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MARKET INQUIRY INTO LAND BASED PUBLIC PASSENGER TRANSPORT

METERED TAXIS AND E-HAILING SERVICES

REPORT

NON-CONFIDENTIAL VERSION

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List of Abbreviations

4IR or Industry 4.0	Fourth industrial revolution
ACCC	Australian Competition and Consumer Commission
CADE	Administrative Council for Economic Defense, Brazil
CJEU	Court of Justice of the European Union
DOT	National Department of Transport
EPH	Earnings per hour
ERTB	Economic Regulation of Transport Bill
GPS	Global positioning system
IPTNs	Integrated Public Transport Networks
IPTNP	Integrated Provincial Transport Network Plans
ITPs	Integrated Transport Plans
MEC	Member of Provincial Executive Committee
MRE	Municipal regulatory entity
NLTA	National Land Transport Act, 2009 (Act No. 5 of 2009)
NLTTA	National Land Transport Transition Act, 2000 (Act No. 22 of 2000)
NLTIS	National Land Transport Information System
NTA	National Taxi Alliance
OECD	Organisation for Economic Co-operation and Development
PRE	Provincial regulatory entity
PTSAP	Public Transport Strategy and Action Plan
SAA	South African Airways
SABOA	South African Bus Operators Association
SAMTA	South African Metered Taxi Association
SANTACO	South African National Taxi Council
TAT	Transport Appeal Tribunal
ToR	Terms of reference

EXECUTIVE SUMMARY

1. On 10 May 2017, the Competition Commission (the Commission), in its exercise of its powers under section 43B[1] of the Competition Act, 1998 (Act No. 89 of 1998) (the Act), published a notice that it would conduct a Market Inquiry into land based public passenger transport sector (the Market Inquiry). The Terms of Reference (ToRs) for the Market Inquiry were also gazetted on the same day. The ToRs identified the centrality of public transport in providing meaningful mobility for most of the population in pursuit of economic participation. The Commission has limited its inquiry to the public passenger transport sector, comprising road and rail based public passenger transport, as relevant for this Market Inquiry.

2. The Inquiry was initiated because the Commission was of the view that there are features or a combination of features in the public passenger transport sector that were distorting or inhibiting competition. The Commission made this assessment based on several complaints in the industry as well as complaints lodged with the Commission by some stakeholders. In addition, transport in general is one of the priority sectors of the Commission. South Africans spend a high proportion of disposable income on public transport (over 20 per cent) against the world benchmark (of 10 per cent) and therefore any resolution on identified impediments in the sector was envisaged to have benefits in the long run.

3. The ToRs identified the central role of public transport in providing meaningful mobility for most of the population in pursuit of economic participation. The ToRs identified the following broad themes to be investigated as part of the Inquiry:
   3.1 Price setting mechanisms: Analysing different price setting mechanisms for all modes of public transport and their impact on competition;
   3.2 Price regulation: Examining applicable price regulations and their impact on competition;

[1] Section 43B of the Competition Act which relates to initiation of market inquiries states:
"(1) The Competition Commission, acting within its functions set out in section 21(1), and on its own initiative, or in response to a request from the Minister, may conduct a market inquiry at any time, subject to subsections (2) to (4)-
(i) if it has reason to believe that any feature or combination of features of a market for any goods or services prevents, distorts or restricts competition within that market; or
(ii) to achieve the purposes of this Act."

3.3 Route allocation, licensing and entry regulations**:** Assessing the impact of regulations, including route allocation, licensing and entry requirements on intermodal and intramodal competition;

3.4 Allocation of operational subsidies: Assessing the impact of operational subsidies on some modes of public transport and their impact on both intramodal and intermodal competition;

3.5 Transport planning: Evaluating the impact of the government's transport planning framework on dynamism, efficiency and competition; and

3.6 Transformation: Assessing transformation issues, including ownership patterns in the public transport industry.

4. Following the publication of the ToRs, the Commission published the Stakeholder Participation Guidelines (the Guidelines) and Call for Submissions on 13 July 2017. The Commission also held public hearings across the 9 provinces between June 2018 and August 2018. Oral and written submissions were received from over 200 stakeholders. All submissions and transcripts of public hearings are available on the Commission's website (**http://www.compcom.co.za/public-passenger-transport-market-inquiry/**)

Rationale of subdividing the report

5. This report has a specific focus on e-hailing and metered taxi services while the main report will focus on traditional markets which are largely static in nature (i.e. minibus, bus and rail).

6. The Commission is of the view that the dynamics of competition between the metered taxis and e-hailing services are driven largely by technological developments. The innovation and digitisation of the markets are referred to as the fourth industrial revolution (4IR or Industry 4.0). Competition assessment and regulatory scrutiny in these evolving technology or platform markets require special attention given their dynamic nature. This report therefore focuses on the dynamic nature of competition in these evolving technology markets while the main report focuses on the traditional markets which are largely static in nature (i.e. minibus, bus and rail). The Commission is not in any way downplaying some technological developments in the traditional markets, but the innovations do not disrupt the way the industry generally operates on a broader level. For example, in several countries, no regulations exist to cater for e-hailing services. In South Africa, the

Department of Transport (DOT) issued a practice note to assist provincial regulatory entities (PREs) to deal with the licensing process of e-hailing operators while the amendments to legislation are being considered. For ease of reference, we refer to them as e-hailing operators.

7. Given the dynamic nature of these markets, the Commission analysed the impact of regulations on competition, i.e., do regulations (or lack thereof) inhibit or distort competition in the metered taxi and e-hailing service markets? The ultimate objective is to promote competitiveness and efficiency in this market, as well as to encourage the industry to explore new and innovative ways of operating.

8. This report provides the provisional findings and recommendations of the Commission. More broadly, the Commission invites stakeholders to make further submissions and provide comments on both the findings and recommendations in this report by **31 March 2020**. This deadline for submissions will be strictly enforced in order to ensure that the Market Inquiry is finalised timeously. Submissions can be made electronically and sent to the following address: **ppt@compcom.co.za**

Evolution of the metered taxi industry

9. The metered taxis industry has evolved over time and was initially predominantly owned by white South Africans until the 1980s. During this period, the metered taxi industry was largely self-regulated and not subject to formal regulation. When the White Paper on National Transport Policy was approved in 1996 (the 1996 White Paper), it included the regulation of metered taxis.

10. Metered taxis are currently fragmented without a nationally recognised body advancing the interests of the industry. The fragmentation may be due to the differences in the metered taxi groupings. There are two groups of metered taxi operators: those who operate as private metered taxi companies, and those who operate as individuals or sole proprietors. Private metered taxi companies provide an array of transport services, including 24-hour services and bookings can be made via websites, telephone or e-mail.

11. Metered taxi services provide on-demand services to the general public. Unlike in other countries, South Africa's metered taxis do not roam the streets searching for passengers. A passenger has to place a booking with a taxi company telephonically or go to the taxi rank to get a ride or to the streets where they park. In major cities, metered taxi companies are allocated ranking facilities by municipalities. In various airports, the Airports Company South Africa (ACSA) provides limited parking bays to those metered taxi operators that ACSA has agreements with. In hotels and shopping malls, metered taxis usually park on the street corners. Apart from the legislative requirements, such as application for operating licences, and having a sealed and functional meter in the vehicle, the metered taxi industry remains self-regulated with local metered taxi associations playing a significant role. Local metered taxi associations recruit new members and offer a letter of recommendation for members during the process of applying for operating licences.

12. Metered taxis are frequently used by middle-to-high income earners and tourists. Most metered taxis operate in urban areas in South Africa. Low income earners use metered taxis mostly in emergency situations. Other than the use of the sealed meter and telephone booking system it is safe to say there is limited use of technology in the metered taxi industry. This lack of innovation or the slow pace of technology adoption by metered taxi operators is leading to their demise, as evidenced by the entry of e-hailing services.

The entry of e-hailing changed the market dynamics

13. E-hailing services refer to transport services that use a digital platform to connect private operators or operators with passenger more efficiently. The platform uses a global positioning system (GPS) technology to connect the nearest active linked operator to a commuter who is in need of the service. E-hailing services provide upfront pricing to passengers that are agreed on before the journey begins and automatically generates an electronic notice with the cost of the trip and a map of the route to be taken. A new e-hailing company called inDriver was launched in South Africa in March 2019.[2] The inDriver's business model allows the passenger to determine the fare of the trip. The passenger enters the amount he or she is willing to pay for the trip. The order is confirmed by the first driver who is willing to accept the offered price. In both e-hailing models, passengers can

[2] See https://www.iol.co.za/business-report/technology/watch-indriver-a-bargaining-ride-hailing-app-has-launched-in-sa-19559473 (last accessed on 02 February 2020)

pay with a debit or credit card, cash or prepaid voucher. Unlike metered taxis, e-hailing passsengers have access to information about the operator, vehicle details, and the estimated time of arrival in real time. In addition, a passenger can share this information with friends or family.

14. E-hailing services began operations in South Africa in 2013 with Uber as the first mover into this market. Uber commenced operations in Johannesburg and extended these services to Pretoria, Cape Town, Durban, Port Elizabeth and East London. Taxify, now rebranded as Bolt, commenced operations in April 2016. Bolt currently operates in Johannesburg, Pretoria, Cape Town, East London, Polokwane, Port Elizabeth, Emalahleni, Ermelo, George, Mossel Bay, Kimberley, Knysna, Plettenberg Bay, Ladysmith, Mahikeng, Mbombela, Mthatha, Pietermaritzburg, Potchefstroom, Klerksdorp, Queenstown, Thohoyandou and Worcester. inDriver entered the South African market in February 2019 and offers services in Cape Town and Johannesburg.[3]

15. The entry of e-hailing services into South Africa disrupted the business model of metered taxis. In sharp contrast to metered taxis, the e-hailing application enables the hailing of a vehicle electronically. Operators on an e-hailing platform can roam and hail everywhere and prices are determined in accordance with demand and supply. Unlike metered taxis, e-hailing services do not own the vehicles used by operators but rather provide an electronic platform through which passenger and operators connect to each other. The vehicles are owned by independent operators. The growing popularity of e-hailing services also caught regulatory authorities off-guard, as e-hailing services do not fall under the conventional regulatory framework.

16. Despite the entry of e-hailing services, metered taxis took time to respond and found it difficult to create their own digital platforms. Some players in the metered taxi industry introduced their own apps such as YooKoo Passenger and Cruise App, both of which struggled to attract a large number of subscribers to their platform. Passengers are reluctant to register with small and less known e-hailing companies due to security concerns.

17. Digital platforms, such as e-hailing services, thrive on network effects or network externalities. Network externality is defined as the benefit gained by current users of a group

[3] See https://www.iol.co.za/business-report/companies/bargaining-ride-hailing-app-launches-in-johannesburg-23340625(last accessed on 05 February 2020)

when an additional user joins the group. The group can be thought of as a network of users; hence the term network externality. Strong network effects increase barriers to entry in platform markets because of the “winner takes all” or “winner takes most” phenomenon. There have been a few potential entrants in the e-hailing market who failed to recruit a substantial number of operators to their platforms. The new local start-up e-hailing companies such as SnappCab, Ryda, Scoop a Cab and Cabbie closed operations because they were unable to compete with established e-hailing companies.

18. Brand loyalty and first mover advantage enjoyed by pioneers of e-hailing services make it difficult for metered taxi companies or operators to launch apps that can successfully compete with established brands. As an example, Uber has solidified its presence in South Africa by entering into strategic partnerships with well-known institutions like banks and airlines. For instance, First National Bank passengers can earn and spend eBucks on their Uber rides. South African Airways (SAA) Voyager has collaborated with Uber so that its passengers can pay for their Uber rides with their SAA Voyager miles. All these partnerships increase passenger’s awareness of Uber and give it more legitimacy. Metered taxi operators are not able to match these incentives.

19. Given these barriers faced by metered taxis and the nature of platform markets which strive for economies of scale and network effects, metered taxi operators found it very difficult to compete with e-hailing services. Metered taxi operators with vehicles that met the requirements of e-hailing companies joined e-hailing services as they could not withstand competition. The basis for the lack of competition arises from factors such as area restrictions and pricing dynamics which will be discussed below.

The impact of area restrictions on competition

20. The practice note by the DOT makes provision for e-hailing operators to be licensed as metered taxi operators whilst the National Land Transport Amendment Bill [B7 D-2016] (Amendment Bill) is being considered in Parliament. The current legislative framework on area restrictions does not make any distinction between metered taxis and e-hailing services. Both metered taxi operators and e-hailing operators are required to apply for an area-based operating licence which defines a specific radius within which they must operate as well as allocated taxi ranks, terminal, pick-up, and drop off points. The radius should be specified in the application for an operating licence.

21. At an operational level, metered taxis comply with the legislative restrictions imposed on their licences and operate within the defined radius. In the case of e-hailing services, the radius is not adhered to because the app used by e-hailing operators allows operators to connect to the nearest passenger outside their municipal boundaries in violation of the licence conditions. Given their use of an app, the violation of the licence conditions by e-hailing operators is difficult to monitor by law enforcement officials. This violation of licence conditions by cutting across municipal boundaries has been a source of conflict, leading the metered taxi operators to conclude that the regulatory environment creates an uneven competitive playing field. The Commission's view is that even though regulations are similar, the significant difference is at an operational level where lack of enforcement results in an uneven competitive playing field between metered taxis and e-hailing services.

22. The Commission considered whether area restrictions (in practice as opposed to what is legislated) affect competition and whether the requirement in the NLTA to pre-determine a pick-up area for metered taxis distorts competition between e-hailing operators and metered taxi operators. The main issue of concern raised by the metered taxi operators is that e-hailing operators are not subjected to area restrictions in practice while metered taxi operators are required to operate in designated areas. If a metered taxi picks up a passenger from a rank and drops the passenger at the preferred destination, it must return to the designed rank without a passenger if no pre-booked trip is available. This has created an uneven competitive environment between metered taxis and e-hailing services as metered taxis have an average of 50 percent of unpaid kilometres (dead mileage) given the empty return trip after dropping off a passenger. This increases metered taxis' operating costs, which may lead to higher fares as metered taxi operators have to recoup the costs from passengers. The 50 per cent of unpaid kilometres influence their pricing. For e-hailing services, operators have an option to move around (roam) after dropping a passenger and minimise the unpaid kilometres that are experienced by metered taxis.

23. Unlike metered taxi operators who are required to operate in designated areas and only in one municipality, e-hailing operators in Gauteng can provide services in Tshwane, Johannesburg, and Ekurhuleni municipalities and minimise the dead mileage. In addition, the use of an app enables e-hailing operators to reduce the distance between the last drop off and the next pick up, thereby reducing operational costs; including low call out fee. E-hailing services are efficient because of the reduction of dead mileage and increased

convenience for passengers who determine their pick-up areas. These efficiencies are reflected in the lower fares charged by e-hailing services compared to metered taxi fares. Area restrictions may limit the benefits that could be derived from metered taxis absent those restrictions, as highlighted in the e-hailing operations.

24. Area restrictions have been a common feature of the metered taxi industry in many countries and the entry of e-hailing services has led to the interrogation of their relevance. The Commission has also observed that some countries are moving away from imposing area restrictions on metered taxis. In Finland, a decision has been taken that metered taxi operators will no longer be tied to a zonal operation (area restriction) and operating licences are valid throughout the country. In London, zones based on licence conditions imposed on operators by the London Cab Order of 1934 were in use prior to acceptance of the United Kingdom Department of Transport's recommendation of the removal of zones on the basis that zoning diminishes the supply of taxis and limits the scope for passenger choice. The United Kingdom's Department of Transport also found that the removal of zones promotes fuel efficiency because taxis can pick up passenger anywhere in the local authority area, rather than having to return empty to their licensed zone after dropping a passenger in another zone.

25. However, some countries, such as Germany, have maintained area restrictions with debates on their relevance continuing. In 2018, the German Government through its Transport Minister, announced its intention to remove the rule that requires taxi operators to return to their rank or base after every drop off. In Italy, private chauffeured vehicles (equivalent to metered taxis in South Africa) must return to their bases after dropping off a passenger in compliance with area restrictions. This is likely to change, as the Italian Transport Regulation Authority favours the adoption of a new framework in which traditional taxi services, private hire car services and new ride-sharing services will compete in the same market and for the removal of the restrictions that require the private hire vehicle to return to its base after dropping off.[4]

26. Area restrictions, more specifically, designated pick-up areas may be justifiable in very specific circumstances. International experience suggest that places such as airports may

[4] Organisation for Economic Co-operation and Development. 2018. Taxi, ride-sourcing and ride-sharing services.

require restrictions given the limited operational space and the need to mitigate excessive congestion.

Area restrictions have an impact on pricing which influences competition

27. The impact of area restrictions on competition is illustrated by fare differences between metered taxis and e-hailing services. Minimising unpaid kilometres by e-hailing operators influences the way in which fares are determined. In assessing the price determination mechanisms, the Commission sought to understand how the operators set their prices and establish efficiencies and inefficiencies in the process and how that impacts on competition.

28. Metered taxi operators have two ways of setting prices (i) regulated fares and (ii) fares determined by the local metered taxi association. The NLTA makes provision for the MEC or Minister, in consultation with the relevant authority to determine a fare structure for metered taxis but in practice, neither the Minister nor the MECs (except for Western Cape) determines the fare structure. Section 66[5] of the NLTA does not provide guidance to the provinces or the municipalities on how to determine the fare structure. Given the lack of fare regulation by the majority of the MECs, metered taxis determine their own fares through local metered taxi associations who agree on a rate per kilometre. The key question is whether government should be involved in regulating metered taxi fares and if so under what circumstances. International experience suggests that government should not be involved in regulating fares. There are however exceptional circumstances where fares for metered taxis are regulated by government. For example, fares for metered taxis in some countries, such as Sweden, are set for airport trips in order to protect tourists.

[5] Section 66 of the NLTA provides:

"(1) In the case of a metered taxi service—

(a) the entity granting the operating licence may specify an area for picking up 30 passenger;

(b) if the operating licence or permit specifies such an area, the vehicle may leave that area if, on the return journey, it is to carry the same passenger that it carries on the outward journey or if the vehicle is to return empty;

(c) the vehicle may pick up passenger outside of that area if the fare is pre-booked and the passengers will return to such area; and

(d) any particular journey may be operated at a fare not determined by the meter if the fare for that journey has been agreed upon before the journey begins, but the meter must be kept running for the information of passengers.

29. E-hailing services, on the other hand, have adopted a market-based approach, in which the fares are determined by the forces of demand and supply. Passengers are aware of the fare estimate in the case of Bolt and exact fare (for Uber) before a trip is accepted by the passenger. However, there are circumstances which necessitates a change in upfront fares, for example, if the passenger requests the operator to use an alternative route that is significantly different from the one used to calculate the upfront fare. When the demand for the service outstrips supply, dynamic pricing (surge pricing) kicks in, which increases the fares by a particular multiplier. The rationale for this, as provided by the e-hailing companies is to incentivise more e-hailing operators to come onto the platform and service the surge in demand. When the market reaches equilibrium the price returns to normal. Even though dynamic pricing has benefits such as incentivising more e-hailing operators to come onto the platform thus meeting increased demand and providing passegers with an opportunity to compare their prices before accepting a trip, the Commission is concerned that dynamic pricing can also be used to overcharge passengers. There has been a surge of complaints by passengers especially after major events such as concerts and sporting events.

30. The potential for abuse arising from dynamic pricing is a real possibility in the markets in which the "winner takes all" phenomenon prevails, where there are high barriers to entry, and where there is reliance on network effects. A few countries have capped the dynamic pricing, for example, in the USA, where a cap is in place in cases of natural or man-made emergencies. Uber has reached an agreement with the New York Attorney General to cap price increases at 3.5 times the base fare for UberX and 2.5 times the base fare for Uber Black when a state of emergency has been declared. However, when there is no emergency, dynamic pricing can lead to very high multipliers (up to approximately 10 times the base fare in New York). In South Africa, Bolt has implemented a cap of 2.3 times, however, Uber initially applied a cap which varied per city from 2.3 to 5.5 times **{exact figures CONFIDENTIAL}**. In 2019, Uber standardised the maximum cap across all the cities in South Africa.

