

UBER

Introduction

We welcome the opportunity to respond to the consultation by Transport for London (TfL) on whether the 1998 and 2000 Private Hire regulations remain fit for purpose,¹ and to assist in developing an effective regulatory framework for Private Hire in London.

The structure of our submission is as follows.

We first set out the relevant framework against which TfL should consider implementing new regulations. These include the Better Regulation Framework, EU competition law, and wider UK government policy guidance and competition law.

Second, we set out our views on each proposal individually. In each case we consider both how the proposal relates to the stated objective and, where it relates to that objective, whether it is proportionate and whether there are less restrictive or burdensome means of achieving the same objective. We also offer data and evidence based on our own experience in the London market, and suggest additional evidence that TfL may wish to rely on.

An appropriate regulatory approach

The rules consulted upon were drawn up in 1998 and 2000. They reflect a market environment which is pre-internet, pre-mobile technology and pre-app and on-demand economy. When innovation in a sector spurs the development of new and evolving business models it is correct to reassess the appropriateness of existing regulation.

In undertaking any assessment of whether Private Hire regulations remain fit for purpose, TfL should have regard to:

1. The Better Regulation impact assessment framework, as set out by the Better Regulation Executive² and the Treasury Green³ and Magenta⁴ books on policy design and evaluation;
2. Its obligations under EU law not to implement regulations that disproportionately restrict competition; and
3. Wider government policy on competition and regulation as set out in the recent 2015 Autumn Statement⁵ and 2015 government Productivity Plan⁶.

These three frameworks overlap so that proposals that fail to meet the standard of one of them are also likely to fail one or both the others. Conversely, proposals that are carefully and properly assessed under the better regulation framework would be likely to comply with EU competition law and be aligned with broader government policy in this area.

Taken as a whole, TfL's proposals do not appear to have been developed within this framework. As a result, they are likely to result in burdensome regulation that will reduce consumer choice, undermine competition, and harm both passenger and driver safety. This is a missed opportunity to bring the regulations up to date, and risks damaging both the efficiency of the London transportation network, and the development of an innovative private hire market.

We have concerns in four areas.

1. TfL has not clearly set out what policy objectives it is seeking to achieve and why additional regulation is needed.

¹ Page 4 of the proposals sets out the objective to "ensure that [regulations] remain appropriate and fit for purpose".

² The 2003 Better Regulation Principles available [here](#)

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220542/magenta_book_combined.pdf

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480798/a_better_deal_for_families_and_firms_web.pdf

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443898/Productivity_Plan_web.pdf

2. TfL has not set out how the proposals in question would address its stated policy objective (or even an unstated one).
3. TfL has not published any assessment of whether the benefits of these proposals outweigh the costs.
4. TfL's approach is overly prescriptive and will restrict further innovation in the sector. The regulator should seek to define and enforce safety and quality standards for the market, not mandate how services are delivered.

Unclear policy objectives and the need to regulate

TfL's overall policy objectives are not sufficiently clear. On page five, TfL states

“our overriding concern in developing these proposals is to improve passenger safety. We are also committed to maintaining a clear distinction between the taxi and private hire trades and further improving the quality, safety, accessibility and overall standard of private hire vehicle provision in London”

We support the objective of passenger safety but many of the proposals have no connection with passenger safety. We suggest that this objective should be defined more broadly to include the safety of passengers, drivers, and other road users including pedestrians as well as good outcomes for the travelling public in terms of price, quality, range and service.

We do not believe that making “a clear distinction between the taxi and private hire trades” should be a policy objective in and of itself. This is an arbitrary objective, and TfL has not stated any likely benefits to either passenger safety or any wider public interest. We can see no link between preserving a distinction between taxi and PHV and public safety. We note that the CMA's submission on the current consultation suggested “that TfL should take care to avoid creating or extending regulatory divergence between taxis and PHVs, and between various types of PHV business model, as this is liable to distort competition.” Moreover, we note that while some proposals support this objective, others quite clearly run counter to it.

Even where TfL distinguishes taxis and private hire vehicles, there are some safety issues which must apply equally to both taxis and private hire vehicles. For such issues, suitable regulation that provides equivalent levels of consumer protection should be in place in both taxi and PHV markets. Improving outcomes in the PHV market without equivalent intervention in the taxi market will expose consumers in the taxi market to unnecessary risk, and run counter to the public safety objective of TfL regulation.

While TfL seeks to promote accessibility and the overall standard of private hire vehicle provision, to do so also requires ensuring value for money, economic efficiency, and the efficiency of the broader transport network. In the case of private hire in London, customer satisfaction is at an all time high⁷ and the market is expanding. The market exhibits many of the characteristics of a well-functioning, competitive market, facilitated in part by modern technology. TfL must ensure that this efficient market operation is not harmed by its proposals.⁸

Lack of link between proposals and policy objective

Second, the links between the proposals and TfL's public policy objectives are not clear. This manifests in four ways:

1. For some proposals there is no identifiable passenger harm that is being addressed at all.
2. Many of the proposals have no clear causal link with improving passenger safety. In many instances, TfL simply asserts that the proposal will increase safety with no rationale or evidence. TfL frequently cites the fact that consultees have suggested a proposal, implying that alone demonstrates a causal link.
3. Even where there may be a link between a legitimate consumer safety objective and the proposal, little or no evidence is presented to support the proposition.
4. Some of the proposals could have effects that run counter to the policy objectives. Some proposals could harm passenger safety. Several would impose greater uniformity of approach that would narrow any distinction between different operators. This would harm diversity of supply, to the detriment of consumers, and would

⁷ 2015 Department of Transport survey found public satisfaction with taxi and private hire services in London rests at 70%: an all time high. <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2015>

⁸ For example, the 2010 Mayor's Transport Strategy lists economic development, quality of life, safety, access to transport, and reductions in carbon emissions as its principal policy objectives.

even run counter to TfL's stated commitment to maintain distinct taxi and private hire markets. Other proposals would have an adverse impact on public policy objectives such as reducing congestion or promoting consumer choice.

TfL should be more precise as to the nature of each of the actual risks that it is seeking to address, and the degree of concern that is currently harboured around each of those risks.

Each proposal should thus be clearly linked to an identified and evidenced need to intervene, setting out the nature and scale of potential consumer harm, and the reasons why the market will not naturally correct that harm at least as well as regulation.

No assessment of costs and benefits or proportionality

Third, the proposals generally lack a proper consideration of benefits versus costs, and as a result, are excessively burdensome and disproportionate. Such an assessment should be undertaken and the costs should include the direct regulatory costs to TfL, the direct costs to operators and passengers of complying with the regulations, and the indirect costs that may arise over time from reduced service provision, competition, and innovation. The need to include indirect impacts is put very clearly by the Department for Transport that states *"by putting up the cost of operation or otherwise restricting entry to the trade... too restrictive an approach can work against the public interest – and can, indeed, have safety implications."*⁹ In a dynamic market such as Private Hire a reduction in competition can impose very substantial long term costs for consumers.¹⁰

An overly prescriptive approach

Fourth, many of the proposals are highly prescriptive and leave very little space for innovation and differentiation by private hire services. Rather than "future proof" the regulations, a prescriptive approach would ossify them in the technology and marketplace of the present.

