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Taxi, ride-sourcing and ride-sharing services - Note by South Africa

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More documents related to this discussion can be found at www.oecd.org/daf/competition/taxis-and-ride-sharing-services.htm

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1. Introduction

1. The Competition Commission of South Africa (“CCSA”) received an invitation from the Organisation of Economic Cooperation and Development (“OECD”) to contribute to the roundtable discussions on taxis, ride-sourcing and ridesharing services to be held on the 4 June 2018¹. The OECD’s focus in the roundtable discussions is understanding the traditional metered taxis’ competitive response to the introduction of app-based taxi services. In addition, the OECD attempts to understand the extent to which competition authorities have analysed the competitive dynamics between traditional metered taxis and app-based services, as well as highlight the engagements (if any) between transport regulators and competition authorities with respect to the taxi industry. Further, the OECD requested competition authorities to highlight specific interventions to deal with any anti-competitive conduct(s) within the metered taxi industry, or to ameliorate anti-competitive outcomes within the metered taxi industry by removing any regulatory burden on the traditional metered taxi services to even the competitive playing field between these services.

2. In line with the OECD’s request, CCSA firstly discusses the current regulatory framework in South Africa’s public passenger transport and secondly provides an overview of the taxi industry. Thirdly, a discussion of the traditional metered taxis follows with special focus on their competitive response to the introduction of app-based services. We lastly discuss the engagements that the CCSA has had with various key stakeholders in the public transport market to understand and deal with factors that potentially prevent, distort or restrict competition.

2. Regulatory Framework for Public Transport in South Africa

3. In South Africa, public transport is regulated by the National Department of Transport (“DoT”) in terms of National Land Transport Act, No. 5 of 2009 (“NLTA”).² The NLTA establishes a number of entities across the three spheres of government, namely national, provincial and municipal level. These entities play various functions from licencing (provincial level) to transport planning (local government). The DoT’s core functions are to assign certain functions across government entities, to monitor and oversee public transport and develop policies for the effective functioning of the public transport in the country.

4. The NLTA defines metered taxis as a “public transport service operated by means of a motor vehicle which is available for hire by hailing while roaming, by telephone, may stand for hire at a rank, and is equipped with sealed meter in good working order to determine fare payable, that is calibrated for such fare or complies with any other

¹ For ease of interpretation, CCSA uses the term app-based services to refer to ride-sourcing or ride-sharing.

² The National Land Transport Act regulates all the other modes of transport in South Africa. This regulation is multi-faceted and regulates land transport in terms of licensing, route allocation, contracting services

requirements applicable to such meters”.³ According to the NLTA, the traditional metered taxi operators are required to apply for an **area-based permit**. A detailed description of the route or routes (or radius) as well as allocated taxi ranks, terminal, pick-up and drop-off points must be specified before obtain the operating licence.⁴ However, the metered taxi may pick up passengers outside of its respective area specified in the operating licence if the fare is pre-booked and the passenger will return to such area.⁵ The fares can be determined by the sealed-meter or by negotiation between the driver and the passenger. In addition to these, the metered taxis are required to have special markings.⁶

5. The app-based taxi service is a technological platform that links driver-partners to passengers using global positioning system (“GPS”). These services do not easily fit within current regulatory framework as, unlike traditional metered taxis, they do not render rank-based service, and do not contain fare meters. Currently, there is no law governing app-based service operation and there has been uncertainty over how these services should be regulated,⁷ although section 50 of the NLTA which states that “*no person shall operate or provide land-based public transport service without operating licence...*” implicitly make provision for app-based service to be licensed upon operation.

6. In order to remedy this shortcoming, the Cabinet has approved the National Land Transport Amendment Bill [B7-2016] which seeks to address these regulatory gaps by making explicit provisions for e-hailing services so as to integrate the services within the existing regulatory framework.⁸ The Bill proposes the following definition: “*electronic hailing or e-hailing means hailing or pre-booking a motor vehicle operated by the holder of an operating licence or permit authorising a public transport service that uses an e-hailing technology enabled application which, enables the hailing or pre-booking of a vehicle electronically; has the facility to estimate fares, and electronically communicate the estimate to passengers in advance; communicates the final fare to the passengers at the conclusion of a trip; provides the prescribed details of the driver of the vehicle to the passengers, and complies with any relevant regulations made under section 8(1)(fC) or (66)(4)(cA).*”

3. Overview of the SA Taxi Industry

7. The land-based public passenger transport sector is highly fragmented in nature, and is dominated by the taxi industry accounting for approximately 70% of total transport usage. The remaining 30% share of land-based public passenger transport industry in South Africa is captured by bus and rail, accounting for 20.1% and 9.9% respectively. Of

³ National Land Transport Act, No.5 of 2009. South Africa.