31. A new e-hailing service called inDriver App was launched by a group of students in Russia to counter dynamic pricing when temperatures dropped.[6] inDriver follows the Real-Time

[6] They named the group Independent Passengers (inDrivers).

Deals (RTD) model which allows passengers to choose how much they are willing to pay and at the same time allow drivers in the area to either accept the offer or make a counteroffer through a bargaining process.[7] Even though there are recommended rates in the inDriver app, these rates merely serve as guidance, the final fare is set by the passenger and driver in a real-time negotiation. inDriver charges zero commission to its driver for the first 6 months. This means whatever cash the driver receives, the driver keeps. After 6 months, the InDriver charges operators 5-7% commission.[8]

Platform markets are changing working conditions and ways of doing business

32. Digitisation has not only brought challenges to transport regulations across the world but also to labour and taxation laws. There are several questions on labour and taxation laws. Firstly, are e-hailing operators classified as independent contractors or employees of e-hailing companies? Secondly, are e-hailing companies adequately accounting for taxation, particularly corporate tax and Value-Added-Tax (VAT)? These questions have been controversial in many jurisdictions in the world, with South Africa being no exception. These issues were raised during the Commission's public hearings by some stakeholders. Given these challenges, the Commission has sought to examine the role played by digitisation in shaping employer-employee relations and the extent to which e-hailing companies account for taxation in South Africa.
33. Evidence presented to the Commission revealed that the relationship between e-hailing companies and its e-hailing operators is not governed by labour laws. The Commission received submissions alleging that e-hailing companies take unilateral decisions with no input from e-hailing operators, an action that has the potential of undermining the rights of the e-hailing operators and threatening their survival. During the public hearings, some e-hailing operators alleged that when e-hailing services entered the South African market, they (especially Uber) used various incentives to attract as many e-hailing operators on the platform as possible. These incentives were later withdrawn unilaterally, negatively affecting their earnings. In addition, e-hailing companies introduced booking fees of an average of 4%, which also impacted their earnings. Based on the data received from e-hailing companies, the Commission found that the gross earnings per e-hailing operator

[7] inDriver Website. About InDriver. Available at https://indriver.com/en/about_us/ . [Accessed 03 February 2020]
[8] Cape Town guy. 2019. inDriver lets you set your price for the drive Available on https://capetownguy.co.za/indriver-lets-you-set-your-price-for-the-drive/ [Accessed 03 February 2020

were declining over time until 2017/2018. However, data received show that for the period 2018/2019 the gross earnings per e-hailing operator has slightly increased, possibly due to the increase in fares. Uber has started limiting the number of e-hailing operators based on its assessment of demand and supply in a defined area. This is a form of self-regulation to minimise oversupply of e-hailing operators. Similar measures of not accepting new members were also taken by the South African National Taxi Council (SANTACO) in the minibus taxi industry.

34. On taxation, the Commission noted that the corporate tax and VAT being paid by e-hailing companies was disproportionately low compared to the revenue generated in South Africa. However, on 1 April 2019, South Africa implemented new rules designed to address the challenge of digitisation. The new definition of "electronic services" was amended to introduce the new VAT regime for cross-border e-commerce transactions. The change in the law meant that, where a supply of service is made by a non-resident to a resident of another country, the non-resident supplier is required to register as a taxable vendor. The Commission is of the view that the move towards a more 'destination' approach on VAT accounting makes Uber and Bolt pay their fair share of VAT in the jurisdiction where they operate. On corporate tax, the Commission is of the view that this issue may be better dealt with by tax authorities.

Both e-hailing and metered taxis face challenges with licensing

35. In general, both metered taxis and e-hailing operators face some regulatory challenges with respect to operating licences and massive backlogs at the provincial regulatory entities (PREs). Backlogs are caused by, *inter alia*, the absence of directives by the municipalities to the PRE, limited capacity to develop integrated transport plans (ITPs) to inform the directives, general lack of capacity in planning authorities and the PREs, and inadequate stakeholder consultations. As in other jurisdictions, the South African regulatory regime is not yet specifically designed to regulate the e-hailing services.

36. The Commission found that 79 per cent of e-hailing operators are providing a service without valid operating licences. No reliable data is available to quantify the proportion of metered taxis that are operating without valid licences but submissions received by the Commission portray a significant proportion operating without valid licences. The

Commission also noted that there are substantial backlogs at various PREs partly due to the inefficiencies of the National Land Transport Information System as well as capacity and financial resources at various PREs. While other provinces and municipalities have issued moratoria on operating licences, these have not been effective in halting illegal operations. For instance, a moratorium on metered taxis has been in place in eThekwini since 2010, but e-hailing companies that came into the South African market in 2013 are operating. Evidence gathered by the Commission indicates that some metered taxi operators opted to join e-hailing and continued to use their existing metered taxi licences. However, other operators are providing a service without valid licences. The moratoria was put in place without conducting needs assessments (market study) and without updated integrated transport plans as envisaged by the NLTA.

37. In its Draft Revised White Paper on Transport Policy (2017), the DOT indicated that the Transport Appeal Tribunal (TAT) must be capacitated to deal effectively with major backlogs in the public transport operating licence disputes to assist the industry with problems experienced at PREs. It appears that government is struggling to deal with challenges at PREs and planning authorities, and that these problems continue to exist in major provinces, with Gauteng, KwaZulu-Natal and Western Cape affected the most. While some municipalities (such as Tshwane) do not have backlogs in issuing directives to the PRE, backlogs are nevertheless encountered at the PREs. Limited enforcement capability results in illegal operations and this is not sustainable where 79 per cent of e-hailing operators do not have valid licences. Given the significant proportion of illegal operators, this raises a question of whether licences should be granted to all e-hailing operators that meet specific requirements such as vehicle fitness and whether the government should be less concerned about limiting the number of e-hailing operators in the industry using quantity restrictions.

38. The NLTA provides for the devolution of the licensing function to planning authorities on condition that the necessary capacity is developed. Nearly ten years have elapsed without any devolution taking place, pointing to the disparity between legislative intent and implementation. The Draft Revised White Paper on Transport Policy (2017) indicates that a strategy for implementing devolution still needs to be developed and DOT has not managed to do so for some time. Submissions received from both PREs and other metropolitan municipalities indicate that several challenges still exist at the municipal level

for devolution to take place and it is unlikely that devolution will be achieved in the short- to medium term. If the *status quo* remains with respect to the challenges at PREs (with regards to backlogs) and planning authorities (issuing directives to PREs timeously), licensing of public transport will continue to be marred by inefficiencies and illegal operations. These regulatory inefficiencies are becoming a hindrance to the operation of public transport and the necessity of imposing quantity restrictions on e-hailing operators (by not timeously processing applications) requires scrutiny.

39. The entry of e-hailing services in South Africa generated conflict between metered taxi and e-hailing operators. At the heart of the conflict is metered taxis' view that e-hailing operators have bypassed regulatory scrutiny (as there was no specific regulation governing their business model) and charging low fares. This conflict has hightened safety concerns for passengers and operators which hinder normal operations. There are areas that have been deemed no go areas for e-hailing operators and this hinders effective competition based on merit and limits consumer choice.

PROVISIONAL RECOMMENDATIONS

40. The Commission has identified provisional recommendations aimed at improving competition in the market.

41. The Commission recommends the removal of area restrictions prescribed in Section 66 of the NLTA. Area restrictions reduce competition and their rationale is incompatible with the evolving nature of the markets. Retaining area restrictions may constrain both e-hailing operators and metered taxi operators when they fully embrace e-hailing technology in the future.

41.1 Once a metered taxi or e-hailing operator has been granted a permit by the PREs, the Commission is recommending that no area or operational restrictions should apply except in designated areas with specific requirements. Metered taxis and e-hailing operators may operate nationally once granted the operating licences. The application process should remain at the respective PREs.

41.2 Allowing e-hailing operators once licenced, to operate nationally, removes the legislative requirement for PREs to undertake localised demand and supply assessment before granting licences to metered taxis or e-hailing operators. Decisions for entry and exit in the e-hailing and metered taxi services should be left to the operators and not subjected to government intervention.

41.3 Area restrictions, more specifically, designated pick-up areas, may be justifiable in very specific circumstances and therefore PREs may issue restricted operating licences in these cases. Restrictions may be considered for airports, other national key points, and where there is limited operational space in order to mitigate excessive congestion.

42. On dynamic pricing, the Commission is of the view that once area restrictions are removed, potential abuse arising from dynamic pricing is mitigated given the number of e-hailing operators in the market. The Commission will however monitor developments in the market and should dynamic pricing arise more frequently, an enforcement avenue may be pursued.

43. The Commission recommends that government (through the MEC or Minister) should not be involved in determining fare structure for metered taxi services as it is inefficient, not justifiable and has not been fully implemented by the majority of the MECs.

44. The Commission recommends that metered taxi operators improve pricing transparency to benefit passengers.

45. On backlogs at PREs, the Commission recommends:

45.1 An overhaul of the issuing of operating licence regime and removal of quantity restrictions. E-hailing and metered taxi operators will still be required to apply for roadworthy permits, but their operating licence applications should not be denied based on supply and demand assessments. In addition, the Commission recommends that all pending applications should be processed and finalised expeditiously. This will free some capacity at the PREs to consider new applications and address existing backlogs.

45.2 PREs and planning authorities to increase capacity to deal with existing backlogs;

45.3 Planning authorities and provinces should enter into MoUs to jointly exercise their respective powers and functions as contemplated in Section 12 of the NLTA. This joint exercise or performance of their respective powers and functions may be regulated by an agreement between the parties, but this exercise would still require both spheres of government to be sufficiently capacitated; and

45.4 To ensure that the metered taxis industry is recognised and empowered to represent the interests of its members, the DOT and PREs should assist the industry to establish a national association of metered taxis. A formalised structure for metered taxis will assist with consultations with the government and advance their interests in the industry in light with digitisation.

45.5 To deal with conflict between metered taxis and e-hailing operators and ensure safety of passengers, the Commission recommends that a specialised division within SAPS be created to deal with all public transport related matters.

Summary of expected outcomes

The nature of distortion/inefficiencies	Recommendation	How recommendation addresses the distortion	Expected benefit or outcome
Area restriction • High administrative and enforcement costs • High fares • Limited service choices, • Inflexible pick-up points, • Long waiting period for passenger • Unpaid kilometres for operators • High fuel cost	Removal of area restrictions	Removal of area restrictions improves efficiencies and passenger benefit due to reduced waiting times. Ensure a competitive playing field between metered taxis and e-hailing services	Removal of legislative impediment will promote competitive markets Enhanced competition between metered taxis and ehailing services leading to: • Reduce waiting time • Choice • Affordable fares • Increase consumer welfare • Promotes fuel efficiency • Innovation • Simpler administrative and enforcement costs. • Improve competition thus improve economic growth
Price Regulation by MECs • Difficult to monitor • Difficult to set a market-related fares • Cannot respond to supply and demand • High administration cost • Some trips may not be profitable (especially during high traffic • Rigid and not responsive to market conditions	The legislature deletes Section 66(3) of the NLTA which allows MEC or Minister together with the planning authority to determine a fare structure for metered taxi service. No price regulation for metered taxis is recommended	Ensure a competitive playing field between metered taxis and ehailing services	Fares to be subjected to market forces which promote competition and lead to lower fares
Backlogs	Removal of quantity restrictions by the PREs given that a significant number of e-hailing and metered taxis are already operating illegally.	Operators will operate legally	This will free some capacity at the PREs to consider new applications without having to deal with massive backlogs

The nature of distortion/inefficiencies	Recommendation	How recommendation addresses the distortion	Expected benefit or outcome
	That the PREs and planning authorities increase capacity to deal with existing backlogs	Improve effeciency	Prevent illegal operators
	That planning authorities and provinces enter into MoUs to jointly exercise their respective powers and functions as contemplated in Section 12 of the NLTA. This joint exercise or performance of their respective powers and functions may be regulated by an agreement between the parties, but this exercise would still require both spheres of government to be sufficiently capacitated.	Improve efficiency	Better cooperation between provinces and adjacent Municipalities in relation to transport matters
	Metered taxis associations are empowered to represent the interest of the industry, the DOT and PREs should assist the industry to establish a national association of metered taxis.	A formalised structure for metered taxis will assist with consultations with government and advance their interests in the industry in light with digitisation	Improved and innovative metered taxi industry

1. Market Inquiry background

1.1. On 10 May 2017, the Competition Commission, exercising its powers under Section 43B of the Competition Act, 1998 (Act No. 89 of 1998), published a notice in the Government Gazette that it would conduct a Market Inquiry into the land-based public passenger transport sector. The Commission initiated the Market Inquiry in order to understand the general state of competition in the land-based public passenger transport industry and to determine whether there are any features that lessen, prevent or distort competition in the industry.

1.2. The terms of reference (ToR) identified the following broad themes for assessment in the Market Inquiry:

1.2.1. **Price setting mechanisms**: Analysing different price setting mechanisms and their impact on competition in the land-based public passenger transport industry;

1.2.2. **Price regulation**: Examining applicable price regulations and their impact on competition in the land-based public passenger transport industry;

1.2.3. **Route allocation, licensing and entry regulations:** Assessing the impact of regulations, including route allocation, licensing and entry requirements on intermodal and intramodal competition in the land-based public passenger transport industry;

1.2.4. **Allocation of operational subsidies**: Assessing the impact of operational subsidies granted to commuter buses, Metrorail and Gautrain on intramodal and intermodal competition in the land-based public passenger transport industry;

1.2.5. **Transport planning**: Evaluating the impact of the government's transport plans on dynamism, efficiency and competition in the land-based public passenger transport industry; and

1.2.6. **Transformation**: Assessing transformation issues, including ownership patterns in the land-based public passenger transport industry.

1.3. For the purposes of this report, the ToRs are discussed with specific reference to the metered taxis and e-hailing services. As such, this report will focus on the following themes identified in the ToRs: price setting mechanisms, price regulation, route allocation, licensing and entry regulations. The allocation of operational subsidies, transport planning and transformation

will not be dealt with in this report. The following discussion sets out a summary of the process followed in conducting the Market Inquiry.

Launch of the Market Inquiry

1.4. The Commission engaged with key stakeholders as part of the pre-launch consultations. The purpose was to inform the stakeholders about the Market Inquiry and to solicit their views on its scope. These consultations culminated in the publication of the ToRs on 10 May 2017, following which the Commission published the Stakeholder Participation Guidelines (the Guidelines) and Call for Submissions on 13 July 2017. The Guidelines provided a fair opportunity and a transparent process for all stakeholders to participate effectively in the Market Inquiry. The Call for Submissions was an initial invitation to all stakeholders to respond to the issues raised in the ToRs. In addition, the Call for Submissions was also important for the Market Inquiry to assess if there are additional issues that may be considered by the Commission.

1.5. The Commission conducted the Market Inquiry in several phases. **Phase 1** involved evidence and information gathering, during which more than 200 stakeholders made written and oral submissions. Oral submissions were largely through public hearings. The Commission appointed three panel members and two evidence leaders from its staff to preside over the public hearings. Public hearings were held in all nine provinces over 24 days between June 2018 and August 2018. **Appendix A** provides a comprehensive list of all stakeholders that made submissions to the Market Inquiry. Additional hearings at the Commission's offices were held in October 2018 to cater to some of the stakeholders that could not participate during the first round of public hearings.

1.6. **Phase 2** of the Market Inquiry involved an assessment of the state of competition in the transport sector based on the information received from market participants. A range of analytical techniques were applied to understand and draw conclusions where possible or make inferences on the nature of competition in the sector, and the impact of any feature or conduct observed in the sector. **Phase 3** focuses on report drafting and reporting on preliminary findings and recommendations.

Invitation for comment of preliminary findings and recommendations

1.7. The Commission is publishing preliminary findings and recommendations and invites interested stakeholders to provide input on the recommended solutions and/or actions. The findings and recommendations in this draft report do not represent any settled views or findings of the Market Inquiry but form the basis for stakeholders to comment on its preliminary findings and recommendations prior to the publication of the final Market Inquiry report.

1.8. The input received from stakeholders will be assessed and incorporated into the analysis to enhance the outcomes of the Market Inquiry. **The final phase** of the Market Inquiry will involve the drafting of the final report on the state of competition in the e-hailing and metered taxi industry and publishing the report in the Gazette as prescribed under Section 43B of the Act.

The rationale for subdividing the report

1.9. The Commission has subdivided the publication of its draft report for public comment into two parts. This report has a specific focus on e-hailing and metered taxi services whilst the main report will focus on the traditional markets. Traditional markets refer to markets that are largely static in nature (i.e. minibus, bus and rail). The traditional markets are excluded from this report because they are not direct competitors of metered taxis and e-hailing services.

1.10. The Commission is of the view that the dynamics of competition between the metered taxis and e-hailing services is driven largely by technological developments. The innovation and digital transformation of the markets are referred to as the fourth industrial revolution (4IR or Industry 4.0). Competition assessment and regulatory scrutiny in these evolving technology or platform markets require special attention given the dynamic nature of these markets. This report therefore focuses on the dynamic nature of competition. The Commission is not in any way downplaying some of the technological developments in the traditional markets, but the innovations have not been to a sufficiently large scale to disrupt the way the industry operates.

Structure of the report

1.11. The report is structured as follows: section 1 provides a market inquiry background, section 2 provides a background on the metered taxi industry and e-hailing services. Section 3 provides an overview of the regulatory framework. Section 4 discusses price setting mechanisms in the metered taxi industry and e-hailing services. Section 5 focuses on barriers to entry. Section 6 assesses the intramodal and intermodal competition and the effect of area restrictions on competition. Section 7 highlights emerging issues from stakeholder consultations, in particular; the impact of digitisation on labour issues and taxation. Sections 8 and 9 present the Commission's findings and recommendations respectively.

2. Background to the metered taxi industry and e-hailing services

Introduction

2.1. This chapter sets out the contextual background of metered taxi and e-hailing services, evolution, business models and discussion of the main role players in the industry. For purposes of this report, drivers utilising e-hailing apps are refered to as e-hailing operators; companies such as Uber and Bolt are called e-hailing companies; and metered taxi drivers are refered to as metered taxi operators. The term e-hailing operators include drivers working for vehicle owners, drivers leasing vehicles or owners driving own vehicles.

2.2. The precise inception of the metered taxi industry in South Africa is unclear since the metered taxi services were not regulated in the past. However, the history of the metered taxi industry can be traced back to the 1950s.[9] Metered taxis were historically family businesses that have been passed from generation to generation. Given its informal nature, the metered taxi industry was initially self-regulated.[10] The available information suggests that metered taxi companies were predominantly owned by white South Africans until the 1990s[11] and black South Africans were not granted metered taxi operating licences before 1994. The 1996 White Paper introduced a formal regulatory framework for the metered taxi industry.

2.3. E-hailing in the public transport market in South Africa started in 2013.[12] Uber was the first mover in this market. It introduced its operations in Johannesburg in 2013 and extended services to Pretoria, Cape Town, Durban, Port Elizabeth and East London. Bolt entered the market and became fully operational in April 2016 under the name Taxify. Bolt currently operates in Johannesburg, Pretoria, Cape Town, East London, Polokwane, Port Elizabeth, Emalahleni, Ermelo, George and Mosselbay, Kimberley, Knysna and Plettenberg Bay Ladysmith, Mahikeng, Mbombela, Mthatha, Pietermaritzburg, Potchefstroom Klerksdorp, Queenstown, Thohoyandou and Worcester. inDriver entered the South African market in February 2019. It is currently available in Cape Town and Johannesburg.[13]

[9] Metered Taxi Operator. Iral submission by Mr Drummond. Cape Town hearings. 21 June 2018. Page 32.
[10] Tshwane Metered Taxi Council. Submission by Mr Magoano.
[11] Tshwane Metered Taxi Council, Submission by Mr. Magano. 4 June 2018. Page 1.
[12] City of Cape Town. Oral submission by Mr. Van De Bergh. 21 June 2018. Page 37.
[13] inDriver Website. About Indriver. Available at https://indriver.com/en/city/ [Accessed 03 February 2020]

2.4. The entry of e-hailing has been facilitated by the exponential growth of innovation, increased global connectivity, and technological advancements that are disrupting traditional business models across industries. These technological disruptions are posing challenges to traditional markets with rigid business models.

