

Transport for London
TfL Consultations
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4 December 2015

Thank you for giving the Institute of Directors a chance to respond to the Proposals on Private Hire Regulations consultation.

About the IoD

The IoD was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 35,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 71% of FTSE 100 companies and 51% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 70%, comprise directors of small and medium-sized enterprises (SMEs), ranging from long-established businesses to start-up companies. IoD members' organisations are entrepreneurial and growth-orientated, and more than half (57%) export goods and services internationally.

Response

The IoD's Royal Charter obliges us to "represent the interests of members and of the business community to government and in the public arena, and to encourage and foster a climate favourable to entrepreneurial activity and wealth creation." It is the latter obligation that is most relevant in this case and the reason for our response to this consultation, the Private Hire Regulations Review.

While we are not opposed to all the proposals in the Regulations Review, it is clear that the overarching spirit of the proposals is one which is unfriendly to entrepreneurialism, innovation and fair competition. Technology is changing the world, and competition too – to quote from the Competition & Markets Authority, competitions exerts "downward pressure on prices and upward pressure on service quality and standards."¹ Companies like Uber, Hailo, Kabbee, Gett and others are already demonstrating exactly that.

These regulations seem to be based on assumptions more suited to a now bygone era when taxis could only be ordered in two ways – booking via a fixed landline, or by hailing them in the street. That is not the world we live in anymore. We note here the recommendations of the London Assembly's Transport Committee, which declared that "it is not within TfL's remit or responsibility to promote either trade (PHV or taxi) over the other, or any particular company, service providers or app. It is up to the trades themselves to convince the travelling public that they can best meet their needs and expectations."² The IoD echoes the view that there is no place for protectionism on London's streets.

It is also worth noting that, according to this consultation, TfL's "position is to support developments in technology which comply with relevant laws and provide benefits to passengers." We would argue that many of the regulations in this Regulations Review do not meet that criteria.

¹ Competition and Markets Authority, CMA response to TfL's private hire regulations proposal, (December 2015) p. 1

² London Assembly Transport Committee, *Future Proof: Taxi and Private Hire Services in London* (December 2014) p. 14

Context

It is worth remembering that the United Kingdom is a world leader in the digital economy. Next year, the UK's online economy will make up 12.4 per cent of our overall GDP – significantly further ahead than our next closest competitor, South Korea, at 8 per cent.³

Britain's – and London's – reputation as a business-friendly destination is built on a historic willingness to be open to new technologies and embrace disruptive innovation. The response of the capital's authorities to the application of new technologies will be a test of how open to innovation we will be in the 21st century. The Business Secretary said in October that “heavy-handed” regulation such as that proposed by TfL would “jeopardise our status as a country that welcomes investment, jobs and puts business first.”⁴ He is right, but words are just that; TfL and the capital's politicians *must* appreciate that this consultation will have implications far beyond the Private Hire Vehicle and taxi trades.

There has been much consternation across Europe in relation to the arrival of Uber in our cities. When French authorities, including the Prime Minister, ordered a nationwide clampdown on the firm in June, and when authorities in Berlin banned Uber in April, the assumption was that such a Luddite reaction to new technology would thankfully never occur in the UK. This Regulations Review suggests such a confidence was misplaced.

We recognise that competition is not the only concern of TfL. We acknowledge the very real fact that taxis and accessible private hire vehicles are vital for many disabled and elderly Londoners, and we agree with the recommendation in the London Assembly Transport Committee's 2014 report into the future of taxi and private hire vehicles, “Future Proof,” that TfL should work with “disability campaigners and the trades to improve disability awareness amongst both drivers and booking staff, and adopt a zero tolerance policy towards drivers and operators who discriminate against disabled passengers.”⁵

We will now list a number of proposals which the IoD wishes to respond to in detail. It should be noted that the IoD is not against all the regulations in the list: we, like both the trades and TfL, are fully behind moves to ensure that licences and insurance of all drivers are up to date and regularly checked. Similarly, we support moves such as Proposal 6, to change the arrangements for in-venue operators in an attempt to tackle touting and so-called “Clipboard Johnnies.” Other proposals to ensure adequate record-keeping by operators and communication with TfL of those records are sensible, as long as the amount of information and the timeframe within which that information must be provided are reasonable and the administrative process as easy and unbureaucratic as possible.

