not have to be ihail shareholders to use the app. Any taxi network will be able to join ihail, subject to entering into a Licence and Services Agreement with ihail. ihail advises that the Licence and Services Agreement will be identical regardless of whether or not the taxi network is an ihail shareholder.³⁵
48. In turn, individual drivers affiliated with networks that sign up to ihail, will need to opt-in to receive the ihail booking services via existing taxi dispatch systems within the taxi. In this respect, ihail submits that the app will increase in attractiveness to both consumers and drivers the more taxi networks that use it.³⁶
49. The proposed arrangements do not include any restriction on taxi drivers or taxi networks from using any other taxi booking apps.
50. Before a passenger can book a taxi using the ihail app they are required to download the ihail app and register using the app, including by providing their name, email address, phone number and credit card details.³⁷

³⁴ Patrick Durkin, Shaun Drummond, The Australian Financial Review, *GoCar to take on taxis and Uber*, 23 February 2016, p. 3.

³⁵ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 5.

³⁶ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 15.

³⁷ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 4.

The driver opt-in process

51. Once a taxi network enters into a Licence and Services Agreement, the network's drivers will need to individually 'opt-in' to receive ihail bookings.³⁸
52. ihail advises that the 'opt-in' process will be managed by each participating taxi network. This process will involve:³⁹
 - ihail sending drivers that are part of the 'signed up' taxi networks an information pack which explains the ihail service. This will outline that a driver must 'opt-in' through their taxi network if they wish to receive ihail bookings dispatched through their network's existing dispatch system and
 - if a driver indicates to its taxi network that they wish to 'opt-in', the network provides the driver's details to ihail, and ihail adds the driver to the ihail fleet for that network. Once the driver has completed the once off opt-in process they are eligible to receive ihail bookings.
53. In this regard, ihail submits that it would expect that all taxi networks that sign up to the ihail app, 'would encourage drivers to opt-in to the extent that it provides a quality booking service.'⁴⁰
54. ihail is responsible for the administration of the entire ihail fleet. This includes the addition and removal of drivers and enforcement of disciplinary procedures.⁴¹ While ihail jobs will be dispatched through existing network dispatch systems, an ihail job will be distinguishable from other jobs.⁴²
55. There is no obligation under the Licence and Services Agreement for taxi networks to exclusively use ihail to obtain taxi bookings. It does not impose a requirement on taxi networks to perform a minimum number of jobs. Similarly, taxi drivers that opt-in to receive ihail bookings will not be required to exclusively use ihail.⁴³
56. Only drivers belonging to a network that has entered into a Licence and Service Agreement with ihail, and who have opted-in, will be able to receive ihail bookings.

Taxi booking and payment selection

57. To request a booking, the passenger is first directed to the Request Screen. The passenger then follows these steps:
 - enter the pick-up and destination location and
 - select relevant booking details – such as type of taxi required and time of pick up.⁴⁴
58. ihail advises that passengers may also choose to enter default settings for the above mentioned choices.⁴⁵

³⁸ Ibid, p. 4.

³⁹ Ibid.

⁴⁰ ihail supplementary submission, 4 February 2016, p. 17.

⁴¹ ihail supplementary submission, 4 February 2016, p. 16.

⁴² ihail supplementary submission, 4 February 2016, p. 17.

⁴³ ihail supplementary submission, 4 February 2016, p. 6.

⁴⁴ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 5.

59. ihail advises that passengers requiring a wheelchair accessible taxi will be able to request this kind of vehicle at any time over the ihail app.⁴⁶ Further information regarding ihail's dispatch rules for wheelchair accessible taxis is provided from paragraph 71.
60. After a passenger taps the *Request* button, they will then go to the *Book Now* screen. On this screen, the passenger can select the following options:⁴⁷
- **taxi network selection** – a passenger may choose to select a taxi from their preferred network or choose to book the 'closest' taxi (regardless of network). If a passenger wants to select a taxi from a particular network, they will go to a network selection screen. This screen contains the following information for each taxi network:
 - the name of each taxi network
 - the average customer rating of each taxi network, which is calculated on the basis of customer feedback and
 - the weighted average waiting time for each taxi network, which is calculated on the basis of the number of vacant cars that the taxi network has located near the passenger's location (the GPS parameters for determining proximity to a passenger's location are outlined at paragraph 67).
- A passenger will only be able to select a taxi network if that network has at least one car located near the passenger's location.
- **payment method** – a passenger can then select how they would like to pay for the fare. The two possible payment options are 'in-app' payment or 'in-car' payment. In-app payment details can be entered in the settings area of the app. If the passenger chooses in-car payment, then the passenger can pay the fare using any of the payment options that the driver has available in the car (for example, cash or EFTPOS facility).
 - **notes for driver** – a passenger may also choose to add a note for the driver. This may include details such as requesting a horn upon arrival or assistance at the door.
61. Rather than make a selection in relation to taxi network and/or payment selection, ihail advises that a passenger can use pre-filled options (that is, they can just press the *Book Now* button). For payment, ihail advises that passengers will be able to select their preferred default payment method during the initial registration process – namely, they will be prompted to select in-app or in-car. This selection will then become the pre-filled (or default) option that will appear in bold font on the payment method selection screen. Passengers will still retain the ability to select an alternative payment method each time they use the ihail app. The passenger's

⁴⁵ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 5.

⁴⁶ ihail response to ACCC information request, 24 February 2016, p. 2.

⁴⁷ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, pp

default setting will remain unless the passenger subsequently changes their preferred payment method.⁴⁸

62. ihail advises that in-app payments and certain in-car payments will incur a credit card surcharge. The relevant charges, including surcharges, will be disclosed in the Terms and Conditions of use which users view when they first register for the app. In particular, the Terms and Conditions will state:

Credit Card Processing Fee – in accordance with the applicable legal requirements (including notice requirements), up to 5% incl. of GST of the Vehicle Fare and Queue Jump Fee in Victoria, WA and NSW. In South Australia, ACT, Northern Territory, Tasmania, Queensland and overseas locations the Credit Card Processing Fee is up to 10% plus GST.⁴⁹

63. In addition, ihail advises that at the payment selection screen, it 'intends to disclose that payment using a credit card will incur a relevant service fee (and the customer will have the option of clicking on the words *service fee* to access ihail's Terms of Use).'⁵⁰ The in-car option will also state that the passenger can pay by cash or credit card.
64. A similar disclosure will also appear during the registration process when passengers are selecting their preferred default payment method.⁵¹
65. After the taxi network and payment options have been set, the passenger then taps the *Book Now* button to book the taxi. The passenger will be notified that a taxi is being dispatched.

Taxi dispatch

66. ihail advises that taxi jobs will be dispatched to ihail drivers in different ways, depending on whether the passenger has selected 'closest taxi' or a preferred taxi network. Where a passenger selects a **preferred taxi network**, ihail will dispatch the job in the following way:⁵²
- ihail, via the cloud, places a booking request in the taxi dispatch system of the selected taxi network
 - the booking is then dispatched by the selected taxi network to the closest vacant car in that network's ihail fleet (according to ihail's dispatch rules which are described at paragraph 67)
 - the taxi either accepts or declines the job. If the job is declined, the next closest car is offered the job
 - once a car accepts the work, the taxi network sends ihail, via the cloud, a response confirming that a car has accepted the job and
 - ihail then connects the customer with the allocated car from their chosen network.

⁴⁸ ihail supplementary submission to ACCC, 9 March 2016, pp, 1, 2. 20016, pp 4-5.

⁴⁹ ihail response to ACCC information request, 24 February 2016, p. 3.

⁵⁰ ihail response to ACCC information request, 24 February 2016, p.3.

⁵¹ ihail submission to the ACCC, 9 March 2016, p. 2.

⁵² ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 6.

67. Participating taxi networks dispatch jobs according to ihail's dispatch parameters, which are:⁵³
- for the CBD – vacant taxis within a 200 metre radius, and if no taxi accepts then within a 400 and 600 metre radius
 - for inner suburbs of a city – vacant cars within a 1 then 2 and 4 kilometre radius
 - for outer suburbs of a city – vacant cars within a 2 then 4 and 6 kilometre radius and
 - for rural areas – vacant cars within a 3 then 6 and 9 kilometre radius.
68. Where a passenger selects **closest taxi**, ihail will dispatch the job in the following way.⁵⁴
- ihail, via the cloud, places a booking request in the taxi dispatch system of each taxi network that has at least one available car located near the passenger (the GPS parameters for determining proximity to the passenger are outlined at paragraph 67)
 - The booking is then dispatched by each taxi network to the closest available car in each network's ihail fleet (according to ihail's dispatch parameters described at paragraph 67)
 - The car either accepts or declines the job. If the job is declined, the next closest car is offered the job through the taxi networks' dispatch systems
 - Once a car accepts the work, the network sends ihail, via the cloud, a response saying a car has accepted the job and
 - ihail connects the passenger to the first taxi that accepts the job.
69. After the job has been successfully dispatched, the passenger will be taken to a screen on the app which shows the driver's GPS location and driver details. At this stage, the passenger has the option of calling or messaging the driver, or cancelling the booking.
70. An ihail driver whose network is affiliated with ihail will receive notification of an available ihail job through their existing 'job screens' within the taxi in the same way as they would receive notification of an available job made directly to the network (by phone, online or through the network's own smartphone app). For an ihail booking, it is proposed that the job screen will include the fleet name (that is, ihail), and display the pick-up compass, customer's phone number and distance to pick up.⁵⁵ Participating taxi networks pay ihail \$0.20 for each booking. ihail also receives a portion of any credit card surcharge fee payable on a fare.⁵⁶

⁵³ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p.6.

⁵⁴ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 6.

⁵⁵ ihail submission, 3 September 2015, p. 4.

⁵⁶ ihail submission, 4 August 2015, p. 6.

71. ihail advises that its dispatch rules will not affect the obligations imposed by regulators on wheelchair accessible taxis under licence conditions. That is, dispatch requests for a wheelchair accessible taxi will be given highest priority.⁵⁷
72. In particular, ihail advises that if a passenger requests a wheelchair accessible taxi, ihail will send that job out to wheelchair accessible taxi drivers ahead of any standard jobs. This priority will be given regardless of any other work in the system, including jobs where passengers have offered a priority dispatch payment (that is, an optional function which allows passengers to offer drivers an upfront payment over and above the standard fare when requesting a taxi). Drivers of wheelchair accessible taxis will only have access to one ihail job at a time. Further, ihail advises that it will not enable the 'cover job display for ihail work, which means that wheelchair taxi drivers will not know if there are any other ihail bookings available.'⁵⁸
73. The ihail app will also allow passengers to pre-book taxis.⁵⁹
74. The ihail app has been designed to operate with any existing taxi dispatch system used by taxi companies. In this regard, ihail has developed a generic system that allows third party dispatch systems to push ihail bookings to registered drivers.⁶⁰
75. At the conclusion of a trip, passengers will be asked to provide feedback about the trip, including rating the driver on a 'thumbs up' or 'thumbs down' basis.⁶¹ Drivers who fall below ihail's minimum performance criteria will be removed from the ihail fleet.⁶²

Calculation and payment of taxi fares

76. ihail has no involvement in setting the price that is charged to passengers.⁶³ Fare prices are determined independently by every taxi company that has an agreement with ihail, including whether or not the taxi company or an individual driver wants to provide passengers with a discounted price from state and territory government regulated maximum fares.⁶⁴
77. At the conclusion of an ihail trip, the taxi driver will be required to enter the value of the fare that is charged to the passenger, which may be below the metered fare if the driver has negotiated a lower price with the passenger. ihail only takes the price that has been entered by the driver, and will not take price information directly from the meter.⁶⁵
78. As noted, passengers using the ihail app to book a taxi will be able to pay via credit card or Cabcharge card through ihail's in-app payment processing system or in the car at the conclusion of a trip.

⁵⁷ ihail response to ACCC information request, 24 February 2016, p. 1.

⁵⁸ ihail response to ACCC information request, 24 February 2016, p. 1.

⁵⁹ ihail submission, 11 September 2015, p. 4.

⁶⁰ ihail submission, 3 September 2015, p. 4.

⁶¹ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p.9.

⁶² ihail supplementary submission, 4 February 2016, p.17.

⁶³ In every jurisdiction in Australia that ihail proposes to launch in, there is a government-regulated maximum price that taxi companies can charge consumers.

⁶⁴ ihail submission, 18 June 2015, p. 1.

⁶⁵ Ibid.

