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17 November 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600
By email: Contact@CompetitionPolicyReview.gov.au

Dear Sir / Madam,

RE: 2014 COMPETITION POLICY REVIEW DRAFT REPORT

The Australian Taxi Industry Association (ATIA) is the national peak representative body for the taxi industry in Australia.

The Australian taxi industry has a significant interest in the establishment and maintenance of markets for taxi services that –

- provide a level playing field for service providers;
- promote efficiency, innovation and best practice;
- minimise discrimination to the maximum extent possible, especially in respect of disability, social economic status, age, ethnicity and gender;
- support affordable, reliable and timely service to whole communities on a 24/7 basis; and
- maximise passenger and driver safety.

This submission restricts itself to addressing only those specific issues of interest and/or concern for ATIA, and its members, that are contained in the Competition Policy Review Draft Report (the Report) released in September 2014. For a more fulsome articulation of the ATIA's positions in relation to the Competition Policy Review, please refer to the ATIA's June 2014 submission to the Review.

The ATIA offers the following comments for consideration.

1. On page 4 in paragraphs 2 and 7, the Report notes that Competition Policy serves "*the national interest when focussed on long-term interests of consumers*" and then identifies Australia's aging population as a reason for extending Competition Policy to the provision of "*human services*". While there may be a case for this, the Report is deficient in not also noting the well-established linkage between aging and the acquisition of disability. This linkage has very significant implications for the interests of consumers over the longer term. It is generally estimated that over 20% of Australia's current population is affected by one or more disabilities. As Australia's population ages, it follows that the proportion and absolute number of community members reliant on assisted travel will increase substantially[1]. The public transport system will accordingly need to significantly expand its capacity to deliver accessible services. Any failure to do so will have serious and unfortunate consequences on that growing group within the community losing, or having lost, capacity for independent travel.

[1] *There is a well-established relationship between aging and propensity to acquire disability.*

Importantly, without access to reliable and affordable transport services, people with disability cannot readily access preventative health care, shop for essentials (e.g. fresh food), or participate reasonably in work or social activities. In such circumstances, the well-being of those directly (and indirectly) affected is greatly diminished.

The Report alludes to this same point in the statement, "*Access and equity dictate necessary standards and genuine opportunities that all consumers should be able to enjoy, so that genuine choice, responsiveness and innovation are available to all."*[2]

Taxis then have a huge role to play in Australia's future public transport system(s) because they are the only component with genuine capability to provide 24/7, on-demand, door-to-door accessible services. It follows that State and Territory Governments can be expected to find their regulatory controls and interventions in respect of the taxi industry of significant advantage for advancing their social policy objectives. As a case in point, State and Territory Government interventions over the last decade have successfully promoted wheelchair accessible taxi licences and this has resulted in their associated vehicles now comprising over ten percent (10%) of the national taxi fleet.

The ATIA recommends that the Report be amended to include discussion of the impact of Australia's aging population on the public transport system and the foreseeable implications this may have for the taxi industry and its regulation.

2. On page 4 in paragraph 8, the Report does well to note that new or disruptive technologies may threaten or put at risk "*traditional safeguards for consumers*". Unfortunately, the Report fails thereafter to fully explore this issue satisfactorily. In the view of the ATIA, *safety* is a good example of something that needs to be safeguarded. For the taxi industry, safety is not just a primary concern for consumers (taxi passengers) but it is equally important for taxi drivers. Again for the taxi industry, safety is not something where reliance on "*traditional safeguards*" would be satisfactory. Taxi passengers and taxis drivers expect and require the industry to have a continuous and ongoing commitment to safety innovation and best practice.

   In the ATIA's view, safety is not a matter that lends itself to the cost benefit analysis of Competition Policy. Indeed, there is something un-Australian and abhorrent about promotion of any public policy outcomes that would serve to lower established safety standards, simply in order to facilitate the market entry of some new technology or competitor(s).

   The ATIA recommends that the Report be amended to reverse its presumption about the supremacy of competitive markets and to give primacy to established safety standards and systems. New technology, whether disruptive or evolutionary, that cannot maintain or advance established safety standards and systems does not represent progress. The Report should promote new technology and competitive

[2] *see page 20 in paragraph 7 of the Report*

markets as "means" to achieve Net Public Benefit and not "ends" in themselves.