We also firmly believe that, beyond the scope of this Regulations Review, there is a wider discussion to be had about the regulations applied to taxi firms particularly around barriers to entry, in the form of the Knowledge, and on centralised pricing. We would urge TfL to look at these to ensure that the playing field upon which taxis and PHV firms compete is as level as possible.

³ Boston Consulting Group, *The Internet Economy in the G20* (May 2015)

⁴ Daily Telegraph, “Sajid Javid attacks ‘heavy handed’ Uber crackdown” (14 October 2015)

⁵ *Future Proof*, p.7

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

Quite apart from the fact that, late at night, it is safer for an individual to be on their way home in a licensed and insured private hire vehicle (PHV) than it is for them to be stood on a street corner waiting to be allowed in to the said vehicle, it is absolute nonsense for a regulator to put rules in place which slow down a service.

The reasons given in the consultation for this entirely arbitrary restriction on trade do not stand up to scrutiny. The idea that any driver needs five minutes to plan an appropriate route does rather suggest that the first five minutes of any journey in a black taxi is spent at the side of the road whilst the driver ponders which route to take. The rise of GPS technology must also feature into this discussion, making route-planning and travel mapping very easy indeed.,

Furthermore, there is no more than anecdotal evidence of whether individuals regularly get into the wrong taxi or private hire vehicle. It strikes us as being an irregular enough occurrence that an arbitrary time limit is an unnecessarily heavy-handed response to a problem that doesn't particularly exist.

One would not limit the ability of a consumer to buy a Pret a Manger sandwich, a t-shirt or a bag of crisps. TfL should remember that as well as a transportation option, a private hire vehicle journey is a product like any other.

Essentially, if TfL's overarching purpose is to ensure that Londoners and visitors are able to move around the capital as quickly as possible, forcing drivers and passengers alike to wait for five minutes – even if car, driver, and passenger are ready to go - before beginning a journey seems a rather perverse way to meet that goal.

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

As we have said, we do not believe that many of the proposals in this consultation document enhance competition which, again to quote from the CMA, exerts “downward pressure on prices and upward pressure on service quality and standards.” This proposal reduces competition via levelling the playing field. If consumers wish to book a PHV seven days in advance, they are likely to use a firm which offers that service. A firm that doesn't may well be at a competitive disadvantage if they do not, but it is not TfL's job to improve the business models of private companies.

Whilst we accept that there is a lack of fully accessible PHVs and disabled passengers often wish to pre-book, the point remains that there is evidently a market opportunity for those PHVs who offer such a service.

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

It is unlikely that TfL would pass a blanket ban on black taxis displaying their orange “hire” light and we would strongly suggest that to limit PHVs from making their presence known to potential customers is an example of TfL attempting to restrain the application of new technology rather than welcoming it. Competition works best when consumers have all the information possible available, and this proposal would necessarily restrict that flow of information.

The inability of PHV providers to inform consumers how long a PHV might take to arrive will create serious secondary effects. It may, for instance, become common practice for passengers to book PHVs via an app, only to cancel if the PHV happens to be, say, ten or fifteen minutes away – information that would only be available post-booking. The extra time lost by PHV firms if this becomes a regular occurrence would almost certainly lead to a punitive cancellation charge being applied more vigorously by PHV firms, ultimately hurting consumers who may have legitimate reasons for cancelling a PHV.

Operators must specify the fare prior to the booking being accepted

While appealing in principle, it strikes us that having fares set prior to a journey is likely to increase costs to consumers. PHV firms would understandably “price-in” potential delays to any fare, in case a PHV driver comes across particularly bad traffic or roadworks, meaning that journey distances and times could well bear little relation to the price charged. In our opinion, the current Operator Regulations, which require an operator to keep a record of any fare or estimated fare if requested by the passenger, are sufficient. There is a wider discussion to be had about the centralised pricing system used in taxis, and whether more flexibility would allow taxi drivers to be more competitive, but that is somewhat outside the scope of this Regulations Review consultation.

Drivers to only work for one operator at a time

Imposing what would essentially be zero-hours, fixed-terms contracts on individuals wishing to become PHV drivers would be a backwards step for labour flexibility.

