

UBER

A. Introduction

Uber strongly supports actions that TfL takes to ensure that the market is regulated effectively in the public interest. In that spirit, we welcome the opportunity to comment on Transport for London's (TfL) revised proposals and, in so doing, provide comments on the Mott MacDonald Integrated Impact Assessment (IIA).

For the reasons set out below, Uber formally calls for TfL to revisit the IIA and ensure that an appropriate process, containing comprehensive analysis, is put in place so that effective and efficient regulation is enacted, both now and in the future.¹

While Uber is grateful that TfL has taken on board requests to carry out an impact assessment, we are concerned that the methodology and process underlying the IIA were flawed (as further discussed in Section B below), in part because the scope of Mott MacDonald's instructions was too narrow and the timeframe for completing the IIA too short. This calls into question the reliability of its conclusions and, to the extent the IIA is used to support regulatory intervention, TfL's compliance with due legal process. More importantly, it raises the possibility that interventions would have overall negative impacts on the public. In our consultation response dated 23 December 2015, we detailed serious concerns regarding the transparency and objectivity of TfL's decision-making process. We consider that the flaws in the IIA methodology and process only add to those concerns, and the legality of any measures that TfL ultimately introduces.

Despite these shortcomings, the revised proposals constitute a material improvement on the initial proposals. TfL has identified certain proposals which would not have addressed any identifiable consumer safety or environmental need (and thus gave rise to the greatest risk of adverse impact on the PHV market as a whole), and refined or withdrawn them. While this is positive, Uber wishes to emphasise the fundamental importance of establishing a robust process by which outcomes are reached.

The IIA does not follow the methodology for impact assessments as recommended by HMG's Better Regulation Taskforce as further embodied in HMT's Green Book (Appraisal and Evaluation in Central Government), HMG's Better Regulation Framework Manual (Practical Guidance for UK Government Officials) and the National Audit Office's Short Guide to Regulation. We therefore outline the key aspects of this methodology below, and highlight what we consider to be the shortcomings in the IIA. We then summarise the results of our assessment, before going into detail on each of the proposals. We would be happy to discuss any of the below further, if helpful.

B. An appropriate methodology for Impact Assessments

Uber highlights the following concerns with the IIA's methodology:

¹ There are currently an estimated 100,000 private hire drivers active in London, with 1 in 10 vehicles entering the congestion zone now a private hire vehicle (per Transport for London's plans for modernising and enhancing London's private hire industry, 20 January 2016). It is therefore paramount that the right regulations are put in place to allow this fast-growing sector to best serve consumers.

The correct framework - need, policy objective and proportionality

Assessment of need against clear policy objective

The IIA should embrace the first, essential step of any assessment of increased regulation, namely to assess and establish whether regulatory intervention is necessary, with reference to specific and legitimate policy objectives.² This assessment of need should be evidence-based. Without this assessment as a baseline, any impact assessment is likely to be biased in favour of over-intervention, with the outcome of harm to public policy. We believe it is essential that the framework of the IIA includes this critical element. We note that TfL has not adhered to this criterion, calling into question the substantive motivation for the proposals. In so doing, it has failed to comply with several of the five principles devised by the Better Regulation Task Force.³

Consideration of the proportionality of proposed measures

A valid assessment should consider the proportionality of each proposal. It requires robust proportionality analysis involving consideration of (i) the suitability of a measure to its stated aim; (ii) whether it is the most efficient means of achieving that aim; and, (iii) whether the benefits outweigh the costs or impacts. The requirement to consider the proportionality of a measure features both in EU law and UK regulatory policy.⁴ We note again that TfL has not adhered to this principle, failing to take into consideration the impact of cost, balanced with any positive or negative consequences, intended or otherwise.

Other procedural concerns

Truncated timeframe

Impact assessments are time consuming to undertake as they require a significant amount of data collection and analysis. The short timeframe within which Mott MacDonald had to produce the draft of the IIA for internal TfL use (three weeks) is likely to have limited the effectiveness and comprehensiveness of their research and assessment.