3. On page 12 in paragraph 3, the Report states, "*The changes induced by reforms can involve adjustment costs and can give rise to distributional consequences*". In the ATIA's view this statement is not completely accurate or satisfactory. It whitewashes the prospect of adjustment costs occurring and the potential for them to be significant and ongoing (especially in terms of opportunity costs).

   The final sentence of the paragraph states that adjustment costs, "*should not stop otherwise beneficial reforms…*". In the ATIA's view, this statement requires further qualification to ensure its interpretation is consistent with the central tenet of competition policy being "*public interest*"[3]. Beneficial reform must produce Net Public Benefit. If adjustment costs exceed reform savings, the reform does not merit proceeding (at least in the circumstance prevailing).

   The ATIA recommends that the Report be amended to advise that adjustment costs are –

   - ***expected;***
   - ***potentially significant;***
   - ***potentially ongoing; and***
   - ***would be cause to stop a reform if they exceed expected savings.***

4. On page 15 in paragraph 10, the Report fails to note that Australians expect properly governed markets to protect safety standards.

   The ATIA recommends that the Report be amended by including safety as an expectation of properly governed markets.

5. On page 16 in the grey box listing "*fit for purpose*" attributes, the Report fails to include either the maintenance of safety standards or efficiency of administration. In the ATIA's view, both are important attributes of competition policy that is "*fit for purpose*".

   The ATIA recommends that the Report be amended by including maintenance of safety standards and efficiency of administration in the list of "fit for purpose" attributes for competition policy.

6. On page 18 in paragraph 6, the Report states, "*Uber ridesharing services (see Box 1.1 below) is an example of a new player introducing new technology and a novel concept that challenges existing regulatory frameworks*". As noted in the comments below in relation to Box 1.1, Uber may have introduced new technology to US markets when it launched its uberBLACK service there in 2010. However, by late 2012 when Uber finally launched uberBLACK in Sydney and Melbourne, the Australian on-demand for-profit passenger transport service market had well and truly embraced smartphone app technology. Every major Australian taxi network already

[3] *see page 24 paragraph 3 of the Report*

had its own smartphone app and had it fully integrated into its computer dispatch system[4]. The Report is wrong and misleading to suggest otherwise.

The "*novel concept*" of an on-demand for-profit passenger transport service being delivered in vehicles with only private-use motor insurance policies, where all Australian motor insurers explicitly exclude cover when vehicles are used to provide livery services, is not just a challenge for regulatory frameworks. It is a challenge for prudent business practice[5] and entirely inconsistent with competition policy, if as the Reports presents, "*Competition policy is about making markets work properly.*"[6]

The ATIA recommends that the Report be amended by deleting paragraph 6 on page 18.

7. On page 19 in Box 1.1, the Report makes a series of compounding erroneous statements.

   a. "*Uber is a platform for ridesharing services that connects passengers directly with the drivers of vehicles*."

      Uber is *not* a platform. Uber Australia Pty Ltd (Uber) is a for-profit propriety company. According to the Australian Securities and Investments Commission's (ASIC) register, Uber has one (1) share issued, and it is ultimately owned by the Amsterdam based, Uber International B.V.

      Uber or Uber's smartphone app provides on-demand booking and dispatch of Uber's ridesharing service (uberX), its limousine or "hire car" service (uberBLACK) and its taxi service (uberTAXI albeit only in Sydney). For the purposes of the Public Transport legislation in every Australian State and Territory, the Uber smartphone app's dispatch of on-demand for-profit passenger transport services makes it a taxi dispatch service for which Regulator authorisation is required. Uber's self ascribed label of being a "platform" is misleading and inaccurate for the purpose of its consideration in the context of the Report (i.e. discussion of competitive markets for on-demand for-profit passenger transport services).

   b. "*Cars are reserved by sending a text message or using a smartphone app*."

      Uber's smartphone app only facilitates on-demand travel. It does *not* facilitate any reserving of cars, only the booking of cars for immediate travel.

      Uber's app does *not* facilitate the booking of cars using text messages. All bookings occur within the Uber app.