⁴ See section 66 (1) (a-d) of NLTA

⁵ See s66(1)(c) of National Land Transport Act, No.5 of 2009. South Africa.

⁶ See s66(4)(c) of National Land Transport Act, No.5 of 2009. South Africa.

⁷ Ibid

⁸ The Bill is still being considered by Parliament

the 70% taxi total, minibus taxi industry accounts for approximately 63% while the metered taxi industry account for 7% of the total transport usage.⁹

8. The taxi industry in South Africa is largely informal but subjected to public transport regulations. The taxi industry comprises of different types of taxis, namely the (i) minibus taxis, (ii) metered taxis, (ii) app-based taxis and (iv) other niche players in the market such as tuk-tuks, and four-plus-ones. The mentioned types of taxis are discussed below:

- **Minibus** refers to a vehicle designed or modified solely or principally for conveying between 9 and 16 seated persons, including the driver¹⁰. A minibus taxi-type service by definition is an unscheduled public transport service operated on a specific route or routes.¹¹
- **Traditional metered taxi** refers to a vehicle authorised to carry between 1-9 passengers; should be available for hire by hailing while roaming, by telephone or otherwise; and should be equipped with a sealed meter for the purpose of determining the fare payable.¹²
- **E-hailing or App-based services** refer to a technological platform that provides private operators or drivers with a platform to source passengers using global positioning system (GPS) technology to connect the nearest active linked driver to a passenger who demands the service.
- **Four-plus-one taxi-type services** refers to transport services provided by sedan motor vehicles and must carry not more than five passengers including the driver. The services provided are unscheduled services with no timetables.
- **Tuk-tuk** refers to a three-wheeled motor vehicle designed conveying not more than three seated persons, including the driver.¹³

4. Competition Authorities' intervention in the taxi industry

9. The CCSA has received over ten complaints in the land-based public passenger transport industry since 2009. Most of the complaints related to excessive pricing on long distance bus services especially during holiday peak periods. With specific reference to taxis, one complaint related to Sisonke Taxi Association which operated taxi and shuttle services to and from OR Tambo International Airport. Sisonke alleged that Airport Company of South Africa ("ACSA") was involved in a restrictive practice by denying them entry to the Airport to render transportation services in competition with the Johannesburg International Airport Taxi Association ("JIATA"). After investigation, the CCSA decided to refer the matter to the Tribunal for determination and ACSA

⁹ Statistics South Africa. (2014). National Household Travel Survey 2013 (NHTS 2013). Page number 95. Available online: <http://www.statssa.gov.za/publications/P0320/P03202013.pdf> . [Accessed 21 August 2017].

¹⁰ *ibid*

¹¹ *ibid*

¹² NLTA

¹³ National Land Transport Act 5 of 2009. South Africa

subsequently settled the matter with the CCSA which ensured that the market is open for other taxi operators.

10. Another complaint was filed by the Metered Taxi Industry in 2015 against Uber. The metered taxi industry alleged that Uber was (i) conducting unfair business practice as it secures partnerships with multinational companies that have exposure to its client base and ultimately giving it unparalleled market access (ii) non-compliant with the South African public transport rules and regulations in that it does not pay any permit renewal, rank fees and licencing fees as do other traditional metered taxis and (iii) charging below-cost rates to the detriment of traditional metered taxi operators.

11. The CCSA investigated the complaint under abuse of dominance provisions (predatory pricing) and found that Uber driver-partners were not charging prices below cost in any of the cities in which Uber operated. The CCSA decided not to refer the complaint to the Tribunal for prosecution. With respect of other allegations, the CCSA was of the view that advocacy engagements with the relevant regulators within the transport industry might lead to better outcomes.

12. Given the number of complaints and diversity of allegations the CCSA decided to conduct a market inquiry into the land based public passenger transport. The CCSA is conducting the market inquiry because it has reason to believe that there are features or a combination of features in the industry that may prevent, distort or restrict competition, and/or to achieve the purpose of the Competition Act. The market inquiry provisions looks at the general state of competition in the industry and highlight any impediments to competition, including regulations or legislation that may have an adverse effect on competition. The market inquiry focuses particularly on the following: price setting mechanisms for different public transport modes and their impact on intra- and inter modal competition; impact of regulations (such as including route allocation, licensing and entry requirements) on inter- and intra-modal competition; and the impact of operational subsidies granted to some modes of transport on intra- and intermodal competition.