79. Passengers will also have an option to use the ihail app to pay for a taxi that was not booked through the ihail app (for example, if the taxi was hailed from the street). This function will only be available in ihail participating taxis.⁶⁶

Fare estimator

80. When requesting a booking on the Request Screen (outlined at paragraph 57) passengers can also obtain a fare estimate for the journey by tapping the *Fare Estimate* button.⁶⁷ Each time a passenger makes this selection, an explanation will 'pop up' outlining how the fare estimate has been calculated. ihail advises that the fare estimate explanation is likely to read as follows:

The amount displayed is an estimate only, calculated on the basis of distance, the time of pick up, route and car type, and includes GST for a booking processed via Credit Card including the relevant Credit Card Service Fee. The amount excludes any discounts that may be applicable for any particular payment type, and applicable extras, tolls, airport charges or the journey time. Actual fares may vary based on the route chosen.⁶⁸

ihail advises that the fare estimate function will always include an allowance for surcharges, regardless of which payment method is ultimately selected. The surcharge can be avoided if the passenger selects to pay in the taxi using cash. The 'Credit Card Service Fee' text will also be a hyperlink to the ihail Terms and Conditions of use, which will set out further detail regarding surcharges.⁶⁹

Priority dispatch payment⁷⁰

81. ihail proposes that passengers using the ihail app will also be able to offer an upfront priority dispatch payment. This will allow passengers to offer a sum of money to drivers in their area to provide an incentive for a priority pick up. For example, when requesting a taxi using the ihail app the passenger will be able to indicate that they are prepared to pay an additional amount over and above the applicable fare, which the passenger determines. Drivers will see this message when the fare is dispatched via their network, meaning that they are more likely, all else being equal, to accept the fare in preference to other fares that may be available at the time. This payment is optional and the passenger will only be able to offer it before a job is accepted.
82. ihail amended its application to no longer seek authorisation for the proposed priority dispatch payment function.⁷¹ It considers that offering such a service does 'not contravene any relevant competition laws.' It wishes to retain the ability to implement a priority dispatch payment function, and in deciding whether or not to implement such a function, it 'will act in accordance with the laws and regulations of each relevant jurisdiction, including competition laws.'⁷²

⁶⁶ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 6.

⁶⁷ ihail response to ACCC information request, 24 February 2016, p.4.

⁶⁸ ihail response to ACCC information request, 24 February 2016, p.4

⁶⁹ Ibid, p. 2.

⁷⁰ Unless otherwise stated, information appearing under this heading was obtained from ihail's submission, 18 June 2015, p. 4.

⁷¹ In its original application for authorisation ihail sought authorisation for to launch the ihail app, inclusive of this feature.

⁷² ihail supplementary submission to the application for authorisation, *Response to ACCC information request*, 4 February 2016.

83. Notwithstanding ihail's advice that it no longer seeks authorisation to offer a priority dispatch payment function to ihail passengers, ihail claims that a priority dispatch payment function would 'improve allocative efficiency, which it claims is a substantial public benefit.'⁷³

Current ihail shareholders

84. ihail is a 'specific venture company' established by Mobile Tracking and Data Pty Ltd (**MTData**) on behalf of the shareholders and future shareholders of ihail Holdings Limited (**ihail Holdings**), a United Kingdom holding company. ihail was established for the purpose of developing and operating the ihail app in Australia for use by local and international taxi companies.⁷⁴
85. ihail advise that once ihail Holdings is fully established, it is intended that 100 per cent of the shares in ihail will be transferred from MTData to ihail Holdings. ihail Holdings will have three subsidiaries, operating in three countries. Specifically:⁷⁵
- ihail – will provide licencing, operational and support services to regional taxi networks in Australia
 - a United States operating company – will provide services for regional taxi networks in the United States and
 - a United Kingdom operating company – will provide services for regional taxi networks in the UK.
86. ihail advises that it is also considering establishing a New Zealand operating company in the near future.⁷⁶
87. ihail Holdings currently has six traditional taxi network shareholders, four of which are based in Australia. The services they provide currently include booked and non-booked taxi services for passengers in:
- the traditional standard taxi
 - maxi taxis
 - multi-passenger taxis and
 - silver service taxis.⁷⁷
88. Cabcharge is also a taxi network service provider in some cities – as set out in more detail below.
89. The Australian-based taxi networks all currently have their own individual smartphone apps. ihail submits that current taxi company shareholders intend to continue to run their own individual taxi booking apps.⁷⁸ In particular:⁷⁹

⁷³ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 8.

⁷⁴ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 3.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid, p. 4.

⁷⁸ Ibid, p. 8.

- *Silver Top Taxi Services Pty Ltd*: 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, live GPS track the approaching taxi and calculate fare estimates. The app allows passengers to book standard taxis, maxi taxis, silver service taxis, wheelchair accessible taxis and station wagons.⁸⁰
- *Black and White Cabs Pty Ltd*: has an app available for Apple and Android devices. The app allows users to book various forms of taxis, live GPS track the taxi that accepts the booking, estimate fares and pay fares through the app.
- *Yellow Cabs (Qld) Pty Ltd*: has an app available for Apple and Android devices and is available for its customers in Brisbane (including Redcliffe, Ipswich and Caboolture), Warwick, Rockhampton and Yeppoon.⁸¹ The app allows users to book various forms of taxis, live GPS track the taxi that accepts the fare and pay fares through the app.
- *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 accepts the fare and to estimate the fare for a particular trip.

90. The other current shareholders are:

- *Texas Taxis Inc and Taxi Services Incorporated Minneapolis* – US based taxi companies, operating in Houston, Austin and San Antonio areas (Texas Taxis) and in the Minneapolis area.
- *MTData* – an Australian-owned company that specialises in providing GPS fleet management solutions and dispatch systems, including to the taxi industry. It is the largest provider of taxi dispatch solutions and taximeters in Australia, and has operations in the United States, Canada, United Kingdom, Ireland, New Zealand and the Middle East.⁸²

GPS location services allow hardware (such as phones, tablets and in-built car systems) to use information from cellular and GPS networks to determine the hardware's approximate location. The hardware provides a latitude and longitude which is relayed by the software to a mapping provider, which provides a current location to be displayed.⁸³

A dispatch service is the hardware and software used to communicate work to taxis in accordance with fleet business rules. The rules are common for all taxis in a network and refer to the ability for taxis to work in ranks,

⁷⁹ Unless otherwise stated, the information was obtained from ihail's supporting submission to the application for authorisation A91501, 26 May 2015 p. 12.

⁸⁰ Silver Top Taxi's website: <http://www.silvertop.com.au/news/35-new-iphone-app> viewed on 22 September 2015.

⁸¹ Yellow Cabs (Qld) Pty Ltd's website: <http://www.yellowcab.com.au/customer-services/smartphone/> viewed on 22 September 2015.

⁸² MTData website, news release, *MTData acquires Sigtec Taxi Camera Business*, 31 August 2015: <http://www.mtdata.com.au/news-events/item/420-mtdata-acquires-sigtec-taxi-camera-business> viewed on 10.3.16.

⁸³ ihail submission, 3 September 2015, pp. 2-3.

areas/zones and accept all job requests provided automatically by the taxi network to which they subscribe.⁸⁴

MTData has been involved in developing the ihail app and the various support services required to operate the app including dispatch services. MT Data does *not* provide GPS location services for the ihail application. These services are provided by the relevant operating system on the user's chosen device (that is, phone, tablet or in-built car system).⁸⁵

- *The New South Wales Taxi Council* – is the operating arm of the NSW Taxi Association and the NSW Country Taxi Operators Association, representing authorised taxi networks in NSW.
- *Cabcharge* – is a participant in the taxi industry. It operates a taxi charge account system which allows customers to pay for taxis without using cash. Cabcharge facilitates non-cash payments in taxis via its electronic terminals (called the 'EFTPOS Fareway System'), for a service fee. As at 30 June 2014, Cabcharge is reported to have approximately 21 500 payment terminals in taxis nationwide⁸⁶, some 95 per cent of taxis nationwide.⁸⁷ Cabcharge holds merchant agreements with a range of taxi companies, and many of the major taxi companies are shareholders in Cabcharge.⁸⁸

Cabcharge has been involved in the development of ihail's in-app payment system and will process payments for bookings made through the ihail app.

Further, Cabcharge is a taxi network service provider in Sydney, Melbourne, Adelaide and Newcastle. Cabcharge's network services include bookings and dispatch, licence leasing, insurance brokerage, provision of taxi vehicle communications equipment, taxi fitouts and repairs, and driver training. As at 30 June 2014, 50 per cent of Cabcharge's revenue came from network services.⁸⁹ Table 2 summarises Cabcharge's network operations.

⁸⁴ Ibid.

⁸⁵ Ibid, p. 3.

⁸⁶ Cabcharge, *Annual Report 2014*, p. 5.

⁸⁷ Stephen Gargano, IBISWorld, *IBISWorld Industry Report 14626 Taxi and Limousine Transport in Australia*, January 2015, p. 24.

⁸⁸ ihail supporting submission to the application A91501, 26 May 2015, p. 5.

⁸⁹ Cabcharge, *Annual Report 2014*, p. 2.

Table 2 Cabcharge's network operations:⁹⁰

City	Network operator name(s)	No. of affiliated taxi as at 30 June 2014
Sydney	Taxis Combined Services, Silver Service, Apple Taxi, 13Lime, ABC Cabs, South Western Cabs	3931
Melbourne⁹¹	13 Cabs, Black Cabs, North Suburban Taxis, Arrow Taxis, Embassy Taxis	2247
Adelaide	Yellow Cabs	299
Newcastle	Newcastle Taxis	173

Submissions received by the ACCC

91. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.
92. The ACCC initially sought submissions from around 50 interested parties potentially affected by ihail's application for authorisation, including taxi companies, taxi industry associations, consumer groups, as well as government departments and regulators.
93. A summary of the public submissions received from ihail and interested parties follows.

Prior to the draft determination

94. ihail submitted that the proposed app will offer consumers a new product and has been designed to respond to shifts in consumer preferences for point-to-point travel – such as, cardless payment, GPS tracking, user review mechanisms and multi-jurisdictional functionality.
95. Further, ihail stated that the purpose of the ihail app will be to 'focus on international connectivity to allow users of the ihail app to obtain taxi services in jurisdictions other than their home jurisdictions.'⁹² It notes that the ihail app has been designed to compete with other booking and dispatch apps, and the proposed arrangements do not restrict individual taxi companies from developing and operating their own taxi booking apps and dispatch systems. ihail submits that its app will provide a means for passengers to have access to a larger fleet of taxis, in a greater range of locations, than any existing app.
96. Public submissions were received from six interested parties, including two current shareholders of ihail Holdings. In particular:
 - *MTData* (shareholder) – supports the arrangements. It submits that the taxi industry is currently experiencing an unparalleled level of competition from

⁹⁰ Cabcharge, *Annual Report 2014*, p. 2.

⁹¹ Cabcharge recently acquired Dandenong Taxis in south east Melbourne.

⁹² ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 13.

technology companies, both domestic and abroad. These entrants are altering the market's expectations and forcing an evolution of the traditional taxi service delivery model. MTDData submits that ihail, being industry owned and operated, offers the best opportunity for taxi companies to compete within this environment.

- *Australian Taxi Industry Association* – supports the arrangements. It submits the ihail app will benefit consumers. The ability for customers to access nearby available taxis, irrespective of fleet or network, will be particularly attractive to consumers, especially for non-regular taxi users who may not hold a preference for one taxi company over another.

Further, the Australian Taxi Industry Association submits that the operation of ihail nationally will benefit business and leisure travellers who may wish to maximise their choice and access to all available taxis in the cities that they visit.

- *NSW Taxi Council* (shareholder) – supports authorisation. It notes that there is no compulsion on taxi networks to use ihail, and there is no requirement on taxi networks that do choose to use ihail to not use other apps. It remains in the best interests of authorised taxi networks to diversify their booking service options to consumers to maximise the revenue potential of their taxi drivers.

Further, the NSW Taxi Council considers the ihail app will promote consumer choice. It will also promote competition, by increasing the number of taxi booking service providers in the market and it will be focused on encouraging taxi service providers to deliver a higher level of service to consumers.

- *Swan Taxis* – opposes authorisation. It considers the potential dominance of ihail will ultimately reduce consumer choice.
- *Uber* – opposes authorisation. Uber considers that the proposed arrangements will adversely impact competition between mobile taxi booking applications, which is a rapidly evolving market. In particular, if taxi companies are permitted to operate their own collective app (as opposed to apps operated by the individual taxi companies) this will reduce the incentives that individual taxi drivers have to participate in the apps provided by third parties. Further, Uber claims that once the ihail app is launched and secures its position in the market, there will be no incentive for individual taxi companies to maintain and incur the costs associated with their individual mobile booking apps.

Uber considers the combination of access to entire taxi networks, as well as 'network effects' that the ihail app would generate, will become a substantial barrier for new entrants. Through its equity position in ihail, Uber is also concerned about Cabcharge being the only taxi payment processing provider.

Uber considers the public benefit generated by the ihail app is minimal, and is already provided to a large extent by other providers.

- *CellTrack Systems Pty Ltd* – provides the SmartMove dispatching system used in approximately 60 regional taxi fleets. It submits that any authorisation should be subject to the ihail app supporting other dispatch systems.