[4] *Australian taxi networks' smartphone phone apps were not run as separate or stand alone systems, they were fully integrated into their computer dispatch systems.*

[5] *Prudent business practice manages uncontrollable but foreseeably substantial risks through insurance. The gaps and deficiencies in insurance cover for "ridesharing services" has been the subject of warnings from the Insurance Council of Australia and 28 State Government Insurance Regulators in the USA.*

[6] *see page 15 paragraph 5 of the Report*

c. "*This type of 'on-demand ridesharing' was not envisaged when laws governing the taxi industry were drawn up."*

In March 2011, the Victorian Government commissioned a comprehensive inquiry for the purpose of reviewing and overhauling that State's taxi industry. Commissioners and staff of the Victorian Taxi Industry Inquiry (VTII) travelled extensively, including visiting the USA and Canada. The VTII published its draft report in May 2012 and its final report in December 2012. In 2013, the Victorian Government enacted a raft of significant legislative changes to give effect to 138 of the VTII's 139 recommendations. The Victorian Government claimed at the time that the changes constituted a major overhaul of Victorian taxi regulations.

Uber commenced operation in the USA in 2010, and launched its ridesharing service uberX in July 2012[7]. Uber was not the inventor of ridesharing services but rather a follower (imitator). The US companies Lyft (and its predecessor Zimride) and Sidecar launched ridesharing services prior to the uberX launch. Accordingly, it is factually wrong for the Report to suggest that the Victorian Government's regulatory changes did not know about (or envisage) "on-demand ridesharing" or that the Inquiry recommending those changes did not know about (or envisage) "on-demand ridesharing".

Victoria is not an isolated case. All Australian States and Territories periodically review and update their regulations in relation to for-profit passenger transport services. As far as the ATIA is aware, all or most State and Territory Governments undertook some form of review of their taxi regulations after the publication of the VTII final report in December 2012 (albeit not necessarily in response to that report).

The ATIA is unaware of any State or Territory that has legislation in relation to on-demand for-profit passenger transport services that has not envisaged, and made provision for –

- on-demand passenger transport service booking;
- electronic communication of on-demand passenger transport service bookings;
- cash and cashless payment systems for on-demand passenger transport services;
- minimum safety and quality standards for vehicles supplying on-demand passenger transport services;
- minimum safety and quality standards for drivers supplying on-demand passenger transport services; and
- computerised dispatch of on-demand passenger transport service bookings (based on complex algorithms using GPS data to optimise pick-up times).

The Report's statement may be true for some US jurisdictions but it is *not* factually correct or relevant for Australian jurisdictions.

[7] *Uber commenced operation in Australia in August 2012*

d. "*The regulatory response to this innovative development has varied across jurisdictions*."

The regulatory response to "ridesharing services" by Australian State and Territory Governments has *not* been particularly varied. State and Territory Governments have consistently declared "ridesharing services" to be illegal. They have followed up those public declarations by issuing Cease and Desist Notices in the first instance and Penalty Infringements in the second instance. In the ATIA's view, there is no basis in fact for the Report's assertion.

e. "*Internationally, the response to Uber has been quite different from that in Australia*."

The response to Uber's ridesharing service internationally has *not* been "*quite different from that in Australia*". Uber's "ridesharing service", uberX (or uberPOP in Europe), has been declared illegal in many US, Canadian, European and Asian cities. Like the Australian States, those cities have issued Uber and/or uberX drivers with Cease and Desist Notices and Penalty Infringements.

In the case of New York City (NYC), the Taxi & Limousine Commission (TLC) instituted no new laws to accommodate Uber's ridesharing service. In the face of consistent and determined enforcement of NYC rules by the TLC, Uber abandoned its ridesharing business model and so competes in the for-profit passenger transport market under (and compliant with) the same TLC rules that apply to all respective competitors.

The ATIA understands that this is also the case for Uber's operation in London (UK).

In the ATIA's view, the Report's assertion, as quoted above, is factually wrong and/or misleading.

f. "*Australian regulators have yet to demonstrate such flexibility and openness to new modes of business*."

This statement infers that Australian regulators have demonstrated "inflexibility" and have opposed innovation (at least in respect of "ridesharing services"). However, to date Australian regulators have simply sought to enforce their jurisdictions' current respective laws pertaining to on-demand for-profit passenger transport services.

In the ATIA's view, it is concerning that the Report, in September 2014, would seemingly contemplate a different response to a "ridesharing services" when these services only commenced operation in three (3) Australian cities in April 2014, and in some jurisdictions, significantly after April 2014. As far as the ATIA is aware, the April launches occurred without notice or consultation with any State Regulator or Government. If some regulatory accommodation was to be made for "ridesharing services", such as would be required in order to demonstrate the Report's favoured "*flexibility and openness*", it is difficult to imagine how that could have reasonably occurred within a

timeframe of just five (5) months[8]. For example, the regulatory accommodations seemingly contemplated by the Report would constitute a significant regulatory change and therefore should be subject to due process that would surely include preparation of a Regulatory Impact Statement and reasonable public consultation.