In particular, the recent joint statement by the Treasury and Department for Business Innovation and Skills stated that *"a regulatory environment that encourages innovation is an essential foundation of a dynamic economy."*¹¹ This built on the earlier 2015 Productivity Plan that stated that *"A regulatory environment that encourages innovation by allowing new competitors to enter and expand into markets is a key part of this... And simplification of regulatory requirements – or deregulation – can free-up resources for businesses to put to more productive uses, raising long-run productivity and growth."*¹²

Industry participants should be given freedom to meet regulatory objectives through diverse and innovative mechanisms. Regulators should set a goal or outcome requirement and enforce whether it is met, but avoid defining the processes by which it is met.

Prescriptive regulation should be considered a last resort since both the direct costs of compliance, and its ability to impede industry innovation, are high.

Where TfL has evidence that the existing regulations are being flouted, we suggest that more effective enforcement be considered rather than increasing the prescriptiveness of how the regulations should be applied.

Where possible, regulators should embrace market solutions and enable consumers to select from a diverse range of service providers providing differing levels of quality, service, and price. Stipulating a one-size-fits-all level of service provision harms efficiency, innovation, and consumer choice.

The remainder of this document responds to each of the proposals in turn.

⁹ 2010 Department for Transport guidance on "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance" [here](#)

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481450/CMA_response_to_TfL.pdf

¹¹ Supra 5

¹² Supra 6

PROPOSAL 1: Operators must provide a booking confirmation to passengers containing the driver photo ID and details of the vehicle being used to discharge the booking.

Technology has revolutionised the private hire industry over the past three years. Uber already ensures that all riders are provided with photo identification of their licensed driver, vehicle and an anonymised means of contacting their driver. We know that our users value the extra safety that driver picture and information provide.

Uber welcomes any and all data-driven movement towards extra safety features across the industry. But the adoption - by Uber and other new entrants to the market - is the best evidence that competition between providers is already leading to innovation around providing information that improves customer safety. We are unaware of any recent increase in passenger or safety concerns relating to driver ID. Before considering a regulatory intervention that will introduce significant costs to small businesses throughout London, we would recommend TfL provides evidence of the existing risk to public safety.

Prescriptive regulation of the way that booking details are provided could have the inadvertent effect of stifling further innovation and competition. It may make it harder for smaller minicab firms without extensive IT systems to continue to operate.

A further unintended consequence of this proposal may be that operators could not accept bookings from consumers who do not have the means of receiving the booking confirmation (e.g. lack of mobile phone or email).

Regulatory intervention should be technology neutral. If TfL are minded to regulate in this area, we would suggest that operators be required to confirm the booking with details of driver and car but allow for flexibility of the channel by which this function is performed.

PROPOSAL 2: Operators must provide booking confirmation details to the passenger at least five minutes prior to the journey commencing.

In answer to question 2, we do not agree with the proposal for a time delay between journey booking time and commencement. In answer to question 3, we do not consider any specified time interval to be appropriate. The longer any time interval, the greater our concern with this proposal.

We do not agree with the proposal for three reasons.

First, there is no evidence of the problem the proposal is designed to correct. There is no support provided for the claim that there is currently a problem with customers getting into the wrong car or unlicensed vehicles, or that any such problem is related to the wait time. Nor is there evidence provided that there is any harm from drivers not pre-planning an appropriate route. As TfL will be aware, the speed of mobile internet connections in London is fast and the capacity for real-time recalculation of GPS mapping software makes pre-planning redundant.¹³

Second, there is no corrective link between the proposed intervention and the purported objective. There is no support given for the statements "A short time period will give more certainty that the driver and vehicle information has been successfully sent" and "A delay between the booking and commencement of a journey will further reduce the risk of a customer getting into the wrong car and/or into an unlicensed vehicle. It will also enable the driver to ensure the passenger is in a safe pick-up location, i.e. not having to run out into traffic to get into the vehicle." Even if such evidence were to be available, it is already illegal to pick-up passengers from unsafe locations, such as in the middle of many lanes of traffic. A more appropriate regulatory response would be simply to enforce the regulations that currently exist.

In short, TfL has not set out any public benefits that would result.

¹³ In press interviews after the publication of this consultation, representatives of TfL also noted that a similar approach had been applied in France. In this instance, that regulation was implemented with a very different intention. This is expressly not the purpose of the proposals in this case. It should, however, be noted that even in France the competition authority argued that the rule was not necessary to address the stated problem (illegal plying) and that it would distort competition and deliver poorer service to consumers; concerns shared by the Competition and Markets Authority in the UK. In any case, the rule in France was subsequently struck down on legal grounds by the Conseil d'État in December 2014.

Third, the proposal would result in substantial harm to the travelling public for several reasons.

It would mean a poorer service to passengers, causing them delay and inconvenience by artificially increasing waiting times. The travelling public is clearly concerned about this. At the time of writing more than 200,000 people have signed a petition against this proposal (amongst others).¹⁴ There is clearly little or no support for this measure amongst Londoners and we urge TfL to listen to this demonstration of public opinion.

It will increase driver costs and reduce their ability to earn. According to our data, 45% of Uber trips in September in London had an expected time of arrival (ETA) under five minutes. Requiring a minimum five minute wait time would mean that drivers would have to wait in their car for several minutes, wasting their time instead of driving someone around. This reduces capacity utilisation. These effects would be substantial. If a five minute limit had been in place in September, Uber partners in London would have been waiting for a total of over 3,000,000 minutes.¹⁵ Combining this by the average journey time and price for trips conducted via the Uber platform in London, this means that 144,000 trips could be taken during this wasted time (equivalent to approximately £2,000,000 in fares forgone by partners). Raising the costs of business models like Uber would reduce competition. The cost of lost competition would be considerable.

It may impair passenger safety. At certain times and locations, even waiting a few minutes extra could put passengers at risk late at night.¹⁶ It may also encourage touting where the waiting time acts as a significant disincentive for individuals to use licensed vehicles. This runs directly counter to TfL's stated objective. For the month of November, for example, 84% of Uber trips after 5pm (i.e. when dark) had a wait time below five minutes (that's well in excess of a million trips). Total time waited would have been almost 4,700,000 minutes, or 78,000 hours. It is in everyone's interest that this time is kept to a minimum and not artificially extended.

It may result in an increase in congestion and other costs of drivers waiting longer than they otherwise would.

The additional congestion, and the possible tendency for drivers to wait in inappropriate places, will incur further safety risks to other road users, and to pedestrians.

In summary, there is no evidence of the harm that the proposal is seeking to address, and no evidence that the proposal would offset that harm were it to exist. Even if there were, the costs to the travelling public would far outweigh any such benefits.

TfL could instead monitor the incidence and cause of alleged problem. This could cover how often customers get into the wrong vehicles, what harm results, and why the mistake was made. TfL could then fashion a more targeted proposal in the future if the need is found to arise. The proposal, as currently constituted, presents clear evidence of grievous and unjustified regulatory overreach.

PROPOSAL 3: Operators will be required to seek TfL approval before changing their operating model.

As in any other industry, individual organisations determine their business model in accordance with all applicable regulations. Requiring pre-screening of changes in business model runs counter to better regulation best practice and is only justifiable when there is a substantial risk of firms changing their business in a way that may unintentionally undermine existing regulation and cause substantial harm in the process. Such pre-screening may be appropriate in the case of systemically crucial financial institutions. It is not appropriate in the case of private hire.