Narrow interpretation of economic impact

While assessment of any positive impact needs to be measured against defined objectives, the negative consequences need to be considered much more broadly, due to the chance of undefined and unintended consequences. The economic impact of regulatory changes on a large and complex system can be far-reaching. It is therefore important for an assessment to acknowledge a broad area of analysis of potential impact, and not just the most proximate areas. In the IIA, economic impact was interpreted to mean business impact on the three main PHV operator business models. This narrow definition does not follow a more generally accepted definition of "economic impact" and so omits to

² The importance of an assessment of the need to intervene is highlighted in Chapters 3 and 4 of HMT Green Book on Policy Appraisal and paragraph 2.2 of the CMA's guidelines on Competition Impact Assessment (Part 1); in the need to assess Proportionality as recommended by the Better Regulation Taskforce; Chapter 13 of HMG's 2015 Productivity Plan; Chapter 4 of HMG's 2015 "A Better Deal: boosting competition to bring down bills"; and in paragraphs 3, 10, 13, 15, 17, 19, 21, 23, 26, 27, and 29, of the CMA's response to TfL's September 2015 proposals for Private Hire Vehicle licensing.

³ The five principles are: proportionality, accountability, consistency, transparency and targeting. The principle of proportionality requires that "regulators should only intervene when necessary" while the principle of transparency requires that "policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties." See the Principles of Good Regulation issued by the Better Regulation Task Force.

⁴ See Case C-55/94 Gebhard and the Better Regulation Taskforce's Principles of Good Regulation which state that "*regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.*" Further, the Better Regulation Framework Manual (Practical Guidance for UK Government Officials) states that: "*there will be a general presumption that regulation should not impose costs and obligations on business, social enterprises, individuals and community groups unless a robust and compelling case has been made.*" (para II).

consider impacts on a broader field of stakeholders, in particular, passengers, would-be passengers and future entrants to the market.

Understanding the benefits of competition

Consumer choice can and does act as a driver of innovation and competition. Inappropriate regulation can limit consumer choice, and so damage competition, to the detriment of consumers. This may result from regulation acting as a barrier to entry. It can also constrain market participants' ability to market test and innovate, in order to provide the best possible service to customers (including personal customers and SMEs) and/or to adapt to client demand. In addition, in a competitive market, increases in costs to operators are generally passed on to consumers, and so causing prices to rise. We are concerned that consideration of these impacts in the IIA has been omitted due to the narrow interpretation of economic impact described above. Failing to take account of the impact on competition of the proposed measures in the IIA, despite clear advice from the CMA⁵, risks avoidable consumer detriment, and represents a serious omission in a good faith attempt to assess impact.

Arbitrary scope of the IIA

Mott MacDonald carried out its impact assessment on the basis of four 'assessment areas', namely health, equality, environmental and economic impact. It is unclear why these four areas have been selected (and others excluded, with the most glaring omission being economic impact on customers), what factors fall within these areas, and on what basis, other than arbitrarily, they are assigned equal weight.

Taken together, these methodological flaws risk the IIA being biased in favour of over-intervention, with the likely outcome of harm to the market and the public, as well as setting unsound precedents in public policymaking.

C. Summary of substantive assessment

Prior to providing details of our substantive concerns, we have grouped the proposals into three main categories, depending on the extent to which the effects analysis has been adequately carried out in the IIA. We then consider two top-down issues, namely the impact of unnecessarily prescriptive regulation, and the cumulative negative impact of a number of measures, the individual impact of which might be considered acceptable by TfL.

Despite the methodological concerns that we outline above, a number of the proposals considered are appropriate because they give rise to manifestly clear benefits and low costs and thus do not warrant further analysis. These include:

1. The proposal to ask private hire drivers to carry their insurance documents at all times.
2. The introduction of greater clarity in operator names.
3. Automatic sharing of National Insurance numbers with the Department for Work and Pensions.

Other proposals may have merit subject to certain clarifications. These include:

1. The provision of driver registration information to TfL on a regular basis.
2. The introduction of proportional operator fees.
3. English language competence standard for drivers.

⁵ Competition and Markets Authority response to the Transport for London's private hire regulations proposals, dated 2 December 2015.

Other proposals have not been shown to have merit, and should be withdrawn unless and until merit is established. The rationale may be, for example, that need has not been demonstrated, that proportionality has not been adequately considered, and that other, negative impacts such as harm to drivers, passengers, or to competition, have not been properly assessed. Alternatively, existing regulations may adequately address valid concerns, rendering proposals redundant and unnecessarily burdensome.

The proposals without merit include:

1. Mandatory fare estimates prior to all bookings.
2. Provision of a voice contact by operators.
3. Operators to notify TfL of any changes in their operating model.