The Report's implied criticism of Australian Regulators' responses vis-à-vis the Californian Regulator's response to "ridesharing services" is particularly peculiar. As noted above, Uber launched its services in California sometime in 2010, and its uberX service in July 2012. California's Public Utilities Commission (CPUC) only enacted the new regulatory structure to legalise the operation of "ridesharing services" in September 2013 (i.e. a full 14 months later). In doing so, the CPUC overrode the will and advice of Californian city based regulators of on-demand for-profit passenger transport services, including the regulators in Los Angeles and San Francisco. Those city government regulators in particular remain highly critical of the CPUC action.

In the ATIA's view, it is completely disturbing that the Report, in its promotion of competition policy, should infer that a foreign owned private company be allowed a discretion to flout or ignore Australian law in pursuit of a business model that primarily serves its own interests of maximising offshore profits. The exercise of any such discretion by an Australian Regulator prima facie would be cause for investigation of possible corruption.

Such a proposition is also completely inconsistent with the Report's own correct assessment, that Australian consumers "…*expect laws to be clear, predictable and reliable and administered by regulators (and applied by the judicial system) without fear or favour.*"[9]

Lastly, the Report in seeking to raise some lack of "*flexibility and openness*" as an issue, seems to have lost sight of the presumption in the original Issues Paper that, "*Competition works best when there is a stable, certain and well understood legislative framework and effective design principles underpinning certain markets*." The Report's implied advocacy that Uber, and its business model, should be treated with "*flexibility and openness*" is incongruent with the presumption of a certain and level playing field for all competitors.

g. In the concluding three (3) sentences of Box 1.1, the Report appears to suggest some differences in approach between the Governments of New South Wales, Victoria and South Australia in relation to uberX or "ridesharing services". However, consistent with the comments above, all three (3) States have declared uberX to be illegal in their jurisdiction, all three (3) States have issued or signalled intention to issue severe financial penalties (fines) to drivers that are caught offering illegal uberX services, and Uber has reportedly pledged to pay uberX drivers' fines in all three (3) States. In the ATIA's view, the New South Wales Government's intention to review its position in respect of "ridesharing services" represents the only possible point of difference and even that may not exist. In not declaring an intention to review

[8] *The time from launch of UberX in April 2014 to publication of the Report in September 2014.*

[9] *see page 20 paragraph 1 of the Report*

their position in relation to "ridesharing services", it can hardly be assumed that the Victorian and South Australian Governments have no such intention or would be in opposition to such intention. As noted above, it is commonplace for all State and Territory Governments to periodically review their regulations in relation to on-demand for-profit passenger transport services.

In summary, the factual errors in Box 1.1 render it irretrievably flawed. In the ATIA's view, it was also improper for the Report to present whatever points it sought to make in the manner of Box 1.1. Uber is not a unique or sole provider of "ridesharing services" in the global or Australian marketplace. Uber cannot even lay claim to being the inventor of "ridesharing services" as a concept or the first provider of such services. There is simply no reasonable justification for Box 1.1 discussing "ridesharing services" by exclusive reference to Uber. The singling out of an individual, private company (Uber) and one of its products (uberX) for implied endorsement represents a serious failure of impartiality and objectivity.

The ATIA recommends the Report be amended by the deletion of Box 1.1.

8. On page 24 in Draft Recommendation 1, the Report presents a set of Competition Principles that are proposed to be subject to a public benefit test. While the discussion of the Competition Principles is largely consistent with historical perspectives, it fails to acknowledge the progress that has been made in the wider field of Regulatory Reform.

   In the ATIA's view, the Report's perspective on regulatory review is too narrow. All primary and subordinate legislation should be reviewed according to schedules determined by the respective Government that enacted the legislation and these schedules should be prioritised to optimise the public benefits anticipated from respective legislative or regulatory reviews. In a post Hilmer / National Competition Policy environment, there is no compelling reason for Competition Policy to be treated as a special case. All legislative and regulatory reviews should be conducted transparently and objectively, applying the broadly accepted criteria for such reviews, namely that regulatory restrictions should satisfy each, and all, of the following for criteria for retention –

   - an Appropriateness test (i.e. in the absence of the regulation some harm or disadvantage would occur – e.g. through a market failure);
   - an Effectiveness test (i.e. the regulation prevents or mitigates the harm or disadvantage identified in the Appropriateness test);
   - an Efficiency test (i.e. the regulation is the least cost solution to preventing or mitigating the harm or disadvantage identified in the Appropriateness test AND its cost is less than the costs associated with the harm or disadvantage).