TfL are right to be concerned about safety and ensuring that drivers are not on the road for 24 hours a day. However, that is an argument for an overall (generous) weekly cap on working hours, rather than a restriction on how many firms an individual could work for. The nature of the employment is changing across the entire business landscape and working more than one job is becoming if not the norm then certainly not the anomaly it once was. Restricting that flexibility in the PHV trade would, again, be an example of looking backwards rather than forwards.

Controls on ridesharing in licensed vehicles

The rise of technology and the sharing economy has made the idea of ride-sharing appealing to many Londoners. The free market argument for ridesharing is clear, and is succinctly put by *The Telegraph*'s James Kirkup:

“You have a car. I do not. I have money. I need to go somewhere. You are willing to take me there. If you do that, I will give you money. At the end of this process, I will be in the place I want to get to, and you will have some money. Everyone gets what they want.”⁶

Quite apart from ridesharing, this logic applies to many of the disruptive industries which have developed over recent years: firms such as AirBnB and OneFineStay allow visitors to the capital to stay in Londoners' houses, rather than hotels, and have unsurprisingly proved popular. It is worth noting at this point that hotel bookings are also up despite this increased competition. The response from central government to these disruptive firms, and ones like them, has been heart-warming for those who believe in innovation and the sharing economy.

“We want to update these laws (on hotel licensing) to help boost the sharing economy, in light of the popularity of websites like Airbnb and Onefinestay, to help people rent out their property on a short-term basis. It will provide income to householders who want to rent out their home – for example, if they themselves go on holiday.”⁷

We are not against the imposition of regulation to protect consumers who wish to ride-share, but we are wary of the language used in the consultation, especially in contrast to central government's acceptance of room-sharing: “we intend to explore measures to ensure private hire vehicles cannot be used for ride sharing purposes in London unless there are very clear controls in place to protect the safety of passengers and drivers.” We will wait until further proposals are published to respond fully, but we would urge TfL to apply a common law philosophy: to allow ride-sharing with provisions, rather than to ban it unless provisions are met.

⁶ Daily Telegraph, “Why on earth are Conservatives trying to stop Uber breaking London's black cab cartel?”, 30th September 2015

⁷ Brandon Lewis MP, then-Minister for Housing, House of Commons, February 2015

Further points

The IoD accepts that regulators have a role to play in ensuring best choice for consumers and ensuring a level playing field for business, and agree with many of the complaints of the black taxi unions. In particular, we note the uncertainty caused by new emissions standards to be imposed on black taxis two years before they will be imposed on private and private hire vehicles. We note too the arduous nature of the current “Knowledge” test, and would suggest that with new technology the time has come to look again at whether the barriers to entry in the taxi trade must be as high as they currently are. We also think there is a case for liberalisation of fare setting; it is true that individual black taxi drivers struggle to compete with PHV firms like Uber who can set their own fares.

Conclusion

Technology rarely goes backwards, yet it can be restrained by over-zealous imposition of regulation. A number of improvements to the provision of PHV service in the capital are listed in the consultation, many of which can be tied directly to improvements in the application of new technologies, but they are immediately followed by regulations designed to reverse those improvements.

The overarching spirit of these regulations, as discussed, is fundamentally unfriendly to technological progress. The proposals also raise an interesting question about what Transport for London’s reaction will be to technology like part- or fully-autonomous vehicles.

We are not against all of the potential regulations suggested. We have no issue with stringent impositions to ensure appropriate licencing and safety.

The answer to disruptive technology is competition and technological innovation by established players, not a regulatory strait-jacket. We are obliged to promote the free market, innovation, and the benefits to consumers of competition. We agree with the London Assembly’s Transport Committee that “the trade and TfL can and must agree on one point. Passengers must come first.”⁸

It is worth remembering that TfL’s motto is “every journey matters.” Allowing greater competition in the taxi and private hire vehicle markets will not just improve those journeys, but will likely increase the number of journeys taken. TfL’s focus should be on ensuring the capital’s transport infrastructure is fit for purpose in the world’s greatest city and that necessarily means the adaptation, not restriction, of new technologies. We strongly urge Transport for London to rethink the most restrictive of the proposed Regulations.

Yours,

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⁸ *Future Proof*, p.56