13. Thus far, the market inquiry has given the CCSA an opportunity to understand the dynamics between metered taxis and app-based taxi services. Based on submissions made to the CCSA, there are concerns by the traditional metered taxi industry that the app-based services entered the metered taxi industry illegally and continue to operate illegally by not abiding to the applicable laws that the traditional metered taxis are subjected to. Traditional metered taxis also complain about the lack of enforcement of regulations which has led to app-based services entrenching their dominance in the metered taxi landscape. As part of the information gathering phase of the market inquiry, the CCSA will conduct public hearings from June to August 2018 which will provide more evidence on the competition dynamics on the industry.

14. The market inquiry is expected to be finalised in May 2019 and some of the recommendations might lead to changes to legislation which would not ordinarily be achieved through direct competition enforcement. The discussions that follow are based on the information gathered so far by the CCSA in conducting this market inquiry.

5. Allegations of excessive pricing through surge pricing

15. The NLTA makes provision that the Minister or a Member of the (provincial) Executive Committee (“MEC”) in consultation with the relevant authority may determine

a fare structure for traditional metered taxi services and it requires the fare structure to be published in the Provincial Gazette. However in practice, the Minister/or MECs have not determined the fare structure for traditional metered taxis as stipulated in the NLTA. Fares for metered taxis are determined by the use of a sealed meter or alternatively agreed upon between the driver and the passenger before the journey starts. There are four components taken into consideration that make up the fares such as the activation charge (initiation fee); first-kilometre charge; subsequent kilometre and the waiting time.

16. Some of the app-based taxis (Uber and Taxify) use a dynamic pricing system where prices are set in accordance with demand and supply. The prices are not regulated and tend to surge during periods of high demand such as evenings, weekends, and around special events, purportedly to increase number of drivers on the roads. The total fare for the trip is calculated based on these three components: base fare¹⁴; time¹⁵ and distance (*per kilometre*). As indicated above, the CCSA has heard concerns from the traditional metered taxi industry that the app-based services may have a leeway of reducing prices below marginal cost as the current regulation do not make any provision for minimum pricing for e-hailing services.

17. Submissions indicated that traditional metered taxis' maximum per km charges are set and do not surge. This contrasts with some app-based taxis which are in principle allowed to surge. The CCSA has noted during its inquiry that the cost to customers when surge pricing is applied could increase by a magnitude of 10-25%. Despite this surge, traditional metered taxis' prices remain higher than app based prices. Based on the pricing analysis conducted by the CCSA on few routes, the base price charged by the traditional metered is between 33% and 42% higher than that charged by app-based taxis. The CCSA also gathered from the submissions by market participants that upfront pricing introduced by app-based taxi services has potential of overcharging consumers by including extra surge charge to assist the app-based service providers to recoup costs arising from market inefficiencies. The CCSA will be undertaking further pricing analysis during the course of the inquiry but preliminary indications are that the traditional metered taxis charge higher prices compared to app-based taxi services. Submissions to the inquiry indicated that most users compare prices between app-based taxis before hailing and this limits the potential for abuse arising from surge pricing.

6. Response by traditional metered taxis to introduction of app-based services

18. The majority of the people that utilise metered taxis in South Africa are middle-to-high income earners and mostly in urban areas. Low income earners use metered taxis mostly in emergency situations. The tourist market also rely on metered taxis inclusive of traditional taxis and app-based services. Metered taxis generally operate in urban areas especially in commercial property developments such as malls, hotels, tourist areas and airports.

19. The CCSA considers the metered taxi industry to consist of traditional metered taxis and the e-hailing/ ridesharing services ("app based taxis"). Competition between

¹⁴ A base fare is charged to the passenger per trip, regardless of the number of passengers and length of the trip

¹⁵ A fare is charged according to the total time taken to complete the trip

these services is intense and is often characterised by resentment by traditional metered taxi industry due to the perceived asymmetric regulatory environment. As a result, violence between traditional metered taxi industry and e-hailing services have been witnessed.

20. Uber and Taxify are currently the largest players in the app-based taxi services' space in South Africa. The former was the first to implement e-hailing services on a large scale and entered South Africa in 2013. Taxify entered later but experienced significant growth due to competitive pricing. The success of Uber and Taxify has also led to the entrance of other app-based services such as SnappCab, Ryda, Scoop A Cab, Cabbie, Yookoo Rider, and Unicab.