General checks on the background and plans of operators happen now at the point of application and renewal of the licensing process. There is no evidence that this needs to change:

- TfL has not provided any evidence that the current approach is not working.
- TfL has not examined whether sufficient incentives already exist for operators to comply with the regulations.
- TfL has not set out why it lacks the ability to monitor and enforce compliance ex post.

¹⁴ <https://action.uber.org/tfl/>

¹⁵ The sum of the difference between the actual waiting time and 5 minutes for all September trips with waiting times under 5 minutes.

¹⁶ Concerns echoed by a number of consumer groups including Which?

<http://conversation.which.co.uk/wp-content/uploads/2015/12/Private-Hire-Regulations-Review-Which-Response-December-20151.pdf>

- TfL has not considered whether alternative ex post mechanisms could achieve its objectives in a less restrictive manner.

The proximate harm of the proposal will be an increased regulatory burden for TfL and the private hire industry.

More importantly, any operator wishing to innovate in a way that would bring about an improvement in the passenger experience will have to get pre-approval from TfL. This will delay the introduction of important benefits for consumers.

The taxi and private hire market in London is highly competitive. Whether new businesses entering the market - Karhoo, for example - or existing providers introducing new products and services - Addison Lee's 'snooze' functionality or Gett's deliveries - the sector is changing rapidly. Pre-approval of business models is likely to reduce incentives for innovation, remove first-mover advantage and, therefore, restrict competition in the market. The proposal will further harm competition by introducing an additional barrier to entry to any further innovative business models. This has been noted by the Competition and Markets Authority in their submission to TfL.¹⁷

Given the mobility challenges facing London over the next decade all of those involved in regulating, facilitating or providing transportation services should make sure that any changes to the legal framework for PHVs keep in mind the value of innovation.

We are also concerned that - as far as we know - TfL has not undertaken any assessment of whether the benefits of the measure would exceed these costs. We believe they would not. Nor has TfL examined whether alternative approaches that would be less costly for passengers would be adequate.

TfL's stringent approach to innovative products has already delayed the launch of new services in London. Discussions began on the detail of uberPOOL - for example - in April 2015 and continued until November 10th 2015. The length and detail of the information requested and provided to the regulator reflects TfL's considerable existing power. Our experience is not isolated. Concerns have also been raised by the proprietors of Maaxi Taxi - another ridesharing service operated by black cabs - who alleged in public that TfL had delayed the launch of their sharing product.¹⁸ Indeed, using regulatory initiative - in this case with regard to services that make a verifiable contribution to the Mayor of London's oft-stated objective of reducing congestion - clearly runs counter to the public interest.

PROPOSAL 4: Security for app based booking platforms

Biometric security of this type is not currently present in the London taxi or private hire market. Uber does not support its mandatory introduction in the UK while technology is neither universally available or effective. It is also unclear that a problem exists that needs to be solved. In any case, the costs associated with this proposal would be significant and represent a significant distortion of the competitive market.

TfL has provided no evidence of 'account sharing' or ID verification being a major problem in the UK. This is certainly not our experience. Indeed, we would expect the further safety features introduced by Uber and others - specifically the provision of a photo of the driver upon booking - to have reduced the incidence of this type of problem.

We also note that there are currently no proposals for similar biometric security measures to be introduced in the non-app based private hire market or in the London taxi trade where personal identification is more difficult. It seems likely that the introduction of a significantly higher barrier to entry for app-based providers would jeopardise the uptake of the extra safety features noted above as well as stifling competition more broadly.

In fact, app based operators are often available to provide for a far greater level of security than their traditional competitors in either taxi or private hire. For both customers and partner-drivers increased safety and accountability is one of the key benefits provided by Uber. Our technology enables us to concentrate on the safety of both riders and drivers before, during and after every trip.

Before the trip...

¹⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481450/CMA_response_to_TfL.pdf

¹⁸ <http://uk.businessinsider.com/nat-rothschild-taxi-app-maaxi-problems-2015-6>

- A rider can request a vehicle by pre-booking through the Uber app and watching their car on a map as it approaches the pick up location. This means riders can wait comfortably, and most importantly safely, in their home or office until their partner-driver arrives.
- When a partner-driver accepts a request, the rider receives the partner-driver's first name, photo, registration plate, car make and model, and the partner-driver's average star rating as rated by previous passengers. This means that riders always know they're getting into the correct licensed, and pre-booked, vehicle.
- Riders and partner-drivers can also contact each other on anonymised phone numbers through either phone or text - protecting privacy whilst ensuring that partner-driver and rider are in contact if there are any problems with a pick up.

During the trip...

- Riders can see a live map of their journey as they travel, ensuring they always know where they are, and the route they're taking.
- Riders can use the 'Share my ETA' function in the App to send a link to their friends or family, who can then view their journey on a map in real time - watching their car arrive to an agreed destination.
- All payments are fully cashless - giving peace of mind for both partner-drivers and riders

After the trip...

- After each journey, rider and partner-driver rate each other out of five stars. For riders, Uber asks they rate the overall experience their driver provided and any rating of less than three stars prompts them to provide further in depth feedback. For partner-drivers, we ask they rate the passenger on their timeliness, politeness and behaviour in the vehicle. Over time, this allows Uber to monitor the quality of both riders and partner-drivers - ensuring a better overall service for all.
- All journeys are fully recorded by Uber. This means that if there is ever an issue during a journey, such as route selection, a collision, or even if a rider leaves an item in the vehicle - the Uber team can quickly find the journey in question and solve the problem.
- The much richer information held by Uber - and other similar services - is much more valuable to both the customer (should they wish to complain or seek redress on an aspect of their journey) and also law enforcement agencies.
- If any problems occur following a journey, the Uber customer support team is on hand 24 hours a day to quickly respond to riders and partner-drivers.
- We respond to 75% of complaints, comments or questions within 6 hours. The most serious issues are overwhelmingly answered in much shorter timeframes.

On the issue of platform security, the increasing trend towards digitisation and electronic record keeping in the industry also presents a security challenge for regulators in the UK. Traditional bookkeeping in the private hire industry has been limited in both the usefulness and the value of the data it collected. Electronic records supplied by an operator are a huge improvement.

The specific proposal to require operators to demonstrate what security measures they have in place to protect passengers from fraudulent use of their accounts and/or personal data is particularly excessive. As TfL is aware, Uber - and companies like us - are also subject to scrutiny by other regulators - EU data privacy regulation and the Information Commissioner, for example. There is no evidence that current regulatory requirements are insufficient, or that an extra layer of regulation from TfL would make any practical difference. Where regulation already exists to deal with exactly this issue, additional regulation amounts to an undue burden.

In our previous submission we argued that there would be a larger gain in customer safety and protection if TfL were to require all operators to improve their audit trail, including information on how the record was created, by whom and any further amendments to the record. We recommend this be considered rather than new regulations related to the storage of data and account security.

PROPOSAL 5: Operator must offer a facility to pre-book up to seven days in advance

TfL notes that an 'essential part of a private hire operator's role is to offer the facility to accept advance bookings.' But, as the Law Commission notes 'there is no statutory definition of a pre-booking.' The Commission goes on to suggest the following definition of pre-booking in the private hire sector as a 'one for which records meeting prescribed

requirements are kept, and where advance price information is available on request.¹⁹ Every Uber journey satisfies these criteria. This proposal has no impact on customer safety. It is, in effect, a major prescriptive market intervention recommended with no evidence that change is either required or welcomed by customers.

