

Competition and Markets Authority response to Transport for London's private hire regulations proposals

1. Following an initial consultation between March and June 2015, Transport for London (TfL) developed a series of proposals for changes to its private hire regulations. On 30 September 2015, TfL invited interested parties to submit comments on those proposals as part of a second consultation. The Competition and Markets Authority (CMA) is grateful for the opportunity to share its views with TfL.
2. The CMA is an independent non-ministerial government department. We work to promote competition for the benefit of consumers, both within and outside the UK. Our aim is to make markets work well for consumers, businesses and the economy.
3. We recognise that private hire vehicle (PHV) passengers need the protection of appropriate regulation. But consumers also benefit from effective competition exerting downward pressure on prices and upward pressure on service quality and standards. Clearly there is a balance to be struck, but the general principle is usually that, in the interest of consumers, competition should only be compromised or restricted by regulatory rules to the extent that doing so is absolutely necessary for consumer protection.¹ We are concerned that some of the proposals on which TfL is consulting would go significantly beyond this, and would impose regulation that excessively and unnecessarily weakens competition, to the overall detriment of users of taxi and private hire services in London.
4. As the UK's primary competition authority, the CMA has in-house knowledge on the competitive effects of regulatory change generally, on competition in taxi and PHV services markets specifically,² as well as on consumer

¹ This should take into account the fact that cross-economy consumer protection legislation already exists. For further information see the CMA's [consumer protection and unfair terms guidance](#). Regulation should also be enforceable. Unenforceable regulation, rarely enforced regulation and unevenly enforced regulation all have the potential to distort markets and to harm competition. Regulators should be mindful that regulation also has the potential to harm innovation. When regulating fast-moving markets, public authorities should take particular care to avoid hasty intervention, over-intervention and the tendency to frame regulations only in relation to worst-case scenarios. See, for example, Thierer, A (2014), *Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom*.

² The CMA's predecessor body, the Office of Fair Trading, completed a [market study into taxis and PHVs](#) in 2003. More recently, the CMA examined the PHV market in Sheffield as part of a merger inquiry (see below).

protection matters. Our observations in this response are shaped by all of these. The CMA recognises that TfL's remit extends beyond competition to a range of other policy goals. The comments that follow are therefore primarily focused on sharing our expertise in order to assist TfL in its assessment of the impact of its proposals on competition.

The taxi and PHV services market

5. The CMA's understanding of the taxi and PHV services market, informed in part by the findings of our recent examination of a merger of PHV operators in Sheffield,³ is that taxis and PHVs often compete among themselves and with one another irrespective of the two-tier system of regulation. They compete on price, but also non-price factors, such as response times and accessibility. Competition among PHVs and competition between taxis and PHVs are both ultimately beneficial for the consumer.
6. The CMA takes the view that innovative services (which include app-based booking systems) may drive efficiencies through which it is possible to offer benefits such as lower prices and greater responsiveness to demand.⁴ The introduction of new services also has an inherent benefit in the form of greater choice for consumers.
7. The CMA therefore believes 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. Above all, regulation should not favour certain groups or business models over others and any measures that restrict the choices available to consumers should be minimised.

TfL's proposals

8. A number of TfL's proposals will harm competition and, by extension, consumers. This will take the form of harm to competition between PHVs, through regulation which is disproportionate and/or reduces incentives for entry, expansion or innovation.⁵ Competition between taxis and PHVs will also be harmed, through regulation which distorts the playing field between them. We urge TfL to consider the impact that any changes to the regime could

³ See the [Sheffield City Taxis / Mercury Taxis \(Sheffield\) merger inquiry](#).

⁴ We also note that in September 2014 the [University of Chicago Booth School of Business's Economic Experts Panel](#) unanimously agreed that allowing app-based services to compete with taxis on an equal footing raises consumer welfare.

⁵ The CMA is concerned that some of TfL's proposals will create barriers to innovation in particular. Hampering innovation results in inefficient business models, services of a lower quality than could otherwise be the case, and dissatisfied consumers.

have on competition. TfL may find the CMA's competition impact assessment guidelines useful in this respect.⁶ We have focused below on the proposals that we think will have the greatest impact on competition. Of these, proposals 2, 3, 8, 10 and 15 are likely to be the most harmful. However, a competition impact assessment can usefully be applied to all the proposals.