Prescriptive regulations

Mott MacDonald note in their assessment that “as a set of proposals, there is a view amongst some operators in the industry that they are fairly prescriptive in nature. There is concern that the impact of this will be to dampen innovation and dynamism in the sector. This could prevent the market from responding flexibly to passenger demand.” As discussed in more detail in Section D below, this is a sentiment echoed by Uber, in particular as regards Proposals 1 (driver photo ID and vehicle details), 3 (operators to inform TfL of changes to operating model prior to implementation) and 7 (ability to speak with operator verbally). The Better Regulation Task Force clearly stated that prescriptive regulations were to be avoided as “prescriptive regulation, like many other means of government intervention, may have unintended consequences [...]. It will often be less flexible and less sympathetic to the way markets work than other tools.”⁶ Indeed, given how competitive the PHV market is, TfL should recognise that issues (such as ensuring minimum safety standards) can often be solved more creatively and less expensively by the market itself. Instead TfL may wish to consider adopting “a ‘goals-based’ approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets.”⁷

Cumulative impact of the proposals

It is important to consider, in addition to the impact of each individual proposal, the cumulative impact of the entire package. Uber notes that a number of the proposals may require significant technical and/or operational changes to operators’ business models, e.g. Proposals 1 (driver photo ID and vehicle details), 7 (ability to speak with operator verbally), and 9 (operators to provide specified information to TfL on a regular basis). Such changes are likely to be very costly to implement for operators. As Mott MacDonald notes, “the capital cost upfront and costs associated with ongoing maintenance may be passed on to passengers [...] limit[ing] the efficiencies realised for passengers to date as a result of technological developments.” As discussed above in Section B, this cost-benefit analysis appears not to have been carried out. The cumulative impact of these proposals could harm consumer interests by increasing fares and reducing choices because PHV operators (and especially smaller PHV operators) will have no choice but to pass on these costs to consumers. Certain PHV operators may not even be able to bear the upfront costs and thus be pushed out of the market.

D. Substantive assessment

⁶ See Principles of Good Governance

⁷ Ibid

The remainder of this document considers each of the proposals in turn. We have applied the methodological framework proposed in Section B above, i.e.:

- Is there a need for intervention based on a clear policy objective? and
- Does the impact assessment take into account all reasonably foreseeable consequences of a regulatory change, and are the impacts of the proposed measure proportionate to the desired objective?

While we do not engage with those proposals which TfL has altogether abandoned, we would re-iterate that, even where the outcome is “broadly” correct, it is the process by which that outcome is reached which is of fundamental importance. In addition, we have not commented on those proposals regarding which we have no substantive comments.

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

Need

Insofar as customers may value the extra safety that driver picture and vehicle information provide, TfL has not demonstrated why the existing market-driven progress on this issue over the last three years has not been sufficient. This issue could not be solved creatively and less expensively by the PHV market itself which is highly competitive and driven by customer choices (as operators will strive to meet customer demand in the most efficient way to remain competitive).

In fact, all Uber customers are already provided with photo identification of their licensed driver, vehicle and an anonymised means of contacting their driver.

Proportionality

Uber queries the proportionality of this proposal. Prescriptive regulation of the way that booking details are provided could have the inadvertent effect of stifling further innovation and competition.⁸ While we would not be affected by this proposal, it would likely have a negative impact on the market overall as it will make it harder for smaller minicab firms without extensive IT systems to continue to operate and, to the extent it requires them to incur additional costs to ensure compliance, these costs will likely be passed to customers.

There has been speculation that smaller operators will benefit from lower licence fees (proposal 23) and that will compensate for the expenditure incurred in the implementation of this proposal. In this case, as in others, Transport for London have not provided any detail to that effect and this is by no means a satisfactory assurance from a regulator. Even if TfL were to lower licence fees, it would be better for the public not to increase their costs disproportionately.

3. Operators will be required to inform TfL of changes to their operating model prior to implementation

Need

It is unclear what policy objective underpins this proposal. Mott MacDonald found that the proposal would not give rise to any benefit to customers’ safety or equality. Uber, like any individual organisation, is already under an ongoing obligation to comply with all applicable laws and regulations in determining its business model. 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

⁸ The Better Regulation Task Force’s Principles of Good Regulation state that “prescriptive regulation, like many other means of government intervention, may have unintended consequences [...]. It will often be less flexible and less sympathetic to the way markets work than other tools.”

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.

Proportionality

Uber also queries the proportionality of this measure.