There is also no evidence presented that people who require a long-term pre-booking service cannot currently get it in the market, or that they would be materially harmed if they could not. Implementing the proposal would reduce competition and consumer choice, leading to direct consumer harm.

This proposal appears to be based on the proposition (for which no evidence is presented) that consumers who wish to pre-book a PHV well in advance find it hard to do so, and that they are harmed as a result. TfL notes that this functionality may be particularly important for disabled passengers.

It is very unlikely that customers find it hard to pre-book PHVs seven days in advance. The private hire and taxi market in London is highly competitive and it is clear that many of the users of the market value this service. There is ample availability for them to choose a provider that suits their preferred method and time of booking. The simple truth is that where customers find services useful they are likely to be provided by a competitive market. The current situation in the market means that a number of different businesses are seeking to win passengers' business with differentiated offerings. Most operators allow pre-booking significantly in advance, some do not.

There is also no evidence that a lack of seven-day pre-booking significantly in advance would harm disabled passengers given the high quality and short wait times of on-demand booking services such as Uber.²⁰ With the launch of uberASSIST in October 2015 and Uber's public commitment to introduce a wheelchair accessible service in the New Year, Uber is already working to improve on-demand booking services for disabled passengers in London. We would also note that both these services offer reliability without mandatory seven-day pre-bookings at ETAs (expected time of arrival) (for ASSIST at the moment) that will drastically increase the flexibility and responsiveness of private hire services for the disabled and the mobility impaired. uberASSIST is also provided at the same - extremely competitive - fare as the uberX product.

While there is no evidence that the proposal will benefit consumers, the costs will be substantial. Uber, for example, does not offer a service which allows passengers to specify when they would like to be picked up. Plenty of other operators do. Uber relies on the ability of our technology to keep partner-drivers busier, reducing costs and increasing partner-driver revenue. Long-term pre-bookings would fundamentally compromise our ability to do this by radically lowering the utilisation of private hire vehicles. Forcing Uber to offer a pre-booking service where pick up can be specified up to seven days in advance will directly harm consumers who do not wish to pre-book that far ahead by reducing competition and choice in the market, and raising prices on the Uber platform.

However, were TfL to find evidence that the market is evolving in such a way that certain groups of passengers were inadequately served, it would be open to TfL at that stage to impose more proportionate and targeted remedies. Uber would be happy to work with TfL in devising what an appropriate remedy might be.

PROPOSAL 6: TfL proposes to no longer issue licenses for in-venue operators or temporary events

The stated objective of this proposal is reduce touting around major events and popular venues. Of course, the most effective way to reduce touting is ensure the market supplies available private hire cars for booking when customers need them. The ability to match supply and demand effectively has clear public safety implications. Put simply, Londoners are more likely to use less safe means of transport when they are not able to easily book a private hire car or hail a taxi.

The withdrawal of in-venue and temporary event licences would likely exacerbate instances of touting in places where large concentrations of people mean that demand far outstrips supply. The introduction of other proposals in this consultation document - mandatory five-minute wait times, for example - would encourage customers to consider unlicensed vehicles or journeys without pre-bookings. The removal of in-venue and temporary event licences will do the same.

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314106/9781474104531_web.pdf

²⁰ The average wait time for a PHV booked via Uber in London is under three minutes.

As with other areas of the consultation, we would urge TfL to consider a full impact assessment of these proposals before deciding on their implementation.

PROPOSAL 7: Operator must have a fixed landline telephone which must be available for passenger use at all times

The consultation notes that the stated objective of this proposal is to make it easier for passengers to raise concerns with operators and to ensure that they can do so in 'real time'.

TfL has not provided any evidence that this anachronistic feature is desired by passengers in London. Customer satisfaction across the market is at an all time high. Further, Uber does not promote a landline telephone number and this does not appear to have hindered its growth and success in the capital in the last three years. TfL should not regulate how firms differentiate themselves to meet differing consumer demand. It remains open to consumers who value having a landline number to contact to choose PHV operators that provide one. No evidence or compelling rationale is provided in the consultation document for making such a service mandatory.

Even were TfL to mandate a 'real time' contact mechanism, it should not stipulate the exact method by which such contact is delivered. For example, while Uber does not promote a landline, all Uber riders can also raise concerns with their operator and get a fast response. Modern electronic communications provide for a number of different contact options available to Uber users, whether in the app, email or even social media. Uber maintains 24/7 support that responds to every single one of these concerns and uses a sophisticated triage system to ensure that urgent communications are dealt with quickly and professionally.

No such requirement is imposed on London taxi drivers and even TfL as regulator and enforcement body does not maintain a 24/7 landline (or customer service function) accessible by the public. And, of course, the first point of call in any form of emergency should be the emergency services.

Nor is it clear why TfL feels it necessary to specify the form of communication here. The principle should be that riders can raise customer service queries quickly and receive a speedy response. It is not clear why a landline is the only form of communication considered acceptable here. This is a good example overly prescriptive regulation and will restrict further innovation in the sector.

While the need for the proposal is unclear, the cost is obvious. A mandatory call centre for all private hire operators would significantly raise operating costs, which in a competitive market will be passed on to consumers. It will also operate as a barrier to innovation and entry as new entrants will not be able to devise innovative new ways to deliver high levels of customer service at lower costs..

Indeed, the need for real-time contact has probably decreased in recent years since the richer information held by Uber - and other similar app-based services - is more valuable to both the customer (should they wish to complain or seek redress on an aspect of their journey) and also law enforcement agencies.

As noted above, a requirement for all operators to improve their audit trail relevant to bookings and customer interactions would solve many of the same issues.

In summary, we agree with both TfL and the GLA Transport Committee that the sector's regulatory framework should be 'future proof.' That means keeping the language of regulation technology neutral and focusing on the outcomes for drivers, customers and the regulator. For example, as mobile and app based communication continues to increase in prevalence, mandating the presence of a landline in an operating centre quickly becomes obsolete. If TfL does feel that from a passenger safety perspective it is necessary to require a permanent operator contact point or mandate a response standard (eg a response in 'real time'), it is not clear why this has to come in the form of a landline telephone number.

PROPOSAL 8: Operators must not show vehicles being available for immediate hire, either visibly or virtually via an app

TfL proposes that operators must not show vehicles being available for immediate hire, either physically in the street or virtually via an app. This proposal aims to reduce the possibility of 'touting' or other illegal cab activity.

There is no link between the proposal and the stated objective. TfL has not set out how refraining from showing for-hire vehicles would lead to a corresponding reduction in touting, especially in the instance of app-based hailing platforms. The reducing of “other illegal cab activity” is impossible to assess as it is not clear what illegal activity is referred to.

Rather than aiding consumers, the proposal reduces the information available to consumers and thus must reduce their welfare.

For example, while the Uber app does not show cars available for immediate hire, it does show vehicles available for booking by the customer. Extra and more accurate information about the availability of a service almost certainly results in fewer customers resorting to alternative, unlicensed providers or touts. Our feedback clearly shows that our customers greatly value this feature of the app.

If TfL is aware of an increasing problem with illegal touting that harms the public, it should consider more effective and less restrictive responses, such as bolstering its existing enforcement capacity to deal with illegal plying for hire.

