

Technology “breaking into” market access rules: legislating on apps – the pros and the contras

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ABSTRACT

The entry of the uberX (or uberPOP) service into Australian markets has highlighted deficiencies in the traditional enforcement strategies used by Australian Government Regulators to restrict the promotion and operation of illegal taxi services. While satisfactory for dealing with small-scale domestic proponents of illegal taxi services, these same strategies have proved hopelessly inadequate to deal with a company of the size, sophistication and arrogant disregard for Australian laws such as Uber.

Accordingly, Australian Government Regulators need to take their lead from regulators, such as New York City’s Taxi and Limousine Commission (TLC). In particular, Australian Government Regulators need to understand and promote their jurisdiction’s rules for taxi and for-hire passenger transportation services, and then enforce them with urgency, determination and consistency.

At the same time, the Australian taxi industry must redouble its commitment to innovation and improvement, so that taxi customers consistently receive high quality services that meet or exceed their reasonable expectations in relation to convenience, timeliness, safety, accessibility, comfort and affordability.

DISCUSSION

Point 1:

UberX is illegal in all Australian cities, but to date, no Australian State (or Territory) Government has been effective in banning its operation (where banning implies Uber stops providing uberX services or converts to offering uberX in a compliant manner such as by using appropriately licensed drivers in appropriately authorised vehicles).

Point 2:

There are currently no other companies offering so-called “ride-share” services in Australia. Accordingly, Uber’s launching of its uberX service was deliberately preemptive and not a response to another “ride-share” competitor’s market entry.

Point 3:

Key milestones for the expansion of uberX services in Australia are as follows –

- Uber started up as a \$1 company, Uber Australia Pty Ltd, on 11 Sept 2012 with its ultimate holding company being the Netherlands based, UBER INTERNATIONAL B.V.
- Shortly thereafter in 2012, Uber commenced operations with UberBLACK and UberTAXI in Sydney and UberBLACK in Melbourne (Australia’s largest cities with populations of approx 5 million and 4 million respectively)
- in April 2014, Uber launched UberX in Sydney, Melbourne and Brisbane (rolling out UberBLACK to Brisbane somewhere in the same timeframe);

- In August 2014, Uber launched UberX in Geelong and the Gold Coast (i.e. non-capital satellite cities to Melbourne and Brisbane respectively). It also had a false start for UberX in Adelaide that it rebranded as just a launch of UberBLACK in that city.
- In October 2014, Uber launched UberX in Perth to complement its UberBLACK service in that city. Uber also commenced recruiting drivers for UberX and UberBLACK in Hobart (the relatively small capital city for the island state of Tasmania)

Point 4:

It is difficult to quantify how successful or otherwise Uber has been in building a market for its uberX service in Australia (e.g. revenue dollars, trip numbers, passengers travelled etc). On the occasions where data is available to check Uber's public claims, the claims appear to include hyperbole and exaggeration.

Point 5:

Notwithstanding Uber's unsubstantiated representations to the contrary, it appears that there are serious gaps and deficiencies in the insurance covers associated with uberX in Australia. The risk exposure primarily affects, uberX drivers, but also includes uberX passengers, and the general public. The position in Australia is very similar to the US experience.

Point 6:

Notwithstanding Uber's unsubstantiated representations to the contrary, it appears that there are serious gaps and deficiencies in the criminal history checks, traffic history checks and medical certificate checks performed by Uber (or on Uber's behalf) for uberX drivers vis a vis the standards applicable to taxi drivers. The safety implications associated with the lower standards for uberX drivers are likely to be very similar to the US experience.

Point 7:

To date, Australian Government Regulators' have relied on their traditional enforcement strategies for dealing with illegal taxi services. They waited for uberX to commence operation before acting and their first action was to issue one or more Cease & Desist notices to Uber. Similar to the experience in the US, the issuing of these notices has been completely ineffective.

The Government Regulators of New South Wales, Victoria, and Queensland subsequently followed up the C&D notices with infringement penalties to uberX drivers ranging between \$1,700-\$2,500 AUD each. Uber appears to have been more than effective in combating the deterrent effect of these fines by –

- (i) committing to pay the fines on behalf of affected drivers; and
- (ii) successfully restricting the number of fines being issued by apparently barring enforcement officers' access to the Uber system to book rides (in order to infringe drivers).

Point 8:

Evidently then, Australian Government Regulators urgently need to a new game plan to deal with uberX. They need to develop and implement enforcement strategies that will cause the operation of these illegal taxi services to face certain (or at least

probable) regular infringement and the quantum of the penalties in their aggregate to be greater than the potential profit associated with ignoring or avoiding compliance with the law. Australian Government Regulators would do well to take their lead from regulators, such as New York City's Taxi and Limousine Commission (TLC). They need to understand and promote their jurisdiction's rules for taxi and for-hire passenger transportation services, and then enforce them with urgency, determination and consistency.

Point 9:

While the entry of uberX into Australian markets can be characterised as a failure in regulatory enforcement, there is an important supporting role for the legitimate taxi industry to play. Quite appropriately, the Australian taxi industry must redouble its commitment to innovation and improvement so that taxi customers consistently receive high quality services that meet or exceed their reasonable expectations in relation to convenience, timeliness, safety, accessibility, comfort and affordability. Similarly, the Australian taxi industry must improve its engagement with the media, the community and their elected representatives, to better explain the purposes of taxi related regulations and how they protect against market failure in respect of the services the community wants to have and enjoy.
