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Monday 25 May 2015

The Hon Bruce Billson, Minister for Small Business
Attention: The General Manager
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Minister,

Thank you for the opportunity to provide a response to the Final Report of the Competition Policy Review and your invitation to provide feedback on specific provisions.

Uber is pleased that the Final report recommended that the States and Territories develop a regulatory solution for ridesharing.

In the short time that Uber has been in Australia we have proven to be a powerful force for competition, in spite of State based regulators using outdated laws to protect incumbent industry models.

The Uber platform has created more than 9,000 jobs in Australia for ridesharing partners and Uber has committed to create 20,000 by the end of 2015 in collaboration with governments.

In every city in Australia where Uber operates it employs local staff to run the city's operations, secures office space and contributes to the local economy. Uber currently employs more than 70 local staff in Australia and is on track to employ 130 by the end of the year.

In addition, Uber generates thousands of economic opportunities for its driver-partners and gives back to the local economy. For every dollar spent by an Uber rider, 80% is taken by the driver-partner and retained in the local economy.

In considering how to implement the recommendations of the Review, the Federal, State and Territory governments must recognise the fundamental distinction reflected in the Final Report between taxi and ridesharing services, and recognise that different services require different regulatory treatments.

Uber would like to draw the Minister's attention to the practicalities of implementation and the effect of other policy considerations by Government and its agencies on the competitive landscape of point-to-point transport.

Level playing field.

A common misconception is that ridesharing services and Taxi services require the same regulatory treatment and by doing so, this would create a level competitive playing field. While ridesharing competes with taxi services and hire cars, it also competes with other forms of point-to-point transport like public transport. There are fundamental differences between taxi services and ridesharing services;

- Ridesharing does not accept anonymous rides.
- Ridesharing services do not accept cash.
- Ridesharing does not rank, or accepted rides via hail.
- Ridesharing services are on demand.

The argument that there should be a one size fits all approach in order to create a level competitive playing field does not recognise the inherent advantages that some services have over others and the unique differences in services , such as that taxi's have access to ranks and can accept anonymous street hails.

Applying different regulatory treatments in recognition of the different industry models does not create an uneven playing field.

Throughout the public commentary on the Final Report, the issue of compensation for taxi licences has been raised.

Legislation in the State and Territories makes it clear that licences (whether perpetual or annual) are purchased with no future guarantee of their value or the number in circulation. Investments are made by private individuals who are fully aware of this risk and make the investment knowing that at any time a policy change, or change in the market could alter the value of the licence. This is no different than any other investment.

Governments do not compensate taxi licence holders in recognition of the loss of business when increased public transport is provided to a community. Local Councils do not compensate land-holders when they change the zoning regulations that permit new or different building types in a residential street that diminish property values. Stock broking houses do not compensate stock holders when the value of stock diminishes.

Governments should look at the investment made by taxi plate and licence holders the same as any other investment by any other private individual.

Implementation

Uber strongly supports the recommendations of the Review but is concerned that States and Territories will approach reform at varied rates of pace and will implement inconsistent regulatory regimes.

National consistency of ridesharing regulations (such as under the Transport Network Company model being adopted by many US states) will reduce red tape, support future mutual-recognition between jurisdictions and improve overall competition in the ridesharing and wider for-hire industries. This model is operator-agnostic and will incentivise more investment and create competitive tension and more jobs.

The Federal Government should Incentivise State and Territory Governments to proceed quickly with reform of their for-hire transportation industries, and consider

withholding Commonwealth funding for those States and Territories that fail to reform the competitive landscape.

Misuse of Market Power

In principle, we support the proposed changes to simplify and clarify the operation of the *Competition and Consumer Act 2010* with regards to the Misuse of Market Power, notably around conduct that limits rather than promotes competition.

In many States consumers who use a taxi and pay by credit card or debit card are still subject to a mandatory 10% surcharge – regardless of the payment method used and the true cost of processing that payment, which is unilaterally levied by Cabcharge or other providers. Drivers/owner operators of taxis are subject to the network fees charged by Cabcharge. As Cabcharge's EFTPOS machines are in 97% of Australia's taxis they are able to exert a disproportionate amount of influence over the industry and industry policy.

Of the 10% per cent surcharge, 25% goes to the taxi networks, while Cabcharge pockets the rest. None of the surcharge goes to the drivers.

Cabcharge was taken to the Federal Court by the Australian Competition and Consumer Commission (ACCC) for anti-competitive practices and was found guilty of substantially taking advantage of its market power and for predatory pricing and was fined \$14m. Cabcharge is heavily integrated with Australia's taxi networks and this service fee is another example of the market being a consolidated anticompetitive monopoly.