PROPOSAL 9: Operators will be required to provide specified information including details of all drivers and vehicles to TfL on a regular basis

While this proposal is linked to TfL’s public safety objective, it is not clear how the suggestion as articulated would improve public safety. First, TfL does not appear to have undertaken any analysis of the existing practice of operators and what information they have available that would assist TfL in this regard. Second, TfL has not provided any analysis of where existing monitoring gaps are greatest. Third, TfL has not considered whether this proposal could create an uneven playing field and thus harm competition.

At Uber, we have state-of-the-art electronic documentation system that stores over 200,000 individual documents. We bear the cost in both hardware, software and man hours of maintaining this complex but necessary system. Such a record system has very significant financial implications.

TfL has repeatedly confirmed the fitness of our system over the past three years. We believe that the regulator keeping effectively duplicate records to those held by operators is not an efficient use of both resources and time on the part of the regulator. As both law enforcement and TfL’s own enforcement team will attest, the relevant parties are already able to access Uber records where required in an extremely timely fashion.

That said, if TfL is convinced of the merit of this proposal we would strongly argue that any such database or reporting mechanism should be automated and constructed in such a way that drivers are not prevented from moving easily from one operator to another. There are also significant improvements that TfL could make to its own systems. For example, enabling a two-way flow of information regarding the licensing status of vehicles and drivers would be welcomed by many operators in the private hire market.

As you will be aware, we currently check driver licence status against the Licence Checker.²¹ We do this both at the point of onboarding a brand new Uber driver, and regularly throughout the lifetime of the driver. This provides a real-time single ‘source of the truth’ for us to verify and take action with drivers if revocations have occurred.

This process has proven helpful, however we could do more. We would like to suggest that we explore a longer-term solution, ideally a direct API interface. We believe this would serve the following mutual benefits:

- Immediate compliance checks for any licence revocations, and immediate suspensions from operator requests thereof;
- Availability for all operators to make use of the technology and set up full compliance checks, not only Uber
- Clear, transparent and immediate checks for drivers, removing any ambiguity in timeframes or processes across operators;
- Providing a digital version of the PHDL and PHVL for our record keeping, thereby ultimately removing the requirement for paper versions;

²¹ <https://tfl.gov.uk/info-for/taxis-and-private-hire/licensing/licence-checker>

Uber also works closely with the Metropolitan Police Cab Enforcement Unit (RTPC - CEU) along with a variety of other Metropolitan Police and London City Police departments when necessary. We have industry leading information request turn around times and a dedicated liaison officer available for the more complex requests. If the proposal were to be implemented, the relevant passenger safety concern must logically also apply to black cabs.

PROPOSAL 10: Operators must specify the fare prior to the booking being accepted

First, this proposal is not related to the stated objective of the consultation, namely public safety.

Second, to the extent that this proposal is related to consumer protection and the need for consumers to have sufficient information to make a decision, TfL has not provided any evidence that such a measure it is necessary for all PHV providers to offer the service. It is already provided by many providers in the market. Passengers are generally aware of the different pricing models and seem able to choose between them effectively at present. Uber agrees that customers should be able to get an estimate of the potential cost of their journey and that 'additional charges' should be added to the fare once the journey has begun and the terms of the contract have been agreed. In November 2015, London Uber customers requested a fare estimate in 24.5% of our booking requests.

It would seem that customer demand for this pricing model is well served by the market. Even in our sharing product uberPOOL, for example, we have introduced set fares at the time of booking.

Moreover, there is also benefit in the flexibility of a variable pricing model. A significant number of Uber journeys in London each day change their destination mid-route, and a fixed price model would not be convenient in such a circumstance.

Even if TfL determined that the average consumer prefers a fixed price model, we do not, agree with the proposal to make this pricing model mandatory. It may have many unintended negative effects. While potentially appealing in principle, generally setting fares prior to a journey will increase prices for consumers. Private hire operators would be forced to produce guaranteed fares that have the risk of journey disruption and delay included. These would undoubtedly be higher than those where the fare is able to change to reflect the realities of the journey undertaken by driver and passenger.

As with other proposals in this consultation, this proposal would remove another way in which private hire operators compete with one another to deliver the most popular service to customers. While we acknowledge that TfL's stated objective in considering this change is to reduce over-charging, we would argue that the operator conditions which require an operator to either offer an accurate estimate (and record it for later confirmation) or an agreed fare is sufficient and significantly less harmful to the consumer.

PROPOSAL 11: Operators must record the main destination for each journey which must be specified at the time the booking is made

First, the link between this proposal and the stated objective is unclear. The recording of the precise details of each journey does not require advance specification. It is also unclear how recording at the time of the booking is different than at the beginning of the journey. It is not clear in the modern world how advance specification supports a passenger safety advantage or assists with compliance. The historic intent behind forced destination entry has been both public safety and route efficiency. With current automated record keeping and GPS technology neither of these remains compelling in the digital era.

Mandatory destination entry should not be a requirement in a modern, technology-enabled industry. While there may remain a place for fares to pre-agreed destinations for pre-agreed prices, the proliferation of operators in the market means that customers now have a choice about which operator and what type of booking they plan to make. Of course, customers should always be able to receive an accurate fare estimate at the point of booking their journey as an integral part of making sure they are protected at all times throughout the transaction.

In the consultation, TfL does not provide any evidence from the travelling public that they want to be forced to specify their destination at booking. Nor is any evidence included that the status quo does not provide for adequate record keeping for law enforcement or the regulator. The Uber system records in real-time a level of detail that allows

customers, drivers, operators, regulators and law enforcement to know the precise timing and details of every single interaction facilitated by the Uber platform.

We have also seen from the use of our platform over the last three years that many customers appreciate the flexibility of being able to make multiple stops, change final destination as their plans change or direct the driver themselves. Approximately 80% of Uber journeys have a destination entered prior to the beginning of a trip. Crucially, our system not only tracks the exact journey undertaken, but also any fare estimates received by the customer or change in destination while on the trip.

However, for other types of PHV service destination entry is essential at the time of booking. For example, the pooling solutions that are just beginning in the London market will rely on destination entry at the time of booking anyway. In this scenario the matching algorithms require a final destination in order to calculate whether the customer is able to share the ride with another travelling along the same potential route. In any case, this is another good example of technological development changing behaviour in a way unrelated to regulation.

In addition to a reduction in consumer choice and service flexibility, the proposal may lead to other costs. There has long been strong anecdotal evidence of private hire operators and taxi drivers effectively screening booking requests to adhere to their own criteria (distance, area of the city etc.). Customers in London will be sadly familiar with a driver that refuses to take them late at night because they don't want to 'head south of the river.' The fact that an Uber partner-driver only receives the destination of a trip when the passenger is in the car is a safeguard that ensures that a reliable service can be provided to everyone at all times, whatever their planned journey.

The solution for the problem of overcharging that black cabs utilise is the meter, which measures time and distance on an objective basis that customers understand when they take a black cab. Solutions with equivalent outcomes should be available to passengers in the PHV market.

Licensing regulations here should look to give the customer as much power as possible. There is a significant danger that regulation of this type prevents new and innovative approaches to the product from developing in a rapidly changing sector.

PROPOSAL 12: Harmonise retention periods for records

GPS technology has allowed the collection of much richer data on drivers, riders, bookings and journeys. We support clarification of the period for which we will be required to keep records.