Indeed, it is unclear from the consultation document what constitutes a 'change in operating model' and whether this refers only to 'substantial changes to the way they [PHV operators] operate.'⁹ Uber updates the service we provide to customers on a weekly basis with additions to the app, whether they be new services like ASSIST or in-app features like suggested pick-up points. It is unclear how these services are affected by the proposed regulation. We urge TfL to clarify its definition of 'changes to operating model' before going any further with this proposal as, without further clarity, it is not possible to assess the proportionality of this measure and respond effectively in this document.

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: having to inform TfL of changes to operating models prior to their implementation coupled with TfL's statement that it will "carry out the same due diligence [as before licensing an operator] ahead of any substantial changes to the way they operate" necessarily implies a pre-approval process similar to the original proposal. This will delay the introduction of important benefits for consumers.

Private Hire in London is a highly competitive market where operators need to be able to innovate quickly to attract customers. Uber has experience of very extensive and often protracted discussions with the regulator in the past of new products and services prior to introduction (which may already slow down progress and innovation). We would be concerned that with the formalisation of these types of arrangement a business' ability to move quickly would be eroded and may lead to strong detrimental outcomes for customers over time.

For this reason, we recommend that if this proposal were to be adopted, TfL at the very least agree to the introduction of service level standards in their approval of changes. These standards should reflect TfL's objectives in reviewing changes and what areas may give rise to particular concern.

Similarly, given sensitivity of the London private hire market we would further expect TfL to put in place demonstrable processes to maintain the confidentiality of all information related to changes in operating model.¹⁰ These confidentiality arrangements should include an exemption from Freedom of Information requests. In this case, even propositions rejected by Transport for London may remain commercially sensitive for a significant period of time.

4. Security for app based booking platform

Need

The consultation does not make clear whether there is a gap in the current regulatory framework regarding the security of app-based platforms and, if so, what that gap is. Nor does it acknowledge the progress the introduction of app-based booking and dispatch systems have brought in the area of customer safety.

⁹ See end of first paragraph on page 7 of TfL January 2016 consultation.

¹⁰ This data is highly commercially sensitive and therefore should not be disclosable under a Freedom of Information Act 2000 (FOIA) request.

7. Customers must be able to speak to an operator verbally at all times when journeys are being undertaken

Need

No evidence or compelling rationale is provided in the consultation document for making such a service mandatory. The IIA states that “some stakeholders stated that the ability to make complaints and enquiries by phone, rather than through a digital platform, is important for reasons of relatives checking on PHV customers being able to raise concerns and get an immediate response in an emergency situation.” For urgent issues, customers can (and should) contact emergency services such as the police (and thanks to GPS tracking, as discussed in relation to Proposal 11 below, customers can easily and very reliably be located).. Alternatively, and for less urgent queries, they can receive timely responses via electronic communications. Many providers offer “share my location” services which allow friends and relatives real-time access to GPS location information about the people they care about.

In addition, Uber does not consider that TfL should regulate how firms choose to meet differing demands for customer services. This is one method via which PHV operators differentiate themselves. In a competitive market such as private hire, it is customer choice that drives service provision and innovation and it is always open to a customer to choose one of the many providers which offer telephone assistance.

Finally, requiring operators to make a telephone line available in this manner involves significant costs and is thus likely to act as a barrier to entry for smaller operators and more generally to stifle innovation. Such prescriptive regulation is especially unnecessary given the constantly evolving range of technological tools available to facilitate communications with customers. Notably, PHV bookings used to be telephone-based but a significant proportion of customers have demonstrated comfort with non-voice communications by making bookings online and/or through apps.

Proportionality

Insofar as TfL considers that there is some benefit to PHV customers having access to a ‘real time’ contact mechanism, Uber considers that it would be disproportionate for TfL to stipulate the exact method by which such contact is delivered. Modern electronic communications provide for a number of different contact options available to operators and customers, whether in the app, email or even social media. These methods of communication may in fact be more convenient to customers than a landline and just as immediate in their response time (e.g. live chat). In fact, in the event of a city-wide emergency, Uber’s systems would make it possible to contact all of its customers whereas telephone lines may not be operational. As mentioned previously, imposing onerous requirements of this nature will lead to PHV operators incurring higher costs, to the likely detriment of their customers and will stifle innovation.

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.

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

Need

Uber is committed to its customers’ safety and supports measures aimed to enhance the safety of their experience. Uber - and every other private hire operator in London - already already have a number of measures in place to ensure that all of the PHV drivers using our app are licensed. Transport for

London regularly audit these systems. It is, therefore, not clear what extra safety benefit or reduction in public harm will flow from the adoption of this proposal.