The ATIA recommends the Report be amended to promote advancement of Competition Policy within the broader framework of Regulatory Reform rather than as a special case.

9. On page 25 in paragraph 2, the Report lists five (5) questions to be asked in determining priority areas for Competition Policy reform. The Report then promotes that an answer of "yes" to any of the questions would place the reform on the "*Panel's priority list*".

In the ATIA's view, the logic underpinning this prioritisation scheme is seriously flawed. It seemingly assumes that the costs of reform processes are not a material consideration and/or that Competition Policy reform processes do not, or should not, compete for scarce Government and industry resources (including with other reform processes). However, neither of these assumptions is realistic.

In the ATIA's view, Competition Policy reform should itself be subject to a public benefit test. If there is to be a "*Panel's priority list*", the simple prerequisite for entry onto such a list should be a reasonable expectation that a reform will produce measurable, material Net Public Benefit (i.e. not just theoretical benefits but real, bankable benefits in excess of the full costs of the reform process). The Report should strengthen the role of public benefit tests by also recommending that each reform process be subject to post implementation review in which all costs and benefits are transparently and objectively measured and these results published publicly.

As a case in point, the Report's proposition that any reform that may "*complete unfinished business from the original NCP agenda*" should be automatically added to the "*Panel's priority list*" is not a satisfactory proxy for Net Public Benefit.

The ATIA recommends the Report be amended to promote a prioritisation regime that reflects reforms' respective expected contributions to Net Public Benefit.

10. On page 29 in paragraph 11, the Report states that, "*Regulation limiting the number of taxi licences and preventing other services from competing with taxis has raised costs for consumers, including elderly and disadvantaged consumers, and hindered the emergence of innovative transport services*". While such an assertion is often repeated by theoretical economists, it lacks empirical rigour or substantiation. In contradiction of these hypothesised outcomes, in comparable jurisdictions where quantity restrictions on taxis have been removed, taxi fares (trip prices) have consistently increased and not decreased. Also, the removal of quantity restrictions has resulted in –

    a. degraded service levels to people with disability, especially where delivered by wheelchair accessible vehicles;

    b. higher levels of short trip (or fare) refusal, which disproportionately impact pensioners and the elderly; and

    c. "redlining" of low socio-economic areas, which disproportionately impacts disadvantaged members of the community.

    In the ATIA's view, it is unbalanced for the Report to ignore the empirical evidence from jurisdictions that have temporarily or permanently removed quantity restrictions on taxis. If the Panel wants to promote the hypothesised view expressed in the Report, a notation should be provided to readers alerting them to the fact that it is a hypothesised view. Moreover, the Report should also note that the empirical evidence does not support the hypothesised view, and note that on weight of balance the empirical evidence compellingly refutes any reasonable prospect that the removal of quantity restrictions on taxis will deliver lower prices for taxi consumers or a Net Public Benefit.

The ATIA recommends the Report be amended by deletion of the second (2nd) sentence of paragraph 11 on page 29 or by its qualification using the information supplied above.

11. On page 29 in paragraph 12, the Report infers that the regulation of taxi and hire car services may currently operate simply, or perhaps only, to restrict competition or support a particular business model. In the ATIA's view, there is no factual basis for the inference. Moreover, if that is the intended interpretation of paragraph 12, such a slur significantly diminishes the Report's credibility.

    State and Territory Governments develop and enact legislation for the enjoyment, advancement and protection of their respective communities. In Australia's democratic system, those same State and Territory Governments are ultimately held responsible for their actions and inactions by their respective communities. State and Territory regulations covering on-demand for-profit passenger transport services do not exist outside of, or exempt from, the normal legislative process or democratic system.

    Unless the Report presents factual evidence to the contrary, it is improper for it to propose any other motive for State and Territory taxi regulation other than that it was intended to serve and promote the best interests of its respective community – i.e. Net Public Benefit.

    The ATIA recommends the Report be amended by deletion of the words "rather than restricting competition or supporting a particular business model" from the end of the first (1st) sentence of paragraph 12 on page 29.