97. The ACCC also received a number of submissions that were excluded from the public register at the request of the parties making these submissions. Broadly, these submissions raised concerns that:
- Cabcharge, being the exclusive supplier of in-app payment processing services to ihail, along with ihail not allowing payment other than through the app (as initially proposed), has the potential to significantly impact competition between payment processing providers.
 - The priority dispatch payment option proposed to be offered by ihail appears to be against the intent of maximum taxi fare regulation in the various states and territories, and may disadvantage financially vulnerable consumers.
98. ihail provided additional submissions in response to concerns raised by interested parties and requests for further information from the ACCC.

Following the draft determination

99. A pre-decision conference was not requested in response to the ACCC's draft determination.
100. The ACCC initially received public submissions from **interested parties** in response to the draft determination from:
- *Cabbiexpress International Limited* – supplies EFTPOS terminals to taxis. It supported the ACCC's draft determination which proposed to deny authorisation to the ihail joint venture arrangements.
 - *CellTrack Systems* – submitted that despite ihail's claim that the app is 'designed to operate with any existing taxi dispatch system...and ihail has developed a generic inter system API that allows third party access',⁹³ its two requests to ihail for information on its API have been ignored. It submits that if the ACCC is moved to change its draft determination, then it should only be done with an undertaking from ihail that it will actively support the integration of other dispatching systems.
 - *Uber* – supported the ACCC's public detriment and benefit conclusions in the draft determination. In particular, it expressed concern that the introduction of the ihail app where a large number of taxi companies are invested in its success will damage nascent competition, which has only recently emerged, and will result in less consumer-focused offerings in the future.
 - *Victorian Taxi Association* – submitted that the establishment of the ihail app, with access to a large fleet of taxis, would provide innumerable benefits to consumers. It considers that taxi networks are two-sided markets which only succeed by satisfying the demands for passengers, as well as their affiliated operators. These competitive pressures remain with or without a consolidated taxi booking app.
101. The ACCC received submissions from **ihail** on 6 November 2015 and 4 February 2016, both of which included proposals to make significant **changes to the operation of the ihail app**. ihail also provided submissions in response to requests for further information from the ACCC. An overview of ihail's proposed

⁹³ Submission from CellTrack Systems Pty Ltd, 23 October 2015.

amendments to its app, including a comparison with how the ihail app was originally intended to operate, follows. The summary of the operation of the ihail app at paragraphs 46 to 83 reflects these changes.

Revised ihail app	Original ihail app considered in the draft determination
<p>In-car payment option – when requesting a booking, consumers will now be able to select to pay via the ihail app or in the taxi, using any payment options the driver has available (that is, with cash or EFTPOS).</p> <p>In-app payment will still be provided by Cabcharge and a surcharge will apply.</p>	<p>Consumers were required to pay for their taxi trip using the in-app function only, which would be provided by Cabcharge and subject to a surcharge.</p>
<p>Taxi network selection – consumers may now select their preferred taxi network as part of the booking process (information about the average customer rating of each available taxi network and the weighted average waiting time for each available taxi network will be provided prior to booking). Alternatively, users may select the closest available taxi, regardless of which taxi network it belongs to.</p>	<p>Consumers could not select a preferred taxi network. When allocating bookings, ihail would send bookings out on the basis of the nearest available participating taxis, regardless of the network to which the taxis belonged.</p>
<p>Drivers must opt-in to use the app – when a taxi network signs up to the app (including shareholder networks), drivers belonging to that network will need to individually ‘opt-in’ to receive ihail bookings through their existing network dispatch systems. The opt-in process will be managed by the participating taxi networks.</p> <p>Ongoing driver participation in the ihail fleet is subject to meeting ihail quality standards and terms and conditions.</p>	<p>Originally, it was proposed that when a taxi network signed up to the ihail app (including ihail’s shareholder members) all drivers affiliated with that network would automatically be signed up to the app and would start receiving ihail bookings through their existing dispatch screens within their cars.</p> <p>If a driver fell below ihail’s performance criteria, they would be removed from the ihail fleet.</p>
<p>No longer offering a ‘direct to driver app’ – ihail has decided to remove the ability for drivers who do not belong to a network affiliated with ihail to sign up to the ihail service via their smartphones.</p>	<p>ihail originally intended to offer an ihail smartphone app direct to drivers who are not affiliated with a taxi network or who were affiliated with a taxi network that had not signed up to the app.</p>
<p>A new in-app payment function for street hails – users will now have the ability to use the ihail app to pay for a taxi that was not booked through the ihail app (for example, if the taxi was hailed from the street). This function will only be available in ihail participating taxis.</p>	<p>This feature was not included in the original version of the ihail app considered in the draft determination.</p>

102. In addition to proposing the above mentioned changes to the ihail app, ihail also disagreed with the ACCC’s conclusion in its draft determination that the ihail app would likely become the dominant taxi booking app across Australia. It submits that the proposed ihail app is unlikely to dominate the supply of booking services in point-to-point travel for the following reasons:⁹⁴

⁹⁴ ihail supplementary submission, 4 February 2016, p 14.

- neither ihail's taxi networks or their drivers are required to exclusively use ihail under its commercial arrangements
- it is rational for taxi networks, taxi drivers and consumers to use multiple taxi booking services (or 'multi-home'), including smartphone apps, where the value offered by 'multi-homing' exceeds the costs of using them
- there is no guarantee that ihail will have a large network of drivers on launch, due to the new requirement for drivers to opt-in. In any event, apps require both the supply and consumer side to interact effectively and there are challenges to success on the consumer side which are unrelated to the size of the driver network (for example, attracting consumers to download the ihail app and continue to use it via good app design and usability, as well as offering features that consumers want), as well as drivers being offered a range of incentives from competing apps and
- on launch, ihail will face competitive pressure from newer and expanding booking services, such as ridesharing (uberX) and other taxi booking apps (goCatch and ingogo), as well as traditional methods of obtaining taxis, such as phone booking and hailing from the taxi rank or street.

103. Therefore, together with the proposed modifications to the ihail app, ihail submits that the likely public detriment from the proposed app is reduced, and is likely to be outweighed by the public benefits generated by the app.

104. The ACCC conducted **additional public consultation processes** after receiving ihail's proposed amendments to the app design. Generally, interested parties that were opposed to the ACCC granting authorisation prior to the draft determination maintained their opposition to authorisation. Many interested parties submitted that despite ihail's proposed amendments to the app, it has not addressed the fundamental public detriment concern arising from ihail's ownership structure.

105. Public submissions opposing authorisation were received from the following interested parties:

- *goCatch* – despite the proposed changes, goCatch expressed concerns about the competitive impact of the ihail app, stemming from ihail's underlying ownership structure. It submits that ihail's current shareholder taxi networks (including Cabcharge) account for around 77 per cent of taxis nationally, 82 per cent of taxis in Sydney, 85 per cent in Melbourne and 70 per cent in Brisbane and Adelaide. The app will remove competition between existing major players in the Australian taxi industry and would incentivise otherwise competing taxi networks to promote the ihail platform at the expense of existing taxi booking providers. It contends that the shareholder structure of ihail is designed to ensure buy in from each of the major taxi networks operating across Australia. This would raise barriers to entry for third party competitors and lead to poorer outcomes for consumers in the long run.
- *Cabbiexpress International* – the proposed amendments are 'window dressing' and not enough detail is provided to allow meaningful assessment. It believes the collection of credit card details could be used to manipulate payment choice to both passengers and drivers by way of 'smart' app design. It considers that in reality, passengers will simply elect to leave everything to be processed via the app. Further, it submits that requiring network affiliated drivers to opt-in to use the proposed ihail app will not reduce the potential

detriment of the arrangements. It believes drivers are likely to perceive that they have no choice but to opt-in to receive ihail bookings.

- *Uber* – the amendments proposed by ihail do not address the fundamental public detriments raised in the ACCC’s draft decision. In particular, they do not change the corporate structure of ihail, meaning that from its launch, ihail will still have access to the largest driver network of any point-to-point transport app operating in Australia. ihail would not have to incur the same costs as competing apps to establish or maintain its network of ihail drivers. Uber considers that under the arrangements, the existing shareholder taxi networks would be able to stifle emerging competition.

Uber advises that there are baseline costs involved in developing and maintaining taxi booking apps to ensure they are continually adapted to meet passenger demand. Uber considers ihail’s shareholder networks will have little incentive to continue to incur these costs once ihail’s networks draw sufficient passengers. Eventually, ihail’s shareholder networks are unlikely to continue to maintain their own apps and therefore, they will cease to be a means by which taxi networks compete.

Uber considers the new opt-in process will have the same ultimate effect as the original proposal, where drivers affiliated with participating taxi networks were automatically signed up to receive ihail bookings. It considers that consumers of point-to-point transport services will follow ihail’s larger network because they value highly the ability to quickly secure a ride. Over time, Uber considers there will be fewer alternative taxi booking apps available, as consumers and drivers will cluster around ihail, making ‘multi-homing’ less likely.

In addition, Uber considers that introducing the ability for consumers to select their preferred taxi network is unlikely to have a material positive effect on the competitive behaviour of taxi’s affiliated with ihail. This is because taxi proximity is frequently the sole reason why a user selects a taxi, and this is correlated with the size of a taxi network.

Further, Uber is of the view that allowing in-car payment, as well as via the ihail app, still entrenches Cabcharge as a payment processing service.

106. A submission in support of authorisation was received from the *NSW Taxi Council* (being a current shareholder in ihail Holdings). It considers that the proposed amendments will enhance the public benefit generated by the ihail app and address the competition concerns highlighted in the ACCC’s draft determination. It also considers that the ACCC needs to give greater consideration to the rapidly changing nature of competition in the personal passenger transport service sector.
107. The *Queensland Department of Transport and Main Roads (TransLink Division)* advised that legislation requires all taxi meters in Queensland to be programmed in accordance with approved specifications – namely, the meter is limited in its manual functions and must incorporate all legitimate costs incurred in accordance with the government’s maximum taxi fares. Consequently, a business model of a taxi meter which has the facility to accommodate a tipping function falls outside the allowable charges in Queensland’s maximum taxi fares, and accordingly would not comply with State passenger transport laws. In addition, Queensland legislation requires taxi drivers to accept all methods of payment in their taxis.

108. *Transport for NSW* provided a submission which noted the recent legislative reforms to the NSW taxi industry. These reforms include removing restrictions in the supply of vehicles that are able to be used for booked services, and significantly lowering the barrier to entry for providers of those services. It has already seen an increase in the number of vehicles providing these services, which is expected to continue. It noted that existing market participants will need to respond to increased competition.
109. The views of ihail and interested parties are considered as part of the ACCC's assessment of the application for authorisation and reproduced where relevant in the 'ACCC assessment' section below. Copies of public submissions may be obtained from the ACCC's website [ihail public register](#).

ACCC assessment

110. The ACCC's assessment of the application for authorisation is in accordance with the relevant net public benefit tests contained in the Act.⁹⁵ Generally, the ACCC shall not grant authorisation unless it is satisfied that the likely benefit to the public would outweigh the detriment to the public, including from any lessening of competition.
111. As noted, ihail has made significant changes to the ihail app in response to the ACCC's draft determination proposing to deny authorisation. In attempting to address the ACCC's concerns ihail has also presented a substantial amount of new information in support of their argument that ihail will not become the dominant taxi smartphone booking app and thereby reduce competition between taxi networks and/or from third party booking apps. The ACCC has assessed the proposed joint venture to operate the ihail app based on these proposed changes and having regard to the further information ihail and interested parties have provided.
112. In order to assess the public benefits and detriments likely to result from the application, the ACCC identifies the relevant areas of competition and the likely future should authorisation not be granted.

The relevant areas of competition

113. The ACCC considers that precise identification of the relevant markets is not required for the purpose of assessing ihail's application for authorisation. The ACCC can consider the areas of competition in a broad sense when assessing any public benefits and public detriments that would likely result from the proposed arrangements.
114. Prior to the draft determination, ihail submitted that the relevant areas of competition affected by the proposed arrangements are:⁹⁶
- the supply of taxi booking services – this includes all other taxi and ridesharing booking apps, as well as traditional methods for hiring a taxi (for example, hailing from a taxi rank or making a telephone booking)

⁹⁵ Subsections 90(5A), 90(5B), 90(6) and 90(7). The relevant tests are set out in Attachment A.

⁹⁶ ihail submission, 4 August 2015, pp. 2,8.

- the provision of in-car taxi payment processing systems – ihail acknowledges that Cabcharge ‘has been a leading payment processing provider for in-taxi payment systems’ and
- the provision of electronic in-app payment processing systems – ihail submits this is a broad market and includes any business that has designed software for processing payments through smartphone apps (for example, PayPal, Braintree (a subsidiary of PayPal), CommBank (used in the Black and White Cabs app), Secure Pay and Visa). It also submits that Cabcharge does not currently provide any services that facilitate payments through smartphone apps, and as such, its involvement in the ihail app will be its entry into this market.