21. Evidence at the CCSA's disposal indicates that the traditional metered taxi industry is responding to the introduction of app-based taxi services. Traditional metered taxis are gravitating towards app-based services. The CCSA noted that the traditional metered taxis are modernising their business in response to competitive constraints imposed by app-based services by developing its own e-hailing apps. The members of South African Metered Taxi Association ("SAMTA") designed a full e-hailing service called Yookoo Rider to connect users with metered cab drivers in their close proximity. The City of Cape Town also envisages using e-hailing apps on minibuses with the aim of transforming the minibus taxi industry into a demand-responsive service.

22. With the entrance of app-based services, traditional metered taxis faced stiff competition and have to introduce similar or even better forms of technology. For instance, Ryda introduced an app which has capabilities of connecting the passengers to a traditional metered taxi and have additional functionalities of only requesting a driver who will drive your own vehicle. As an additional safety measure, Ryda has functionalities where a female passenger may only request a female driver. However, Ryda is currently only available in Johannesburg and is in the process of being sold to a third party.

23. Cabbi and Unicab works with specific metered taxi organisations in Johannesburg and Cape Town respectively and operates like Uber. Whilst a reasonable number of traditional metered taxis introduced technology to be able to compete with Uber, the popularity and brand loyalty of Uber was significant. In part, this is attributed to the strict vetting process undertaken for drivers to be registered on their platform. New entrants providing app-based taxi services did not constraint Uber or Taxify in any significant way as most are only based in one city (with the exception of Yookoo Rider) and have not attracted sufficient economies of scale to compete effectively. Yookoo Rider provides a platform for the general traditional metered taxi industry across the country but the uptake has not been at levels anticipated when it launched in 2017. Uber and Taxify are strong brands and both have managed to derive benefits of brand loyalty.

24. An additional development was the response of drivers – some of the traditional metered taxi drivers opted to register with Uber or Taxify and in some instances, they register on both apps. Information at the CCSA disposal indicates that independent drivers are not tied to specific contracts by app-based service providers and hence have the liberty to use various app-based services simultaneously. Because of the insistence of app-based taxis to have better vehicles as part of their vetting process, some of the metered taxi drivers with older vehicles are not able to join these app-based taxi services.

25. Whilst the traditional metered taxis have responded to some extent to the introduction of app-based taxis, the impact has not been very pronounced due to brand

loyalty, first mover advantage and marketing efforts by app-based taxis. Information gathered so far in the inquiry shows that there is some competition between traditional metered taxi services and app-based taxi services in the country. This competition is often tied-up with violence in the industry that has led to deaths of drivers. This violence emanates from the traditional metered taxis resentment towards app-based services which is premised on two key factors: (i) current regulatory system and (ii) pricing of the app-based services which are lower than traditional metered taxis.

7. Engagements with Regulators and Government

26. The CCSA has engaged with the Department of Transport, and both Provincial and Local Government commenced during initial investigation of the above mentioned complaints. In addition, the CCSA has been interacting with transport regulators during the market inquiry and most of the engagements so far related broadly to understanding the regulatory framework and subsidy policy for public transport and its potential impact on competition. In addition to engagements with the different spheres of government, the CCSA engaged with taxi associations and app-based service providers as the key stakeholders in the public passenger transport industry.

27. Engagements with the transport regulators and other stakeholders will continue during the market inquiry with key interactions expected on the publication of interim findings and recommendations, which will be released for public comment. In addition, the CCSA will, upon completion of the inquiry, publish the report in the Government Gazette and submit to the Minister of Economic Development Department (“EDD”) with or without recommendations.¹⁶ The CCSA may, on the basis of the recommendations it will eventually make, further engage with the transport regulators to ensure that the recommendations are implemented.

8. Conclusion

28. As noted, the CCSA has received more than ten complaints in the public passenger transport industry, one of which related to app-based taxi services. The CCSA is conducting a market inquiry in the public transport sector which will assist in understanding the impact of the regulatory framework on competition and also the competitive dynamics within the metered taxi industry, specifically between traditional metered taxi and app-based taxi services.

29. The National Land Transport Amendment Bill [B7-2016] currently under consideration by Parliament seeks to make explicit provisions for regulation of e-hailing services and this will ensure regulatory certainty and to some extent reduce the conflict between traditional metered taxis and app-based taxi services.

30. The Commission has engaged with various stakeholders such as transport regulators and key participants in the metered taxi industry and continues to do so on its ongoing Inquiry to understand the features that may distort, prevent or lessen competition in the taxi industry; which will culminate in CCSA’s recommendations to the DoT and contribute to transport policy formulation.

¹⁶ Competition Act No. 89 of 1998. s43C(1)