E-hailing and metered taxi fragmentation

2.5. There are several organisations representing the interest of various metered taxi operators, including the South African Metered Taxi Association (SAMTA), the South African Meter Taxi Forum (SAMTF), Tshwane Metered Taxi Council (TMTC), Western Cape Metered Taxi Council (WCMTC) and the Gauteng Metered Taxi Association (GMTA). These organisations are responsible for safeguarding the interests of metered taxi companies as well as individual metered taxi operators and play an active role in assisting the metered taxi industry with operating licence applications.[14] Despite the existence of these and other organisations, metered taxis are currently fragmented and do not have a nationally recognised body to advance the interests of the industry. The fragmentation may be due to the differences in the metered taxi groupings. For instance, SAMTA submitted that it is a national body safeguarding the interests of metered taxi operators in South Africa.[15] However, the Commission learnt that SAMTA is active in Durban only, while GMTA and TMTC are active in Gauteng only. Some metered taxi associations are registered as companies, for instance, the Aero Park Metered Taxi Association (APMTA) is, in reality, a transport company operating from Kempton Park rather than an association of metered taxi operators.[16]

2.6. E-hailing operators are to some extent also fragmented. However, the dominance of the two companies (Uber and Bolt) means that the level of fragmentation is limited. E-hailing operators seem to have organised themselves under an organisation called The Movement, but this does not include all e-hailing operators. During the public hearings, most Uber and Bolt operators presented evidence in their individual capacity.[17] The Commission has however observed that both metered taxi operators and e-hailing service operators do not have a national body or structure (similar to SANTACO or the National Taxi Alliance (NTA)

[14] Mabuse, K and Browning, P. 2009. The metered taxi in South Africa cities. Proceedings of the 28th South Africa Transport Conference (SATC 2009). 6-9 July 2009. Pretoria: Transformation Technologies cc.
[15] South African Metered Taxi Association. Submission by Ms F Freedman. 18 April 2017. Page 1.
[16] Aero Park Metered Taxis in Kempton Park. Oral submission by Mr Thomas Rabodiba, Gauteng hearing. 8 June 2018. Page 3
[17] Uber/Bolt operators . Oral submission in Port Elizabeth public hearings. 13 August 2018. Page 35.

that is recognised to represent the minibus taxi industry). As a result, the metered taxi and e-hailing operators do not have a united voice to advance its common interests. E-hailing companies, on the other hand, are able to lobby given their resources and access to policy makers.

Metered taxis and e-hailing business models

2.7. Metered taxis and e-hailing services use different business models to acquire passengers and conduct operations. The business models will be briefly discussed below.

Metered taxi business model

2.8. Metered taxi operators provide an on-demand service to the general public. Unlike in other countries, South Africa's metered taxis do not roam the streets searching for passengers. There are two groups of metered taxi operators in South Africa: (i) private metered taxi companies, and (ii) individual or sole proprietors meterd taxi operators. Private metered taxi companies provide an array of services including 24-hour service through out the year, with payments done through cash, debit and credit card machines on board. Passengers may book for services via websites, telephone and e-mail. Some private taxi companies have public passenger liability cover and their cars are in good condition. In major cities, private metered taxi companies are allocated ranking facilities by the municipality. ACSA provides limited parking bays to contracted metered taxi services within various airports in South Africa.

2.9. On the other hand, individual or sole proprietor operators usually use a taxi rank as a base and passengers visit the rank to get a service. Metered taxis usually park or rank close to hotels and shopping malls waiting for passengers. Apart from the legislative requirements such as applications for operating licences, and having a functional sealed meter in the vehicle, the metered taxi industry remains self-regulated with local metered taxi associations playing a significant role. Local metered taxi associations recruit new members and offer a letter of recommendation for members during the process of applying for operating licences.

2.10. Evidence gathered by the Commission revealved that metered taxis are frequently used by middle to high-income earners and tourists. Most metered taxis operate in urban areas in

South Africa. Low income earners use metered taxis mostly in emergency situations. Metered taxis have limited use of technology (slow pace of technology adoption) and this is leading to their demise as evidenced by the entry of e-hailing services. Lack of innovation or the slow pace of technology adoption by metered taxi operators is leading to their demise. The demise of the metered taxis around the world has raised several questions: should regulators intervene in these markets and if so, to what extent and for which objective?

E-hailing business model

2.11. E-hailing in public transport refers to the use of technological platform to connect e-hailing operators with passengers more efficiently. The platform uses a global positioning system (GPS) technology to connect the nearest active linked e-hailing operator to a passenger who is in need of the service. E-hailing companies such as Uber and Bolt connect e-hailing operators and passengers seamlessly in a two sided market. Digital platforms are dynamic in nature and can easily extend services to new or related markets with much ease. For instance, Bolt has already expanded from e-hailing with cars to motorbikes and scooter sharing.[18] Uber has now expanded into food delivery with an app called Uber Eats. In 2018, Uber announced that it was looking at the possibility of a flying drone for food deliveries.[19]

2.12. The nature of digital platforms is dynamic while the regulatory framework is static and may not efficiently deal with such developments and innovations. For instance, when the NLTA was promulgated in 2009, e-hailing was not part of the South African public transport system, and it was not explicitly defined in the NLTA. Subsequent to the entry of e-hailing services, the DOT issued a practice note to provide guidance to all PREs and municipal regulatory entities (MREs) as an interim measure on the approach to be followed when dealing with applications for operating licences for e-hailing services. The DOT gave all PREs directives to the effect that while it was still in the process of amending the NLTA, all PREs should treat e-hailing services as a sub-category of metered taxi services.[20]

[18]Business Tech. 2019. Bolt rebrands as Bolt. March. https://businesstech.co.za/news/mobile/303990/Bolt-rebrands-as-bolt/ (Accessed on 13 March 2019).
[19] Bandoim, L. 2018. Uber plans to launch food delivery drones. https://www.businessinsider.co.za/how-the-petrol-increased-in-south-africa-the-last-10-years-2018-9 (Accessed on 21 March 2019.)
[20] National Department of Transport. 2015. National Land Transport Act: Practice note on e-hailing services. Page 1-3.

2.13. Unlike metered taxis, e-hailing companies such as Uber and Bolt do not own the vehicles used by e-hailing operators but rather provide a platform for the passengers and e-hailing operators to connect. The vehicles are owned (sometimes leased) by independent contractors and for ease of reference, we refer to them as e-hailing operators. The term e-hailing operators include drivers working for vehicle owners, drivers leasing vehicles or owners driving their vehicles. All e-hailing operators with vehicles are required to get their respective vehicles licensed by the Provincial Regulatory Entities (PREs).

2.14. E-hailing fare structure is based on vehicle type, rates and city. The fares may vary due to among others, traffic conditions, weather, routes, demand and supply. The trip is based on three components, namely base fare, time and distance. For the sake of transparency, e-hailing provides an upfront pricing system to help the passengers know the estimated fare before the journey begins. At the end of the trip, the system automatically generates an electronic notice with the cost of the trip and a map of the route taken. Passengers can pay with a debit or credit card, cash or prepaid voucher. A passenger is provided with information about the operator (name and telephone number), vehicle details, and the estimated time of arrival in real time. In addition, a passenger can share this information with friends or family to improve security.

Comparison of the efficiency of e-hailing business model vs metered taxis

2.15. The e-hailing business model offers great convenience to both passengers and e-hailing operators, thus resulting in efficiencies. One measure of efficiency is how much time e-hailing operators spend searching for passengers or driving to pick up passengers. A trip is allocated to an e-hailing operator who is closest to the passenger and therefore limiting costs for both the operator and passenger. Passengers connect to a vehicle closest to them and in a shorter period of time.

2.16. In addition, the e-hailing technology enables an e-hailing operator to find another fare paying passenger closer to another passenger's drop off point. This significantly reduces the travel time and distance between fare paying rides. The e-hailing technology allows the passengers, in real time, monitor the location and time of arrival. Passengers have full

transparency of pricing via price estimate function and can share their trip information with friends, family, or other persons, to further enhance security.[21]

2.17. The Commission has observed that for metered taxis that operate at designated areas or at airports and major stations are forced to return to the base after dropping off a passenger. This means that the trip is priced to recover an empty return trip. This is in sharp contrast to the e-hailing model where a ride close to the destination is found by the use of technology. The metered taxi business model therefore results in greater distances travelled between fare paying rides; thus effectively raising the operating costs of metered taxi services. High operating costs, in turn, results in higher fares which ultimately limit the demand for metered taxi services.

2.18. Differences in efficiency levels (which are being reflected in fares) between the metered taxis and e-hailing services have been a source of conflict in most cities in the world. The efficiency of e-hailing has brought fares down in ways that metered taxis are not able to duplicate. In some countries, including South Africa, e-hailing services face significant opposition, as discussed below.

The conflict between metered taxi operators and e-hailing operators

2.19. The entry of e-hailing services in South Africa and all over the world has often generated conflict, sometimes with fatal consequences, between a metered taxi and e-hailing operators. From the submissions presented at public hearings, tt the heart of the conflict are two issues. Firstly, metered taxi operators argue that e-hailing operators have bypassed regulatory scrutiny (as there was no specific regulation governing their business model) and are operating without regulation. Secondly, metered taxi operators allege that e-hailing operators' fares are "too low" and that e-hailing companies are subsidising their operators. Metered taxi operators have used these two issues to argue that e-hailing operators are threatening the survival of their businesses with unfair low prices. Metered taxis have also argued that government has failed to protect the metered taxi industry.

[21] Bolt submission. 20 February 2018. Page 3-4

2.20. In Paris, France, metered taxi unions have protested about Uber's low fares and are against e-hailing operators being granted licences. Some of these protests have attracted national participation, while others have been violent, sometimes resulting in the burning of tyres, traffic blockades and damaging of vehicles owned by e-hailing operators.[22]

2.21. In Bogota, Colombia, metered taxis (Yellow Cabs) blocked roads and clashed with police while protesting against e-hailing operators. The protest came after Colombia's government decided that metered taxis shouls replace taxi meters with GPS-based software applications that can be used to calculate and collect fares. During the protest, metered taxi operators called for more regulation on technology services.[23]

2.22. In Madrid, Spain, metered taxi demonstrators blocked access to a major tourism fair, Fitur, and vowed not to give up on demands for more stringent regulations for e-hailing services like Uber and Cabify. The demonstrators demanded that users of e-hailing services be required to book the service an hour in advance to mimic metered taxis' business model. In response to their demands, the government called for a "balanced" approach that will enable both transportation options to coexist peacefully.[24]

2.23. In London, England, cab operators staged protests against e-hailing services, arguing that the service has an unfair advantage due to less stringent regulation and uses its international structure to pay less tax.[25] South Africa has also experienced protests and several confrontations between e-hailing and metered taxi operators, some of which led to the loss of lives.[26]

2.24. In summary, e-hailing services have been beneficial to passengers and at the same time posed challenges to regulators. Difficulties arose with respect to how e-hailing services are classified – are they technology companies or transport companies? There are other

[22] Verbergt, M and Schechner, S. Taxi Operators Block Paris Roads in Uber Protest. Available at https://www.wsj.com/articles/taxi-operators-block-paris-roads-in-uber-protest-1435225659 (Accessed on 21 June 2019).
[23] BBC report available at https://www.bbc.com/news/world-latin-america-41731109 (Accessed on 21 June 2019).
[24]Urra S. One held, 11 injured as protesting taxi operators clash with police in Madrid available at https://elpais.com/elpais/2019/01/23/inenglish/1548256015_585203.html (Accessed on 21 June 2019).
[25] See https://www.theguardian.com/technology/2016/feb/10/black-cab-operators-uber-protest-london-traffic-standstill (Accessed on 21 June 2019).
[26] Naik, S. Uber taxis torched, 30 arrested during Joburg #taxiprotest available at https://www.iol.co.za/news/south-africa/gauteng/uber-taxis-torched-30-arrested-during-joburg-taxiprotest-11752647 ((Accessed on 21 June 2019))

conceptual difficulties with the model such as who is the firm between the technology company and e-hailing operators and whether e-hailing operators can be classified as employees for labour law purposes. The responses of regulators are discussed below.

How regulators have responded

2.25. Regulators and courts around the globe continue to grapple with the legal challenges posed by the conflict discussed above. In 2017, Uber was initially banned in Italy after a court in Rome ruled that Uber represents unfair competition for traditional metered taxis. This decision was reversed on appeal.[27] The Italian government has promised to introduce clearer rules governing competition between conventional metered taxis and rival transport services.

2.26. In 2016, the Higher Regional Court in Frankfurt, Germany, found UberPop had violated German law because its e-hailing operators did not have public transport licences. UberPop is a budget version of UberX that allows every driver to become an e-hailing operator with their own car without acquiring a professional driver's licence and a public transport operating licence. The court banned Uber from running the service with unlicensed operators and set fines for any violations of local transport regulations.[28] UberPop service was also outlawed in France.[29]

2.27. Canadian municipalities such as Toronto and Ottawa took a decision to license UberX operators in 2016, resulting in a new regime for Uber licensing.[30] This decision was taken after various protests by the metered taxi industry.

2.28. In Spain, a ruling from a Madrid Court in 2014 forced Uber to shut down its services. The court ruled that Uber's activities should be terminated and prohibited in the whole country

[27] See https://www.reuters.com/article/us-italy-uber/italian-court-overturns-uber-ban-idUSKBN18M22E (Accessed on 21 June 2019)
[28] Siebelt, F. German court upholds ban of unlicensed Uber taxi service available at https://www.reuters.com/article/us-uber-germany-ban/german-court-upholds-ban-of-unlicensed-uber-taxi-service-idUSKCN0YV1JH (Accessed on 21 June 2019)
[29] Thomson, A . France's highest court upholds UberPop ban available at https://www.ft.com/content/a5685552-6157-11e5-a28b-50226830d644
[30]See https://www.bnnbloomberg.ca/toronto-issues-operating-licence-to-uber-as-cabbies-protest-1.548649 (Accessed on 21 June 2019)

as a cautionary measure, due to condemnation from the metered taxi operators' association. After this, a Judge in Barcelona requested the Court of Justice of the European Union to determine whether the activities of e-hailing companies present an unfair competition against metered taxi operators. In December 2017, the European Court of Justice held that Uber is a transportation service company and as such, it will have to comply with existing metered taxi rules.[31] Member states can thus regulate the conditions for providing the e-hailing service.

2.29. The South African regulatory regime has also not yet been designed to regulate the e-hailing services. For this reason, the DOT is currently developing the legal framework through the Amendment Bill which explicitly accommodates electronic hailing.

Role players

2.30. The key role players in the metered taxi industry include:

2.30.1. The PREs responsible for granting operating licences;

2.30.2. Planning authorities for issuing directives to the PREs; indicating whether a service is required or not in accordance with the NLTA;

2.30.3. Motor vehicle manufacturers and dealerships;

2.30.4. Metered taxi companies, metered taxi associations;

2.30.5. Financiers; and

2.30.6. Fuel suppliers among others.

2.31. E-hailing comapnies in South Africa include Uber, Bolt plus new entrants such as inDriver, Ntuza Digital TaxiCab App (launched in East London), YoTaxi app (Launched in Durban by

[31] See European Court of Justice Press release available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-12/cp170136en.pdf (Accessed on 21 June 2019)

12 metered-taxi associations), YooKoo Passenger, Hailer (launched in Kimberly) and inDriver app (available in Port Elizabeth, Cape Town, Johannesburg and Pretoria). YooKoo Passenger (a newly developed e-hailing app) announced its partnership with the metered taxi industry with the aim of challenging both Uber and Bolt.[32]

[32] SA Meter Taxi Association And YooKoo Ride Ready To Take On Uber https://smesouthafrica.co.za/17526/Entrepreneurship-and-Business-Stories/ (Accessed on 14 February 2020)

3. Overview of the regulatory framework

Introduction

3.1. This chapter discusses the regulatory framework for metered taxis and e-hailing services. Its objective is to assess whether any regulations impede the effective functioning of the market and deter competition between metered taxis and e-hailing services. The intended outcome is to provide a foundation for the assessment of competitive dynamics between the metered taxis and e-hailing services. The chapter begins by outlining the key policy documents that guide the regulatory framework for public transport in South Africa. An overview of the licensing regime for metered taxis is discussed and how e-hailing operations are currently regulated. Challenges facing both metered taxis and e-hailing services are discussed with the objective of developing recommendations to promote fair competition.

Significance of the White Paper

3.2. The 1996 White Paper on National Transport Policy (1996 White Paper) played a crucial role in initiating the process of transforming the South African land based public transport sector. The 1996 White Paper introduced various changes in the regulation of public transport in the country which culminated into the National Land Transport Transition Act, 2000 (Act No. 22 of 2000) (NLTTA) and the NLTA respectively. The NLTTA came into force in 2000 but it was transitional in nature and had to be implemented for a period of five years while the NLTA was being put in place. The NLTA was promulgated in 2009 and repealed the NLTTA.

3.3. The NLTA defines a "metered taxi" as public transport service operated by means of a motor vehicle contemplated in Section 66 which is available for hire by hailing while roaming, by telephone or otherwise, may stand for hire at a rank; and should be equipped with a sealed meter in good working order,for the purpose of determining the fare payable, that is calibrated for such fare or complies with any other requirements applicable to such meters. This definition is amplified in Section 66 of the NLTA which will be discussed below.

3.4. E-hailing or App-based services are not currently defined in the NLTA, however, they are catered for in the Amendment Bill which is before Parliament's National Assembly. On 24

April 2018, the Amendment Bill was passed by the National Assembly and transferred to the National Council of Provinces (NCOP) for concurrence. The Amendment Bill was passed by NCOP with amendments on 28 March 2019 and returned to National Assembly for reconsideration. The Amendment Bill provides for a distinct category of e-hailing services and defines e-hailing as:

> "*1(c) 'electronic hailing service' or 'e-hailing service' means a public transport service operated by means of a motor vehicle, which—*
>
> *(a) is available for hire by hailing while roaming;*
>
> *(b) may stand for hire at a rank, and*
>
> *(c) is equipped with an electronic e-hailing technology-enabled application, as contemplated in section 66A;*

3.5. In the absence of formal recognition of e-hailing in the NLTA, on 25 February 2015 the DOT issued a practice note to provide guidance to all PREs and MREs as an interim measure to inform a consistent approach when dealing with applications for operating licences for e-hailing services. The DOT gave all PREs directives to the effect that while it was still in the process of amending the NLTA, all PREs should treat e-hailing services as a sub-category of metered taxi services.[33] The successive discussion in terms of the application process, licensing requirements for e-hailing services and metered taxis are largely the same based on the practice note issued by the DOT. Specific differences in the treatment of e-hailing services by the PREs will be highlighted in the discussions.

Overview of the licencing regime (operating licences)

3.6. This section identifies the roles and responsibilities of each stakeholder in the approval process of operating licences for both e-hailing and metered taxis. In terms of Section 50(1)[34] of the NLTA, no person shall operate or provide public transport services unless he/she holds an operating licence. Section 23(1)[35] of the NLTA requires MECs of transport within their

[33] National Department of Transport 2015. National Land Transport Act: Practice note on e-hailing services. Page 1-3.
[34] Section 50(1) of the NLTA states:
> "(1) No person may operate a road-based public transport service, unless he or she is the holder of an operating licence or a permit, subject to sections 47,48 and 49, issued for the vehicle concerned in terms of this Act."
[35] Section 23(1) of the NLTA states:

jurisdictions to establish PREs which must then carry out the powers assigned to them in terms of Section 24[36] of the NLTA. One of those functions contemplated in Section 24(1) of the NLTA is to decide on applications relating to operating licences where no municipality to which the operating licence function has been assigned exists. Although the NLTA contemplates the assignment of the operating licence function from the provincial sphere of government to the municipalities, nowhere in South Africa has this function been assigned. Therefore, PREs are currently responsible for the issuing of all operating licences.