Proportionality

The proportionality of this proposal depends on its exact scope. 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. The costs of compliance should not be under-estimated and are likely to have a detrimental impact on the market and customers especially. These include the security and encryption of data during the transfer from the operator to regulator; something completely absent from the impact assessment or any of TfL's consultation documents.

Uber would expect there to be further consultation on the format of any such information exchange as this could give rise to considerable compliance costs.

There are also significant improvements that TfL could make to its own systems. For example, enabling a robust and real-time two-way flow of information regarding the licensing status of vehicles and drivers would be welcomed by many operators in the private hire market.

10. Operators must specify an estimated fare prior to the journey commencing

Need

Nowhere at any stage of the work conducted by TfL and Mott MacDonald is evidence provided that customers do not currently have sufficient information to make a decision on either choice of provider or that they are being misled on the costs of services.

Indeed, Uber already provides a feature on its app which enables customers to obtain estimated fares based on the entered destination although there is no requirement on the customers to use this feature.

¹¹ The consultation document recommends the introduction of mandatory estimates in order to improve the transparency of fares whereas TfL's Journey Planner does not provide any fare estimate.

Fare estimates in the form of ranges or guaranteed fares are already provided by, or available on request from, all PHV operators (to our knowledge) calling into question the need for this additional regulation. In our experience, passengers are generally aware of the different pricing models and seem able to choose between them effectively at present.

The last three years has seen a proliferation of private hire price comparison websites that aggregate for the customer available fares for proposed journeys. Shashi Verma, director of customer experience at TfL stated that "There are over 360 apps using TfL data - Citymapper is probably the most commonly used app that uses our data. The impact of all of this [using the data] is that rather than spending huge amounts of money in developing apps ourselves, we can spend a small amount of money in publishing all the data."¹² Customers then have the opportunity to make a judgement on their preferred operators across a range of key features. The existence of services like these are a very good indication that people can get estimates in a variety of ways (with encouragement from TfL) and thus increasing regulation in these areas is not required.¹³

Proportionality

¹¹ In November 2015, London Uber customers requested a fare estimate in 24.5% of our booking requests.

¹²<http://www.techradar.com/news/phone-and-communications/mobile-phones/tfl-will-never-make-the-ultimate-travel-app-but-there-is-a-very-good-reason-1304247>

¹³ See Minicabster or Minicabit, for example.

If TfL does decide to proceed with this proposal, we urge them to consider the following crucial considerations in order to minimise the harm which could arise to customers.

1. Customers should be able to easily obtain a fare estimate, should they wish to. Some customers are comfortable with fares calculated on the basis of time and distance, and so should be given the option to obtain an estimate. They should not be forcibly provided with one.
2. Operators should be able to provide the estimate as a range of prices. That way, the customer is less likely to be misled and will allow operators to take into account the effect of traffic or other delays on the estimates.
3. If the customer elects to alter their destination after the trip commences, no requirement to recalculate the fare estimate should exist. Such a requirement would cause disruption to their journey by pausing while a recalculation takes place.
4. There should be clear recognition that this is an estimate only and that - on occasion - the fare range provided to the customer before booking will be different (either lower or higher).

Even with clarifications provided in the above areas, it is not clear that the customer benefit that arises from this proposal exceeds in any meaningful sense a regulation that mandates that customers have the option of receiving a fare quote.

11. Operators must record the main destination for each journey which must be specified prior to the journey commencing.

Need

Uber appreciate that this requirement may be necessary in order to implement Remedy 10. However, Uber already enables customers to select a destination should they wish to and we do not consider that making this a requirement is necessarily in the customer's interest. Further, to the extent this is necessary for safety reasons to locate a vehicle, Uber already tracks drivers using GPS technology (accurate to within less than one metre) from the second the dispatch is received, until the customer is dropped off at their destination..

Proportionality

We are concerned that this proposal could be detrimental to customers. We therefore welcome TfL's move towards destination-entry before the commencement of a trip (rather than at booking). We agree that this is a more sensible approach that retains enough flexibility for the customer, while preventing journey discrimination that remains a significant issue in some parts of the taxi and private hire market.

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. We would recommend that there is no requirement on drivers to inform the operator if destination changes, so long as the route is recorded - which is the case as systems like the one used by Uber record the actual destination via GPS and so makes sure the most up-to-date information possible is recorded, as is TfL's stated objective in the consultation document.

12. Harmonise retention periods for records

Need

Nowhere in the consultation document or IIA, is the need for this proposal explained. The superficial clarity provided by harmonisation is not adequate justification for regulation.