There are clear differences in the length of time types of data remains relevant. For example, lost property data would seem to have limited value and necessity past a certain point. Vehicle records, as well, for drivers who have stopped driving on our platform, or who have been banned, have limited value and considerable cost implications past six months. Certainly a twelve month retention period for this information would seem unnecessary. Harmonisation, while simple from a regulatory standpoint can place undue burdens on businesses in data storage and compliance. We know that UK privacy groups have expressed concerns on this issue in the past and urge TfL to be guided by the principles of the Information Commissioner in this area.²²

PROPOSAL 13: Limit on the number of business names attached to each Operator's licence

We are unaware whether over-proliferation of business names exists, and if so what problem it causes. However, consumers tend to value brands that they can recognise. Given the heightened level of competition in both the taxi and private hire markets in the capital, we expect brand recognition to continue to grow in importance. As such, even if there were problem with over-proliferation of business names, it may not be necessary to regulate since the market may provide sufficient incentive for firms to harmonise brand names.

Brand recognition is not an objective that regulators should be involved with. Inasmuch as any individual brand names may be misleading, then suitable action should be taken, but the number of names employed may not be related to any misleading practices.

²² <https://ico.org.uk/for-organisations/guide-to-data-protection/principle-5-retention/>

Nonetheless, for reasons of transparency in communication and complaints, Uber would broadly welcome any amendment to licensing conditions that ensures that consumers are aware of the name attached to their operator's licences.

PART 2: PRIVATE HIRE DRIVERS

PROPOSAL 14: Specific requirement for an English Language test

Uber broadly supports a more stringent English language requirement for private hire drivers. We recognise that the trade is at its core a public service industry and participants must be able to communicate effectively with passengers over the course of providing their service. For that reason, we would recommend that any English language test introduced as part of the driver licensing process should focus predominantly on the ability of the applicant to converse effectively.

The consultation document does not provide details on what it believes constitutes an acceptable standard and how this will be measured. The proposal for private hire drivers to demonstrate competence at an 'intermediate level' should be more specific.

We note though that satisfaction in the taxi and PHV markets is at an all time high. New technology such as GPS, interactive maps, app-based booking systems make English language less important than it has been in the past, not more. Any extra burden on applicants should be introduced after thought has been given to ensure that it will not form an additional administrative burden that delays and deters those who want to make a living for themselves in the trade.

Earlier this year, Uber also launched features that enable deaf individuals to drive on our platform -- an English Language test would prevent them from being able to do so. We would propose that any language test that TfL may implement be flexible enough for deaf people and other groups to participate in without fear of discrimination.

PROPOSAL 15: Drivers to only work with one operator at a time

TfL proposes to require that licensed PHV drivers only be permitted to work for one operator at a time, and submit to an exclusive contractual obligation. TfL argues that this is necessary to reduce the risk of drivers working excessive hours with a number of different operators. Uber does not agree with this proposal.

TfL provides no evidence that this is currently a problem and, if it is a problem, what the impact on customer safety and satisfaction has been.

We note that TfL's proposal seems only to address excessive hours among drivers working with multiple operators; it does not address the risk of excessive hours among PHV drivers working with a single operator, or the danger of black cab drivers working excessive hours. It also does not address the risk of PHV drivers working excessive hours by combining PHV with non PHV jobs. It is unclear why this regulation is proposed only for private hire drivers without similar action being contemplated to address corresponding behaviour amongst London taxi drivers.

The proposal will also harm the competition and efficiency in the market.

The ability of drivers to be flexible and move their labour across multiple platforms is a vital principle in maintaining a competitive market in London. It allows both operators to compete for drivers which should lead to upward pressure in the driver offering. Removing this principle would also create a significant barrier to entry for new operators in the market.

We also believe that there is a real danger that mandatory single-homing can create a strong network effect, as it would effectively encourage drivers to work only for the operator with the most customers. The direct consequence of a change of this type would be a market that supports a smaller number of larger operators, likely leading to reduced competition and higher prices.²³

We recommend that TfL clarify their expectations of private hire drivers with regard to working practices and consider issuing a maximum hour per day rate that they could be confirmed as part of compliance checks.

²³ See CMA response: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481450/CMA_response_to_TfL.pdf

PROPOSAL 16: Driver and Operator licence applicants to provide National Insurance numbers and share with Department for Work and Pensions (DWP)

Uber supports this proposal. We co-operate with all requests for information from the Department of Work and Pensions and have done so since launch. Though we do note that no evidence has been provided that the Department itself has requested this further information.

Uber has made it easier for all drivers to comply with their tax obligations. All Uber partners receive weekly income statements. These summarise payments, service fee, and any other deductions. The online partner dashboard also allows drivers to get a total income figure for tax purposes in a matter of seconds. Uber has also arranged for accountancy firm Crunch to offer all partners a free tax consultation.

Given activity in this area in the private hire sector, we would welcome clarification from TfL of similar measures that they plan to introduce in the taxi industry.

PROPOSAL 17: Vehicle licence to be revoked if driver licence revoked

Uber supports TfL's objective of trying to ensure that drivers who are convicted do not continue to work. But TfL has not assessed whether the costs of this proposal exceed the benefits. Any change to regulation may incur significantly adverse effects for individuals who share cars or for rental companies that provide a fleet for the industry.

Nor has TfL set out whether better enforcement against convicted drivers would not be a less intrusive instrument. TfL has not set out why barring the driver is not a sufficient solution. In this regard, TfL could consider requesting information from operators to help with detection of violations.

The proposal may not be effective as a driver who wishes to continue to drive illegally could simply change car. Conversely, a PHV driver with his license revoked will have no use for his vehicle and will likely have an incentive to sell or lease out the vehicle at the earliest possible opportunity. In any case, the car remains fit for purpose.

Our records indicate that almost 2,000 of our licensed partner-drivers share their vehicle with other drivers on our platform. We should, of course, be clear that it is also possible that our partners to also share their vehicle with licensed drivers who do not use the Uber application.

TfL is unable to guarantee that where a driver's vehicle licence is revoked through no fault of their own, individuals will not be deprived of their livelihood.

PROPOSAL 18: Checks on convictions of operator staff

Uber absolutely agrees that any staff members dealing closely with the well-being of members of the public should have a background check. But TfL has not provided any clear evidence there is an existing problem with the conduct of operators and their staff in London.

We would welcome clarification and more information from TfL on the action criteria they expect to apply to employ with regard to the employment of individuals with a prior criminal record. We would also hope that in the case of app-based operators where there is little or no interaction with the public, TfL does not seek to unnecessarily restrict the employment opportunities of individuals within the sector.

We also note that the proposal for the introduction of an audit trail obligation covering all interactions with the public - as enabled by app and email based communication - would solve many of the same issues. We believe that similar safety objectives should apply in equal measure to the taxi market.

PROPOSAL 19: TfL stop accepting payment by PO and cheque

No information is provided with regard to the number of payments TfL processes from both of these sources. Without this information it is difficult to make a judgement as to the pertinence and proportionality of this proposal. Though we should note that this proposal has no impact on Uber as an operator.

PART 3: PRIVATE HIRE INSURANCE

PROPOSAL 20 Hire and Reward insurance to be checked at point of licensing and must be in place for duration of vehicle licence

Uber welcomes further action from TfL in this area. We do not, however, support the proposal to mandate vehicle insurance at the point the private hire driver licence is issued because we do not believe it would be effective.

It would not prevent the primary concern in this area: individual drivers would still be able to cancel their policy once the vehicle licence has been issued (as analogous to unsubstantiated reports of drivers doing so after joining a new PHV company or platform).