3.7. Municipalities, as planning authorities, make recommendations or issue directives to the PRE to either approve or decline applications for granting new operating licences and renewal, amendment or transfer of existing operating licences. In the processing of the applications, the PRE must by means of notice as prescribed in the NLTA regulations, inform all planning authorities in whose areas the services will be operated to give directions regarding the application based on the planning authority's integrated transport plans. In terms of Section 14[37] of the NLTA, the planning authorities are involved in the preparation of the integrated transport plans as contemplated in Section 36[38] of the NLTA. If there is a need for the service, the planning authority must direct the PRE to grant the application.[39] If there is no need for the service, the planning authority must direct the PRE to refuse the application.[40]

"(1) Every MEC must establish a Provincial Regulatory Entity within the relevant provincial department, to perform the functions of that entity in the province."

[36] Section 24 of the NLTA states:

"(1) Each Provincial Regulatory Entity must—

(a) monitor and oversee public transport in the province;

(b) receive and decide on applications relating to operating licences for intra-provincial transport where no municipality exists to which the operating licence function has been assigned but excluding applications that must be made to the National Public Transport Regulator in terms of section 21."

[37] Section 14 of the NLTA states:

"(1) All planning authorities must—

(a) prepare the integrated transport plans as contemplated in section 36;

(b) perform the constitutional transport functions listed in Parts B of Schedules 4 and 5 of the Constitution;

(c) supply directions to the entities responsible for the granting, renewal, amendment or transfer of operating licences in terms of their integrated transport plans in the prescribed manner; and

(d) perform any other land transport-related functions assigned to them in terms of the Constitution and this Act.

[38] Section 36(1) of the NLTA states:

"(1)All planning authorities must prepare and submit to the MEC, by the date determined by the Minister, integrated transport plans for their respective areas for the five-year period commencing on the first day of the financial year determined by the MEC, and must update them in the prescribed manner and as frequently as prescribed."

[39] See section 55(2)a of the NLTA

[40] See section 55(3) of the NLTA

3.8. In terms of Section 18(3)[41] of the NLTA, planning authorities are also conferred with powers to introduce moratoria and to give notice that they will no longer be receiving applications for new services except in accordance with invitations for specified services on specified routes or specified areas in accordance with the municipality's ITP. In addition in terms of Section 39 of the NLTA, planning authorities also have the power to impose a moratorium on the issuing of new operating licences when rationalising public transport services in its area if, based on its ITP, it concludes that there is surplus of legally operated services by operators on a particular route as a result of which an existing non-contracted public service is no longer required.

3.9. Apart from legislative provisions in the NLTA, metered taxi operators must also comply with the planning authorities/city traffic by-laws. These by-laws regulate *inter alia* the position of the meter in a vehicle, fares to be displayed and that the fare shall be calculated from the time the passenger enters the vehicle and immediately stop when the passenger arrives at the destination. In addition, these by-laws also provide for the prohibition of the interference with the meter, testing of taxi meters and charges for testing meters.[42]

Application process

3.10. When a new application is lodged, the PRE must give notice of the receipt of an application for an operating licence in the Government Gazette and may allow interested persons an opportunity to comment and make representations in favour of or against the application. The PRE is not required to publish a notice in the Government Gazette with respect to the following applications:

3.10.1. Applications for renewal of an operating licence;

3.10.2. Applications to amend particulars of the same vehicle specified in the operating licence;

[41] Section 18(3) of the NLTA which confers planning authorities with powers to introduce moratoria states:
"….(3) Such a municipality may give notice in the prescribed manner that it will no longer receive applications for operating licences for new services except in accordance with invitations given by it for specified services on specified routes or in specified areas in accordance with its integrated transport plan, either for the purpose of concluding a contract or because those routes or areas are already adequately served."

[42] eThekwini Municipality: Public Transport By-Law, 2014, City of Johannesburg Metropolitan Municipality, Metered taxi, minibus, midibus and bus by-laws, City of Tshwane Metropolitan Municipality: By-laws to Regulate passenger-carrying motor vehicles.

3.10.3. Applications to replace the vehicle specified in an operating licence under section 73 of the NLTA; and

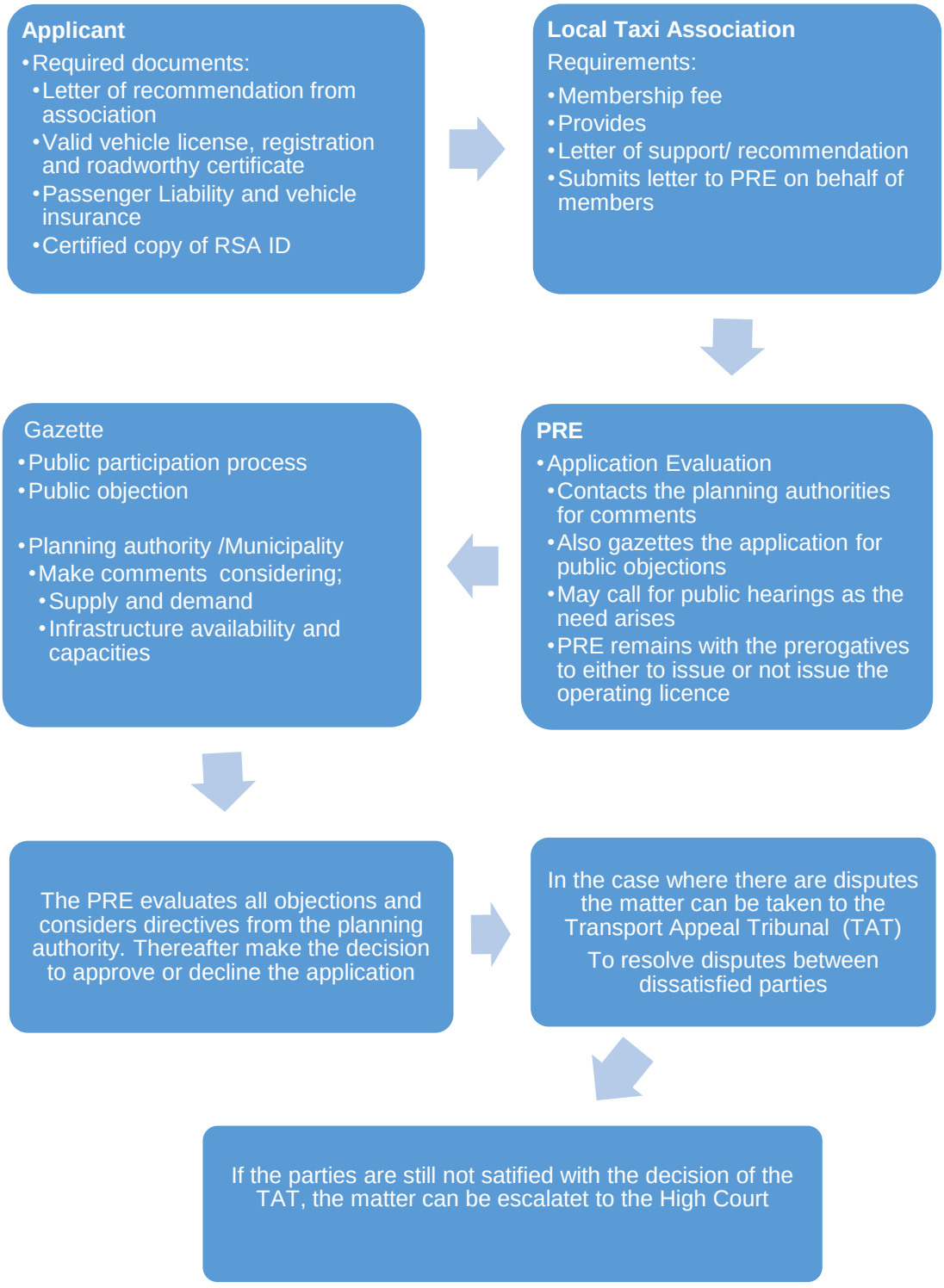
3.10.4. Applications for the conversion of a permit where the permit is already route based in the case of minibus taxi type service or scheduled service.

3.11. Interested persons, including members of the public and other operators, wishing to submit comments or make representations are permitted to do so within 21 days of the date of the publication of the notice in the Government Gazette.[43] Where objections have been raised regarding a particular application, the PRE would be required to convene a hearing and adjudicate on the objection. Before the PRE considers the application, it must, in the prescribed manner, inform all planning authorities in whose areas the services will be operated with the request to give directions regarding the application based on the planning authority's Integrated Transport Plan (ITP). Based on the need for the service, the planning authority will give a directive to the PRE. The PRE will also consider all objections received and may decide either to approve or reject the application. If any of the parties are dissatisfied with the ruling of the PRE, an appeal can be lodged with the Transport Appeal Tribunal (TAT). A decision of the TAT can be appealed to the High Court.

3.12. Below is a schematic representation of the application process.

[43] South Africa, Republic. National Land Transport Regulations, publication of applications, regulation 17 (4)

Figure 1:Application process



Source: Commission's own compilation based on submissions or the NLTA

Area/radius based operating licence

3.13. Currently, both metered taxi and e-hailing operators are granted metered taxi operating licences in terms of Section 66 of the NLTA. Given that e-hailing services are not mentioned in the current Section 66 of the NLTA, the granting of metered taxi operating licences to e-hailing operators follows a decision of the TAT which is binding on all PREs.[44] When applying for a new operating licence, a detailed description of the area that will be serviced is required on the form prescribed by the NLTA. This is because metered taxi operations are generally radius or area-based services and not route-based services which are applicable to minibus taxi and bus services.

Developments in the regulatory framework

The Economic Regulation of Transport Bill

3.14. The purpose the Economic Regulation of Transport Bill (ERTB) of 2018 is to give practical effect to government plans for consolidating the economic regulation of transport within a single legal framework. The ERTB provides for the establishment of a single regulator (the Transport Economic Regulator) and the Transport Economic Council ending the role of specialised industry-specific regulators in price control.

3.15. The Transport Economic Regulator will subsume the Ports Regulator and regulate the following entities: National Ports Authority, Transnet Ports Terminals, Transnet Freight Rail, Airports Company of South Africa, Air Traffic and Navigation Services Company, Passenger Rail Agency of South Africa and South African National Roads Agency Limited. Any person adversely affected by a decision, determination or ruling issued or made by the Transport Economic Regulator may appeal or apply for a review to the Transport Economic Council.

3.16. The primary form of intended regulation focuses on price control. Price control has been defined a method for setting the maximum price that can be charged, or revenue that can be earned, by a regulated entity for the use of or access to its assets, facilities or

[44] See Transport Appeal Tribunal. Western Cape Metered Taxi Council v WCPRE and others. Case No TAT/18/3/03/-07/2015.

services.[45] Each regulated entity described in 3.15 above would be required to submit a proposal to the regulator requesting approval of its tariffs on services and facilities offered.

3.17. The Minister of Transport may however, in consultation with the Regulator, by notice in the Gazette, declare that the ERTB applies to any market, or any entity, facility or service, irrespective whether privately or state owned, within the transport sector. Such a determination by the Minister has determined occurs if any of the following circumstances apply:

3.17.1. the facility or service is provided by only a single operator; or
3.17.2. the entity, market, facility or service is not functioning competitively; and
3.17.3. economic regulation can adequately address the economic consequences resulting from the non-competitive nature of the market.

3.18. The Passenger Rail Agency of South Africa ("PRASA") and its associated entities such as PRASA Cres fall within the definition of regulated entities in the ERTB. PRASA Cres (manages the real estate business of PRASA and intermodal terminals) has different tariffs across its properties and the Transport Economic Regulator will have powers to regulate its fees or tariffs. As such PRASA would be required to submit a proposal to the Transport Economic Regulator requesting approval of its tariffs on services and facilities offered.

3.19. The ERTB will not currently apply to minibus taxis, e-hailing services and metered taxis as none of them are defined as regulated entities in terms of the ERTB. However, should the Minister establish that economic regulation can address some concerns in any market, the ERTB may apply to all transport modes.

3.20. In terms of National Assembly Rule No. 241(1) (b) the Minister of Transport announced his intention to introduce the ERTB in Parliament during 2020. The ERTB and its Explanatory Memorandum were published for comments in the Government Gazette No. 41437, Notice Number 632 of 12 February 2018, and further published on Government Gazette 41992, Notice 1135 of 24 October 2018.

3.21. Given the time required to fulfil all parliamentary processes, it is unlikely that the ERTB will have an immediate impact on the outcomes of the inquiry. Rather, the inquiry may

[45] See Section 1 of the Economic Regulation of Transport Bill

provide valuable information to the Minister of Transport to access if economic regulation is necessary on specific transport modes.

Challenges faced by metered taxi and e-hailing operators

Route allocation, licensing and entry regulations

3.22. In general, both metered taxis and e-hailing operators face some regulatory challenges with respect to moratoria on the issuing of new operating licences and massive backlogs at the PREs. In so far as moratoria are concerned, various municipalities such as Ethekwini and Nelson Mandela Bay have utilised these powers. The following reasons were advanced for the various moratoria:

3.22.1. to conduct an audit process of all operating licences issued;

3.22.2. to conduct physical verification of all operating licences issued in the municipality/ province with a view to stamping out illegal operations; and

3.22.3. to allow for the finalisation of the development of the Integrated Provincial Transport Network Plans (IPTNPs) as well as the ITPs.

3.23. In eThekwini, the municipality has taken a decision not to support or recommend any application for an operating licence for either a meter or charter licence and e-hailing operators to the PRE due to a moratorium that was imposed in order to assess demand and supply. Despite the DOT's practice note and the TAT's decision that operators applying for e-hailing operating licences be granted a metered taxi operating licence, the municipality has decided not to issue any operating licences to e-hailing operators.[46] The Eastern Cape PRE also indicated that the Bufallo City and Nelson Mandela Bay municipalities have declared a moratorium on metered taxis.[47]

3.24. Persistent backlogs at PREs were highlighted by several stakeholders as a challenge faced by both metered taxis and e-hailing operators. The PREs have acknowledged the backlogs but provided reasons for them, which include delays by the planning authorities to issue directives. Sometimes planning authorities are unable to provide directives to the PREs

[46]City of eThekwini, oral submission from Mr Woyisana dated 27 June 2018. Page 131
[47] Department of Transport, Eastern Cape. Oral submission by Mr Melane. 14 August 2018. Page 15.

when the latter are considering applications for operating licences. The general reasons include the lack of funding, capacity and technical capability resulting in planning authorities being overwhelmed and unable to perform their legislative functions efficiently.[48] Some planning authorities indicated in their submissions that the lack of directives has been as a result of a lack of capacity to develop and implement ITPs to inform the directives.[49] The moratoria has not been successful in preventing both metered taxis and e-hailing operators to provide a service in these towns and cities.

3.25. Even though the PREs may consider applications without directives from the planning authorities in terms of Section 55(6)[50] of the NLTA, the PREs have been cautious in disposing of these applications without directives.[51] This is mainly because these ITPs are primarily used as a scientific basis on which to quantify demand and supply of public transport. Granting an operating licence without considering ITPs may result in oversaturation of the market since the PRE would have granted the application without considering whether there is a need for such a service in that area.

3.26. In addition, the PREs highlighted the outdated and ineffective operating licence application systems. The PRE's heavy reliance on the National Land Transport Information System (NLTIS) for the processing and issuing of operating licences prior to adjudication of applications has also led to backlogs. Although in terms of Regulation 6(7) of the NLTA, applications for operating licences must be finalised within 60 days, evidence obtained shows that in the City of Johannesburg alone, there is a backlog of nearly 7 000 applications (including minibus taxi applications) dating back to 2007.[52] According to the Gauteng PRE, the NLTIS system has not functioned consistently for at least ten years, resulting in backlogs and inefficiencies. Gauteng PRE indicated further that Western Cape and KwaZulu-Natal have developed their own systems and have found their performance improving

[48] National Department of Transport. Oral submission by Ms Manana. Pretoria, Thursday, 7 June 2018. Page 55.
[49] Department of Transport, Mpumalanga. Oral submission by Mr Gadisi. 11 July 2018. Page 10–11.
[50] Section 55(6) of the NLTA states:
"….(6) Where the planning authority has failed to respond to the request contemplated in subsection (1), the National Public Transport Regulator or a Provincial Regulatory Entity may dispose of the application without any input from the planning authority, by considering the matters mentioned in Section 57."
[51] Department of Roads and Transport. Oral submission by Ms Smith. 6 June 2018. Page 29.
[52] Gauteng Provincial Department of Roads and Transport. Oral submission by Ms Smith. 6 June 2018. Page 47-49

significantly.[53] Bolt submitted that, although their operators have been applying for licences, none had received updates about the status of applications or when they may obtain their licences.[54]

3.27. As a result of the backlogs at PREs, metered taxi and e-hailing operators utilise the proof of application receipt to operate. The receipt or proof of application does not constitute an operating licence, implying that it is illegal to operate using proof of application. Regardless of this, e-hailing companies accept applications from potential operators; who then provide a service illegally without operating licences. The extent of the illegal operations poses an enforcement challenge for the authorities. Even though law enforcement officials impound vehicles operating without operating licences, evidence shows that Uber pays impounding fees for the release of the vehicles of their e-hailing operators. For example, between 2015 and 2018, Uber paid **{CONFIDENTIAL}** R million release fees on behalf of its operators for operating without valid operating licences in Cape Town.[55]

3.28. **Table 1** illustrates the number of e-hailing operators with or without valid operating licences as at September 2019. In the major cities, Uber has between 35 per cent and 55 per cent **{actual figures CONFIDENTIAL}** of its e-hailing operators without valid operating licences compared to between 70 and 95 per cent **{actual figures CONFIDENTIAL}** for Bolt. Overall, 79 per cent of e-hailing operators do not have valid licences for the major cities presented in Table 1. The e-hailing companies combine data for all the metropolitian municipalities in Gauteng under “Gauteng”.

[53] Gauteng Provincial Department of Roads and Transport. Oral Submission by Ms Smith. 6 June 2018. Page 44.
[54] Bolt. Oral submission by Mr Taylor. 7 June 2018. Page 179.
[55] Department of Transport and Public Works Western Cape. Oral Submission by Mr Reyneke. 20 June 2018. Page 146-147

Table 1: Number of e-hailing operators with or without valid operating licences as at September 2019

City	Uber			Bolt			Combined		
	With OL	Without OL	% without	With OL	Without OL	% without	With OL	Without OL	% Without OL
Cape Town	CONFIDENTIAL INFORMATION								87%
Durban									95%
Gauteng									71%
Port Elizabeth									89%
Total									79%

Source: Various submissions from Uber submission and Bolt

3.29. The level of compliance is low in towns and cities where the e-hailing companies introduced new services. For instance, all **{CONFIDENTIAL}** operators are providing a service without licences in **{CONFIDENTIAL}**. Similarly, Bolt is currently operating without licences in **{CONFIDENTIAL}**.

Entry regulation

3.30. Planning authorities ascertain the need for public transport services in their jurisdiction. If there is a need for the service, the planning authority must direct the PRE to grant operating licences; otherwise (if there is no need for the service) the planning authority must direct the PRE to refuse the application. The arguments for regulating entry by planning authorities are to prevent congestion in city centres[56] by limiting the number of vehicles circulating and/or parked on the streets,[57] and to deal with violent altercations among competitors.[58] Therefore entry restrictions or supply caps are closely related to area restrictions in that its intention is often to limit supply in a particular area.