There is no excuse for any mandatory surcharge, particularly of this magnitude and Governments should legislate the removal of the surcharge immediately and ensure competitively neutral policies are in place for payment systems.

Further, the ACCC should commence renewed investigations into the operations of Cabcharge and anticompetitive payment systems and the practices that protect these schemes.

Taxation

The recent guidance on the sharing economy issued by the Australian Tax Office (ATO) is out of step with existing Government policy and has created a barrier to effective competition.

Division 1 Section 44 of the *Goods and Services Act* requires taxi services to register for the Goods and Services Tax (GST) before they have earned their first dollar, as opposed to all other businesses that are required to register when they reach a threshold of \$75,000.

The ATO's recent decision to single out Uber partners and treat them differently to other businesses in the sharing economy is out of step with the Government's stated policy objectives of promoting small business and reducing the regulatory and red tape burden when it can be shown to be of no net benefit. We do not agree that an Uber partner should be treated any differently than another micro business and believe that the approach by the ATO is not a contemporary interpretation of the legislation and is not in the interests of promoting competition.

The decision to treat Uber partners differently to other small business will stifle investment and innovation in the space and undermine the competitive landscape.

Uber is conscious of the need to ensure transparency of the operations of our partners and Uber. We are also mindful that in doing so the Government should not create a barrier to entry to the marketplace, or impose unnecessary burdens on these small business operators without any tangible tax benefit to the nation.

We do not believe that the ATO's approach will return any net benefit to the nation in terms of taxation, given the relatively low level of earnings involved for many of Uber's partners. What is certain, however, is that such a move will impose a red-tape and regulatory burden on our partners that will create a barrier to entry to their participation in the sharing economy, which is at odds with the Government's own policies and the stated objectives of promoting competition and growth.

We estimate that the cost of processing the Business Activity Statements of thousands more micro and small operators will exceed the value of the revenue that will be captured and, as a result, there will be no net benefit.

Importantly, the reasons the ATO gives for the taxation treatment of the taxi industry (i.e. that the industry was cash-based when the GST was introduced and their charges are regulated by government), simply do not apply to Uber and its partners, where all transactions are electronic and charges are market-based. Further the unique nature of ridesharing means that a majority of partners are not undertaking the activity as an enterprise.

Uber has tried to engage in meaningful discussions to explore alternatives with the Government and the ATO to meet the Government's requirement for transparency and the application of appropriate taxation treatments for new sectors of the economy.

We have offered to compulsorily require Uber partners to register for the GST after a certain amount of time or number of trips on the platform where it can be reasonably certain that the partner is undertaking ridesharing as an enterprise and should register for GST. The ATO, however, has determined it will dictate Government policy and will not entertain alternatives.

We believe that the ATO does not have an appropriate understanding of the sharing economy and the Government does not have a plan to consider the policy implications of the sharing economy. Instead rules drawn up in 1999 that are not relevant and which do not deliver any public benefit are being applied to a business model that is

fundamentally different to how the market was structured when the legislation was considered.

The ATO's treatment of ride sharing also stands in stark contrast to the approach being adopted in other nations such as the United States, where many state governments are actively considering and introducing ride sharing regulations that impose appropriate safety and consumer protection standards, whilst not unnecessarily burdening participants of this new sector of the economy before they have even had the opportunity to try out ride sharing and determine whether it is suitable for their circumstances. The ATO's decision signals to the global economy that Australia is not embracing the differences and benefits created by technological change.

The decision by the ATO will create a barrier to entry that will stifle the growth of ridesharing in Australia and will not deliver a benefit. The imposition of red tape and regulatory burden that is not imposed on other forms of the sharing economy or indeed other small business operations needs to be properly considered by Government at a policy level.

If a ridesharing driver used his/her vehicle to collect documents or pizzas on demand and deliver them they would be treated as any other small or micro business operator and only be required to register for GST at \$75,000 and where it can be shown they are carrying on an enterprise. If they plan to undertake ridesharing and instead pick up a person instead of an item then they have to register for GST before they take one trip. The ATO and Government have failed to recognise the change in the way that transportations services are structured and delivered.

We believe that the best way for policy makers to deal with these issues is to consider how the sharing economy fits within the broader picture and what regulatory and policy treatments should be applied. We do not believe this narrow interpretation is one that is correct or helpful.

Getting the competition settings right in this area should be done as a matter of urgency as it cannot wait until the conclusion of the tax white paper process. It needs leadership by Government now.

We look forward to your response to the Final Report and how all levels of government will apply the recommendations.

We would welcome the opportunity to meet with you to brief you and to answer any questions you may have.

Please don't hesitate to contact me to arrange a time or if you have any questions at

Yours sincerely,



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