Further, ihail submits that the systems for in-app payment uses fundamentally different technology to card-present systems. ihail contends that in-app payments for most retail and service environments use the same fundamental platforms, equipment and methodology for transaction processing. Therefore, it considers there is no difference between processing an in-app payment for groceries, pizzas, clothing or taxis.

115. Following the draft determination, ihail highlighted that the supply of point-to-point transport services, which includes taxis, hire cars and ridesharing has changed significantly in recent times. Notably, technology has seen the rapid growth of ridesharing services such as Uber, which it submits provide attractive alternatives to consumers who have traditionally relied on taxis and hire cars.

116. Further, it submits that the growth of ridesharing ‘is set to continue, especially given recent developments regarding greater certainty around the legality of such services and a renewed focus on reform in the taxi industry.’⁹⁷

117. The ACCC considers the following areas of competition are relevant to its assessment of the ihail app:

- competition between taxi networks
- competition between taxi operators
- competition between ihail and third party apps and
- competition between taxi payment processing providers.

118. In its draft determination, the ACCC noted that alternative transport options such as Uber and other ridesharing services may also place some competitive constraint on taxis. The ACCC was of the view that the extent of the competitive constraint imposed by ridesharing services will depend on the level of penetration achieved by them. However, the ACCC also noted the legality of these services in many jurisdictions was largely unresolved at that time, and until there was greater regulatory certainty around the operation of ridesharing services, the extent of the competitive constraint they could impose was also uncertain.

⁹⁷ ihail supplementary submission, 4 February 2016, p. 2.

119. Since the draft determination, New South Wales and Western Australia have followed the ACT Government and legalised ridesharing. Tasmania has also introduced the Taxi and Hire Vehicle Industries and Amendment Bill 2016 which will provide for the legalisation of ridesharing businesses, and there are ongoing reviews in Queensland, Victoria and South Australia. Given these developments, the ACCC expects the growth of ridesharing services is likely to continue both among existing providers and new entrants. For example, goCatch recently announced the launch of its ridesharing service, GoCar. Therefore, the ACCC considers that ridesharing services will increasingly be regarded as a substitute for traditional taxi services, and therefore, the competitive constraint that ridesharing services may impose on taxi services is also a relevant consideration in the ACCC's assessment of the proposed arrangements. This is discussed in further detail in the Public Detriment section of this Determination.

120. Regarding the relevant areas of competition, the ACCC notes:

- Taxis have traditionally competed for passengers via telephone bookings or on the spot hailing on the street or at a taxi rank. Currently, the majority of taxi revenue comes from un-booked services (70 per cent), with 30 per cent of taxi rides coming from booked taxi services.⁹⁸ An increasing trend is the use of smartphone taxi booking apps, both as a means of replacing traditional booking methods and as an alternative to hailing a taxi. These apps are operated by the individual ihail taxi networks themselves (and currently represent around 12 per cent of booked taxi services, or 8.5 million rides annually⁹⁹) or by new third party entrants, such as goCatch and ingogo.
- The use of private ridesharing apps in the point-to-point transport sector appears to be growing. For example, in 2015 around 11 per cent of people in Sydney had recently used ridesharing services.¹⁰⁰
- Passengers in taxis currently have the option of paying the driver with cash, by EFTPOS within the taxi (including via debit, credit and charge cards, including Cabcharge), or an in-app payment method.
- Cabcharge supplies EFTPOS payment terminals to around 95 per cent of taxis in Australia.
- Cabcharge also operates taxi networks in Sydney, Melbourne, Adelaide and Newcastle.

121. The ACCC estimates that the taxi networks operated by ihail shareholders comprise more than half of the taxis in Australia and a larger share again in most major metropolitan regions. In particular:

- more than half of the taxis in NSW, with a larger share in Sydney
- more than half of the taxis in Queensland, with a larger share in Brisbane (including Brisbane's two largest taxi networks)

⁹⁸ ihail supporting submission to the application for authorisation A91501, 26 May 2015, p. 13.

⁹⁹ ihail supplementary submission, *Response to ACCC information request*, 4 February 2016, p. 10.

¹⁰⁰ Independent Pricing and Regulatory Tribunal, *Final Report: Sydney taxi fares to apply and new licences to be released from July 2015*, February 2015, p. 14.

- almost three-quarters of taxis in Victoria, and over 85 per cent of taxis in Melbourne (including Melbourne's two largest taxi networks) and
- around half of the taxis in South Australia, with a larger share in Adelaide.

The future with and without

122. The ACCC will compare the public benefits and detriments likely to arise in the future where ihail's proposed arrangements for which authorisation is sought occurs against the future in which the proposed conduct does not occur.

123. The ACCC considers that in the future without the proposed conduct, the ihail joint venture will not jointly launch the proposed app which seeks to aggregate taxi networks across Australia and in some overseas locations via a single smartphone interface. Accordingly, the current circumstances would continue – namely, passengers would continue to book or hail taxis via traditional means, through individual taxi network apps or via third party apps that are not affiliated with any taxi network.

Public benefit

124. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.¹⁰¹

125. ihail submits that while app-booking technology is already being used in the taxi industry 'the ihail technology is a new and innovative product designed specifically for the purposes of ihail and its related entities in other jurisdictions.'¹⁰²

126. Prior to the draft determination, ihail submitted that the app will result in the following public benefits:¹⁰³

- the smartphone app will allow taxi users to access taxi services in a number of cities or regional locations, both within Australia and globally, which no other licensed taxi booking app currently does
- ihail has been designed (in the original application) to present the passenger's request to the closest available taxis in a defined zone. Given the broader network of taxis that will be using ihail compared with other existing apps, this should mean that more taxis are likely to be in the passenger's vicinity, which should reduce dispatch times and
- the app will improve competition within local taxi markets and allow taxi operators to compete with the services currently offered by Uber and other ride-sharing applications.

¹⁰¹ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

¹⁰² ihail submission, 4 August 2015, p.11.

¹⁰³ ihail supporting submission to the application A91501, 26 May 2015, p. 14.

127. In response to the draft determination, ihail submits that the most obvious public benefit of the ihail app is that it has the potential to deliver service improvements of three kinds:¹⁰⁴

- it facilitates lower search costs and increases convenience for travellers who are out of their 'home market' (whether interstate or overseas)
- by allowing feedback on individual networks and drivers, the app facilitates competition and improvements in network and driver quality. In turn, this should increase passenger confidence in the quality of service available from taxis using the ihail app and encourage greater use of taxis and
- by allocating taxis according to proximity and drawing from a larger pool of taxis than through individual networks (assuming passengers do not select a preferred network), there is an increased probability that consumers will benefit from lower waiting times.

128. Further, ihail submits that an additional benefit generated by the app, as modified, is that allowing passengers to compare taxi networks in real-time using a single platform will enhance competition between taxi networks as they strive to outperform their rival, which is a benefit to the public.¹⁰⁵

129. The ACCC's assessment of the likely public benefits from the proposed arrangements follows.

Increased convenience

130. ihail considers the main public benefit generated by the proposed app will be increased convenience for consumers. Specifically, ihail submits that its new app will provide a single booking platform across multiple cities reducing search costs and waiting times.

131. The Australian Taxi Industry Association agrees that many consumers will be attracted by the convenience of a single national taxi booking platform under the ihail app. In particular, it considers that:

...many consumers may find such a feature particularly attractive, especially business and leisure travellers (international, interstate and intrastate) who may wish to maximise their choice and access to all of the available taxis in the cities that they visit.¹⁰⁶

132. Similarly, the Victorian Taxi Association submits that 'innumerable benefits to consumers would flow from the establishment of an app with access to a large fleet of taxis across Australian cities and internationally.'¹⁰⁷

133. Conversely, Uber considers that in its experience, the vast majority of consumers that book journeys using point to point booking apps are not business or travelling consumers. Rather, the majority of these consumers book journeys in their location of residence. In any event, Uber considers the public benefits claimed by ihail are already provided by current players in the market.¹⁰⁸

¹⁰⁴ ihail supplementary submission to the ACCC, 4 February 2016, p. 13.

¹⁰⁵ ihail supplementary submission to the ACCC, 4 February 2016, p. 14.

¹⁰⁶ Australian Taxi Industry Association submission, 3 July 2015, p. 1.

¹⁰⁷ Victorian Taxi Association submission, 5 November 2015, p. 2.

¹⁰⁸ Uber submission, 10 July 2015, p. 11.

134. The ACCC considers that the introduction of the ihail app does not represent a new type of product for the taxi industry. Existing booking apps, including third party apps such as goCatch and ingogo, already provide access to large networks of taxis in individual locations, as well as access to taxis across a variety of locations. They also allow customers to rate individual drivers.
135. The ACCC considers that ihail represents an additional booking platform available for consumers, in competition with existing individual taxi network apps and third party apps. The key differences between ihail and existing booking apps is that ihail is likely to have, from shortly after its launch, a larger network of taxis available in most locations than existing apps, and is also likely to be able to be used in more locations than any single existing taxi booking app. ihail's ability to have a very large network from its launch arises from its ownership structure, with ihail shareholders' networks representing more than half the number of taxis in Australia and a significantly higher number again in most major metropolitan cities.
136. The ACCC considers that the ihail app is likely to result in a benefit to the public to the extent that the aggregation of taxi networks signing up to use the app provides consumers with access to a potentially broader pool of taxis in a location via a single booking platform. Given the participation of many of Australia's largest taxi networks, ihail is likely to have a greater pool of taxis to draw on in most locations to meet booking requests than apps operated by individual networks or third party apps (which rely on individual drivers signing up to them). This is likely to reduce wait times for taxi passengers, particularly in busier periods.
137. Having said this, the ACCC notes that in most large cities many taxi networks also have a large pool of taxis to draw on, as do the popular third party booking apps.
138. In this regard, in the Frontier Economics Report prepared on behalf of ihail following the draft determination, it is argued that that once a taxi network has a critical mass of taxis there is diminishing returns in adding additional taxis. That is, adding additional taxis will continue to reduce waiting times, but at a decreasing rate. The Frontier Economics Report claims that goCatch and Uber's networks appear more than sufficient to effectively compete with the ihail app.¹⁰⁹
139. The ACCC considers that the size of many other taxi networks are sufficient, such that outside periods of peak demand their waiting times are unlikely to materially differ from ihail's. Accordingly, the benefit in reduced waiting times that ihail considers will result from its larger network of taxis is primarily confined to periods of peak demand.
140. The ACCC also considers that the ihail app is likely to provide passengers with access to taxis across a greater range of locations through a single app than existing apps operated by individual taxi networks or third parties. This would be particularly beneficial to domestic travellers who will be able to access taxis in most major Australian cities through a single booking platform.
141. The ACCC notes that some existing third party taxi booking apps currently provide consumers with access to taxi drivers across multiple locations, in particular major cities on Australia's east coast. Like ihail, these apps have the potential to further expand the locations in which they operate in the future. However, the geographic scope of coverage of these third party apps is currently narrower than the

¹⁰⁹ ihail supplementary submission to the ACCC, 4 February 2016, *Frontier Economics ihail authorisation application, a report prepared for ihail and HSF*, February 2016, pp, 20, 21.

coverage ihail submits it will achieve. In relation to ridesharing, Uber already has a global presence, and would be likely to maintain a larger geographic scope than the ihail app.

142. If the ihail app is successfully rolled out overseas, it could also potentially benefit Australian consumers when travelling to these locations. However, to date ihail has not provided evidence of extensive proposed take up of the ihail app by taxi networks and operators outside of Australia.
143. The ACCC considers that the ihail app is likely to result in a public benefit by providing a single taxi booking app that can be used across multiple cities, including potentially internationally. Having said this, the ACCC recognises that a number of existing taxi booking apps already provide this service, albeit currently on a more limited scale than proposed by ihail.
144. Therefore the ACCC considers that the ihail app is likely to result in benefits to the public by increasing the availability of taxis to ihail passengers which in turn, is likely to reduce waiting times for taxis, particularly in peak periods. The ACCC also considers that being able to use the ihail app across multiple locations, including potentially some overseas locations, is convenient for ihail passengers, which is also a public benefit.

Increased competition

145. Due to passengers being able to use the ihail app in multiple locations and using a single set of log in and payment details, ihail considers the proposed arrangements will allow traditional taxi operators to compete more effectively with the services currently offered by Uber and other ride-sharing apps. For example, ihail submits that it is currently 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 consumer wishes to hail a licensed taxi using his or her smartphone, they will need to find and download the relevant app for the local taxi company, create an account through the smartphone app and register their payment details. Further, this may not provide them the closest available taxi, as it will only show available cabs affiliated with that particular taxi network.¹¹⁰
146. Further, ihail considers the proposed joint venture provides another way 'for taxi companies to engage in a developing technological environment, and to compete in what is a very competitive market.'¹¹¹
147. The NSW Taxi Council notes that the ihail app will add to the suite of booking applications available to consumers. It considers that it 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...and it is not uncommon for taxi drivers to be using multiple systems...¹¹²
148. Further, the NSW Taxi Council considers that:

¹¹⁰ ihail supporting submission to the application for authorisation, 26 May 2015, p. 14.