3.31. Several competition authorities from Canada, Spain, Portugal, Norway and Finland have criticised the strict control of the number of taxi licences on the basis that they create

[56] Federal Ministry for Economic Cooperation and Development. Taxi as a part of Public Transport. Sustainable Urban Transport Technical Document#16.
[57] Frazzim, S, Grea, G and Zambani. A. 2016. Study on passenger transport by taxi, hire car with operator and ridesharing in the EU. September. European Commission. University of Luigi Bocconi. Centre for research on regional economics, Transport and Tourism. Wavestone
[58] OECD.2016. App-based Ride an Taxi service. Principles for Regalation. International Transport Forum.

significant barriers to entry. Some competition authorities, including the Federal Competition Commission of Mexico, the Canadian Competition Bureau, and the Spanish Competition Authority, have expressly recommended the elimination of restrictive quotas.[59]

3.32. The Organisation for Economic Co-operation and Development (OECD) also noted that:

"*It is increasingly widely accepted that restricting taxi numbers constitutes an unjustifiable restriction on competition and reduces economic welfare. While several theoretical arguments based on externalities (notably pollution and congestion) and productivity have been advanced to justify the imposition of supply restrictions, each of these rationales is strongly contested. In sum, the economics literature provides little support on theoretical grounds for supply restrictions*."[60]

3.33. However, in the vast majority of the European Union Member States, the local authorities are empowered by the legislation to regulate the number of licences issued.[61] For example, in the Member States such as, but not limited to France, Germany and Italy, the number of taxis operating in the municipality boundaries is restricted.[62] While the national government sets the requirements for licences, the municipalities are authorised to add their own requirements and are allowed to control access to the market.[63] In Italy, the municipalities fix the number of taxi licences, frequency of assigning new licences and the assignment procedures, characteristics of vehicles, rules of service provision (such as shifts), and the criteria for setting taxi fares.[64] Even though Sweden deregulated entry together with fare regulation in the taxi business in 1990, the quality requirements for taxi operators were tightened.[65] The Danish Parliament abolished quantity restrictions in 2018, however, the

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[59] OECD. 2007. Taxi Industry: Competition and Regulation. Page 17. http://www.oecd.org/regreform/sectors/41472612.pdf (Accessed on 22 June 2019.)

[60] *Ibid* page 7

[61] With the exception of Austria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Netherlands, Poland, Slovenia, Slovakia, and Sweden (and the cities of Berlin and London), all EU Member States have introduced quantitative restrictions based on socio-economic criteria, such as the number of inhabitants, the number of tourists and business travellers. The taxi market is also geographically fragmented since the licences are usually valid only for the territory of the issuing municipalities. Exceptions are the Netherlands and Sweden, where a valid licence covers all national territories. (See European Commission. 2016. Study on passenger transport by taxi, hire car with driver and ridesharing in the EU. Study contract no. MOVE/D3/SER/2015-564/SI2.715085).

62 Uber Submission dated 06 June 2019. Page 31.

63 European Commission. 2016. Study on passenger transport by taxi, hire car with driver and ridesharing in the EU. Study contract no. MOVE/D3/SER/2015-564/SI2.715085.

[64] Organisation for Economic Co-operation and Development. 2016. Taxi, ride-sourcing and ride-sharing services - Note by Italy. Directorate for Financial and Enterprise Affairs Competition Committee. 22 May 2016.

[65] Federal Ministry for Economic Cooperation and Development. Taxi as a part of Public Transport. Sustainable Urban Transport Technical Document#16

number of licences issued remained capped on a year to year basis, and they are distributed quarterly to establish competition between taxi operators.[66]

3.34. In India, quantity restriction differs between various types of taxis such as local taxis, and those on the city taxi scheme. The quantity restricted however, is on the number of vehicles allowed to be operated by corporations or individuals. Local taxis do not have such restrictions,whilst the minimum and a maximum number of taxis that can be operated on city taxi scheme are set. Local taxi permits are indefinite while those on the city taxi scheme are valid for a 5 year period. In African countries such as Kenya, Ghana and Nigeria, there are no quantity restrictions in place. However, operators have to conform to vehicle safety and quality standards. Vehicle requirements include legislative prescripts on the quality, type and condition of vehicles to be used for transportation amongst others. Quality requirements are legislative requirements for taxi operators to obtain operating licences. This is based on the qualifications, skills, and other attributes such as the health condition of the driver.

3.35. The impact of quantity restrcitions on competition will be explained in detail in section 6.

[66] Organisation for Economic Co-operation and Development. 2016. Taxi, ride-sourcing and ride-sharing services - Note by Denmark. Directorate for Financial and Enterprise Affairs Competition Committee. 22 May 2016

4. Price setting mechanism

Introduction

4.1. In this chapter, the Commission analyses different price setting mechanisms in order to understand how pricing is determined, and secondly, to assess the impact of pricing on competition. The objective of this section is to provide a basis from which to undertake a competitive assessment using price determination as one of the key considerations in understanding the state of competition between metered taxis and e-hailing services.

4.2. The fares for metered taxi services and e-hailing services are set differently. The section begins by discussing how fares for metered taxis and e-hailing services are determined and then assesses how these differences in price determination influence the actual fares charged to commuters.

Metered taxi fare determination

4.3. There are two ways in which metered taxi fares are determined. Firstly, metered taxi fares are regulated in terms of the NLTA and secondly, their fares are determined by metered taxi associations. The protection of consumers from unduly high prices is one of the reasons used to justify regulating fares. According to SAMTA, there is a risk that passengers (tourists and visitors) may be overcharged especially by metered taxis who do not comply with the regulations, so called "unmetered taxis".[67]

4.4. The NLTA requires metered taxi vehicles to be equipped with a sealed meter to determine the payable fare. In terms of Section 66(3)[68] of the NLTA, the decision to determine a fare structure rests on the Minister or MEC in consultation with the relevant authority. The NLTA

[67] SAMTA. Submission by Ms Freedman (SAMTA representative). 28 July 2017.
[68] Section 66(3) of the NLTA states:
"... (3) The Minister or MEC, in consultation with the relevant planning authority, may determine a fare structure for metered taxi services and the MEC must publish such fare structure in the *Provincial Gazette.*
(4) The Minister or MEC may make regulations providing for—
(a) a grading system for metered taxis;
(b) special requirements for operators of metered taxis, which may include testing of knowledge of the relevant area;
(c) special markings or other requirements for metered taxi vehicles; and
(d) any other matter affecting the standard or quality of operation of metered taxis."

requires the fare structure to be published in the provincial Gazette.[69] Fares may also be agreed on before the journey starts rather than being determined by the meter.[70]

4.5. Even though Section 66 of the NLTA gives the Minister or MEC (in consultation with the relevant authority) the power to determine the fare structure for metered taxis, no guidance is provided on how the fare structure is determined. Despite the existing legislative framework assigning the MEC or Minister some powers to determine the fare structure, the Commission found that neither the Minister nor the MECs actively regulates fare structure with the exception of the Western Cape Provincial Regulatory Entity (WCPRE) and City of Cape Town where a maximum fare level is set.[71] In all other provinces, fares are determined by the local association or set by the company in instances where metered taxis are company owned.

4.6. The pricing for metered taxi services is not flexible compared to e-hailing services. A metered taxi operator in Cape Town submitted that when an operator makes an application for a licence, he/she has to indicate in the application that he/she will charge R10 per kilometre. This fare is set on a sealed meter and cannot be changed by an operator because the meter has to be reset by the traffic department. Metered taxi operators can only change the fare by trading in their old meter and buying a new meter.[72] This requirement makes price setting by metered taxis to be inflexible and unable to respond to supply and demand. This may lead to metered taxi operators either overcharging or undercharging passengers given the fixed fares. In instances of low demand, metered taxi operators cannot lower their fares to capture the potential increase in demand for passengers who are only willing to pay a lower price and vice versa for periods of high demand.

4.7. Regulated fares in theory have the disadvantage of being inflexible. In South Africa, only the Western Cape regulates fares. According to the OECD, in markets where competition flourishes, rules and regulations on price need to be looked at with scepticism and possibly

[69] See Section 66(3) of the NLTA,
[70] See Section 66 of the NLTA.
[71] SAMTA. Submission by Ms Freedman (SAMTA representative). 28 July 2017
[72] Metered Taxi Operator. Oral submission by Mr David Drummond. 23 June 2018. Page 102.

avoided.[73] Fare regulation in potentially competitive industries may have some unintended consequencies.[74]

4.8. The predominant way in which metered taxis set fares is through their local metered taxi associations. The metered taxi associations' executive committees with their members by mutual agreement, determine fares per area for all metered taxi operators belonging to that association.

Fare determination for e-hailing services

4.9. E-hailing fares are not regulated. There are two ways in which e-hailing companies set fares. Uber and Bolt independently set their fares whilst inDriver allows passengers to set their own fare for their selected route. Uber and Bolt fares are based among others, on vehicle type, rates depending on demand and supply which varies per city, traffic and weather conditions. The trip is calculated based on these three components below;[75]

4.9.1. Base fare: a fare charged to the passenger per trip;[76]

4.9.2. Time (per minute): a fare charged per minute during the trip;[77] and

4.9.3. Distance (per kilometre): the fare charged per kilometre.[78]

4.10. In setting fares, Uber and Bolt adopted an upfront pricing system where a passenger and e-hailing operator are presented with an exact fare (in case of Uber) and estimated fare (in case of Bolt) before a passenger accepts the trip.[79] The upfront fares are calculated based on the following factors: the expected time and distance of the trip in current traffic

[73] OECD. 2011. Competition Assessment Toolkit. Volume II: Guidance. Version 2.0
[74] Viscusi, WK, Harrington, JE and Vernom, JM. 2005. Economics of regulation and antitrust. Cambridge: MIT Press. Chapter 16.
[75] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 14-16
[76] Regardless of the length of the trip or number of passengers. The base fare is designed to cover the cost of traveling to pick up a passenger, generally is a short distance within 2 kilometres.
[77] Is charged according to the total time taken to complete the trip. The per minute charge takes into account the value of a driver-partner's time and is intended to provide the operator with cost recovery of the additional costs associated with heavy traffic.
[78] Is charged according to the total distance covered by the trip. The rate per km takes into account the running cost of the vehicle. The fare charged on per km and per minute at calculated from the moment that the operator starts the trip and will continue until the operator ends the trip.
[79] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 15.

conditions, the availability of e-hailing operators, the number of people requesting rides, and toll fees (where applicable). The consequence is that prices for the same journey may vary depending on the prevailing demand from other passengers and the supply of e-hailing operators.[80]

4.11. The inDriver's business model allows passengers to set their own fare for the selected route. In this model, a passenger sets the desired destination and the inDriver app recommends a fare which the passenger may accept or set the fare s/he is willing to pay for the trip. After setting the fare, nearby e-hailing-operators can either match the passenger's requested amount or bid a higher amount. The order is confirmed by the first operator who is willing to accept the offered price.[81] As indicated earlier, inDriver still has a relatively small presence in South Africa.

Dynamic Pricing

4.12. Uber and Bolt have adopted a market-based approach in which the fares are determined by demand and supply. When the demand for the service outstrips supply, dynamic pricing kicks in which increases the fares until demand and supply normalises. Passengers have full transparency of pricing.[82] The rationale provided by e-hailing companies for dynamic pricing is that it incentivises more e-hailing operators to come onto the platform in response to demand. When the market reaches equilibrium the price returns to normal.[83] Bolt and Uber submit that dynamic pricing has several benefits. Firstly, a passenger who is willing and able to pay high fares during peak times can get service and price sensitive passengers will wait until the price falls. Secondly, dynamic pricing incentivises the operator to go to an area where the price is surging which results in supply increasing in that area which assists in bringing the price to an equilibrium. Thirdly, e-hailing operators are also incentivised to work on public holidays such as Christmas and New Year's Eve, with an expectation of higher fares and earnings.[84]

[80] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 76-77.

[82]Uber. Submission by Webber Wentzel (Uber lawyers). 7 September 2017. Page 15. Bolt submission. 7 September 2017. Page 4.
[83] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 17-20.
[84] Bolt. Submission by Ethicore (Bolt's Lawyers). 25 May 2018. Page 11-12. Uber. *Ibid.* Page 76-77

4.13. Dynamic pricing allows e-hailing operators to go to areas where demand is high, thus resulting in greater vehicle utilisation. This in turn leads to an increase in fare paying trips and operator's earnings which consequently result in lower fares for the passengers.[85]

How dynamic pricing works

4.14. In its submission, Uber indicated that it divides cities into hexagonal zones to ensure that a change in fare is accurate and effective.[86] Each zone has its own dynamic price multiplier, based on the real time demand and supply in that zone. The system frequently updates fares based on the latest, real time conditions in each geographic area. Uber submits that dynamic pricing is not simply implemented city-wide but targeted to very small hexagonal areas. As such E-hailing operators are notified when demand increases through an in-app map, which shows the busiest areas. In some instances, e-hailing operators are provided with advance information about upcoming events which can improve their earnings. **Figure 2** shows the geographic dispersion of trips subject to dynamic pricing in Cape Town and Johannesburg. The darker areas indicate zones subject to dynamic pricing.

Figure 2: Trips subject to dynamic pricing in Cape Town and Johannesburg

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Source: Submission by Webber Wentzel (Uber Lawyers) 4 August 2019

4.15. **Figure 3** illustrates dynamic pricing during Ed Sheeran's Concert. No dynamic pricing is observed during most of the afternoon into the night. After midnight when concert goers were leaving the venue, demand for services increased, triggering dynamic pricing. The surge multiplier reached a peak of **{CONFIDENTIAL}** (times). This led e-hailing operators to respond and come to the area and after an hour, no surge multiplier was observed.

[85] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 40.
[86] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 41.

Dynamic pricing ceases after the spike in demand is met, and pricing returns to the normal level.[87]

Figure 3: Practical illustration of dynamic pricing on Ed Sheeran Concert

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Source: Submission by Webber Wentzel (Uber Lawyers) 4 August. 2019

4.16. Error! Reference source not found. shows how dynamic pricing occurred during Global C itizen concert in Johannesburg. Before the dynamic pricing kicked in, **{CONFIDENTIAL}** per cent of requests between **{CONFIDENTIAL}** PM and midnight were completed **{CONFIDENTIAL}** per cent of the requests were not completed). E-hailing operators were not willing to get onto the platform or accept trips from passengers. When the concert ended, a surge in demand resulted in dynamic pricing which encouraged e-hailing operators to come onto the platform. After two hours, dynamic pricing was close to **{CONFIDENTIAL}** times. This illustrates that dynamic pricing incentivises the e-hailing operators to respond to passenger requests and within a short space of time, once demand has been met, normal fares kick in.[88]

Figure 4: Illustration of dynamic pricing during the Global Citizen Concert

CONFIDENTIAL

Source: Submission by Webber Wentzel (Uber Lawyers) 4 August 2019

[87] Uber-Submission by Webber Wentzel (Uber Lawyers) 4 August. 2019
[88] Uber-Submission by Webber Wentzel (Uber Lawyers) 4 August. 2019

4.17. Until recently, Uber had different maximum surge multipliers in different cities across South Africa. The caps have been standardised across South Africa at a maximum multiple of **{CONFIDENTIAL}** times. Bolt's multiplier is capped at 2.3Xs. Uber's dynamic pricing works by increasing prices for passenger by a stated multiple (e.g. 1.1x and 2.5x) above the standard price based on the level of demand for rides relative to the supply of operators available in a local area. For example, the fare from 77 Meintjies Street, Sunnyside, Pretoria, to Menlyn Mall during normal levels of demand would cost approximately R106. However, during peak hours the cost of the trip at 1.2x or 2.6x multiples would be approximately R127.2 and R275.6 respectively. Uber submits that dynamic pricing is rarely activated and only accounts for **{CONFIDENTIAL}** per cent of all rides in South Africa in 2018.[89]

Potential concerns of dynamic pricing

4.18. While there are justifications for dynamic pricing, the Commission has also observed that dynamic pricing may surge so high that it may be detrimental to the passengers.[90] Dynamic pricing normally kicks in at the worst possible time for passengers, for example, when it is raining or at night after a major event. There are also concerns that dynamic pricing may lead to overcharging passengers.[91] According to Bolt, the passenger may end up paying ten times more. The Commission has observed that on 2 December 2018 after the Global Music Festival, passengers were left stranded because of dynamic pricing. Some concert goers were charged over R1 000 compared to a normal cost of around R200.[92] However, Uber committed to refund affected passengers and attributed the problem to network coverage challenges and traffic flow mismanagement at the event.[93]

[89] Uber. Submission by Webber Wentzel (Uber Lawyers). 4 August 2019.
[90] IOL. 2018. 5 December 2018. #Global Citizen Festival: Uber leaves people stranded after massive price hikes. The Business Report https://www.iol.co.za/business-report/companies/globalcitizenfestival-uber-leaves-people-stranded-after-massive-price-hikes-18360774 (Accessed 5 December 2018.)
[91] Traveller24. 2018 Tips on how not to be 'overcharged' by Uber. 2 March 2017. http://www.traveller24.com/TravelPlanning/tips-on-how-not-to-be-overcharged-by-uber-20170407 (Accessed on 2 March 2018.)
[92] Eyewitness News. 2018. Uber apologises to Global Citizen festivalgoers over price hikes. https://ewn.co.za/2018/12/04/uber-apologises-to-global-citizen-festival-goers-over-price-hikes (Accessed on 5 December 2018.)

Pricing strategies between e-hailing and metered taxis

4.19. Having discussed fare determination of both e-hailing and metered taxis, the next step is to show how this translates into actual fares paid by passengers. The comparison of prices between e-hailing services and metered taxis may vary from 100 to 200 per cent depending on the distance and time of travel. **Table 2** shows price differences between metered taxis and Uber in selected routes. The impact of price differences will be considered under the competition dynamics section.

Table 2: Price differences between Uber and metered taxis

Routes	Distance	Uber X	Metered taxis	Difference
Sandton Gautrain station - Fredman drive	1km	R20	R70	250%
Sandton Mall - Rosebank Mall	5.2km	R62	R158	155%
Kingsway campus Auckland Park - Park Station	6.5km	R60	R100	67%
Sandton - OR Tambo International Airport	36.5km	R260	R450	73%
Rosebank Mall - University of Pretoria	54.6km	R450	R660	47%

Source: Dube S.C, 2015[94]

4.20. As can be seen above, price differences are more pronounced for shorter distances. For example, Uber charges approximately 250 per cent less than metered taxis for a 1km journey. The difference in prices charged narrows as the distance increases. Irrespective of the distance, Uber prices remain significantly lower than metered taxis. Mr. Lehman submitted that metered taxi operators in Durban (specifically Mozzie Cabs and Zippy Cabs) ceased operating due to uncompetitive prices compared to e-hailing operators.[95] The impact of these pricing differences and pricing strategies will be considered in detail as part of the competitive assessment in Chapter 6 below.

4.21. Metered taxi operators are of the view that e-hailing companies use predatory pricing to take metered taxis out of business. Predatory pricing raises complex questions in competition economics and law and represents a challenge for competition authorities. The

[94] Dube S.C. (2015). Uber: a game-changer in passenger transport in South Africa. CCRED Quarterly Review accessed from http://www.competition.org.za/review/2015/11/22/uber-a-game-changer-in-passenger-transport-in-south-africa
[95] Metered Taxi Companies (Zippy Cabs, Mozzie Cabs, and Cruise Taxi App). Oral submission from Mr Lehman. KwaZulu-Natal hearings. 28 June 2018. Page 5

Commission previously investigated a complaint of predatory pricing against Uber and decided not to pursue the case as the complaint was lodged within one year of Uber commencing its operations in South Africa. Given the short duration, the Commisison was of the view that it was unlikely to establish anti-competitive effects. The welfare-enhancing benefits arising from digital platforms and their network externalities must be encouraged and preserved to the extent that they are not leading to competition distortions.

Price regulation vs deregulation – an international perspective

4.22. Given the price differences between e-hailing and metered taxis, the Commission sought to understand whether prices are regulated or not in other jurisdictions. The Commission observed that countries like Hungary, Lithuania, Slovakia and Sweden have deregulated metered taxi fares. In Hungary and Slovakia, fares are not regulated either at the national or municipal level. Metered taxi services set their own fares. In Lithuania, the general rule set by the Road Transport Code is that metered taxi operators are free to determine their fares and required to communicate the fares to the relevant municipal authorities and published accordingly. Any change in the fares must be communicated five days in advance. In Sweden fares are freely set, however, maximum fares are imposed from and to the airport to protect tourists and visitors from being overcharged by metered taxi operators.[96] In 2017, the Finland Ministry of Transport and Communication took a decision to deregulate metered taxi fares, however, passengers are informed about how the fares will be calculated before the trip.[97] In Ghana, metered taxi fares are not regulated leaving the metered taxi industry to negotiate their own fares with passengers.[98]

4.23. Various jurisdictions still regulate maximum and minimum fares. In the USA, dynamic pricing is capped in cases of natural or man-made emergencies. Uber has reached an agreement with the New York Attorney General to cap price increases at 3.5Xs (times) the base fare for UberX and 2.5Xs the base price for Uber Black when a state of emergency has been declared. According to Uber, this cap policy is applicable throughout the USA.

