



Australian
Competition &
Consumer
Commission

ACCC Draft Determination: ihail

Dr Jill Walker, Commissioner, ACCC

The Impact of Disruptive Innovations on Competition Law Enforcement
OECD Global Forum on Competition 29 October 2015

Background

- ‘Authorisation’ provides exemption from competition law where a net public benefit test is met (ACCC or the Australian Competition Tribunal on review)
- Taxi markets in Australia are highly concentrated
- *Cabcharge* has dominated payment processing (and related taxi specific payment instrument) - history of enforcement action by the ACCC & recent new entry (*Cabcharge* also have ownership interests in taxi companies)
- Several independent 3rd party booking apps, e.g. goCatch & ingogo (compete for drivers & customers) & taxi network specific apps already exist
- Legal status of *Uber* still unclear in most states, but the ACT has proposed to legalise and regulate
- ihail applied for authorisation of a JV involving competing taxi companies and *Cabcharge* to operate a smartphone booking app (the ihail app)
 - aggregate competing taxi networks on a single booking app (with fares allocated to the first available driver)
 - payments processing exclusively “in app” by *Cabcharge* (no in cab payment)
 - Includes a ‘tipping function’ = payment for priority dispatch
- ACCC Draft Determination proposes to deny authorisation (12 Oct 2015)
- Final decision expected November/December 2015

Draft Determination

- *Public Benefits*

- consumers would have access to a larger pool of taxis on a single app
- single app could be used in multiple cities (domestic and international)
- but independent apps can also be used in multiple locations and each taxi network app accounts for a large pool of taxis

- *Public Detriments*

- ihail may achieve a dominant position through agreement between competitors vs competition with existing apps for consumers and taxis: from the launch of the app, ihail's ownership structure would give it a larger fleet of taxis across Australia than any other app (over half of all taxis in Australia, a larger share in metropolitan areas and additional networks & drivers may join)
- reduced incentive for taxi companies to compete on price or service for customers booking through the app: allocation of fares on a "first available" basis means taxi companies can expect to receive a share of bookings approximately equal to their share of taxis on the road
- *Cabcharge* already dominates in taxi payment processing and the proposed exclusive arrangements would foreclose fledgling competitors from a potentially significant portion of the payment processing market
- Priority dispatch payments potentially in breach of state government price regulations and reduced access to taxis for financially disadvantaged persons

Incumbent attempt to remain dominant or pro-competitive?

- *The ACCC is ripe for disruption*

“This is one of the most starkly absurd decisions the ACCC has made, probably in its entire history. In the midst of a furious contest between taxis and Uber, the ACCC has decided to cripple the taxi companies’ ability to innovate in response to competition.” John Roskam, Executive Director Institute of Public Affairs

- ihail argues their app is pro consumer and pro competition in response to Uber
- Is the ACCC right to be concerned that ihail:
 - could be a tipping point for network effects and replace competition with a dominant app; and
 - potentially foreclose emerging competition in taxi payment processing?