Proportionality

While Uber welcome the clarification TfL has sought to provide on the period for which operators will be required to keep records and understand that this data may be of use to customers, we were surprised that the IIA made no mention of the potential burdens on businesses that are part of the data storage process (even though GPS technology has allowed the collection of much richer data on drivers, riders, bookings and journeys).

Harmonisation, while simple from a regulatory standpoint can place significant burdens on businesses in data storage and compliance, outweighing potential benefits from the data retention (which, as discussed previously, could be passed on to customers). We also 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.¹⁴

14. Specific requirement for an English Language test

Need

Uber understands customers' desire to be able to communicate effectively with their drivers and that this may require drivers to have minimum standard levels of English.

However, at no point in the consultation or in the IIA has any evidence of customer detriment from drivers' lack of English language skills been provided by TfL. Insofar as there is an issue, TfL has not demonstrated why this issue could not be solved creatively and less expensively by the market itself which is highly competitive and driven by customer choices. Further, the Uber rating process allows customers to rate drivers on the basis of the overall service provided (including but not limited to cleanliness of the car and presentational skills). This naturally incentivises drivers to achieve a decent standard of English without the need for further regulation. Uber further notes that such a measure could constitute discrimination against certain groups of drivers, including in particular disabled and deaf drivers.

Mott MacDonald documented the 'major adverse' diversity and economic impacts associated with this proposal. A phased introduction may mitigate some of the most severe adverse impacts for individuals licensed and already operating as drivers, but careful thought should be given to form and content of the test and its overall necessity.

Proportionality

While Uber recognises the need for drivers to have basic English language skills, this proposal must remain proportionate (by reference to the kind of examination imposed and method of administration) or else it risks having an overall detrimental impact on the market, and customers in particular.

Imposing a B1 (intermediate) English level test, as contemplated in the consultation, is entirely disproportionate in this context. This English language test is expensive to administer, does not test drivers' ability to interact with customers (in particular the test should assess oral rather than written skills and should focus on language relating to customer service), restricts supply by making it more difficult for driver to enter the market (thus reducing competition overall), increases costs (as the cost of the test will likely be passed on to passengers) and is discriminatory in that it will impact disproportionately on certain ethnic groups.

Accordingly, Uber recommends that:

¹⁴ <https://ico.org.uk/for-organisations/guide-to-data-protection/principle-5-retention/>

- The examination adopted is only mandatory at the point of licensing or renewal and not a requirement for existing licence-holders.
- British nationals are exempt as would those who possess a secondary qualification from an English institution (consideration should be given to other relevant exemptions).
- The examination is oral in nature and relates to customer service language only
- Given the nature of the transactions entered into by partners the CEFR A2 standard would be sufficient and mitigate the equality impacts noted by Mott MacDonald.¹⁵
- The examination should not be expensive to take or capacity constrained.
- The examination should be outsourced to a number accredited parties (in the same way as the topographical examination).

20. Hire and Reward insurance to be checked at point of licensing and must be in place at all times whilst a vehicle is registered to an operator

Need

Uber appreciate the benefit to consumers from ensuring partner-drivers using Uber are insured although as discussed below, we have already put in place a number of measures to ensure that drivers using our app are all insured.

Proportionality

The key point with regard to proportionality is what constitutes ‘registered to an operating platform.’

The Uber system’s safeguards already provide for the exclusion of partner-drivers when any document expires or becomes invalid for any reason. These individuals are automatically prevented from logging-in to the Uber app and, therefore, receiving jobs. We would welcome clarification that a driver excluded in this way does not represent one ‘registered on a platform.’

We continue to believe that 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. Accordingly, the regulation should make clear that it is the driver’s ultimate responsibility to have adequate hire and reward insurance and operators should only be responsible for checking this is in place, which Uber is expending considerable efforts in doing as described above.

23. Operator licence type

Need

We support TfL consulting on this proposal separately, as the proposal suggests. In any such consultation, TfL should set out clearly the problem with the current system in relation to consumer harm, the objectives that its charging structure seeks to achieve.

Proportionality

TfL should 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

¹⁵ This qualification mandates that to pass individuals can use and comprehend basic English including geography and terms related to their employment.

objectives to ensure the fee's proportionality and transparency. 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.

TfL has recognised the difference in cost in regulation for larger operators. We would also urge the regulator to move towards a more proportional compliance system that recognises the scale of some operators in the market and regulates accordingly. This would mean that agreed-upon, proportional thresholds would be set in core areas that operators would have to meet under the terms of their licence.