[96] European Commission. 2016. Study on passenger transport by taxi, hire car with driver and ridesharing in the EU.
[97] Uutse 2018 Taxi market liberalisation set to alter fares and services in July. https://yle.fi/uutiset/osasto/news/taxi_market_liberalisation_set_to_alter_fares_and_services_in_july/10192384
[98] Kufuor.K.O.2019. Uber in Ghana: markets and institutions in the emergence of ride-sharing taxis. Forthcoming 5 Lancaster University of Ghana Law Journal

However, when there is no emergency, dynamic pricing can lead to very high multipliers (historically up to approximately 10Xs the base fare).[99]

4.24. In Austria, metered taxi fares are fixed and dispatch centres are not authorised to offer discounts for the pre-booked segment of the market. In France, fixed fares are applicable for trips to and from Paris airports since 1 March 2016. The maximum fares are regulated according to the categories of vehicles. Similarly, in Spain, the local authorities set the maximum fares in consultation with metered taxi associations, based on national legislation. Fixed fares were introduced for journeys to and from airports and from other points in Barcelona and Madrid.[100] In Germany, local transport authorities set fixed fares for metered taxis. In Berlin, Uber provides two options: UberX or UberTAXI. With UberX, passengers pre-book a trip with an Uber operator. For UberTAXI, passengers can pre-book a trip with a regular taxi operator and be charged in accordance with the Berlin Taxi Tariff regulation.[101]

4.25. In Kano, Nigeria, metered taxi fares are regulated, leaving very little room for bargaining. Airport metered taxi operators are required to register with the Kano Airport Taxi Association and pay an annual fee.[102] In Kenya, Nairobi, there is a plan to regulate the metered taxi industry by making it a requirement that metering systems be installed in all metered taxis.[103] In India, metered taxi fares can be regulated by the State Transport Department. The State Transport Department of India can set the minimum as well as maximum fares charged by e-hailing companies with the exception of the tariffs of deluxe/ luxury (UberBlack) which is not regulated and the fares are subjected to market forces.[104]

[99] OECD.2016. App-based and Taxi service Principles for regulation. International Transport Forum. Corporate Partnership Board
[100] European Commission. 2016. Study on passenger transport by taxi, hire car with driver and ridesharing in the EU.
[101] Uber Germany. Uber moves Berlin. https://www.uber.com/en-ZA/cities/berlin/ (Accessed on 8 May 2019.)
[102] Madugu.Y M. 2018Filling the mobility gaps: The shared taxi industry in Kano, Nigeria. The Journal of Transport History. Vol. 39(1) 41–54
[103] See https://www.businessdailyafrica.com/news/Metered-taxi-billing-plan-for-Nairobi-from-December/539546-2352164-59o2n3z/index.html last accessed on 08 August 2019
[104] UITP. 2018. India unveiled new taxi policy guidelines to promote urban mobility. December https://india.uitp.org/news/morth-taxi-policy-guidelines-december-2016

4.26. In Brazil, metered taxi tariffs are regulated with local governments determining fares. A prescribed fare structure which caters for evenings and weekends is used.[105] In São Paulo, e-hailing services are required to fix a tariff to be charged.[106]

4.27. Regulation of fares seem to introduce administrative burden for authorities and it is inflexible to address changing market dynamics. Price regulation in general, acts as a disincentive for innovation.

[105] Tollini.P. 2016. Uber In Brazil: Competitive (Dis)Advantages Vis-À-Vis Traditional Taxi Services?– Faculty of Law University of Brasilia

[106] Tollini.P. 2016. Uber In Brazil: Competitive (Dis)Advantages Vis-À-Vis Traditional Taxi Services?– Faculty of Law University of Brasilia.

5. Barriers to Entry

Introduction

5.1. This section provides an assessment of barriers that may prevent new entrants from entering and competing effectively with existing operators. Firstly, this section discusses network effects as an economic barrier to entry. Secondly, brand loyalty and first mover advantage are discussed. This is then followed by a discussion of pricing strategies. The barriers to entry assessment will provide a framework to assess the competitive dynamics in each mode of public transport (intramodal competition) and between modes (intermodal competition).

5.2. Understanding the barriers to entry when assessing the state of competition in any market is imperative.[107] Competition requires rivals and in markets where the barriers to entry are high, rivalry is limited.[108] Limited rivalry in markets, among other things, heightens potential abuse or stabilises anticompetitive conduct. The barriers to entry and expansion in the e-hailing market include network effects, brand loyalty and pricing strategies.

Network effects

5.3. Digital platform markets such as e-hailing services thrive on network effects or network externalities. Network externality is defined as “the benefit gained by incumbent users of a group when an additional user joins the group. The group can be thought of as a “network” of users, hence the term “network externality”.[109] Economic theory suggests that there are two types of network effects, namely direct and indirect. Direct network effects occur when the value of a good or service increases with the number of users/consumers; while indirect network effects occur when the value a consumer derives from a good or service increases with the number of additional users of an identical complementary good.[110]

[107] OECD. 2007. Policy brief: Competition and Barriers to Entry. January 2007.
[108] Roberts, Simon. 2016. Barriers to entry and implications for competition policy. Competition Commission and Tribunal 2016 Conference.
[109] McKnight, LW and Bailey, J P. 2018. The Economics of Internet Interconnection Agreements," in McKnight, LW (ed). Internet in Veljanovski.C. 2018. Network Effects and Two-Sided Markets. *SSRN Electronic Journal.* January 2018.
[110] Katz, ML and Shapiro, C. 1985. “Network Externalities, Competition and Compatibility” 75 *American Economic Review* 424, in Veljanovski, C. 2018. Network Effects and Two-Sided Markets. ^. January 1985.

5.4. Markets with network effects have some features that are absent in traditional markets. The number of people using the network is a key indicator of the benefit of buying a good or service at its early stage of development.[111] The network operator has an incentive to grow the network, and in particular to encourage take-up in the early years, using penetrative pricing. Economies of scale are required for the network to be efficient. The requirement for economies of scale increase barriers to entry and expansion because of the "winner takes all" or "winner takes most" phenomena associated with platform markets.

5.5. Several potential entrants in the e-hailing market failed to recruit a substantial number of operators to their platform. For example, start ups such as SnappCab Ryda, Scoop a Cab, and Cabbie had to close down because they were unable to compete for operators and passengers with established e-hailing companies. Some players in the metered taxi industry introduced their own apps such as YooKoo Passenger and Cruise App, both of which also struggled to attract a large number of subscribers to their platforms.[112] Passengers are reluctant to register with unknown and new e-hailing companies.

Brand loyalty and first mover advantage

5.6. Uber pioneered public transport e-hailing and developed brand loyalty in the process. Uber has solidified its presence by entering into strategic partnerships with well-known institutions such as banks and airlines. For instance, First National Bank customers can earn and spend eBucks on their Uber rides.[113] South African Airways (SAA) Voyager has collaborated with Uber so its passengers can pay for their rides with their SAA Voyager miles.[114] All of these partnerships have increased awareness of Uber's brand and has given it more legitimacy with passengers.

5.7. Given Uber's strategic partnerships with recognised brands in South Africa, any potential entry would have to invest a substantial amount to advertise their brand or partner with equally strong brands. The Commission learnt that, although it may cost between R30 000

[111] Jullien, B and Sand-Zantman, W. 2016. Network effects. Institution Economic Industrial.
[112] Metered Taxi Companies (Zippy Cabs, Mozzie Cabs, and Cruise Taxi App). Oral submission by Mr Lehman, 28 June 2018
[113] FNB Ebuck. Uber. https://www.ebucks.com/web/eBucks/partners/uber.jsp (Accessed on 20 March 2019.)
[114] Business Tech. 2019. SAA passengers can use SAA Voyager Miles to pay for Uber rides. March. Accessed at https://www.iol.co.za/business-report/companies/saa-passengers-can-use-saa-voyager-miles-to-pay-for-uber-rides-19659281. 1 on 20/3/2019.

to R200 000 to develop an app, advertising costs are exorbitant. An estimated R20 million would be required to market the app across South Africa to the level of well-established e-hailing companies such as Uber and Bolt.[115]

5.8. The Commission, however notes that network effects do not always preclude the entry of new firms, as new firms may still be able to enter the market by exploiting a slightly different segment of the market. Bolt managed to enter the market and offered operators better incentives (reduced its commission) and lower fares. inDriver started in Cape Town and launched in Johannesburg in May 2019 and has 3,000 new e-hailing operators.[116] inDriver is still relatively unknown and has not yet achieved economies of scale required for platform markets. Despite the limited entry, Uber still has strong brand loyalty and still enjoys the first mover advantage.

Conclusion on barriers to entry

5.9. The barriers to entry in platform markets are high due to incumbency advantages, strong network effects and brand loyalty. Incumbency advantage may lead to monopolisation by a single network and increasing concentration.[117] Network effects may also give rise to "negative feedback effects when a dominant firm has built up a large user base by subsidising connections, and then seeks to exploit users at a later stage by raising prices."[118] Economic literature suggests that a dominant firm is constrained by the risk of losing sales on the other sides of the market,[119] especially where there is a potential for multi-homing (i.e. the parallel usage of different platforms), and lower switching costs between the platforms.[120] The Commission received submissions during the public hearings which indicates that e-hailing operators register for both Uber and Bolt and then decide which app to turn on at a particular point in time.

[115] Ntuza Cap -Oral submission from Mr Mfaka, dated 27 August 2018. Page 31 and 33
[116] BizCommunity. 2019. inDriver now available in Johannesburg. Available on https://www.bizcommunity.com/Article/196/709/190921.html [Accessed 03 February 2020]
[117] Tipping is considered as the increase in a firm's market share dominance caused by indirect network effects. Monopolisation of single network.
[118] Veljanovski, C. 2018.Network Effects and Two-Sided Markets SSRN Electronic Journal. ResearchGate.
[119] Evans, D. 2016. Multisided Platforms, Dynamic Competition and the Assessment of Market Power for Internet-Based Firms.
[120] Ulrich, H. and Justus, H. 2016. Google, Facebook, Amazon, eBay: Is the internet driving competition or market monopolization? Düsseldorf Institute for Competition Economics (DICE). Dice Discussion Paper 83

6. Competition assessment

Introduction

6.1. Having considered barriers to entry discussion, the next sections will assess competition dynamics (i) between e-hailing companies and (ii) between metered taxis and e-hailing services.

Competition between e-haling companies

6.2. This section presents the market shares of the two largest e-hailing companies (Uber and Bolt) in South Africa. Other e-hailing companies have insignificant presence at this point in time. Competition for e-hailing services occurs in two stages, firstly, in recruiting the operators and secondly acquiring the passengers. With regards to the operator side of the market, independent operators switch between e-hailing companies because of projected earnings potential. On the other hand, passengers consider prices, the ease of using the app, quality and safety of the service as influencing the decision to switch. Market shares in this section are estimated using the number of trips completed during the specified period as shown in **Table 3.**

Table 3: Uber and Bolt market shares (number of trips) from 2016 to 2019

Years	% shares per city							
	Durban		Cape Town		Gauteng		Average	
	Uber	Bolt	Uber	Bolt	Uber	Bolt	Uber	Bolt
2016	CONFIDENTIAL INFORMATION							
2017								
As at March 2018								
2019								
Total								

Source Commission's calculation based on Uber and Bolt submissions 2020.

6.3. The market share analysis in **Table 3** reveals that Uber has been a dominant player in the e-hailing market in South Africa. Bolt has been expanding since its entry in 2016, reaching market share of **{CONFIDENTIAL}** per cent in South Africa between 2016 and 2019. Using the total revenue generated in South Africa, Uber's market shares for 2017 and 2018 are **{CONFIDENTIAL}** per cent respectively, well above the dominance threshold. Bolt's market shares based on revenue generated in South Africa was **{CONFIDENTIAL}** per

cent in 2017 and marginally increased to **{CONFIDENTIAL}** per cent in 2018. Irrespective of the way in which market shares are calculated Uber is a dominant player in the e-hailing market in South Africa.

6.4. There are other e-hailing companies that operate on a small scale and that are ineffective competitors of established companies such as Uber and Bolt.[121] These services do not appear to have constrained Uber and Bolt as they have not yet attracted sufficient economies of scale.

Competition between metered taxis and e-hailing services

6.5. For purposes of this assessment, the key question is whether metered taxis and e-hailing services constrain one another. The Commission received several submissions suggesting that there is intense competition between metered taxis and e-hailing services.[122] Other submissions indicated that e-hailing services and metered taxis target different market segments. E-hailing services are presumed to be targeting passengers that switch from private car use, and this market was not serviced by metered taxi services.[123]

6.6. Evidence presented to the Commission protrays resentment by the metered taxi industry towards e-hailing services due to the perceived asymmetric regulatory environment which puts restrictions on metered taxis. Metered taxis argue that area restrictions imposed by the NLTA put them at a competitive disadvantage as e-hailing services are not restricted to specific geographic areas. As a result, violence between the metered taxi industry and e-hailing operators is a common feature. The increase in the usage of e-hailing services led to the decrease in the use of metered taxis. As a result, some established metered taxi companies have been forced to close, while others have had their revenues decline. For instance, in Durban, two prominent metered taxi companies, Mozzie Cabs and Zippy Cabs closed. Mozzie Cabs had been in business for around 22 years, operating a fleet of 43 taxis with a staff complement of around 150 employees. Zippy Cabs had been in the market for

[121] The Movement (Uber and Bolt Advocacy group). 2018. Oral submission by Ms Munchik. North West hearings. 25 July 2018. page 101.
[122] This includes EThekwini Transport Authority, South African Metered Taxi Association (SAMTA) and the KwaZulu-Natal Provincial Regulatory Entity (KZN PRE) to name a few.
[123] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 46.

30 years operating a fleet of 10 metered taxis with a staff complement of 40 employees.[124] According to Mr Lehman, Mozzie Cabs was marginally profitable until the advent of e-hailing services in South Africa.[125] In Port Elizabeth, Hurter Cabs, which operated for 70 years, also closed down.

6.7. While other metered taxi operators exited the market, some metered taxi operators with compliant vehicles joined e-hailing services.[126] One of Uber's requirements for new operators is that the operator's vehicle must meet Uber's specific quality standards which includes having newer vehicles.[127] The majority of the metered taxi operators have older vehicles and are unable to join the e-hailing services which further increases the level of resentment. Some metered taxi operators launched app-based services to respond to competition from e-hailing services. Apps that were launched include: Yookoo Ride in Johannesburg,[128] PointA2B in Tshwane,[129] and Emergency Taxi app. The WeRide app was launched in March 2018 and have value-added services such as the Interactive Voice Response (IVR) system as part of a services offering.[130] In 2018, the Ntuza app was launched in the Eastern Cape.[131] inDriver App was launched in Cape Town and Johannesburg/Pretoria in 2019.[132] YoTaxi was launched in Durban.[133] The launch of these apps was to try and respond to competition from e-hailing services.

6.8. Although some players in the transport industry view metered taxis as being in competition with e-hailing services, Uber is of the view that e-hailing service operators have created a "new market". A survey, conducted by Ipsos on behalf of Uber, suggested that e-hailing

[124] Metered Taxi Companies (Zippy Cabs, Mozzie Cabs, and Cruise Taxi App). Oral submission by Mr Lehman. 28 June 2018. Page 6.
[125] Metered Taxi Companies (Zippy Cabs, Mozzie Cabs, and Cruise Taxi App). Oral submission by Mr Lehman. 28 June 2018. Page 5.
[126] Metered Taxi Companies (Zippy Cabs, Mozzie Cabs, and Cruise Taxi App). Oral submission by Mr Lehman. 28 June 2018. Page 4.
[127] https://www.uber.com/za/en/drive/requirements/vehicle-requirements/ (Accessed on 13 February 2020).
[128] Sameer, N. 2017. Metered taxis roll out their own ride-hailing app. 4 December, 2017. https://www.iol.co.za/motoring/industry-news/metered-taxis-roll-out-their-own-ride-hailing-app-12259244. (Accessed 13 October 2018.)
[129] Keppler, V. 2018. Metered taxis get their own app. https://citizen.co.za/news/south-africa/1956271/metered-taxis-get-their-own-app/ (Accessed on 13 October 2018).
[130] Mzekandaba, S. 2018. Three's a crowd as new taxi app enters SA. https://www.itweb.co.za/content/mQwkoq6K6Pgv3r9A. (Accessed on 13 October 2018.)
[131] Ntuza Capbs. Public Transport Market Inquiry East London public hearing day 2, Session. Page 20-21.
[132] Website inDriver. Available at https://indriver.com/en/city [Accessed on 3 February 2020]
[133] Website YoTaxi . Available at http://yotaxi.co.za/how-it-works/ on 3 February 2020.

services managed to reach a group of commuters that had never used metered taxis before. The survey found that:

6.8.1. more than half of the Uber users (53%) had never used a metered taxi prior to moving to Uber;

6.8.2. 15% of users used metered taxis regularly prior to using Uber; and

6.8.3. 9% of users that do not use Uber but intend to do so in the future as a result of the introduction of cash as a means of payment for Uber rides had used a metered taxi before.[134]

6.9. Uber concedes, however, that although various providers of public passenger transport offer differentiated services under various business models, they compete for the same pool of potential passengers.[135]

Area restrictions as a competitive constraint in the metered taxi industry

6.10. As indicated above in terms of Section 66(1) (a-c) of the NLTA, metered taxi operators are required to apply for an area-based operating license. In the application of an operating licence for metered taxis, a detailed description of the area (defined radius), as well as allocated taxi ranks, terminal, pick-up, and drop off points, must be specified. In the case of e-hailing, the radius is not explicitly defined and ehailing operators may cut across different municipal boundaries. Section 66(1)(a) of the NLTA and Section 66A(1)(b)[136] of the Amendment Bill permits (but does not mandate) regulatory entities to specify within an operating licence an area for picking up passengers ("the pick-up area"). Sections 66(1)(b) and (c) of the NLTA however creates two exceptions to the pick-up area requirement as follows:

6.10.1. if the operating licence or permit specifies such an area, the vehicle may leave that area if, on the return journey, it is to carry the same passengers that it carries on the outward journey or if the vehicle is to return empty; and

[134] Uber commissioned Ipsos Marketing study on South African market in 2017. Uber Submission by Webber Wentzel (Uber Lawyers) dated 7 September 2017. Page 48.
[135] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 48.
[136] Section **66A**(1)(b) of the Amendment Bill [B7 D-2016] provides:

(1) In the case of electronic hailing services—
(a)….
(b) the regulatory entity granting an operating licence for such service may specify the area for picking up of passengers, subject to section 57(5).

6.10.2. the vehicle may pick up passengers outside of that area if the fare is pre-booked and the passengers will return to such area ("the pre-booked exception").

6.11. Given that the current Amendment Bill is still before the National Assembly and subject to further consideration and legislative processes, it is important to illustrate how the pick-up area and the pre-booked exceptions as currently legislated in Sections 66(1)(b) and (c) work in reality. Sections 66(1)(b) and (c) respectively provide as follows:

6.12. In practical terms, the application of the two exceptions would mean that if an operating licence specifies that a pick-up area is the Johannesburg metropolitan area, an operator may pick up passengers anywhere within the Johannesburg metropolitan area. But in order for the pre-booked exception to apply a metered taxi operator, whose licence specifies his or her pick-up area is the Johannesburg metropolitan area, may pick-up a passenger in Johannesburg, and drop off in Pretoria, but once the operator is in Pretoria, he or she may pick up another passenger in Pretoria provided that the passenger pre-books the fare and that the operator drops off the passenger in Johannesburg. Therefore Section 66(1) of the NLTA permits an e-hailing operator to transport passengers outside of his or her pick-up area only if one of the two exceptions is met.

6.13. When licences are issued by the relevant PREs in terms of Section 66 of the NLTA, licences provide for a pick up area within the municipal boundary of the relevant municipality or, in the case of Cape Town, within a radius of 35 kilometres (from a specific base). There are therefore two scenarios that are not currently permitted by Section 66(1). The first scenario is when an operator whose designated pick up area is the City of Tshwane picks up a passenger in Pretoria for dropping off at OR Tambo International Airport which is in the City of Ekurhuleni. If on arrival at the airport the operator picks up a new passenger to the City of Johannesburg instead of dropping off the passenger in Pretoria, such a trip is currently not permitted in terms of section 66(1) of the NLTA. The second scenario is when an operator picks up a passenger in Johannesburg and takes them to the airport, which falls within the Ekurhuleni Metropolitan Municipality. If on arrival at the airport, he or she picks up another passenger who does not want to return to Johannesburg but rather wants to be dropped off in Benoni, which is in the Ekurhuleni municipality, such a trip is prohibited under the current law, the operator will not be permitted to take the passenger to Benoni.