Moreover, this proposal would require drivers to spend money on insurance before they even know whether their application for a PHV licence has been approved or there is a PHV company they can work with.

This proposal would represent a very large barrier to entry for private hire drivers. Our data indicates that typical annual insurance policies costs between £2,000 - £2,500 per year. This is money that a large proportion of drivers do not have readily available. Loan arrangements are currently available that spread this cost over time, but drivers need good credit and a significant deposit for annual policies.

Implementation of this proposal would represent a very significant burden in the licensing process that would add significant time to the approval process and would consume vital resources more effectively used elsewhere.

We also note that a significant number of private hire drivers share vehicles and it is unclear how this proposal would reconcile this fact.

Increased enforcement against uninsured drivers would be a more proportionate response to any perceived risk. Uber conducts our own checks of insurance documents at onboarding and insurance renewal for every single driver active on the platform. We also use spot checks directly with providers routinely over the course of the year. We are also working independently and directly with insurance companies to find ways to routinely check the validity of documents used on the platform electronically and in real time. TfL support would be most welcome in this area.

PROPOSAL 21: Drivers to carry or display a copy of insurance details at all times

This is a welcome proposal. We believe that this initiative would provide for the ability of compliance officers to confirm insurance status of private hire vehicles in real time. This proposal is clearly linked to a public safety objective and is relatively low cost to implement. In the case of a black taxi, of course, an insurance certificate is posted in the vehicle. We would welcome a level playing field in this regard.

We believe this would be a significantly more effective deterrent to drivers considering violating the terms of their licence.

PROPOSAL 22: Hire and Reward fleet insurance in place by operators

TfL's objective for this is that 'fleet insurance would ensure customers are protected in case the driver is uninsured or if the insurance is in any way invalidated.' Uber, of course, supports this objective. We note again that TfL has not provided any evidence that uninsured drivers or those possessing invalid insurance is a significant issue in the trade in London.

In any case, there are a number of different ways for TfL to reduce or eliminate the risk of uninsured drivers. Some of which are suggested above. TfL should consider other mechanisms that achieve the same objective.

The proposals for drivers to display their insurance, combined with spot checks and strong sanctions could be a far more cost effective way to achieve this objective. Uber would support sanctions that would have a strong deterrence effect. TfL could also explore how it could engage platforms to assist it with the detection of non compliance by drivers.

TfL accepts that this proposal would result in significant additional cost, but may not be aware of the non-financial constraints on business model that fleet insurance would implicitly mandate. In addition to these costs on individual firms, this proposal would raise a very significant new barrier to entry to the sector and thus reduce competition.

The provision of fleet insurance by operators would also reduce choice and opportunities in the market. It seems certain that companies providing insurance for drivers on their platform would also take closer control of drivers' working hours and practices. The imposition of fleet insurance, we believe, would effectively create a single operator environment in London. We have set out in an earlier section - proposal 15 - why Uber does not believe this is a good thing for the taxi and private hire market in London. Our concerns are shared by the Competition and Markets Authority.

In July, during his appearance before the Greater London Assembly Transport Committee, Leon Daniels, Managing Director of Surface Transport, TfL, noted that 'what we want and what we are pressing for is the ability for TfL as the regulator to be able to check online instantly the validity of insurance for road users, particularly the ones [private hire] that we are talking about.'²⁴ Uber welcomes this proposal and agrees this is best way forward. We are surprised, therefore, not to see this reflected in the consultation document. There is room for TfL to act to make this process easier and we would welcome the support of the regulator here.

Uber is currently negotiating the introduction of an API based system with major insurers in the market that will perform precisely this function, and so we [ourselves] will be able to access real time insurance coverage status of our drivers. We expect to launch the first of these in January 2016.

PROPOSAL 23: Operator licence type

This is not a proposal for a specific regulatory intervention so we confine our response to discussing the general factors that TfL should consider as it develops its thinking further.

We support TfL consulting on this proposal separately, as the proposal suggests. In any such consultation, we would suggest that TfL set out clearly the problem with the current system in relation to consumer harm, the objectives that its charging structure seeks to achieve, and that it outline the principles underlying its charging structure to ensure that they are proportionate and equitable. Any charging structure should also take account of the extent to which the systems of existing operators, such as electronic documentation and dedicated compliance teams, assist TfL in meeting its objectives. TfL may wish to consult on how it prioritises its enforcement as is best practice in many regulators, and how it can most effectively detect the types of non-compliance that pose the greatest harm to public safety.

PROPOSAL 24: Controls on ridesharing in licensed vehicles

This is not a proposal for a specific regulatory intervention so we confine our response to factors that TfL should consider as it develops its thinking further.

We support TfL developing its thinking on this issue further, as the proposal suggests. In doing that, we suggest TfL have regard to the following factors.

Reducing congestion is among TfL's highest priorities. To reduce congestion we need to ensure that London can effectively handle its growing population as well as encourage people who commute by car that there's a better alternative. There are no simple solutions to these challenges. But getting more people to share their journeys and providing credible alternatives to car ownership are important parts of the answer.

²⁴<http://www.london.gov.uk/moderngov/documents/s49773/Minutes%20-%20Appendix%203%20-%20Transcript%20Taxi%20and%20Private%20Hire.pdf>

First, the sharing of vehicles has the potential to deliver substantial benefits. We agree with TfL that “Sharing of private hire services has the potential to provide a range of benefits such as cheaper individual fares, reduced congestion and greater utilisation of vehicles, thus reducing emissions.”²⁵ Well functioning taxi and private hire markets are vital to keeping cities like London moving.

Second, there is certainly substantial demand for this type of service. Over the last three years in London we’ve seen lots of passengers wanting to go in the same direction at the exact same time. In just three weeks of uberPOOL there have been 50,000 matched trips in London alone. That equates to approximately 117,000 miles that have been saved by having more than one person sharing the same vehicle and a reduction of approximately 50 tons of CO2 emissions.²⁶

Third, existing legislation is clear on legality of these types of journeys. Shared private hire services are not fundamentally different to existing services. TfL has already recognised that uberPOOL is legal and fits within existing definitions of private hire and taxi sharing. Our service continues to ensure that all drivers on the system are fully insured as licensed PHV drivers for commercial transportation of passengers. That said, we agree that consent remains an important principle. Passengers booking a shared car must proactively select that product and accept the possibility of another rider joining them in the vehicle.

Fourth, TfL should consider how liberalisation of the regulation on ride sharing could further help it improve public transportation in London.

The most recent national statistics from the Department for Transport also show that while car traffic is increasing at about 2% a year; most likely as a result of economic growth, population growth, and low petrol prices albeit to a level that is still below its 2007 peak. London's population is growing fast - up 15% in the last ten years - and that trend looks set to continue. So getting around the city is only going to get harder.

TfL has already done extensive work to promote the sharing of journey in London.²⁷ The regulator has noted that car clubs and sharing ‘can help unlock a new model of urban mobility for London by offering an alternative to private car ownership.’ There are clearly extra safety features inherent in sharing being facilitated by licensed private hire drivers and Uber’s technology.

Instead of regulating to curtail these types of service, TfL should consider ways that regulation can encourage the growth of further car sharing and the most efficient utilisation of the capital’s road network.