25. Amendment of advertising regulation to include "in" vehicle

Need

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.

Proportionality

This proposal may have the effect of closing off a potential income stream for PHV drivers and/or operators and thus appears on its face to be a disproportionate restriction on the PHV market. 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.¹⁶

Response to the IIA questions (as per p. 24 of Consultation Doc)

As discussed in Section B above, regulatory impact should be assessed against a stated policy objective. Following the establishment of a need to intervene, the proportionality assessment must take account of the proposal's broader, intended and unintended, impacts.

Because the scope of the IIA was limited to assessing the impact of the proposals against the four assessment areas and did not consider either need or the wider impact of the proposals, the results on occasion overstate impacts on consumers' health/equality and underestimate environmental and/or economic impact. This tendency is especially pronounced in relation to the more prescriptive proposals, as considered further below.

The questions raised by TfL in relation to the IIA preclude the possibility of carrying out a proper cost-benefit analysis as they require each factor to be considered in isolation when much of the analysis should focus on weighing them against one another (once the appropriate assessment of need has been carried out).

Health impacts and mitigations

1) Please provide any comments or evidence you have on the potential health impacts of implementing the proposals.

We believe the best way to deliver safety is for TfL to ensure a baseline of acceptability through enforcement of current regulations and allow the market to deliver increased health and safety outcomes

¹⁶https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481450/CMA_response_to_TfL.pdf

above that. We do not believe the proposals will materially increase health impacts at present (discuss where IIA says they well). We believe they may harm health and safety in the future by reducing the scope for innovation and market solutions. By way of example, we analyse one of the IIA's findings below:

Proposal 7 (Requirement for passenger to be able to speak to an operator verbally)

Mott MacDonald identified this proposal as having a "moderate beneficial" health/safety impact on customers. However, this is not assessed against a formulated objective, making stakeholders more likely to ascribe a benefit to the measure. However, the answer would likely have differed had customers been given an open ended question of what would improve their sense of safety in a car, and a tally made of how many times access to a phone operator was mentioned, and, if so, whether the customer was aware that a PHV that offered a phone-line was provided being offered by the market. Indeed, Uber is aware of a number of PHV operators who already offer this service and who may thus have a competitive advantage in servicing clients for whom a telephone line is valuable. This is not to suggest that we are less concerned about our customers' safety - rather, we have deployed a different set of tools to ensure their comfort and safety (including GPSs on all cars, continuous background/safety checks of drivers [tbc], sending driver ID photos and car details to customers and maintaining an email customer care).

Based on the above, we consider that, to the extent that this proposal gives rise to health/safety benefits, these would be minor at best as the benefit of this specific measure will only be felt by a few customers, and such a service is already available from a number of PHV operators in the market.

This propensity to overestimate safety/health benefit appears in other proposals such as Proposal 14 on English language requirements (again, there is no evidence of a demonstrable need from customers) and Proposal 9 (operators being required to provide specified information to TfL on a regular basis).

2) Will the proposed mitigations address these health impacts? If not, what other mitigations do you suggest?

Our analysis below takes into account the proposed mitigations. As mentioned above, we consider that many of the mitigations go some way towards alleviating the concerns we have of the proposals' impact. However, barring an appropriate impact methodology, our concerns remain.

Equalities impacts and mitigations

3) Please provide any comments or evidence you have on the potential equalities impacts of implementing the proposals.

Uber recognises the importance of ensuring a proper service in the PHV sector to a range of customer segments. To this end, we have rolled out a number of product innovations that facilitate accessibility for both riders and drivers with disabilities including: enabling the app to be compatible with VoiceOver iOS and wireless braille for blind and vision-impaired customers, customising the app for deaf and hard-of-hearing riders and drivers (e.g. visible and vibrating alerts and the ability to enter a destination via the app) and UberAssist where driver partners are trained to provide additional assistance for seniors and people with disabilities.¹⁷

¹⁷ See further, <https://newsroom.uber.com/greater-accessibility/>

One of the fundamental issues with the IIA in its current form is that no consideration is given as to what issues potentially marginalised customers may face and whether the market itself may (and in fact already does, as is exemplified by the initiatives detailed above) resolve such issues. Indeed, the PHV market is highly competitive with a number of PHV operators targeting different customer groups or customising their offering for various customer groups. The proposals, individually and as a whole, may constrain the ability of PHV operators to respond to customer demand (for example Proposal 3 which requires that TfL is informed of changes to a PHV operator's business model prior to implementation) and this may impact certain customer segments with specific needs more particularly.