6.14. In practice, the effect of Section 66 of the NLTA on metered taxi operators is that, on completion of the journey, if a metered taxi operator has travelled beyond municipal boundaries, the metered taxi operator must return to the designated pick up point without any passenger unless the metered taxi operator carries the same passengers as those on the outward journey.[137] The DOT submitted that both the NLTA and the Amendment Bill subjects both metered taxi operators and e-hailing operators to similar provisions in so far as predetermined pickup areas are concerned. Even though the DOT is correct to submit that the provisions of Section 66 of the NLTA apply to both e-hailing services and metered taxi operators by virtue of them operating in terms of a metered taxi operating licence, e-hailing operators in Gauteng are able, due to the technology they use, to reduce the distance between the last drop off and the next pick beyond municipal boundaries in Tshwane, Johannesburg, and Ekurhuleni Municipalities in contravention of the law.

6.15. Therefore, some metered taxi operators have raised a concern that e-hailing services are able to operate with no area restrictions while metered taxi operators are required to operate in designated/pick up areas.[138] Metered taxi operators submit that the e-hailing operator's conduct is in violation of the current Section 66 of the NLTA which provides that, on completion of the journey, an e-hailing operator must return to the designated pick up point without any passenger unless the e-hailing operator carries the same passengers as those on the outward journey.

Self-imposed area restrictions

6.16. It is clear from the wording of Section 66 of the NLTA as discussed above that metered taxi operators are not restricted to predetermined pick up or drop off areas within boundaries of the relevant municipalities in which they are licenced to operate. In addition, there is no barrier in the NLTA for the hailing of a metered taxi on the street as this practice is permitted through the definition of a metered taxi as one which "*is available for hire by hailing while roaming, by telephone or otherwise*". Therefore, licensed metered taxis remain free within their municipal boundaries and are not restricted or legally obliged to operate from ranks.

[137] See section 66 (1)(b) of the NLTA.
[138] Gauteng Metered Taxis Associations. Oral submission by Mr Rabodiba. 8 June 2018. Page 7. The assertion was also confirmed by Gauteng. South African Metered Taxi Association.

Insofar as some metered taxi operators have complained that they are restricted to operate from ranks, this appears to be as a result of additional restrictions imposed by the metered taxi associations. Metered taxi operators have historically self-enforced a business model based on a rank system, even though they are permitted by the NLTA to roam within their designated areas.[139]

6.17. As indicated above in Chapter 2, there are two groups of metered taxi operators: those who operate as private metered taxi companies and those who operate as individual or sole proprietors. The Commission has received submissions to the effect that those operators adopting a rank-based business model are mainly individual or sole proprietors as opposed to those operating under a private metered taxi company's business model.

Stakeholders views on the removal of area restrictions

6.18. Bolt submits that removal of area restrictions may create more problems such as oversupply of metered taxis at specific pick up areas or taxi ranks, which in turn may result in congestion (such as at airports or train stations) and violence. Bolt further submits that the removal of area restrictions may constitute an unconstitutional infringement on the rights and mandate of the provinces, as enacted by the PREs. Bolt further submits that imposing area restrictions to e-hailing and metered taxi operators is not only anti-competitive but also counterproductive and constitutes a regression in policymaking.

6.19. Uber supports the removal of area restrictions and submits that this will ensure that no category of service has an unfair advantage. In the same vain, Uber is strongly opposed to imposing area restrictions on the basis that the entire logic of an e-hailing system will be negated unless the specified area is extremely wide e.g. Gauteng or Western Cape.

6.20. The Tshwane Metered Taxi Council and representatives of the metered taxi operators in Ekurhuleni support the removal of area restrictions because they are of the view that area restrictions result in higher prices to the detriment of passengers. They also submitted that area restrictions prevent metered taxi operators from picking up passengers outside their

[139] Mabuse, K. and Browning, P. 2009. The metered taxi in South African cities. Proceedings of the 28th Southern African Transport Conference, 6 – 9 July 2009. Available online: http://repository.up.ac.za/bitstream/handle/2263/11882/Mabuse_Metered%282009%29.pdf?sequence=1&isAllowed=y Accessed on (22 June 2019)

designated areas thus resulting in metered taxi operators having an average of 50 per cent of unpaid kilometres on a return journey.[140] Some metered taxi operators from Cape Town[141] and Durban[142] supports this option the removal of area restrictions.

6.21. The DOT does not support the removal of area restrictions, arguing that the imposition of area restrictions is a valuable tool to assist in avoiding conflict in the industry.

Submissions on area restrictions by stakeholders during the National Council of Provinces' public hearings

6.22. The Amendment Bill was introduced to the National Assembly and later transferred to the NCOP and in both houses, public hearings were held to allow the public and stakeholders to make submissions. Industry players including Uber SA, Bolt[143], Uber Operators Guild, TransForum, the South African E-hailing Association (SAEHA)[144] and SAMTA made submissions. During these public hearings, three main concerns were raised in relation to the Amendment Bill one of which was area restrictions. On area restrictions the main issue raised was that area restrictions reduce competition and inhibit more efficient business models. Furthermore, it was submitted that new business models arising from digitisation render area restrictions outdated.

6.23. The South African E-hailing Association (SAEHA) representing over 600 e-hailing operators, expressed concerns, arguing that area restrictions would not only restrict e-hailing operators to certain areas but also that passengers would not be able to access the service beyond certain points. This, according to SAEHA, would make certain destinations inaccessible.[145]

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[140] Meeting between the Commission and Mr Tsibo Shange and Mr Magaono on 28 May 2019
[141] Mr Drummond email correspondence dated 06 June 2019
[142] Email correspondence from Paul Lishman of Mozzie Cabs 18 June 2019
[143] DOT. 2018. Department's response to National Land Transport Amendment Bill [B7B-2016]. NCOP Economics and Business. https://pmg.org.za/committee-meeting/27148/. (Accessed on 8 December 2018.) See also See Bolt 's submissions available at http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180911Taxify.pdf (Accessed on 28 June 2019)
[144] South African E-hailing Association. 2018. Submission by Mr Trevor Mathebula. http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180911SAEHAs.pdf (Accessed on 28 June 2019.)

[145] South African E-hailing Association. 2018. Submission by Mr Trevor Mathebula. http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180911SAEHAs.pdf (Accessed on 28 June 2019.)

6.24. TransForum, which made submissions on behalf of 3 000 Uber operators, submitted that area restrictions could be used to artificially restrict operational areas thereby impacting the overall level of service to the passengers.[146] Bolt submitted that area restrictions imposed unwarranted restrictions on e-hailing services and supported the proposal to effect an amendment that would allow operators to pick up passengers outside designated areas if the trip is pre-booked.The DOT supported Bolt's proposal for operators to be allowed to pick up passengers outside designated area if the trip is pre-booked.[147]

6.25. During deliberations in the NCOP, KwaZulu Natal Province proposed that e-hailing services should not be restricted to areas of operation and dedicated routes as they were roaming services . In response Mr. Hament Patel for the DOT stated that the DOT having considered the concerns raised by members in the previous meeting felt that the concerns of members were fair. As such he further stated that that both clauses 66A(1)(b) and 66(2) in the Amendment Bill would be deleted based on the earlier decision by the Committee and the DOT to remove restrictions on areas of operation for e-hailing services. In addition, he stated that the deletion would allow operators to go from place A to place B to place C.[148] The implication of this deletion, if endorsed by the National Assembly, is that both e-hailing and metered taxis will be able to pick up passengers outside their designated municipal boundaries, without a requirement for a fare to be pre-booked (where a passenger pre-arranges the trip) and without a requirement to carry passengers and return to their pick up areas.

6.26. Following these discussions, the Amendment Bill was passed by NCOP on 28 March 2019 and returned to National Assembly. On 7 May 2019 the Amendment Bill lapsed in terms of National Assembly Rule 333 (2) because the Amendment Bill was not finalised by both houses when the term of the fifth Parliament came to an end.[149] On 29 October 2019, the

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[146] See TransForum's submissions available at http://pmg-assets.s3-website-eu-west-1.amazonaws.com/180904SC_Uber_-_Gauteng.docx (Accessed on 28 June 2019)

[147] See https://pmg.org.za/committee-meeting/27148/ (Accessed on 13 February 2020)

[148] NCOP Economics and Business. 2019. National Land Transport Amendment Bill: Department response to negotiating mandates. Available at https://pmg.org.za/committee-meeting/27895/ (Accessed on 22 July 2019)

[149] Lapsing of Bills on last sitting day of annual session or term of Assembly or when Assembly is dissolved
(2) All Bills before the Assembly or any Assembly committee on the last sitting day of a term of the Assembly or when the Assembly is dissolved, lapse at the end of that day.

Amendment Bill was revived by the National Assembly and is currently under consideration.[150]

Summary of the (in)efficiencies of area restrictions

6.27. The original intention behind the area restrictions was to provide adequate levels of service to each part of a city and to limit supply in an area. In addition, area restrictions were motivated in the belief that they lead to a potential decrease in congestion[151] and pollution. Furthermore, it was believed that area restrictions will help operators earn a reasonable income while providing a quality service, given that there are low barriers to entry.[152] The question is whether any of these justifications are still relevant today.

6.28. Area restrictions create an uneven competitive environment between metered taxis and e-hailing services. It was submitted during public hearings that the outcome of the prevention of operators from picking up passengers outside their designated areas is that metered taxis have an average of 50 per cent unpaid kilometres.[153] As such the same area restrictions also undermine greater efficiency for metered taxis, pushing up their costs and ultimately higher prices to the detriment of consumers. Area restrictions also preclude a metered taxi from responding to an increase in demand in a particular area if it falls outside his/her area of operation. This increases metered taxis' operating costs, which may lead to higher fares as metered taxi operators would have to recoup the costs from passengers.[154] Through their use of technology, e-hailing services reduce the distance between the last passenger drop off and the next passenger pick-up, thereby reducing operational costs including low call out fee. In addition, the e-hailing business model also achieves high levels of operator and vehicle utilisation relative to metered taxis.[155]

Potential exceptions to area restrictions

6.29. The Commission notes that there may be practical reasons why area restrictions may be justified in certain circumstances. Other jurisdictions have designated specific areas where metered taxis or e-hailing service require some form of authorisation to operate. In Belgium,

[150] See https://pmg.org.za/hansard/29297/ last accessed on 30 January 2020
[151] National DOT. Transport Market Inquiry, Gauteng Public Hearing day 4. Page 7.
[152] Rahel, S. 2015/16. "Economics of the Taxi Industry: An Uber Shake-up" Honors Theses *AY.* Paper 28.
[153] Oral submission by Mr Mongrate. 21 June 2018. Page 124. This assertion was also confirmed by SAMTA.
[154] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 76-77.
[155] Uber. Submission by Webber Wentzel (Uber Lawyers). 7 September 2017. Page 76-77.

a separate licence for Zaventem airport, issued by the Zaventem municipality, is required to operate from that airport. This licence is valid throughout the Zaventem municipality. Taxis from Brussels or other regions can only drop passenger off but not pick them up at the ranking except if they have a prior reservation. In Austria, a concession is required to operate at the airport. In France, a separate licence is not required to pick up passenger at airports. However, in Paris, in order to avoid the concentration of taxis at Charles de Gaulle Airport during peak hours, each licence holder is allowed only two passengers per day at the airport barrier. In Italy as a rule, licence holders are entitled to operate the service to/from that airport according to the municipality's regulations. However, local authorities may impose certain conditions to curb the exploitation of such a licence.[156]

Review of international practice on area/geographic restrictions

6.30. A review of international practice indicates that in most European Union member states, licences are subject to geographical restrictions while in other member states they seem to be moving away from area restrictions. In Bulgaria and Cyprus, the geographical restriction is within a municipality (local) since the taxis may only carry passengers in their area of authorisation..[157] In Brazil, a taxi may not offer services outside of its taxi stand unless the operator has a special additional licence for this purpose.[158] In Denmark, the geographical market is generally limited to the municipality that issued the licence. Traditionally, taxi services (and commercial road transport in general), were tightly regulated in Denmark. In 2017, a revision of the Danish regulatory framework of taxi services was adopted by the Danish Parliament, in January 2018. Some of the main changes were the abolishment of the geographic restriction.[159]

6.31. The Commission has also observed that most countries are moving away from imposing area restrictions on metered taxis. In Finland, a decision has been taken that metered taxi operators will no longer be tied to a zonal operation (area restriction), with operating licences

[156] European Commission Study 26 September 2016 on passenger transport by taxi, hire car with driver and ridesharing in the EU available at https://bit.ly/2zM0R2t. (Accessed on 22 June 2019)
[157] European Commission Study 26 September 2016 on passenger transport by taxi, hire car with driver and ridesharing in the EU available at https://bit.ly/2zM0R2t. (Accessed on 22 June 2019)
[158] Visser.J and Bakker 2015. International comparison of taxi regulations and Uber. KiM Netherlands Institute for Transport Policy Analysis. *Journal on Researchgate*.
[159] Organisation for Economic Co-operation and Development: Working Party No. 2 on Competition and Regulation, Taxi, ride-sourcing and ride-sharing services - Note by Denmark dated 4 June 2018 available at https://one.oecd.org/document/DAF/COMP/WP2/WD(2018)3/en/pdf

valid throughout the country.[160] In London, zones were used, based on licence conditions imposed on operators by the London Cab Order 1934. The United Kingdom Department of Transport recommended the removal of zones finding that zoning tends to diminish the supply of taxis and passenger's choice. Removal of zones promotes fuel efficiency due to the eradication of empty trips.[161]

6.32. In Italy, private chauffeured vehicles (equivalent to metered taxis in South Africa) must return to their bases after dropping off a passenger. This is likely to change, as the Italian Transport Regulation Authority favours the adoption of a new framework in which traditional taxi services, private hire car services and new ride sharing services would compete in the same market. The Italian Transport Regulation Authority advocated for the removal of the restrictions that require the private hire vehicle to return to its base after dropping off.[162] Germany still requires metered taxis to be restricted to certain geographical areas. In 2018 Germany Transport Minister indicated the intention of removing the rule that requires taxi operators to return to their rank or base after every drop off.[163]

6.33. In Sweden there are no geographic restrictions on taxis operating under licences that are issued by the National Transport Agency and these licences are valid for the whole national market. In the Netherlands, taxis are not subject to geographical restrictions except for Amsterdam Schiphol Airport. In Poland, there are three types of licences according to the geographical areas: 1) a particular municipality; 2) the area of neighbouring municipalities – after the prior conclusion of an agreement between them; and 3) the capital city of Warsaw.[164] In Nigeria and as a result of negotiations between the Nigerian Transport Authorities and Bolt, Bolt operators are permitted to operate within the vicinity of the airports but there are no restrictions to dropping off passengers.[165]

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[160] Ministry of Transport and Communication. 2017. Taxi and vehicle-for-hire services in the Act on Transport Services. Factsheet 60/2017.
[161] United Kingdom Department for Transport. 2010. Taxi and private hire vehicle licensing: best practice guidance. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/212554/taxi-private-hire-licensing-guide.pdf (Accessed on 22 April 2019.)
[162] Organisation for Economic Co-operation and Development.2018. Taxi, ride-sourcing and ride-sharing services - Note by Italy 4 June. Working Party No. 2 on Competition and Regulation. DAF/COMP/WP2/WD(2018)7
[163] D.W. Newspaper. 2019. Germany: Taxis denounce Transport Ministry's deregulation plans Accessed at https://www.dw.com/en/germany-taxis-denounce-transport-ministrys-deregulation-plans/a-47591409 on 8 May 2019
[164] European Commission Study 26 September 2016 on passenger transport by taxi, hire car with driver and ridesharing in the EU p 37 available at https://bit.ly/2zM0R2t. (Accessed on 22 June 2019)
[165] Bolt Submission to the Competition Commission dated 02 May 2019.

6.34. In Ghana, the District Assembly issues permit which allow taxis to operate in areas beyond the District Assembly's jurisdiction. As such taxis are free to operate as floating taxis as there is no obligation for them to return immediately to their station after having dropped off all their passengers.[166]

Conclusion on competition between metered taxis and e-hailing

6.35. The entry of e-hailing services led to the decline in revenue and in some instances closure of some metered taxi business. Area restrictions placed on metered taxis result in an uneven competitive landscape. This is because metered taxis operate within area confines, while the e-hailing services operate anywhere without area restrictions. This has had a negative effect on the metered taxi business in relation to employment and the ability to compete fairly. Some countries have been moving away from area restrictions given the anticompetitive effect these restrictions have on the metered taxi services.

[166] Kufuor.K.O.2019. Uber in Ghana: markets and institutions in the emergence of ride-sharing taxis. Forthcoming 5 Lancaster University of Ghana Law Journal

7. Other emerging issues

Introduction

7.1. This section analyses (i) the role played by digitisation in shaping employer/employee relations and (ii) the extent to which e-hailing companies account for taxation in South Africa. The issues under discussion in this section are emerging issues that go beyond the ToR of this market inquiry. As such the Commission is not going to make findings and recommendations on these emerging issues save to note and make certain observations.

The impact of digitisation on employment relations

7.2. Uber and Bolt submits that digitial platforms in the transport sector has created employment for unemployed individuals seeking full-time employment and has provided an opportunity for already employed individuals seeking to supplement their incomes. Uber indicates that unlike in other countries, the majority of the e-hailing operators in South Africa using its platform tended to be predominantly full-time operators and not those that seek supplementary income options.[167] As such, digitisation has not only brought challenges to transport regulators but also extended to labour laws. The question of whether independent contractors and/or e-hailing operators are typical employees who should be governed by employer/employee related laws has been controversial in many jurisdictions worldwide, with South Africa being no exception.

7.3. Digitisation has brought the rise of the so-called "*ubarisation*" where there are independent workers who are detached from any work contract and often paid based on tasks performed. This has marked the demise of traditional labour relations and stable work contracts as digital platforms do not act like traditional employers and do not bear any collective responsibility for the protection of employees.[168] E-hailing companies have responded to suggestions that they should take responsibility for labour issues by indicating that they are not taxi operators but rather technology companies,[169] leaving operators individually

[167] Uber Submission by Webber Wentzel (Uber Lawyers) dated 07 September 2017. Page 80
[168]Palier B. 2018. The politics of social risks and social protection in digitalised economies in Neufeind. M.O., Reilly J. and Ranft F. Work in the digital age: challenges of fourth industrial revolution.
[169] Witt, A., Suzo, N. & Wikstrom. (2015). Regulating ride-sharing in the peer economy. Communication Research & Practice, 1(2), pp. 174-190.

responsible for their safety and other labour-related issues that would ordinarily be safeguarded by the employers as per labour laws.

7.4. South African labour laws regulate employee/employer relationships but does not apply to the rights of independent contractors in the context of e-hailing services where no formal employment contracts exist. This is uncontroversial given the fact that at the time of the promulgation of labour laws, these new technologies were not yet conceived. The effect of lack of labour law regulation puts e-hailing companies in a position where they determine the rules of engagement with the operators. E-hailing operators are often in a weaker bargaining position and have no pension, sick leave, or decent work conditions.[170] These operators allege that they can have their accounts deactivated from the platform without any recourse and work long hours in order to secure decent earnings and have no influence in fare setting despite the fact that they own the vehicles and they are subjected to all operating costs.

7.5. During public hearings, e-hailing operators submitted that on entry into South Africa, e-hailing companies promised lucrative self-employment opportunities. However, this was not the case, as the operators who own vehicles are not involved in the decision-making process.[171] The Commission received evidence that some operator's earnings are below minimum wage and they cannot quit since some have already invested in cars that they cannot attempt to sell as resale value is insufficient to repay the loan.[172] The e-hailing operators submitted that sometimes they earn below the minimum wage.[173] Operators submitted that short trips have become less profitable over the years and that e-hailing companies have signed up too many operators on their platform and are not willing to increase the fares. **Table 4** shows the declining revenue over short distances over time.