¹¹¹ Ibid.

¹¹² NSW Taxi Council submission, p. 6.

Authorised Taxi Networks will look to diversify their offerings to accredited taxi-cab operators....Maximising the number of booking services which will promote the use of the network...thereby enhancing revenue opportunities for the driver...will be a factor upon which accredited taxi-cab operators will consider when choosing which authorised taxi networks to affiliate with.¹¹³

149. The ACCC considers that the ihail app is likely to increase competition between existing smartphone booking apps at least in the short term. It will allow taxi networks to compete more effectively in providing booking services with third party booking platforms that might offer greater coverage in terms of geographic scope and the pool of taxis available, as compared to individual taxi network booking apps. Similarly, it will allow taxi networks to more effectively compete to provide booking services with ridesharing businesses, such as uberX, which also offers greater geographic coverage than individual taxi network booking apps.
150. The ACCC also notes that various existing taxi booking apps are currently offering consumers incentives to use their apps, such as sign up bonuses and credits towards future trips for referring friends. In this regard, ihail may further stimulate competition in the form of promotional activities to attract passengers.
151. As discussed in more detail in the ACCC's consideration of the likely public detriments which follows, access to drivers (that is, wait times) is a key consideration in the choice of apps for passengers. However, other factors such as app usability, incentives offered and features of the app are also important influences on passenger demand.
152. In this regard, two examples of features ihail proposes to introduce which are not currently available through other apps and which are likely to be valued by consumers and promote competition between taxi booking apps are:
 - taxi network selection – passengers will be able to choose their preferred taxi network as part of the booking process and will be provided with information about each network's weighted average waiting times and average customer ratings for each available network prior to doing so
 - in-app payment for street hails – passengers will be able to use the ihail app to pay for taxis that were not booked through the app (for example, if the taxi was hailed from the street) if the taxi hailed is part of the ihail network.

ACCC conclusion on public benefits

153. The ACCC considers that the ihail app is likely to result in some public benefits by providing a new, convenient single platform for consumers to book taxis from a pool of taxi networks and drivers that is likely to be broader than that provided by any existing taxi booking app. This larger pool of taxis is also likely to reduce waiting times for passengers in periods of peak demand.
154. The ihail app also provides a single app that can be used in more cities than third party taxi booking apps currently available, including potentially internationally.
155. On launch, the ihail app is likely to prompt a competitive response from other booking apps. In particular, the ACCC expects third party apps to react to the entry of ihail through improving functions, services and the promotional initiatives they offer to passengers and drivers..

¹¹³ NSW Taxi Council submission, p. 7.

156. However, the ihail app does not represent a new type of product for the taxi industry. There are a wide range of taxi booking apps already providing access to large networks of taxis and access across a variety of locations. Accordingly, the public benefits likely to result from the introduction of the ihail app are largely incremental.

Public detriment

157. Public detriment is not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹¹⁴

158. As noted, the networks operated by ihail shareholders comprise more than half of the taxis in Australia and a larger share again in most major metropolitan regions. Further, the arrangements for which authorisation is sought allow the entire fleets of taxi operators and networks in any area who are not ihail shareholders to also join the app. The ACCC has assessed the likely impact of the arrangements in the areas of competition noted above.

Potential for ihail's ownership structure to lessen competition between booking apps

159. In the draft determination, the ACCC noted that being a joint venture between a number of large taxi networks, and allowing others to join, ihail will have a larger network than any competing taxi booking app in most areas of Australia. The ACCC expressed concern that ihail would have a larger network of taxis than any competing app by virtue of its ownership structure, rather than offering a superior service.

160. If ihail was to become the dominant booking app on the basis of this advantage, other booking apps may be 'crowded out' and this could entrench ihail's position. Specifically, while taxi companies have incentives to continue to operate their own apps, due to network effects, the ACCC expressed concern that ihail may become the main means of booking taxi fares (through smartphone apps). This would impact the viability of taxi companies' own apps which may reduce competition.

161. The ACCC was also concerned that if ihail became the dominant booking app, this would reduce the competitive constraint provided by third party booking apps, such as goCatch and ingogo. In particular, it could reduce the viability of existing third party apps and increase barriers to entry for new third party providers.

162. In the draft determination the ACCC noted that if ihail achieved this position due to a superior service offering, this would reflect a competitive market outcome. However, the ACCC was concerned that under the proposed conduct, ihail may achieve a position of dominance by virtue of its ownership structure alone.

163. The ACCC also noted that the extent of any reduction in competition and the associated public detriment would be dependent to some extent on how the taxi and ridesharing industries evolve over the coming years – particularly the extent of any further deregulation of the taxi industry in the various jurisdictions and

¹¹⁴ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

whether, and the manner in which, ridesharing services continue to operate in the future.

164. In response to the draft determination, ihail argues that it will face strong competition from other taxi booking and ridesharing apps. Further, ihail argues that it is unlikely to achieve a position of dominance because:
- the arrangements are non-exclusive – networks and drivers are free to continue using other apps
 - it will not necessarily achieve a significantly higher level of drivers than competing apps and even if it does, this does not necessarily mean taxi users will be attracted to the ihail app
 - drivers and passengers will multi-home (use more than one app)
 - ihail faces strong and increasing competition from other apps.
165. The ACCC's views on each of the reasons put forward by ihail in support of its argument that it is unlikely to achieve a position of dominance are discussed below.

Exclusivity

166. Taxi networks will, all else being the same, always have a preference for booking platforms in which they have an interest, whether it is their own app or ihail, over third party apps. The ACCC considers that this preference is unlikely to be problematic unless taxi networks mandate the use of their app and prevent their operators or drivers using other booking apps. In this case, ihail does not propose to place any restriction on the use of third party apps by drivers.
167. Some interested parties have raised concerns that taxi networks and/or ihail will seek to discourage their drivers from using third party apps. In this respect, the ACCC notes that the businesses that have a direct relationship and contact with drivers, the taxi networks, will have an incentive to encourage use of their own apps over third party apps whether or not the ihail app proceeds. Notwithstanding this, the ACCC would be concerned if in promoting the ihail app to drivers, taxi networks or ihail disadvantaged drivers that use third party apps (as opposed to encouraging them to opt in to accept bookings made through the ihail app) in preference to, or in addition to, the ihail app. This risks reducing the ability of third party apps to compete on their merits with ihail.
168. Accordingly, as discussed at paragraph 276, the ACCC has imposed a condition of authorisation requiring ihail or the relevant shareholder taxi networks to obtain an express confirmation from drivers who elect to opt-in to participate in ihail acknowledging that the driver has been informed that they remain free to use any other booking services, including any other booking app. The ACCC has also imposed a condition requiring ihail and its shareholder taxi networks not to do anything to prevent drivers from using other booking services (including any other booking app) or do anything to disadvantage drivers who choose to use other booking services (including any other booking app) in preference to, or in addition to, the ihail app.

Scope of ihail's network

169. ihail argues that if all its shareholders' drivers opt-in, it will have approximately 42 000 drivers. ihail contrasts this with goCatch, which has 35 000 registered drivers. However, the ACCC notes that the number of drivers signed up to third party apps is not necessarily indicative of the number of active drivers they have. That is, not all drivers signed up to third party apps regularly use them. For example, public available information about ingogo suggests that it has around 5000 active drivers.
170. In contrast, because ihail fares will be dispatched through the driver's existing in-car dispatch system, all drivers who opt-in to ihail will be available at all times during their shifts to accept fares, except when they already have a fare or are on a break.
171. The ACCC estimates that the taxi networks operated by ihail shareholders comprise more than half of the taxis in Australia and a larger share again in most major metropolitan regions. Other taxi networks will also be able to join ihail without becoming a shareholder in ihail. Therefore, as noted, the proposed arrangements will allow all taxi networks in any area to come together on a single app (if they all decide to participate).
172. The ACCC does not consider that the change to the arrangements to require drivers to opt-in to be eligible to accept bookings made through the ihail app, rather than be automatically signed up if their network joins ihail, will materially impact the eventual size of the ihail network, although it may slow its growth.
173. ihail fares will be dispatched through the drivers' existing in-car dispatch systems in the same manner as any other fare booked through their network (for example, a phone booking) is dispatched. Unless a driver does not like ihail's terms and conditions of use, there does not appear to be any reason why a driver would not opt-in to receive ihail fares. The opt-in process will be managed by the driver's taxi network, which the ACCC considers will actively promote and encourage opting-in. Both opting in, and being available for fares during shifts having opted in, is costless for the driver. Indeed, not opting in would simply mean that the driver is not able to accept the full suite of bookings made by customers with the driver's network. Given that participating in ihail, at sign up and on an ongoing basis, is costless to the driver (both financially and opportunity cost), the ACCC expects that close to all drivers in each participating network will elect to opt in.
174. In contrast, third party apps have to actively compete for each individual driver they sign up. There are also costs involved for the driver (downloading and setting up the app). Once registered, drivers have to log in and accept fares on their smartphone. Therefore third party apps have to actively compete to retain active drivers (that is, to keep them actively using the app once they are signed up) on an ongoing basis. This is why the number of 'active drivers' on third party apps is lower than the number of registered drivers. Accordingly, the ACCC does not consider that the level of take up of third party apps amongst drivers is indicative of how many drivers may sign up to the ihail app.
175. Therefore, the ACCC maintains its view about the likely scope of ihail's network as expressed in the draft determination. Despite the change to the arrangements that requires drivers to individually opt-in to be eligible to accept ihail bookings, ihail will eventually have a significantly larger network of taxis than any competing booking

app by virtue of its ownership structure, rather than from having a better product which is attractive to both drivers and passengers.

176. As such, a key issue in assessing the impact on competition of the arrangements is determining the likelihood that the scope of ihail's network will lead to the market tipping to ihail being the dominant app.
177. Taxi booking apps (and other ridesharing apps) are two-sided markets. Two-sided markets have users on both sides of a platform, with take up and use on one side being influenced by take up and use on the other side. In the case of booking apps, driver demand for the app will be influenced by the number of users signed up to the app and user demand will be influenced by the number of drivers signed up to the app. Therefore, there are positive network effects between the two sides of the market.
178. In two-sided markets, if one market participant is able to get a substantial number of users on its platform, this may be sufficient to lead the market to tip to a dominant platform or monopoly. However, tipping is not guaranteed and is less likely to occur in dynamic industries. Further, an important factor in considering whether a two-sided market is likely to tip is whether market participants on either side of the market single-home or multi-home. That is, whether users simultaneously use more than one platform to access the relevant goods or services. To the extent that users on both sides of the market do multi-home, the likelihood of tipping is lessened.
179. Factors influencing whether drivers and passengers are likely to multi-home are discussed below. This is followed by a discussion of the factors driving demand for a particular app.

Multi-homing

Factors influencing whether drivers multi-home

180. There are a number of factors that will influence taxi drivers' decisions on whether to use multiple booking apps (that is, whether to multi-home). These include:
- whether or not drivers are explicitly or implicitly bound to use one app exclusively
 - the costs involved in signing up to an app
 - the ability of the driver to maintain multiple apps
 - the level of differentiation between apps – that is, whether the driver benefits from signing up to multiple apps since they have different offerings or are likely to provide access to different taxi users.
181. In respect of app exclusivity, as noted, ihail's arrangements do not require exclusive use by drivers and do not prevent drivers from using multiple booking apps. Hence, so long as this does not change, this is unlikely to be a barrier to multi-homing.
182. In relation to sign up costs, these tend to be low and in some cases drivers are offered incentives to sign up to new apps (for example, goCatch and ingogo provide smartphones to drivers upon signing up to their apps). This is not

uncommon in two-sided markets where the success of the platform is dependent on getting users on both sides on board. Given the sign up costs are low, they are unlikely to be a barrier to multi-homing.

183. White label apps (that is, taxi networks' own smart phone booking apps) and ihail run through existing dispatch screens in taxis, while third party apps run through smartphones (for example, goCatch and ingogo). For smartphone apps, the driver must have the app open and must interact with the app in order to receive jobs. Hence, there is a natural limit to how many smartphone based apps a driver may be on at any one time. While this may put an upper limit on the number of apps that a driver may use at any one time, this would not appear to limit a driver to using only one app at once or to being signed up to only one app.
184. The extent to which booking apps offer different benefits to drivers (for example, access to certain passengers, incentives, and usability) will influence how many apps a driver chooses to sign up to. This appears to be something that market participants can influence by differentiating their product. There does not appear to be anything particular to booking apps that would limit the ability of businesses to differentiate their app from others on the market. Hence, it seems unlikely that this would act as a barrier to multi-homing.
185. Given the above, the ACCC considers that it is likely that drivers will choose to sign up to and use multiple booking apps to the extent that these provide something different from other apps, most notably, access to more or different taxi users. Indeed, this already appears to be the case with many drivers using their network's white label app (which they will continue to use if they sign up to ihail) and a third-party app such as goCatch or ingogo.