12. On page 30 in Draft Recommendation 6, the Report advocates that taxi reforms should "*remove regulations that restrict competition in the taxi industry, including from services that compete with taxis, except where it would not be in the public interest*". As noted consistently in this submission, in the ATIA's view the focus of any review and reform of taxi regulations should be the best promotion of Net Public Benefit. It is completely inappropriate for the Report to pre-empt any independent and objective taxi regulation review by prescribing that their outcomes. Furthermore, as currently expressed, Draft Recommendation 6 Report does not advocate or require a regulatory review, any regulatory impact analysis or any public consultation. In the ATIA's view, this would be completely unsatisfactory for any regulatory reform process.

    In Draft Recommendation 6 there is also an expanded role proposed for "*independent regulators*". As noted later in this submission the ATIA does not support any such expanded role[10].

    The ATIA recommends Draft Recommendation 6 be amended to advocate State and Territory Governments conduct taxi regulation reviews and implement reforms that serve to promote the best Net Public Benefit in their respective jurisdictions. The ATIA also recommends Draft Recommendation 6 be amended by deletion of its second (2nd) paragraph and its promotion of an expanded role for independent regulators.[11]

13. On page 34 in Draft Recommendation 11, the Report advocates the overseeing of Regulatory Reviews by a new body, the Australian Council for Competition Policy. In the ATIA's view, the proposal is inefficient and redundant. All Australian Governments should be responsible for the review of their respective

[10] *see comments re page 139 paragraph 7*

[11] *see also comments re page 139 paragraph 3*

legislation. The public interest is best served by those Governments, and their performance in maintaining and/or reforming their statute book, remaining accountable to their communities through the democratic process.

The ATIA supports Draft Recommendation 11's advocacy for regulatory reviews to be transparent and subject to a public benefit test.

In the ATIA's view, Draft Recommendation 11 is deficient in only advocating identification of the "*highest priority areas*" and only the publishing of "*results with timetables for reform*". A better approach would include the establishment of a comprehensive, prioritised review schedule by each Government for its whole statute book (not just highest priority areas) and the publication of that schedule as a ten (10) year rolling program (rather than just a series of ad hoc exercises). A better approach would also include a commitment to public consultation that involves full and timely disclosure of all inputs, analysis and outputs of the review process (not just results and timetables for reform).

The ATIA recommends Draft Recommendation 11 be amended to advocate comprehensive, prioritised regulatory review schedules and a holistic approach to transparency.

14. On page 35 in Draft Recommendation 13, the Report advocates that all Australian Governments should review their competitive neutrality policies and that the proposed Australian Council for Competition Policy should oversee the process. The ATIA supports the undertaking of these reviews but strongly believes that there is no need for involvement by the proposed Australian Council for Competition Policy. The proposition is inefficient. The existing Productivity Commission is more than capable of performing any oversight role if required.

The ATIA recommends Draft Recommendation 13 be amended to advocate the Productivity Commission oversee the review of competitive neutrality policies.

15. On page 36 in Draft Recommendation 14, the Report advocates annual reporting of competitive neutrality complaints to the proposed Australian Council for Competition Policy. The ATIA does not support the proposition because it is unnecessary and inefficient.

    The ATIA does support certain elements of Draft Recommendation 14, namely for -

    - investigation of complaints by bodies independent of government; and
    - governments to respond publicly to the findings of complaint investigations.

The ATIA recommends Draft Recommendation 14 be amended by deletion of the third (3rd) dot point referring to annual reporting to the Australian Council for Competition Policy.

16. The ATIA supports Draft Recommendation 44 in principle and would be very interested to participate in the development of simplified cartel provisions.

17. On page 50 in paragraph 9 and page 51 in paragraph 1, the Report canvasses the possible expansion of "*laws concerning false, misleading or deceptive*

conduct to organisations involved in public advocacy campaigns". As a not-for-profit (NFP) industry organisation, the ATIA is very aware of the significant financial disadvantages that confront community or industry advocacy bodies when conducting public campaigns against large, trans-national companies. While there should be no licence granted to NFPs to lie, mislead or deceive, it would also be the ATIA's view that NFPs should be provided with every possible protection from disingenuous, malicious or obstructive litigious action. Accordingly, on balance the ATIA does not support removal of the environmental and consumer exception to the secondary boycott prohibition.

18. The ATIA supports Draft Recommendation 34 in principle and would be very interested to participate in the development of simplified authorisation and notification provisions.

19. The ATIA supports Draft Recommendation 35 in principle and would be very interested to participate in the development of a block exemption framework.