Proposals 10 and 11 which require that a fare estimate is given could also have inadvertent negative effects on customers. While the intention is to provide more transparency and certainty as to the fare price, it may well result in fare prices going up as PHV operators price-in the additional risk they are being asked to bear. Customers generally understand the pricing models and are given the option of receiving a fare estimate range. If they want a fixed fare rather than an estimate, they can choose from a number of PHV operators that operated a fixed fare - often at a higher average price than variable fare alternatives. Making this a requirement is likely to backfire and impact disproportionately on the customers TfL intends to protect. The English language requirement in Proposal 14 may also impact on the accessibility of economic opportunities for drivers, in particular those who may be deaf or hard-hearing. Further, because of the costs imposed by the proposals as a whole (see our response to Q.7 below), customers may be disadvantaged insofar as those costs are passed on through higher fares.

4) Will the proposed mitigations address these equalities impacts? If not, what other mitigations do you suggest?

Uber considers that the proposed mitigations do not address these equality impact issues and, on the contrary, the proposals are likely to adversely impact customers as a whole with some customers affected more keenly. By formulating more detailed policy objectives and considering the intended and unintended impacts of the proposals, these issues can be properly addressed

Environmental impacts and mitigations

5) Please provide any comments or evidence you have on the potential environmental impacts of implementing the proposals.

Mott MacDonald has only considered the environmental impact of the measures in relation to Proposals 23 (Consideration of additional categories of operator licence type) and 24 (Controls of ridesharing on licensed vehicles). However, Uber considers that many more measures give rise to potentially significant environmental impacts.

Uber notes that most customers use the app during non-peak hours¹⁸ and a majority of drivers drive electric (or other low emission) cars. As such, any limitation on our ability to meet client demand may result in further congestion/pollution.

6) Will the proposed mitigations address these environmental impacts? If not, what other mitigations do you suggest?

We do not consider that the proposed mitigations affect environmental impact.

¹⁸ In fact, Uber is used most often late in the evening/early morning in London:
<https://medium.com/@UberPubPolicy/getting-home-safely-after-a-night-out-da1817d5d01c#.h9au5q9ym>

Business and economic impacts and mitigations

7) Please provide any comments or evidence you have on the potential business and economic impacts of implementing the proposals.

As mentioned in Section B, we consider that the scope of the business and economic impact must cover economic impacts on all market participants. Otherwise the full set of both anticipated and unintended consequences will not be taken into account when weighing the benefits of each proposal.

In Proposal 9, for example, PHV operators are required to provide TfL with specified information including details of all drivers and vehicles on a regular basis. This measure is deemed to have a “minor adverse” economic impact. However, depending on the method by which the data is to be transferred and frequency with which it is transferred, this requirement could be very onerous on PHV operators, and in particular smaller operators. The costs are likely to be passed down to consumers given how competitive the PHV sector is.

Likewise, proposal 3, which requires operators to inform TfL of changes to their business model prior to implementation, may give rise to significant adverse economic impacts by slowing down the pace of innovation, to the detriment of customers.

Further proposals such as requiring PHV operators to send driver photo IDs as well as car details (proposal 1), requiring PHV operators to make a landline available to customers (proposal 7), increasing/harmonising information retention periods (proposal 12), amending the advertising regulation to include “in” vehicle, individually and jointly give rise to significant costs (or profits foregone) for PHV operators to bear, to the detriment of customers.

8) Will the proposed mitigations address these business and economic impacts? If not, what other mitigations do you suggest?

No the economic impact is not consistently given sufficient weight as there is no clear cost-benefit analysis carried out in the IIA.

Other impacts and mitigations

9) Please provide any comments or evidence you have on other potential impacts of implementing the proposals.

As mentioned in response to Q7 above, we consider that the economic impact of the proposals, both intended and unintended, has not been sufficiently assessed as part of a sound cost-benefit analysis. This cost-benefit analysis however can only be carried out once a proper assessment of need has taken place. While the mitigations mentioned have gone some way towards alleviating our concerns, we consider that neither need nor overall benefit

Revised proposals

10) We are inviting comments or evidence you have on the potential health, equality, environmental, business and economic impacts of the latest proposals

These are considered in our substantive analysis, in Section D above.

Andrew Byrne
Head of Public Policy UKI
25 February 2016