Factors influencing whether passengers multi-home

186. The same factors would appear to influence whether passengers or taxi users will multi-home.
187. In respect of app exclusivity, there is little if any scope for booking apps to require or enforce exclusivity from passengers. Further, nothing in ihail's arrangements prevent passengers from being members of multiple apps. Hence, this does not appear to limit passengers' ability to multi-home.
188. Similarly, the sign up costs for passengers are low (mostly being the time taken to install and sign up to a new app) and are unlikely to represent a significant barrier to passengers signing up to multiple apps. Further, once signed up, there is no direct cost (or charge) to passengers in maintaining multiple apps.
189. In relation to differentiation between apps, again, this is likely to be influenced by competition in the market. Existing booking apps offer passengers a variety of differentiated functions, services and promotional initiatives. For example, different apps offer different payment options, different information about and ways to rate drivers and a wide variety of promotions. As discussed, the main initial point of difference the ihail app will offer is the scope of its taxi network.
190. For these reasons, there do not appear to be substantial barriers to passengers signing up to and maintaining multiple booking apps. Nevertheless, this does not necessarily mean that passengers will simultaneously use multiple booking apps when seeking to make a specific booking. Doing so does impose costs on the passenger in terms of time and convenience. While there is evidence of many

drivers using at least one third party booking app such as goCatch and ingogo when searching for a fare in addition to receiving bookings through their networks white label app, evidence of passengers simultaneously using more than one booking app is less clear.

191. However, given the low barriers to signing up to and maintaining multiple booking apps the ACCC considers that it is relatively easy for passengers to switch from one app to another (i.e. discontinue using one booking app and use another in its place). Whether or not they do so will likely depend on whether passengers are happy with the first app they sign up to, whether they are incentivised to try another app, and competition from other apps more generally. This is discussed more below.

Competition from other apps

192. Under the proposed changes to the ihail app, passengers will be able to select their preferred network when booking a taxi. However, the ACCC does not consider that this will materially impact taxi networks incentives to maintain their own apps. It will remain the case that participating networks will only receive a proportion of fares booked through ihail, as opposed to all fares booked through their own app. Even when a customer using ihail has a preference for a particular network there remains the risk that when booking a taxi they may choose another network, for example due to relative wait times, or select the default 'nearest taxi regardless of network' option.
193. Further, jobs booked through ihail impose a cost on taxi companies in the form the 20 cent fee payable to ihail and foreclose potential revenue that would be available to the taxi company if the booking was made through their white label app (ihail, rather than the taxi network would receive a share of any applicable credit card surcharge payable on the fare).
194. Having said this, there are costs associated with maintaining white label apps, and individual taxi networks are only likely to maintain them while this cost is lower than the additional revenue generated by them.
195. However, for the reasons outlined above, the ACCC considers taxi networks participating in ihail will continue to have incentives to maintain their own white label apps and encourage passengers to use their white label apps in preference to ihail.
196. Nor will the ihail arrangements impact incentives for operators of third party apps to maintain and develop apps, subject to there being sufficient remaining demand from drivers and passengers for their apps.

Factors influencing driver demand for an app

197. Which booking apps a driver chooses to use is likely to be influenced by a number of factors including:
- access to passengers
 - the cost involved in using the app
 - the usability of the app

- the terms and conditions of use associated with the app (for example, penalties for not picking up a job and failing to achieve a satisfactory user rating)
- incentives for using the app.

198. These factors are primarily likely to be driven by competition between apps and are largely separate to the scope of the authorisation. However, the most important of these factors, access to passengers, will also be driven by the proposed conduct. That is, ihail's ownership arrangements will lead to it having a greater network of drivers which may in turn increase the number of passengers on the app. This is discussed in more detail below.

Factors influencing passenger demand for an app

199. The same five factors that influence driver demand for an app are relevant to passenger demand for an app, except that it is access to drivers that will influence passenger demand for an app.

200. Access to drivers is one of the key concerns the ACCC had with the proposed arrangements in the draft determination. In particular, the ACCC was concerned that (through its ownership structure) ihail would be able to access the largest network of drivers compared with other apps and that this would give ihail an advantage in attracting passengers which could lead to ihail becoming the dominant booking app by virtue of its ownership structure rather than through effective competition for the market.

201. The ACCC considers that access to drivers (that is, wait times and particularly in periods of high demand) is a key consideration in the choice of apps for passengers. If by virtue of its larger network ihail is able to offer significantly better, or quicker, access to taxis than other apps this increases the likelihood of the market tipping to ihail being the dominant app notwithstanding the other factors likely to influence passenger demand for apps.

202. As noted, Frontier Economics argues that marginal network effects in the taxi industry diminish in importance as networks grow. Once a critical mass is reached adding additional taxis will continue to reduce wait times, but at a decreasing rate. At some point the gains from differentiation between networks becomes more important than the gains from network effects.

203. Accordingly, a relevant consideration is whether competing booking apps have or are able to achieve a critical mass of taxis sufficient to reduce waiting times to a point where the difference between their waiting times and ihail's waiting times does not confer a significant competitive advantage to ihail.

204. The ACCC notes that the entire fleet of each individual taxi network is available for dispatch for fares booked on their white label apps. Accordingly, many of these networks already have a critical mass of taxis in their home jurisdiction available to passengers using their white label apps.

205. While the absolute number of drivers signed up to third party apps are not necessarily indicative of the actual scope of their networks, apps like goCatch and ingogo do have networks of 'active' drivers that are larger than many taxi networks. However, goCatch and ingogo drivers are spread across many areas. When considered on a region by region basis, and having regard to the fact that

even third party apps' active taxi drivers are not always logged on to the app during a shift, the ACCC notes that goCatch and ingogo have significant networks of active drivers in most major metropolitan cities in which they operate.

206. Accordingly, the ACCC considers that there are a variety of competing white label and third party apps in areas where ihail will operate that have networks which are sufficiently large to be able to dispatch taxis without significant wait times outside of periods of high demand. However, in periods of peak demand the scope of ihail's network is likely to give it a significant competitive advantage. This competitive advantage is likely to influence customers' choice of app not only in periods of peak demand but also at other times.

207. In response to the draft determination, ihail also argues that it may not become dominant even if it has access to the largest network of drivers. In particular, ihail argues that it will still need to compete with other apps to attract passengers through:

- a low cost service for passengers using the app
- the provision of a quick and easy to install and use passenger interface
- terms and conditions of use that ensure quality drivers and protect passengers
- the provision of incentives to attract users.

208. The ACCC considers that usability of apps is a particularly important component of competition between apps. If ihail does not produce an app that passengers find easy to use then it will likely be of limited relevance that ihail may have the largest network of drivers on its app. Passengers will simply delete the app or use other apps if ihail is not user friendly. Further, if the quality of drivers is low due to the terms and conditions of use (on the driver side) then passengers may choose to use another app with more stringent requirements for drivers. Similarly, if ihail were to charge passengers for using the app then ihail would be unlikely to grow market share as most other apps provide their service for free. Hence, ihail is likely to be somewhat constrained in its price and service offering even if it does have the largest network of drivers.

209. For these reasons, at least in the short run, and given the existence of other booking apps that have established a base level of drivers and passengers over a number of years, the ACCC considers that ihail is likely to be somewhat constrained in its price and service offering if it is to become a successful app. That is, it is unlikely that its access to drivers alone will allow it to become and maintain its position as the dominant app, particularly as other apps, while not able to match ihail's network, will still likely have fleets of taxis of sufficient size to be able to dispatch taxis without significant wait times, at least outside of periods of high demand.

Ridesharing apps

210. In the draft determination, the ACCC noted that the extent of any reduction in competition and associated detriment if ihail was to become the dominant taxi booking app by virtue of its ownership structure would depend to some extent on how the taxi and ridesharing industries evolve over the coming years. Particularly the extent of any further deregulation of the taxi industry in various jurisdictions

and whether, and the manner in which, ridesharing services continue to operate in the future. As previously noted, while ridesharing services such as Uber may place a competitive constraint on taxis, at the time the draft determination was released only the ACT Government had legalised ridesharing and the legality of these services in most jurisdictions was unresolved.

211. Since the draft determination NSW and Western Australia (in addition to the ACT) have legalised ridesharing, Tasmania has announced its intention to do so and there are ongoing reviews in Queensland, Victoria and South Australia. Accordingly, and bearing in mind the forward-looking nature of the assessment, the ACCC considers that greater regard can be had to the competitive constraint ridesharing services may have on ihail than was the case in the draft determination.
212. In this respect, the largest ridesharing service in Australia, Uber, had approximately 14.5 million fares in 2015. This compares to around 2 million fares for goCatch and around 8.5 million fares booked through taxi networks' own white label apps.
213. Further, with ridesharing services being legalised in some jurisdictions, and the likelihood that they will be legalised in others, their usage is likely to continue to grow.
214. The ACCC notes that there is conflicting evidence about the extent to which the growth in ridesharing services has come from passengers substituting ridesharing services for taxis or complementing them. ihail notes reports that Australian taxi owners lost more than \$31 million in revenue in 2015 from consumers switching from taxis to ridesharing services.¹¹⁵ This would suggest that the number of consumers switching from taxis to ridesharing services is relatively small. Based on the \$31 million estimate, around 10 per cent of Uber's fares in Australia have come from passengers who would have otherwise caught a taxi, representing around 1.2 million fares, compared to around 227 million total taxi trips taken.
215. However, Frontier Economics cites research from New York, which they state is one of the few jurisdictions where data on taxi and Uber trips exist, which suggests that 35 per cent of Uber trips in New York are from additions to pre-existing market demand and 65 per cent are from passengers substituting Uber for taxis.
216. Broadly, the ACCC considers that there is likely to be some degree of substitutability between ridesharing and taxi services for customers seeking point to point transport in many instances. Accordingly, the ACCC considers that ridesharing services are a relevant competitive constraint in considering the effect on competition of the ihail app.

Conclusion on likelihood that ihail's ownership structure will lessen competition between booking apps

217. The potential for ihail's ownership structure to lessen competition is dependent on whether:
- ihail's ownership structure will provide it with a competitive advantage and

¹¹⁵ ihail supplementary submission, 4 February 2016, p. 2.

- any competitive advantage conferred is able to be used by ihail to inhibit competition.

218. The ACCC considers that ihail's ownership structure will provide it with a competitive advantage. ihail is likely to have by far the largest network of active drivers of any taxi booking app. This means ihail will be better able to meet passenger demand in peak booking times than any other app, which is likely to be valued by passengers. Being better able to meet passenger demand in peak periods is also likely to influence choice of apps outside of peak periods.

219. However, the ACCC considers that ihail will still face some competitive pressure from other booking apps. Third party apps have established reputations and customer bases and are able to compete effectively with ihail in respect of all other aspects of their service offering. Indeed, ihail is primarily a response to third party and ridesharing apps which have established their brand reputation and customer base. If apps offer broadly comparable service offerings, an app being able to differentiate itself from the others in relation to an important function that is valued by passengers is likely to strongly influence consumer choice of app. In ihail's case, that point of differentiation is likely to be the eventual size of ihail's network by virtue of its ownership structure, and therefore, reduced waiting times for taxis.

220. However, it appears that white label and third party apps such as goCatch and ingogo, as well as Uber, have, and are able to attract, a critical mass of drivers so that in most cases the difference between their waiting times and ihail's waiting times would not be significant outside of periods of peak demand. If this is the case, the ACCC considers these other booking apps will impose a competitive constraint on ihail. If ihail is not able to provide a high level of service in respect of the other factors influencing driver and passenger demand, drivers and passengers are likely to switch to other apps, or use other apps in addition to ihail, particularly given that switching to other apps is relatively simple.

221. Accordingly, the ACCC remains of the view expressed in the draft determination that the likely scope of ihail's network, by virtue of its ownership structure, will confer a competitive advantage to ihail. Ultimately, this may result in ihail obtaining a larger share of smartphone bookings than any competing app. However, as this source of competitive advantage is primarily confined to periods of peak demand, other booking apps are likely to impose a degree of competitive constraint on ihail.

222. The ACCC considers that this will mitigate the extent of the reduction in competition and associated public detriment due to the competitive advantage ihail will have as a result of its ownership structure.