7.6. Uber operators' gross earnings before the commission for a trip less than 2 kilometres was R85 in 2013, and this was reduced to R20 between 2016 and 2017. Uber has since increased the minimum fare to R25 from August 2018. Therefore, on average, an e-hailing operator needs to drive four trips to reach the same amount of earnings he earned in 2013

[170] Swingler. H. 2018. Project to protect workers in digital gig economy. August 28 Accessed at https://www.news.uct.ac.za/article/-2018-08-28-project-to-protect-workers-in-digital-gig-economy on 14 April 2019.
[171] The Movement- Oral submission by Mr Mbelengwa. dated 25 July 2018 Page 125
[172] Uber and Bolt Operators- Oral submission by Mr Mnguni and Mr Muthivhi, dated 26 July 2018 Page 72. 81 and 96.
[173]. The Movement- Oral submission by Ms Munchik, dated. Page 99

Table 4: Gross and net earnings for trips less than 2 km (June 2013 to October 2018)

Uber					Bolt			
Period	**fare>2km**	**Commission**	**Booking Fees**	**Net (R)**	**fare>2km**	**Commission**	**Booking fee**	**Net(R)**
Jun 2013	R85	20%		R68.00				
Dec 2013	R50	20%		R40.00				
Jun 2016	R20	25%		R15.00	R20	5%		R19.00
Dec 2017	R20	25% 20%	4%	R14.20 R15.20	R20	15%		R17.00
Aug 2018	R25	25% 20%	4%	R17.75 R18.50	R20	15%	4% To passengers	R17.00
Oct 2018	R25	25% 20%	4%	R17.75 R18.50	R20	15%	4%	R17.00
Nov 2019	R25	25% 20%	4%	R17.75 R18.50	R20	20%	4%	R16

Source: Uber Blog, Bolt submission and the Commission's own calculations.

7.7. Uber is further alleged to have unilaterally withdrawn some of the incentives it gave operators when it entered the South African market.[174] Uber submits that the incentives were provided to to compensate for initial lower levels of vehicle utilisation while the market grew. Uber further submits that these incentives were essential to ensure sustainable fares to support operators' earnings and maintaining low waiting times for first-time passeger. Therefore, as soon as the market grew or passenger volumes became high in support of high vehicle utilisation, these incentives became unnecessary.

7.8. Uber indicated that it still has other incentives such as hourly guarantees, trip bonuses, and tiered service fees. However, unlike in 2013, these incentives are now temporary and therefore uncertain.[175] From the Commission's public hearings, it was clear that operators were not consulted on any changes affecting their relationship with Uber and felt ignored and marginalised.[176]

[174] Uber and Bolt Operators-Oral submission by Mr Muthivhi dated 26 July 2018. Page 96
[175] Uber Submission by Webber Wentzel (Uber Lawyers) dated 15 October 2018. Page 22
[176] UBER and Bolt partner drivers- oral submission by Ms Carmen Malgas; Mr Rethar Abdullah; and Mr Vince Matthews, Eastern Cape Public hearings, dated 13 August 2018, pages 35 - 70

7.9. During public hearings e-hailing operators submitted that Uber and Bolt set their fares so low because they do not own the vehicles and the changes in fuel prices and other operating costs are not fully accounted for.[177] In addition they also complained that the fares are too low and unsustainable, leaving them with reduced earnings. A high level analysis conducted by the Commission indicates that gross earnings per hour have increased marginally betwteen 2018 and 2019. Uber's operators' average gross earnings per hour increased from **{CONFIDENTIAL}** per hour in 2018 to **{CONFIDENTIAL}** in 2019. Bolt operators' average gross earnings per hour increased from **{CONFIDENTIAL}** in 2018 per hour to **{CONFIDENTIAL}** in 2019.

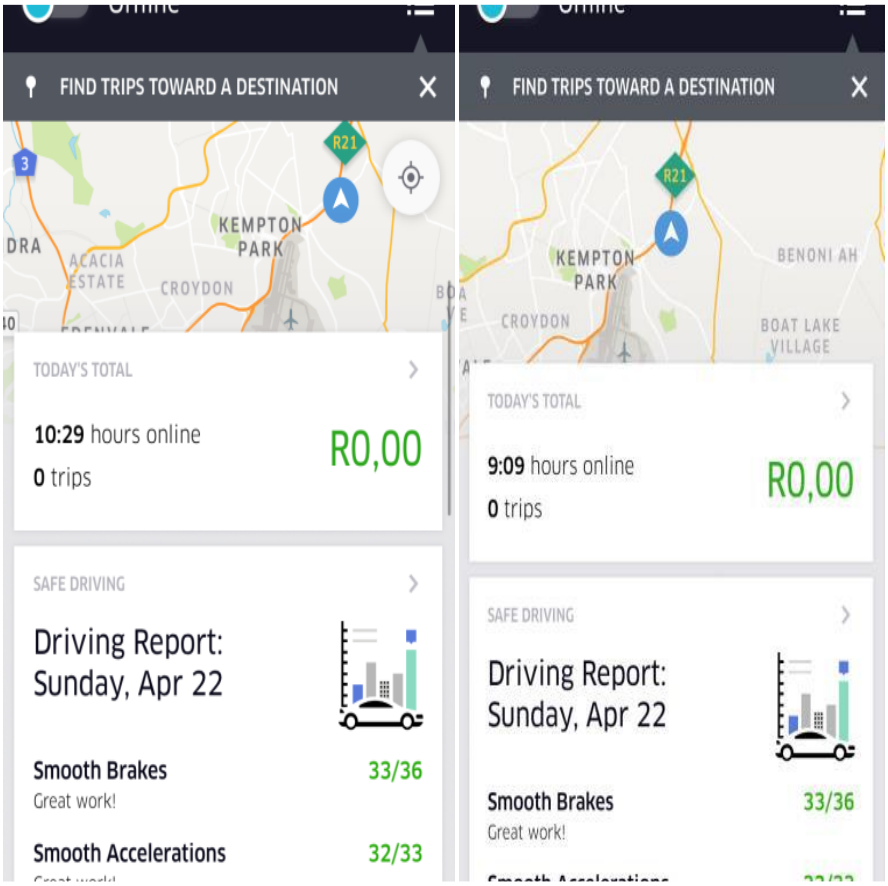
Supply of e-hailing operators

7.10. During public hearings an operator alleghed that Uber was flooding the market with vehicles. It is for this reason that some e-hailing operators have requested the DOT to regulate e-hailing companies and restrict the number of vehicles that are in the market.[178] **Figure 5** shows that operators can be online for up to ten hours without a single trip. The Commission acknowledges that the information presented below is a very small sample that may not be representative of the majority of the e-hailing operators.

7.11. Uber submits that it restricts the number of vehicles on its platform if the supply is higher than demand. Uber utilise a waiting list to control the number of e-hailing operators on the platform and the waiting list is based on the date of sign-up.[179] However, Bolt submits that the market for e-hailing services is not saturated although the number of e-hailing operators using their platform has increased since 2016. Bolt submit that the average earnings-per-hour ("EPH") of an operator has remained consistent. For this reason, Bolt has not put a restriction on accepting new e-hailing operators onto its platform since it is still in a high growth phase.[180]

[177] Mozzie Transport - Oral submission by Peter-Lehman- KwaZulu Natal Public hearing, dated 28 June 2018 (This sentiment also shared by the Representatives of Gauteng Metered Taxis Associations).
[178] Uber and Bolt Operators-Oral submission by Mr Muthivhi dated 21 August 2018. Page 96
[179] Uber Submission by Webber Wentzel (Uber Lawyers) dated 15 October 2018.Page 15
[180] Bolt submission by Ethicore (Bolt's Lawyers) dated 19 October 2018. Page 20

Figure 5: Time spent by a selected operator without a trip



Source: The Movement

Labour law protection of e-hailing operators: an international perspective

7.12. In this section, the Commission provides an analysis of how courts and agencies in various countries have assessed the question of whether e-hailing operators are typical employees who fall within the scope of employment laws.

7.13. In the United Kingdom, this question was considered by the Employment Tribunal in *Aslam v Uber B.V and Others* (*Aslam*)[181]. In *Aslam*, the Employment Tribunal was called on to determine whether Uber operators are deemed to be workers with certain rights, rather than being independent contractors in the UK. The dispute, in this case, began when a group of nineteen Uber operators, backed by the trade union, initiated proceedings against Uber,

[181] [2017] I.R.L.R 4 (28 October 2016).

arguing that they were entitled to the national minimum wage and paid holidays. The Employment Tribunal ruled that any operator who (i) had the Uber app switched on; (ii) was within the territory in which he was authorised to work; and (iii) was able and willing to accept assignments, was, for so long as those conditions were satisfied, a "worker". Uber appealed the Employment Tribunal's decision but lost its appeal in December 2018 when the Court of Appeal dismissed its appeal.[182] In the State of New York, USA, the Unemployment Insurance Appeal Board ruled that Uber was liable for unemployment benefits for three operators, along with others who are "similarly situated".[183]

7.14. A similar decision was reached in Switzerland, by the Suva Social Security Agency. In this case, the Social Security Agency looked to the actual control which Uber enjoyed over its e-hailing operators, and concluded that this, coupled with the relative absence of indications that they were independent contractors, meant that they were employees.[184] In the European Union, the European Court of Justice ruled on 20 December 2017 that Uber is a transportation service company and as such, will have to comply with existing taxi rules.[185] Therefore, member states can regulate the conditions for providing Uber services.

7.15. In France, the Paris Court of Appeals[186] held that Uber operator did not fulfill the conditions required to be considered as a self-employed worker namely:

7.15.1. The free determination of the conditions for exercising transport service is entirely governed by Uber, which centralises and allocates to operators' requests for transport services via algorithms.

7.15.2. Uber prohibits the picking-up of other passenger outside the application system. The Court also found that fares are fixed contractually through the platform's algorithms.

7.15.3. The existence of a relationship of subordination between the Uber operator and the platform.

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[182] Decision available at https://www.judiciary.uk/wp-content/uploads/2018/12/uber-bv-ors-v-aslam-ors-judgment-19.12.18.pdf **(**Accessed on 21 June 2019)

[183] A.L.J. Case No. 016-23494 available at http://www.nyctaxinews.com/Uber%20AB%20Decision-redacted.pdf (Accessed on 21 June 2019)

[184] Available here https://www.reuters.com/article/swiss-uber/uber-operators-are-employees-eligible-for-company-social-security-contributions-swiss-agency-idUSL5N1EV0JU (Accessed on 21 June 2019)

[185] See European Court of Justice Press release available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-12/cp170136en.pdf (Accessed on 21 June 2019)

[186] Kayali L. French court: Uber and operators tied by 'work contract' available at https://www.politico.eu/article/french-court-uber-and-operators-tied-by-work-contract/(Accessed on 21 June 2019)

Impact of digitisation on taxation

7.16. Many countries are grappling with the complexities of determining relevant corporate tax for services that operate in platform markets. Digital platforms operate in multiple jurisdictions simultenaously, with varying tax regimes. Both Uber and Bolt have submitted that payments made by passegers (in the case of e-hailing services) are “transferred” to their respective parent companies overseas, after which the parent will “return” a portion to pay the operators’ share. In addition, the parent company pays the subsidiary some fees for undertaking a service on behalf of the parent company.

7.17. It is alleged that this system is preventing many countries from collecting corporate taxes on income derived from those countries. Even when taxes are collected in countries where the services are rendered, the average tax rate for digital companies is lower than the traditional companies.[187] This has serious implications for government tax revenue. In 2017, the European Commission reported that digital platform companies pay less than half of what brick and mortar businesses pay.[188]

7.18. The same sentiments expressed globally have been raised in South Africa by several stakeholders. Gauteng Metered Taxi operators are of the view that e-hailing companies do not pay corporate and Value Added Tax (VAT) on the booking fees and this seems to be unfair to metered taxis who are supposed to pay such taxes.[189] SAMTA shares the view that the government may not be receiving adequate taxes from e-hailing companies.[190] The Commission noted from Uber and Bolt submissions that corporate tax paid appears to be disproportionately low compared to the revenue generated in South Africa. However, on 1 April 2019, South Africa implemented new tax rules designed to deal with the tax challenge posed by digitisation of markets. The new definition of ‘electronic services' was amended to introduce the new VAT regime for cross-border e-commerce transactions. The change in the law meant that non-resident entities are now required to register as a taxable vendor.[191]

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[187] Jukurti 2017. Taxing the digital economy—It’s complicated Taxing the digital economy—It’s complicated. Brookings. https://www.brookings.edu/blog/future-development/2017/12/13/taxing-the-digital-economy-its-complicated/

[188] E-commerce, law and Policy, Spain Uber case could lead to —landmark‖ CJEU verdict, available at http://www.e-comlaw.com/e-commerce-law-and-policy/article_template.asp?ID=2369&Search=Yes&txtsearch=EU

[189] Gauteng Metered Taxi Associations-Oral Submission by Mr Msayiwe dated 8 June 2018. Page 28.

[190] SAMTA-Oral submission by Mr Moodly, dated 29 June 2018. Page 115

[191] Mail and Guardian.2019. New tax rules lead global reform. Pressreader Available at https://www.pressreader.com/south-africa/mail-guardian/20190426/281895889654091 [Accessed on 29 February 2020].

The Commission is of the view that this move will address the concerns raised by a number of stakeholders during the public hearings. The Commission notes that following the change in the law, both Uber and Bolt are now VAT registered vendors. On corporate tax, the Commission is of the view that this issue may be better dealt with by tax authorities.

8. Findings

8.1. The Commission makes the following findings:

8.1.1. Area restrictions contained in Section 66 of the NLTA are inefficient and distort competition between e-hailing operators and metered taxi operators.

8.1.2. On fare determination for metered taxis - despite the existing legislative framework providing guidelines on how metered taxis can set their fares, neither the Minister nor the MEC regulates fare structure as alluded by the metered taxis.

8.1.3. Substantial backlogs in the application of operating licences at various PREs exist due to the inefficiencies and capacity constraints experienced at PREs. This has led to a significant proportion of e-hailing operators and metered taxi operators operating without valid operating licences, and thus operating illegally.

8.1.4. The Commission has observed that the relationship between e-hailing companies and e-hailing operators is not governed by any labour laws.

8.1.5. The Commission has also observed that metered taxis operators are currently fragmented without a nationally recognised body advancing the interests of the industry. The fragmentation may be due to the differences in the metered taxi groupings.

9. Recommendations

9.1. The Commission recommends the following:

9.1.1. ***On area restrictions:*** the Commission recommends the complete removal of area restrictions as prescribed in Section 66 of the NLTA. Area restrictions reduce competition and their rationale is incompatible with the evolving nature of digital markets and may constrain both e-hailing operators and metered taxi operators. Metered taxis and e-hailing operators, once licensed by their respective PREs, may operate nationally. The Commission therefore recommends the adoption of a more flexible legal framework that would cater for the migration of metered taxis into using modern technology (the process of digitisation). Planning authorities can, however, designate area restrictions in specific areas such as airports in order to deal with congestions among other issues.

9.1.2. ***On price setting mechanisms***: the Commission recommends that the legislature delete Section 66(3) of the NLTA which allows MEC or Minister together with the planning authority to determine a fare structure for metered taxi services. No price regulation for metered taxis is recommended.

9.1.3. ***On backlogs of operating licences****:* The Commission recommends

9.1.3.1. An overhaul of the issuing of operating licence regime and removal of quantity restrictions. This would mean that operators will still be required to apply for roadworthy permits, but their operating licence applications will not be denied based on supply and demand. In addition, the Commission recommends that all pending applications should be processed and finalised expeditiously given that a significant number of operators are already operating illegally. This will free some capacity at the PREs to consider new applications without having to deal with massive backlogs;

9.1.3.2. That the PREs and planning authorities increase capacity to deal with backlogs

9.1.3.3. That planning authorities and provinces enter into MoUs to jointly exercise their respective powers and functions as contemplated in Section 12 of the NLTA. This joint exercise or performance of their respective powers and functions may be regulated by an agreement

between the parties, but this exercise would still require both spheres of government to be sufficiently capacitated; and

9.1.3.4. Metered taxi associations are empowered to represent the interest of the industry. The DOT and PREs should assist the industry to establish a national association of metered taxis. A formalised structure for metered taxis will assist with consultations with the government and advance their interests in the industry in light of the digitisation of the market.

ANNEXURE A – List of stakeholders that made submissions to the market inquiry

Province	Taxi industry	Bus industry	Rail industry	Government and others
Eastern Cape	1. SANTACO - Eastern Cape 2. Uncedo Service Taxi Association 3. GRATA 4. Ntuza Cabs 5. Border Alliance	6. Algoa Bus Company 7. Africa Best 350 8. SANSBOC – Eastern Cape 9. Mayibuye Transport Corporation	10. Eastern Cape Metro Rail 11. PRASA Regional Office	12. Buffalo City Metropolitan Municipality 13. Nelson Mandela Bay Metropolitan Municipality 14. Mr Siyabulela Fobosi
Free State	1. SANTACO Free State 2. NTA – Free State 3. Greater Bloemfontein Taxi Association 4. Laphum'ilanga	5. Interstate Bus Lines 6. Maluti Bus Service 7. Mr. Kgolokwane 8. SANSBOC – Free State	NO RAIL FACILITIES	9. Free State Department of Police, Roads and Transport 10. Mangaung Metropolitan Municipality 11. Mr Stuart Denoon-Stevens 12. Mr. Leva Ben Mabaso 13. SANCO
Gauteng	1. SANTACO – National 2. SANTACO - Gauteng 3. Tshwane Metered Taxi Association 4. Uber 5. Gauteng Metered Taxi Alliance 6. Aeropark Meter Taxi Association 7. Mr Paul Browning – industry expert 8. Gauteng Educational Transport Services 9. Gcina Cabs 10. Tshwane Women In Transport 11. NACTU 12. Taxify	13. Autopax 14. Intercape 15. Moolla's Transport Services 16. PUTCO 17. SABOA 18. North West Transport Investment 19. APM 20. Unitrans 21. Tshwane Rapid Transit	22. Gautrain Management Agency 23. PRASA Rail 24. PRASA CRES	25. Gauteng Provincial Transport Department 26. DOT 27. City of Johannesburg 28. City of Ekurhuleni 29. City of Tshwane 30. Department of Human Settlements 31. Department of Rural Development 32. The National Treasury 33. National Transport Commuter Organisation of South Africa – NATCOSA 34. Greater Soweto Commuters Forum

Province	Taxi industry	Bus industry	Rail industry	Government and others
KwaZulu-Natal	1. SANTACO KZN - Durban Central Region 2. SANTACO - KZN 3. NTA - KZN 4. SAMTA 5. Mr Peter Lehman	6. African People Mover 7. Mr Dipchund – Freeline Omnibus (Bus operators association) 8. Metro Group of Companies 9. Bus Operators Association - Newlands 10. KZN Bus Council 11. Nozulu Enterprise and Events 12. Transnet Durban Transport	13. Metrorail KZN	14. Department of Transport KwaZulu-Natal 15. Msunduzi Municipality 16. Ethekwini Transport Authority 17. Abagibeli Bezithuthi Zomphakathi (ABZ) Rights Organisation 18. SANCO KZN
Limpopo	1. SANTACO Limpopo 2. NTA Limpopo	3. Bahwaduba Bus Service 4. Great North Transport 5. SANSBOC - Limpopo 6. Lowveld Bus Services 7. BUSCOR	NO RAIL FACILITIES	8. Limpopo Department of Transport 9. Polokwane Municipality 10. Mr. Ofentse Hlulani Mokwena 11. SANCO - Limpopo
Mpumalanga	1. SANTACO - Mpumalanga 2. SANTACO - Tshwane Region 3. NTA - Mpumalanga	4. Thembalethu Bus Services 5. BUSCOR 6. SANSBOC - MP	NO RAIL FACILITIES	7. Mpumalanga Department of Public Works, Roads and Transport 8. City of Mbombela 9. Mpumalanga Commuter Organisation 10. Greater North Commuters Association 11. SANCO MP