Proposal 2 – 5-minute wait requirement

9. TfL proposes that operators must provide booking confirmation details to the passenger at least 5 minutes prior to the journey commencing. This is aimed at reducing the risk of a customer getting into the wrong car and/or into an unlicensed vehicle, enabling the driver to ensure the passenger is in a safe pick-up location and giving more certainty that the driver and vehicle information has been successfully sent, delivered and read by the passenger, and that the driver has had sufficient time to plan an appropriate route. This allows for competition on level terms among PHVs but does so by eliminating the advantage otherwise available to those using technology that allows them to fulfil a booking more quickly. For example, TfL will be aware of a statement from Uber that the average wait for one of its drivers in London is 3.6 minutes.⁷ There would also be a loss for consumers if they are obliged to wait 5 minutes when they are already physically present at a PHV operator's premises.
10. It is not clear that TfL's aims are not already met by the status quo, and to the extent that they are not, TfL does not set out the evidence base supporting why a 5-minute interval would be appropriate to ensure that its objectives are met. The CMA's assessment is that this proposal reduces the competitiveness of PHVs in contrast to black cabs by artificially hampering the level of service that PHVs can provide. Customers are therefore denied a better PHV service than would be available otherwise.
11. Finally, we note that the French government sought to apply a similar (15 minute) rule in 2013. The French competition authority argued that the rule was not necessary to address the stated problem (illegal plying) and that it would distort competition between taxis and PHVs.⁸ The rule was subsequently struck down on technical grounds by the Conseil d'État in December 2014.⁹

⁶ See [Competition impact assessment: guidelines for policymakers](#).

⁷ See [Uber—Written evidence](#), 16 October 2015.

⁸ See [Autorité de la concurrence website](#).

⁹ See [Conseil d'État website](#).

Proposal 3 – approval for changes to operating models

12. TfL proposes that operators will be required to seek TfL approval before changing their operating model. This proposal aims to assist TfL in determining whether a new operating model is compliant with private hire legislation in the interests of passenger safety.
13. Ex ante regulation of business models is liable to reduce incentives for innovation (a key competitive parameter) and by extension to restrict competition. TfL's consultation document neither sets out evidence that new business models can give rise to harm nor that the existing regulatory regime does not adequately protect consumers, even where novel business models arise. Should TfL nonetheless feel that there is a strong chance that consumer harm could occur, it is not clear that this 'precautionary principle' approach is a proportionate form of mitigation.

Proposal 5 – mandatory pre-booking facilities

14. TfL proposes that PHV operators must offer a facility to pre-book up to seven days in advance. This proposal appears to be based on the proposition (for which no evidence is presented) that the PHV segment as a whole is tending away from pre-booking and the possibility that the facility may cease to exist altogether at some point in the future. TfL notes that this is particularly important for disabled passengers.
15. The CMA believes that mandating ancillary functions (such as pre-booking) can place undue burdens on some providers, leading to increased costs for PHVs and thus distorting the competitive process. Those unable or unwilling to provide these functions will be excluded from the market, reducing competition without materially improving service provision. This is particularly the case when such functions are only mandated for part of the market. The effect here is likely to be a reduction in competition between PHVs and taxis. The CMA's experience is that where consumers find ancillary facilities useful, they are likely to be provided by a competitive market where different offerings proliferate. 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 proportionate and targeted remedies without raising operators' costs and risking harm to competition.

Proposal 7 – fixed landline telephone requirement

16. TfL proposes that a PHV operator must have a fixed landline telephone number which must be available for passenger use at all times. This proposal

is aimed at making it easier for passengers to raise concerns with operators and to ensure that they can do so in 'real time'.

17. The CMA believes that this proposal could raise barriers to entry (entrants would have to provide both a number and staff to handle calls) as well as restricting innovation (including platform-based business models) and could therefore lead to reduced competition between PHVs. Moreover, the CMA notes that it remains open to consumers who value having a landline number to contact to choose PHV operators that provide one; it is not clear that it is necessary to make this functionality mandatory. 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 – prohibition of displays of vehicle visibility

18. 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.
19. This proposal is liable to reduce competition between black cabs and legal PHVs and would lower the quality of service for many PHV customers who might value the visual representation of the availability of vehicles. TfL does not provide any evidence that the proposal meets any genuine public interest; its main purpose appears to be maintaining the two-tier system. TfL should consider less restrictive responses, such as bolstering its existing enforcement capacity to deal with illegal plying for hire.

Proposal 10 – requirement to specify the fare in advance

20. TfL proposes that operators must specify the fare for each journey prior to the commencement of that journey. This proposal aims to reduce the chance of overcharging and to ensure that ancillary costs are taken into account prior to the journey.
21. If the proposal implies that a precise fare must be supplied at the time of booking and cannot be changed, this would effectively prohibit innovative pricing models that could be more efficient than pre-calculated fares (eg by varying according to supply and demand). This would remove another parameter of competition among PHV operators. It is plausible that the pre-specified prices set for a given journey would represent an average cost, or even a conservative estimate, thus resulting in higher prices overall. Moreover, the CMA is not aware of any evidence that PHV overcharging is seen by passengers to be a significant problem.