Competition between taxis on price and service when providing services to passengers using the ihail app

223. In the draft determination the ACCC expressed the view that incentives for taxi operators and/or networks to compete on price or quality of service when providing services to passengers who book through the ihail app were likely to be limited. This was because the ihail app was initially designed to give jobs to the first qualifying driver who accepted it. Therefore, taxi operators and networks would not have been able to increase the number of jobs they got through the ihail app by competing on price or quality of service. Each taxi network could have expected to receive a share of ihail bookings roughly equal to their share of taxis using the app (that is, the number of taxis in their network as a share of all taxis using the app).

224. In response to the draft determination, ihail has changed the way the app will operate so that passengers will be able to choose their preferred taxi network as part of the booking process and will be provided with information about each network's weighted average waiting times and average customer ratings prior to making a booking. Alternatively passengers will be able to choose to have the closest available taxi, regardless of network, dispatched.
225. The ACCC considers that allowing passengers to select a preferred taxi network within the ihail app means that the app no longer eliminates the incentive for participating networks to compete for passengers using the app. Whereas previously differences in the price or service offering of taxi networks would have had no impact on the share of ihail fares they received, under the amended arrangements incentives for drivers to differentiate on price and/or service to attract passengers using the ihail app remain.

Competition between taxi payments processing providers

226. In the draft determination, the ACCC expressed concerns that the proposed arrangements would foreclose opportunities for payment processing providers other than Cabcharge to supply services to customers using the ihail app, thereby adversely impacting competition between taxi payment processing providers.
227. In particular, as the ihail app was originally designed, in-app payment was the only option available to passengers booking taxis through the app and Cabcharge was the exclusive supplier of in-app payments processing services to ihail.
228. Accordingly, other providers of taxi payment processing services would have been precluded from providing services to passengers and drivers when the taxi was booked through ihail. Further, if passengers booking taxis through ihail ultimately constituted a significant proportion of all taxi bookings, this was also likely to affect the ability of other providers of taxi payment processing services to provide this service to other customers. That is, if the contestable customer base was eroded to the point that it was not viable for competing providers to continue to offer services there could be a significant effect on other taxi payment processing service providers.
229. Therefore, the ACCC was concerned that the proposed arrangements may limit emerging competition between the dominant incumbent provider of taxi payment processing services, Cabcharge, and other providers of taxi payment processing services.
230. In response to the draft determination ihail changed the way the booking process will operate so that passengers will now be able to elect, at the time of making each booking, whether to pay via the ihail app, with the payment processed by Cabcharge, or in the taxi, using any payment options the driver has available (that is, with cash or EFTPOS).
231. ihail advised that passengers will also be able to complete a taxi booking using various pre-filled (or default) selections, including for preferred payment method. In this regard, ihail considers that in-app payment would be the most efficient and convenient default payment method. However, it intends to incorporate steps in

the registration process that allows passengers to set their preferred default payment method at the time of registering to use the ihail app.¹¹⁶

232. The ACCC considers that the changes ihail has made to the booking process go some way to addressing the ACCC's concerns. While Cabcharge will remain the exclusive provider of in app payments processing services for ihail customers, passengers will now retain their choice of payment method. In particular, passengers will be able to choose their preferred payment method each time they book a taxi under the ihail app, or set their own default payment method. However, the ACCC would be concerned, in circumstances where the passenger does not exercise either of these options, if ihail determined that payment via the app would be the default option.
233. The ACCC considers that if ihail set in-app payment as the default option (with payments processed by one of its shareholders, Cabcharge) the app could still foreclose, to a significant extent, opportunities for payment processing providers other than Cabcharge to supply services to customers using the ihail app. Accordingly, as discussed at paragraph 277, the ACCC has imposed a condition of authorisation preventing ihail from setting the default payment method to 'in-app', unless the passenger has explicitly chosen in-app payment as either their default option during the registration process or at a later time. This means that all providers of taxi payment processing services will continue to be able to compete to supply services to all customers booking through the ihail app unless the customer has a preference for in-app payment. This condition is intended to minimise the extent of the likely public detriment to competition between taxi payment processing services.

Credit card processing fees

234. ihail advise that relevant credit card processing fees, which apply to all ihail in-app payments and some forms of in-car payment, will be disclosed in ihail's terms and conditions of use. ihail also states that it intends to disclose on the 'payment selection screen' of the app, as well on the default payment screen during the registration process,¹¹⁷ that payments using a credit card will incur the applicable service fee. The customer will have the option of clicking on the words 'Service Fee' to access ihail's terms of use. The in-car payment option on the payment selection screen will also state that a customer can pay in-car by cash or credit card.
235. Given that passengers have to use their credit card if they select to pay for their taxi in-app, all payments made through the ihail app will incur the relevant credit card surcharge fee. Accordingly, the ACCC considers that this fee should be prominently disclosed to passengers when they are considering payment options available to them.
236. As discussed at paragraph 278, to ensure that this is the case the ACCC has imposed a condition of authorisation requiring that ihail's payment selection screen must contain a prominent disclosure that a relevant credit card service fee will apply if the passenger chooses the in-app payment option.

¹¹⁶ ihail submission to the ACCC, 9 March 2016, p. 1.

¹¹⁷ ihail submission to ACCC, 9 March 2016, p. 2.

Allowing customers to offer an additional payment when booking to incentivise priority pick up

237. In the draft determination the ACCC expressed concerns about the proposed function of the ihail app that would allow passengers to offer a payment when requesting a taxi in order to incentivise priority pick up.
238. In particular, the ACCC expressed concerns that the priority dispatch payment function could adversely impact access to taxis for financially disadvantaged sections of the community in periods of peak demand. The ACCC also noted that interested parties had expressed concern that such a priority dispatch payment function was arguably in breach of regulations governing maximum taxi fares in some jurisdictions and/or at the very least, against the intent of such regulations.
239. In response to the draft determination ihail states it does not agree with the ACCC's concerns and believes that, in order to compete with other apps, it may from time to time need to consider offering driver incentive measures, such as a priority dispatch. ihail states that in doing so, it will act in accordance with the laws and regulations of each relevant jurisdiction, including all relevant competition laws.
240. Frontier Economics argues that banning this function would prevent the realisation of welfare gains to customer groups who might value prioritisation of their trip highly.
241. ihail also advised that it no longer seeks authorisation for the priority dispatch payment function. It is of the view that offering such a service does not contravene competition laws, and it wishes to retain the ability to implement such a function within the app in the future.
242. The ACCC notes that while ihail is no longer seeking authorisation for the priority dispatch payment function it is part of the ihail app and therefore is part of the competitive landscape being assessed in the likely future with the proposed arrangements (assuming such a function is legal in the relevant jurisdictions). Therefore the ACCC can still consider the relative benefits and detriments of the priority dispatch payment feature in the context of assessing the overall public benefits and detriments of the conduct sought to be authorised.
243. The ACCC accepts that, all else being equal, the ihail app is likely to be less attractive to some customers than apps offered by some of its competitors, if some of these competitors offer a priority dispatch payment function and ihail does not. The ACCC also accepts that ihail offering a priority dispatch payment function would provide a benefit to ihail app users who value prioritisation of their trip.
244. However, the ACCC also notes that for some sections of the community, for example, persons with disabilities, older persons or those with limited mobility, taxis are an important, and in some cases the only transport option. The ACCC also notes that affordability is often a major concern for these sections of the community. Arrangements whereby in peak times scarce taxis could be allocated based on capacity or willingness to pay above regulated maximum prices may adversely impact on access to taxis for these sections of the community.
245. Further, while some third party taxi booking apps contain a priority dispatch payment function, the ACCC considers that there is a significant difference between individual taxi drivers deciding to use a third party app that has such a

function and most, and potentially all, major taxi companies in a region collectively agreeing to such an arrangement. In this respect, individual taxi companies' own apps do not offer this type of function.

246. Further, interested parties continue to raise concerns that priority dispatch payment functions such as those operated by some third party apps, and as proposed by ihail, are against the intent of regulations governing maximum fares in some jurisdictions.

247. For these reasons, the ACCC considers that the ihail app offering a priority dispatch payment function is likely to generate a public detriment.

Impact on bookings management and taxi dispatch services

248. As noted, ihail submits that the ihail app is designed to operate with any existing taxi dispatch system used by taxi networks. Following the draft determination, CellTrack Systems (who provides the SmartMove dispatching system in a number of regional taxis) submits that its two requests to ihail for information on its API¹¹⁸ have been ignored.¹¹⁹

249. In response, ihail confirmed that:

...the ihail app will operate as an open source application that can be utilised by any dispatch system that integrates in accordance with its OpenAPI – ihail has no preference as to which dispatch solution is used by taxis using the ihail app.¹²⁰

250. Further, ihail submits that it will provide any taxi dispatch provider with the relevant integration documentation provided:¹²¹

- a customer of the dispatch provider (that is, a taxi network) has signed a Licence Services Agreement with ihail or is expected to do so in the future and
- the dispatch provider has signed a Non-disclosure Agreement in order to protect ihail's intellectual property.

251. ihail advises that it will respond directly to CellTrack Systems consistent with the above mentioned approach.

252. Given that the ihail app is proposed to operate with any existing taxi dispatch system, the ACCC considers that it is unlikely to raise competition concerns in relation to the provision of bookings management and dispatch services.

ACCC conclusion on public detriments

253. Despite ihail's proposed changes to the arrangements in response to the draft determination where taxi drivers affiliated with participating networks need to individually 'opt-in' (rather than be signed up automatically by their networks), the ACCC remains of the view that the underlying ownership structure of the ihail app will help it quickly establish a larger national fleet of taxis than any existing taxi

¹¹⁸ CellTrack Systems advises that 'API' is the formal description of interface to the ihail system.

¹¹⁹ CellTrack Systems submission, 23 October 2016, p. 1.

¹²⁰ ihail submission, *ihail response to CellTrack Systems submission*, 9 March 2016, p. 1.

¹²¹ ihail submission, *ihail response to CellTrack Systems submission*, 9 March 2016, p. 1.

booking app. This initial competitive advantage is obtained directly from ihail's ownership structure, rather than through offering a better product to drivers and passengers, and is likely to reduce competition between booking apps.

254. However, the ACCC considers that because:

- other booking apps have established brand reputations and customer bases
- ihail drivers can continue to use other booking apps in conjunction with ihail and
- it is easy for passengers and drivers to switch between booking apps,

ihail will still face some competitive pressure from other established booking apps (including ridesharing apps) to offer a product which attracts and retains passengers and drivers.

255. The ACCC also remains of the view that ihail's priority dispatch payment function will adversely impact access to taxis for financially disadvantaged sections of the community in periods of peak demand, which the ACCC considers is likely to also result in some public detriment.

256. The changes to the app proposed by ihail following the draft determination reduce the extent of the other public detriments previously identified by the ACCC. In particular, while Cabcharge remains as the exclusive supplier of in-app payments processing services to ihail, passengers can now also pay in-car, meaning other payments processing providers can compete to process in-car payments.

257. Further, because passengers are now able to choose a preferred taxi network when booking through the ihail app, and passengers will be provided with information about the performance of each network, incentives for participating taxi networks to compete to attract customers using ihail also remain.

Balance of public benefit and detriment

258. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.

259. The ACCC considers that the proposed ihail joint venture, as amended, is likely to result in some public benefits. The ihail app provides a new additional, convenient single platform for consumers to book taxis from a pool of taxi networks and drivers that is likely to be broader than that provided by any existing taxi booking app. This larger pool of taxis is also likely to reduce waiting times for passengers in periods of peak demand.

260. The ihail app also provides a single app that can be used in more cities than third party taxi booking apps currently available, including potentially internationally.

261. On launch, the ihail app is likely to prompt a competitive response from other booking apps. In particular, the ACCC expects third party apps to react to the entry of ihail through improving functions, services and the promotional initiatives they offer to passengers and drivers.