20. The ATIA does *not* support Draft Recommendations 39, 40, 41, 42 or 43 in their advocacy for the establishment of the Australian Council for Competition Policy, and the proposing of its role, powers and responsibilities.

    In the ATIA's view, the establishment of Australian Council for Competition Policy is premised on an exaggerated understanding of Competition Policy's role and contribution within the broader Regulatory Reform agenda. The new structure is unnecessary when Competition Policy is more appropriately understood to be merely a subset or consideration within that broader agenda.

    In the ATIA's view, Competition Policy should be viewed as a servant for the improvement of Net Public Benefit. They are not equal or synonymous. Competition Policy, and the broader Regulatory Reform agenda are "means" and improved Net Public Benefit is the "end".

    In the ATIA's view, Net Public Benefit is not advanced by wasteful reorganisation of institutions and government bureaucracies. It is advanced by lean, efficient administrations presiding over systems that tend towards being self-sustaining and that require minimalistic intervention. The establishment of the proposed Australian Council for Competition Policy presents as an unquantified and unfunded drain on the public purse and one that may likely cause diversion of much needed resources away from the Australian Competition and Consumer Commission (ACCC) and the Productivity Commission (PC).

The ATIA recommends Draft Recommendations 39-43 be amended by –

- ***abandoning the establishment of the Australian Council for Competition Policy;***
- ***culling those roles, powers and responsibilities proposed for the Australian Council for Competition Policy that have establishment plus maintenance costs in excess of the quantifiable savings realisable by their existence; and***
- ***reassigning any surviving roles, powers and responsibilities proposed for the Australian Council for Competition Policy to existing institutions or government departments, with preference being given to the PC and the ACCC.***

21. The ATIA does not support Draft Recommendation 44 and its advocacy for a framework to support Competition Payments. In the ATIA's view, the proposition that Competition Policy requires systemic support through Competition Payments is without merit.

    Regulatory Reforms should be promoted and implemented on the strict condition that they will realise an improvement in Net Public Benefit and not on the basis that they may artificially facilitate or engineer a redistribution of Commonwealth resources to become State resources. In the ATIA's view, the Report is naïve and deficient in not recognising the potential harm caused to Regulatory Impact Analysis in the presence of the distorting effects of Competition Payments.

    (This is particularly curious for a Report promoting Competition Policy given Competition Policy's default preference for the removal of interventions that result in price / cost distortions. The ATIA would have expected the Panel to be alert to the dangers and harm associated with Government sponsored or initiated cost / price distortions.)

    The ATIA recommends Draft Recommendation 44 be amended to treat Competition Payments as an intervention of last resort that is customised case by case, based on analysis performed by the Productivity Commission.

22. The ATIA supports, in principle, the option in Draft Recommendation 47 in respect of the ACCC whereby the current Commission is replaced "…*with a Board comprising executive members, and non-executive members with business, consumer and academic expertise."*

23. The ATIA supports Draft Recommendation 48 in principle and would be very interested to participate in the development of a media code of conduct for the ACCC.

24. The ATIA does not support Draft Recommendation 49 as presented because it is viewed as completely inadequate. The Report appears to accept as a given that the ACCC is under resourced to investigate all of the complaints it receives. This position is incompatible with the Report's statement that, "*Competition policy is about making markets work properly*."[12] In the ATIA's view, the Report is compelled to promote solutions that allow the ACCC to administer an efficient and fully effective complaint resolution system.

    In the ATIA's view, Draft Recommendation 49 requires significant augmentation.

    The ATIA recommends Draft Recommendation 49 be amended to include –

    - ***a major overhaul of the ACCC's complaint handling system;***
    - ***a stricter reporting regime for the ACCC's complaints handling system's performance to parliament; and***
    - ***additional funding for the ACCC***

25. On pages 137-139 in the section headed, Taxis, the Report includes many factual and deductive or extrapolative errors.

[12] *see page 15 paragraph 5 of the Report*

On page 137 in paragraph 4, the Report promotes an inadequate categorisation of taxi regulations by asserting that they focus on only two (2) areas, namely -

- service quality; and
- quantity restrictions.

The report's categorisation fails to accommodate the significant number of taxi regulations that are purely directed at safety for passengers or safety for drivers. It also fails to accommodate the significant number of taxi regulations that are purely directed at promoting equity, especially for people with disability or of disadvantage.