Fifth, TfL should consider how strong competition may drive innovation and new technology that help address regulatory concerns. For example, developments in payment systems technology may make the sharing of payment easier and more accountable.

PROPOSAL 25: Amendment of advertising regulation to include “in” vehicle

TfL proposes to clarify Regulation 8 of the Vehicle Regulations such that the current prohibition on advertising will include material displayed ‘from’ as well as ‘on’ the vehicle. It is not clear what justification exists for the prohibition of advertising either inside or outside vehicles.

This proposal may have the effect of closing off a potential income stream for PHV drivers and/or operators. No equivalent restriction applies to taxi drivers so the proposal would seem to place PHVs at a competitive disadvantage. As noted by the Competition and Markets Authority in their submission, the proposal may also have the effect of impairing consumer choice insofar as competing PHV operators (including new entrants) will not be able to advertise themselves and their respective merits with a view to gaining custom.²⁸

²⁵ <http://content.tfl.gov.uk/tfl-car-club-strategy.pdf>

²⁶ Using Myclimate.com’s calculation tool: https://co2.myclimate.org/en/offset_further_emissions

²⁷ TfL’s Car Club Strategy: <http://content.tfl.gov.uk/tfl-car-club-strategy.pdf>

²⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481450/CMA_response_to_TfL.pdf

ANNEXE 1: The Consultation Process

In addition to the concerns we have raised herein relating to the individual proposals that are the subject of this consultation (“the **Proposals**”), we have a number of fundamental issues regarding the process that TfL has followed throughout its present review of the private hire regulations, and the development of the Proposals. These principally concern the transparency and fairness of that process, and the extent to which the decision-making process relating to the Proposals, and their adoption, has and will, take into account the interests of all interested parties in a fair and equitable manner.

We have already communicated these concerns to TfL on a number of occasions, both directly and through our external lawyers, in the hope that they might have been addressed earlier in the review process. Regrettably, TfL has so far failed to respond substantively, or to take any measures that might address the obvious and inherent unfairness of the review. As a result, Uber is, and remains, on an entirely unequal footing to that of its principal competitors with regard to participation and input into the development of private hire regulation in London and, in particular, the formulation and adoption of the Proposals.

Details of our specific concerns have previously been set out in letters dated 11 September, 27 October and 6 November 2015 from our external lawyers, Hogan Lovells International LLP, to Boris Johnson MP, the Chairman of TfL. In summary, those concerns are as follows.

Representation within TfL

The TfL Board is ultimately responsible for most aspects of London's transport system, including implementation of the existing regulatory regime and development of the future regulatory framework for the taxi and private hire industry. The Surface Transport Panel supports and advises TfL in carrying out its policy development and enforcement activities in the private hire sector.

Since it first obtained its PHV Operator's Licence, Uber has become a significant and prominent player in the London private hire market. It is now the largest PHV operator in London, with over 20,000 PHV partner drivers operating on the Uber platform, and [more than one million] Uber-registered users. Uber is therefore a key and major stakeholder, not only in the London private hire industry, but also the wider taxi and private hire market.

However, unlike its major competitors, the interests of Uber, and those of the partner drivers operating on the Uber platform, have no direct representation on the TfL Board or Surface Transport Panel. In contrast, the LTDA and the LPHCA are both represented by senior officials within their own organisations who sit on both the Board and Panel. This is despite the fact that each of these organisations represents fewer members than Uber has partner drivers²⁹. This unsatisfactory situation inevitably undermines the objectivity and fairness of all TfL decision-making on issues affecting the London private hire trade, including in particular the development, consideration and adoption of the Proposals.

As TfL is aware, after beginning its operations in London, Uber made repeated attempts to join the LPHCA as the major representative trade body for the private hire vehicle sector in London. However, on each occasion Uber's application was rejected on the basis that its interests were not aligned with those of other LPHCA members. Indeed, the LPHCA openly and vigorously opposes our operations in London, as does the LTDA, including through on-going legal actions. Uber is understandably concerned, therefore, that not only is it unfairly excluded from directly representing its interests, and those of the many partner drivers who use the Uber platform and their passengers, through participation in the critical advisory and decision-making functions within TfL, but that its principal competitors, who openly and vigorously oppose its interests, enjoy privileged access and participation in those functions.

Engagement with TfL on the Proposals

As we have previously noted, it is also concerning that, again in apparent contrast to a number of Uber's competitors, Uber was given little opportunity to engage with TfL on the development of the Proposals and prior to their publication. We are still not fully aware of the precise level of engagement that TfL has had, and continues to have, with other stakeholders (our external lawyers have still not had a substantive response to their Freedom of Information request for this information which they first made on 11 September 2015). We are aware, however, that the LTDA and other taxi

²⁹ According to their own assessment of their size, the LTDA represents around 10,000 drivers and the LPHCA around 15,000.

trade organisations³⁰, as well as the GMB³¹, met with TfL to discuss the draft Proposals in August and early September 2015.

It is also telling that, on 25 August 2015, the LTDA were able to set out details of the Proposals in an article in the TAXI magazine³², well in advance of the current consultation paper, and even in advance of the final draft of the Steer Davies Gleave analysis of the consultation responses³³.

Conclusions on consultation process

Given Uber's current position as a significant contributor in the London private hire market, its views and interests, and those of Uber's partner drivers and their customers, are clearly important considerations for TfL when deciding on future private hire regulation. The role currently played by Uber's major competitors in TfL's decision-making processes, and the exclusion of Uber from those same processes, is plainly no longer appropriate or equitable, and gives rise to real concerns not only as to the fairness of the current consultation process, but also the legality of any subsequent decisions by TfL concerning the Proposals.

In light of the matters outlined above, it is perhaps unsurprising that the Proposals largely mirror the LTDA's own proposed changes to PHV regulation which it submitted to TfL in the previous consultation. Nor is it surprising that many of the Proposals specifically, and unfairly, target Uber's operations and the Uber operating model, raising questions as to their purpose, proportionality and general fairness.

The Proposals patently reflect the current imbalance of interests within TfL, and the undue and significant influence of Uber's competitors on the current process. As has now been recognised by the CMA, in its own response to the consultation dated 2 December 2015, the Proposals are clearly disproportionate and will reduce incentives for entry, expansion and innovation. As such, they will harm competition not only among PHVs, but also between taxis and PHVs. They will also, by extension, harm consumers³⁴. We agree.

The Proposals also appear to run contrary to TfL's own taxi and private hire strategy for 2015, and its vision of a London private hire service that has *"a choice of operators in order that customers can book the service that best suits their individual needs"*³⁵. Uber fully endorses that vision and is keen to work with TfL to achieve it. As is clear from the CMA's submissions, adoption of the Proposals will only reduce innovation and competition, and restrict the choices available to consumers.

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³⁰ See tweet from the official LTDA twitter feed (@TheLTDA) timed at 2.47pm on 10 September 2015.

³¹ See tweet from Steve Garelick (@steve_garelick) on 25 August at 1.39PM.

³² Taxi Magazine, Issue 350, 25 August 2015, page 3: *"Light at the end of the tunnel"*.

³³ A draft of the Steer Davies Gleave report was published on 14 August 2015 but a revised draft was not available until 3 September. The first final draft was dated 10 September.

³⁴ CMA response to Transport for London's private hire regulations proposals, dated 2 December 2015.

³⁵ <http://content.tfl.gov.uk/taxi-and-private-hire-strategy2.pdf>