262. However, the ihail app does not represent a new type of product for the taxi industry. There are a wide range of taxi booking apps already providing access to large networks of taxis and access across a variety of locations. Accordingly, the public benefits likely to result from the introduction of the ihail app are largely incremental.
263. Notwithstanding a likely initial competitive response from competing apps, the ACCC considers the ihail app also has the potential to reduce competition between booking apps longer term if ihail has a competitive advantage because of its ownership structure, rather than by offering a better product that is attractive to both drivers and passengers, and ihail is able to use that competitive advantage to inhibit competition.
264. In this respect, the ACCC considers that ihail is likely to have by far the largest network of active drivers of any taxi booking app. This means ihail will be better able to meet passenger demand in peak booking times than any other app, which is likely to be valued by passengers. Being better able to meet passenger demand in peak periods is also likely to influence passenger choice of apps outside of peak periods.
265. Third party apps are able to compete effectively with ihail in respect of all other aspects of their service offering. Indeed, ihail is primarily a response to third party and ridesharing apps. If apps offer broadly comparable service offerings, an app being able to differentiate itself from the others in relation to an important function that is valued by passengers is likely to strongly influence consumer choice of app. In ihail's case that point of differentiation is likely to be the eventual size of ihail's network by virtue of its ownership structure, and therefore, reduced waiting times for taxis.
266. However, it appears that white label and third party apps such as goCatch and ingogo, as well as Uber, have, and are able to attract, a critical mass of drivers so that in most cases the difference between their waiting times and ihail's waiting times would not be significant outside of periods of peak demand. If this is the case, they will impose a competitive constraint on ihail notwithstanding the size of its network and that it may obtain a larger share of smartphone bookings than competing apps. If ihail is not able to provide a high level of service in respect of the other factors influencing driver and passenger demand, drivers and passengers are likely to switch to other apps, particularly given that it is relatively simple for passengers to sign up to and use more than one app and many existing booking apps have established reputations and customer bases.
267. Accordingly, the ACCC remains of the view expressed in the draft determination that the likely scope of ihail's network, by virtue of its ownership structure alone, will confer a competitive advantage on ihail. Ultimately, this could potentially result in ihail obtaining a larger share of smartphone bookings than any competing app. If ihail achieved a dominant position in providing taxi booking services due to providing a better product that is attractive to both drivers and passengers this would reflect a competitive market outcome. However, under the proposed conduct, ihail's source of competitive advantage is its ownership structure. Notwithstanding this, as this source of competitive advantage is primarily confined to periods of peak demand, other booking apps are likely to impose a degree of competitive constraint on ihail.
268. Therefore, the ACCC considers that the modifications to the ihail app and the conditions imposed by the ACCC discussed below, will mitigate the extent of the

reduction in competition and associated public detriment due to the competitive advantage ihail will have as a result of its ownership structure.

269. The proposed priority dispatch payment function could also adversely impact access to taxis for financially disadvantaged sections of the community in periods of peak demand which the ACCC considers is likely to result in some public detriment. Further, interested parties have raised concerns that priority dispatch payment functions are arguably in breach of regulations governing maximum fares in some jurisdictions and/or at the very least, against the intent of such regulations.
270. In the draft determination the ACCC had significant concerns that by foreclosing opportunities for taxi payment processing providers other than Cabcharge to supply services to customers using the ihail app, the proposed arrangements are also likely to impact competition between taxi payment processing providers. The ACCC considers that allowing passengers who make bookings through the ihail app to pay either in-app or in-car reduces these concerns provided the ihail app does not operate in a manner that prioritises in-app payment over in-car payment.
271. In the draft determination the ACCC was also concerned that the ihail app would reduce competition between taxi companies in supplying services to customers using the app. The ACCC considers that the changes made to the app, whereby passengers will be able to choose their preferred network, and be provided with information about each network's performance to inform that decision, reduces these concerns by maintaining incentives for taxi networks to differentiate themselves in order to attract passengers using the app.
272. On balance, the ACCC considers that, subject to the conditions outlined below, the proposed ihail arrangements (as amended) are likely to result in public benefits that would outweigh the detriment to the public constituted by any lessening of competition that would result or would be likely to result from the proposed conduct.

Conditions

273. The Act permits the ACCC to grant authorisation subject to conditions.¹²² While there is no express limit on the types of conditions which may be imposed on the grant of an authorisation, the power to impose conditions is constrained by the subject matter, scope and purpose of the Act.¹²³
274. While the Act does not expressly limit the circumstances when the ACCC may impose conditions, circumstances in which the ACCC may consider imposing conditions include where there is no or insufficient public benefit and imposing a condition may increase the benefit or reduce the detriment, thereby generating a sufficient net public benefit.¹²⁴
275. In this instance, the ACCC is granting authorisation subject to conditions to mitigate the likely public detriment arising from the ihail app and the joint venture arrangements.
276. In particular, the ACCC considers it is important that drivers are made explicitly aware that they remain free to use any competing booking service, including

¹²² Section 91(3)

¹²³ See *Re Medicines Australia Inc* [2007] ACompT 4 at [129].

¹²⁴ See *Re Medicines Australia Inc* [2007] ACompT 4 at [123].

competing booking apps, rather than it simply being mentioned in a potentially long list of terms and conditions provided to potential ihail drivers. As such, the ACCC imposes the following conditions:

- C1** ihail or the relevant shareholder taxi network to which a driver is affiliated (if any) must obtain an express confirmation (either in writing or in electronic form) from each driver who opts-in to participate in ihail acknowledging that the driver has been informed that they remain free to use any other booking services, including any other booking app.

If requested by the ACCC, ihail or the relevant shareholder taxi network will provide the ACCC access to the records revealing these driver acknowledgments.

- C2** ihail and the relevant shareholder taxi networks must not do anything to:

- a) prevent or attempt to prevent drivers or operators who opt in to the ihail app from using other booking services (including any other booking app) or
- b) disadvantage drivers or operators who choose to use any other booking services (including any other booking app) in preference to or in addition to the ihail app.

277. Changes to the ihail app since the release of the draft determination whereby passengers will chose their preferred default payment method (in car or in app) at the time of registering to use the app go some way to addressing the ACCC's concerns that Cabcharge being the exclusive provider of in app payments processing services would adversely affect competition between taxi payment processing providers. However, if the ihail app was ultimately operated in a manner which favoured in-app payments processing, rather than leaving this choice to the passenger, this could still have the effect of foreclosing opportunities for payment processing providers other than Cabcharge to supply services to customers using the ihail app. Therefore, the ACCC imposes the following condition:

- C3** ihail must ensure that the default payment setting in the ihail app is not set as 'Via App' payment or equivalent unless the user of the app manually sets the preferred default option to 'Via App' payment or equivalent.

278. Finally, the ACCC considers that in providing choice of payment method to passengers, it is also important that passengers are fully informed about the potential costs associated with their selection, including applicable credit card service fees. Accordingly, the ACCC imposes the following condition:

- C4** ihail must ensure that the ihail payment method selection screen clearly and prominently discloses that a relevant credit card service fee will apply if the passenger chooses the 'Via App' payment option. Details about the cost of the relevant credit card processing fee for 'Via-App' payment must be available to the passenger:

- a) before the 'Via App' payment option is confirmed and
- b) before any user of the app manually selects 'Via App' or equivalent as their default payment option.

279. The ACCC has consulted ihail about these conditions. The ACCC also notes that the conditions are broadly consistent with ihail's recent submissions about how it intends to operate the app.
280. Further, the ACCC's assessment of the proposed ihail arrangements is based on how ihail described the app would operate at the time of making this determination. Any future changes to the way the arrangements operate may impact the balance of the ACCC's net public benefit assessment.

Length of authorisation

281. The Act allows the ACCC to grant authorisation for a limited period of time.¹²⁵ This allows the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
282. In this instance, ihail seeks authorisation for five years. It submits that this is an appropriate period of time to demonstrate the public benefit obtained from the ihail taxi booking app joint venture.
283. The ACCC's draft determination proposed to deny authorisation. Since the draft determination was released, there have been a number of significant developments, both to the proposed operation of the ihail app and within the point-to-point transport sector itself.
284. As outlined above, the ACCC considers that on balance, the likely public benefits from the proposed ihail arrangements will outweigh the likely public detriments, subject to the conditions of authorisation.
285. However, the ACCC notes that the taxi industry is currently undergoing significant and rapid change, including emerging competition by non-traditional taxi booking service providers and ridesharing businesses. In this context, there is potential for competition to develop in a number of different ways. In these circumstances, the ACCC considers it would be appropriate to review how the market evolves, and particularly the impact of the ihail arrangements on competition between booking apps, earlier than the five years proposed by ihail. As such, the ACCC grants conditional authorisation for three years, commencing from the date the ACCC's final determination comes into effect.
286. In the event that ihail seeks re-authorisation of the arrangements at the end of the authorisation period, the ACCC will carefully review the competitive impact of the ihail arrangements in the taxi sector overall.

Determination

The application

287. On 26 May 2015 ihail Pty Ltd (ihail) lodged application for authorisation A91501 with the ACCC. Application A91501 was made using Form B Schedule 1, of the Competition and Consumer Regulations 2010.

¹²⁵ Subsection 91(1).

288. The application was made under subsections 88(1) and 88(1A) of the Act by ihail on behalf of itself, ihail Holdings Limited and the existing shareholders of ihail Holdings Limited to make and give effect to joint venture arrangements. In particular, the proposed joint venture is between a number of taxi companies and other participants with an interest in the taxi industry to develop and operate a smartphone taxi booking application (ihail app) for use by domestic and international taxi companies.
289. ihail also seeks authorisation for any new shareholders, licensees, employees or contractors or any other party to the arrangements during the period of authorisation.
290. ihail seeks authorisation of these arrangements as they may contain a cartel provision and may have the effect of substantially lessening competition within the meaning of section 45 of the Act.
291. On 6 November 2015 and 4 February 2016 ihail lodged submissions which proposed modifications to how the ihail app will operate in practice. The operation of the ihail app, including all of the relevant modifications, is described in detail from paragraph 46 to 83 in this Determination.
292. The conduct for which authorisation is sought, following the modifications made by ihail, involves the ihail app operating in the following way:
- any taxi network (whether it is a shareholder in ihail or not) will be able to sign up to the ihail app (whatever dispatch system it uses), subject to entering into a Licences and Services Agreement with ihail
 - when a taxi network enters into a Licence and Services Agreement, the network's drivers can choose whether or not to 'opt-in' to receive ihail bookings over the existing taxi network's dispatch system
 - drivers who opt-in to the ihail app will remain free to use other booking services
 - before a passenger can book a taxi using the ihail app they are required to download the ihail app and register using the app, including by providing their name, email address, phone number and credit card details
 - to request a booking, a passenger enters the pick-up and destination location and select relevant booking details – such as type of taxi required and time of pick up
 - when requesting a booking passengers can also obtain a fare estimate for the journey, which will include any credit card service fees
 - each time a passenger requests a booking the passenger will have the opportunity to select their preferred taxi network as part of the booking process, or select the closest available taxi
 - each time a passenger requests a booking the passenger will have the opportunity to select a preferred payment method to pay for the fare – either via the ihail app or in the taxi

- the relevant credit card fees applicable to payment by credit card will be disclosed to passengers before the passenger elects to pay by credit card
- passengers can use the ihail app to pay for a taxi that was not booked through the app (for example, hailed on the street), if that taxi is a ihail participating taxi
- the ihail app may offer a function which allows passengers to offer an upfront priority dispatch payment to drivers and
- at the conclusion of a trip booked through the ihail app, the passenger will have the opportunity to rate the service.

The net public benefit test

293. The relevant tests for consideration of this application for authorisation are set out in subsections 90(5A), 90(5B), 90(6) and 90(7).

294. For the reasons outlined in this determination, and subject to the conditions below, the ACCC is satisfied that in all the circumstances the proposed arrangements for which authorisation is sought are likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.

Conduct for which the ACCC grants authorisation

295. The ACCC **grants** conditional authorisation to application A91501, as amended by ihail's subsequent submissions (described in paragraph 292 above), to make and give effect to joint venture arrangements between by ihail, ihail Holdings Limited and the existing shareholders of ihail Holdings.

296. Pursuant to section 91(3) of the Act, the ACCC is granting authorisation on **condition** that:

C1 ihail or the relevant shareholder taxi network to which a driver is affiliated (if any) must obtain an express confirmation (either in writing or in electronic form) from each driver who opts-in to participate in ihail acknowledging that the driver has been informed that they remain free to use any other booking services, including any other booking app.

If requested by the ACCC, ihail or the relevant shareholder taxi network will provide the ACCC access to the records revealing these driver acknowledgments.

C2 ihail and the relevant shareholder taxi networks must not do anything to:

- a) prevent or attempt to prevent drivers or operators who opt in to the ihail app from using other booking services (including any other booking app) or
- b) disadvantage drivers or operators who choose to use any other booking services (including any other booking app) in preference to or in addition to the ihail app.

C3 ihail must ensure that the default payment setting in the ihail app is not set as 'Via App' payment or equivalent unless the user of the app manually sets the preferred default option to 'Via App' payment or equivalent.

C4 ihail must ensure that the ihail payment method selection screen clearly and prominently discloses that a relevant credit card service fee will apply if the passenger chooses the 'Via App' payment option. Details about the cost of the relevant credit card processing fee for 'Via-App' payment must be available to the passenger:

- a) before the 'Via App' payment option is confirmed and
- b) before any user of the app manually selects 'Via App' or equivalent as their default payment option.

297. The conditional authorisation extends to any new shareholders, licensees, employees or contractors or any other party to the arrangements during the proposed period of authorisation.

298. Authorisation is granted for three years until, 12 April 2019.

Date authorisation comes into effect

299. This determination is made on 22 March 2016. If no application for review is made to the Australian Competition Tribunal it will come into force on 13 April 2016.

Attachment A - Summary of relevant statutory tests

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.