Proposal 15 – drivers to only work for one operator at a time

22. TfL proposes to require that licensed PHV drivers can only work for one operator at a time. TfL argues that this is necessary to reduce the risk of drivers working excessive hours for a number of different operators.
23. The CMA is concerned that this proposal may not be suitable or necessary to meet the stated objective. We understand that in the Republic of Ireland, for example, all drivers are required to log into and out of an app to allow the transport authority to monitor the hours worked. TfL's proposal seems only to address excessive hours among drivers working for multiple operators; it does not seem to be concerned with the risk of excessive hours among PHV drivers working for a single operator, or the danger of black cab drivers working excessive hours.
24. Moreover, the CMA believes that 'multi-homing' (ie the ability of drivers to work for multiple platforms) can allow drivers to switch their supply to where it is needed in the market. Mandatory single-homing can create a strong network effect, as it gives drivers the incentive to only work for the platform with the most customers. The consequence could be fewer PHV operator platforms, or even a single dominant platform, with the potential for all the consumer harm that platform dominance might bring.

Proposal 24 – controls on ridesharing

25. TfL proposes to explore measures to ensure that PHVs cannot be used for ridesharing purposes¹⁰ unless there are 'very clear controls in place to protect the safety of passengers and drivers'. TfL specifically mentions the potential for disputes in ridesharing between strangers.
26. The CMA recognises the importance of these aims. However, we are concerned that TfL's stance as expressed here could unduly harm the emergence of new business models. We would encourage TfL to consider the potential benefits to consumers that ridesharing could provide, and to balance the competition implications of any proposed regulation against the public safety objectives that TfL rightly seeks to pursue, as well as to consider whether those objectives could be achieved by less restrictive means. We note that licensing authorities elsewhere in the world have found regulatory approaches which achieve their aims without eliminating ridesharing. The

¹⁰ The CMA understands this to refer to situations where multiple passengers separately book the same vehicle and travel together paying separate fares.

competition impact assessment guidelines referred to above may be an aid in this regard.

Proposal 25 – advertising regulation

27. 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. This 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. 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.

Topographical skills assessments

28. The CMA recognises that TfL’s proposals in this area do not constitute major changes to the topographical skills assessment which currently exists. However, like the Law Commission, the CMA is unconvinced that such tests are appropriate – particularly given that satellite navigation is widely used by PHV drivers.¹¹ While we recognise that such tools are not perfect, it is not clear that the skills checked by TfL’s assessment constitute a necessary or effective backup. A satellite navigation system may or may not take account of traffic accidents or roadworks without some disruption to the journey, but the topographical skills assessment is unlikely to ensure that a driver can do so either. Moreover, most satellite navigation systems can update information and re-plan routes at least as effectively as a human driver (whether tested or not).
29. Prior to satellite navigation, topographical tests may have provided some guarantee of effective navigation but it is no longer obvious that they are necessary for that purpose. On the other hand, they do raise barriers to entry, thus reducing the supply of PHVs and may therefore have a distorting effect on competition. Research carried out for the CMA’s predecessor, the Office of Fair Trading, found that consumers are generally unwilling to pay extra for higher quality standards. The research therefore concluded that consumer welfare may not be increased by regulatory measures that seek to raise quality standards above minimum levels.¹² To the extent that different

¹¹ See the [Law Commission’s report on taxi and private hire services](#).

¹² See Office of Fair Trading (November 2003), [Consumer survey report, Annexe I](#).

consumers value differing levels of navigational skill, we would expect the market to be able to provide a range of alternatives.

The wider regulatory framework

30. TfL's proposals relate to the regulation of PHVs. Many of our observations above are about the effects that such proposals are likely to have on competition between taxis and PHVs. Raising the level of regulation for PHVs might reduce the regulatory gap between taxis and PHVs but in general, we do not think that raising the level of regulation on PHVs is likely to benefit consumers. On the contrary, we think it will harm them by reducing innovation and choice and potentially reducing opportunities for prices to be driven down.
31. Given that technological innovation now allows consumers to book PHVs for near-immediate use, the CMA believes that there would be value in a broader review of whether maintaining two different tiers – including a high level of regulation on taxis – continues to serve consumers in light of recent changes to the market.

2 December 2015