A better and more accurate categorisation of taxi regulations would include at least the following five (5) foci –

- safety (passengers & drivers);
- access (all hours, all areas, no discrimination);
- affordability (no price gouging);
- efficiency; and
- service quality.

The ATIA recommends the Report be amended to reflect at least the five (5) foci nominated above.

On page 137 in paragraph 5, the Report states that quality regulations "*appear to impose little cost on the taxi industry*". This is simply *not* true. There are significant costs borne by taxi drivers, taxi operators, and taxi networks in complying with the respective taxi regulations that apply to them. It follows that these costs are reflected in the taxi fare structures set by State and Territory Governments, and so, are passed onto taxi customers. Nonetheless, the conclusion to the statement, namely that these regulations do not significantly restrict competition between taxi services, would in fact be true.

The ATIA recommends the Report be amended so that the regulatory cost burden on the taxi industry is acknowledged. In doing so, the Report's conclusion that this burden does not significantly restrict competition between taxi services, but effectively establishes the level playing field for that competition, should be retained.

On page 137 in paragraph 6, the Report states that quantity restrictions on taxi licences (or permits) have "*the effect of limiting responsiveness to consumer demand"*. As noted already in this submission, in contradiction to such hypothesised outcomes, in comparable jurisdictions where quantity restrictions on taxis were removed, it resulted in –

- degraded service levels to people with disability, especially where delivered by wheelchair accessible vehicles;
- higher levels of short trip (or fare) refusal, which disproportionately impact pensioners and the elderly; and
- "redlining" of low socio-economic areas, which disproportionately impacts disadvantaged members of the community.

The removal of quantity restrictions on taxis typically results in higher taxi numbers in nodal hubs such as airports and central business districts (CBDs), and less taxi numbers in low population density areas, such as fringe suburbs. As far as the ATIA is aware, there are no post hoc research studies that have concluded the resulting oversupply of taxis at airports and CBDs provided a Net Public Benefit (i.e. adequate compensation for the undersupply of taxis servicing suburban areas or people with disability or of disadvantage) such that the removal of quantity restrictions could be reasonably justified.

The ATIA recommends the Report be amended by deletion of the second (2nd) sentence of paragraph 6 on page 137.

On page 137 in paragraph 6, the Report states that, "*New taxi licences are typically issued on an infrequent and ad hoc basis with different sale methods resulting in large variations in sale price*". The statement is not universally or even generally factual. Many jurisdictions frequently review taxi licences and consistently release licences when those reviews recommend such action. Some jurisdictions in fact regularly release taxi licences. As far as the ATIA is aware, all taxi licence releases by Governments tend to attract "sale prices" that reflect the prices trading in the respective private markets for like taxi licences. Irrespective of other inaccuracies in the statement it is simply not true for the Report to assert that "*large variations in sale price*" result from the review and release processes adopted by respective State and Territory Governments. Prices of taxi licences are set by the forces of supply and demand for those licences – i.e. the competitive forces prevailing in the respective taxi licence market.

The ATIA recommends the Report be amended by deletion of the first (1st) sentence of paragraph 7 on page 137.

On page 137 in paragraph 8, the Report notes that the taxi industry was "*virtually unique among customer service industries in having absolute limits on the number of service providers*." In paragraph 10 (p137), seemingly as a counter to the ATIA's explanation for quantity restriction quoted in paragraph 9 (p137), the Report states that, "*However, most service industries face variable demand, and businesses are able to operate without regulation limiting the number of operators."*

In relation to paragraphs 8-10 (p137), the ATIA agrees –

- quantity restrictions on the number of service providers in a market are not common within general service industries (para 8);
- with its own comments about quantity restrictions (para 9); and
- most service industries can, and should, operate without quantity restrictions on the number of service providers (para 10).

Notwithstanding these points of agreement, the Report's discussion of quantity restrictions on taxi licences is fundamentally flawed by *not* acknowledging that there are characteristics of taxi services that distinguish them from other services. Taxi licences afford rights to provide on-demand for-profit passenger transport services but they are also encumbered (or burdened) with very significant obligations. A taxi licence allows the holder of the licence to ply-for-hire 24 hours per day and 7 days per week (i.e. 24/7) anywhere within the

respective taxi licence area (unless conditioned otherwise). However, operating in conjunction with that right is an obligation for service to be made available 24/7, everywhere within the respective taxi licence area, without any discretion to refuse to provide service (except in extreme circumstances) and at prices set by Governments. These obligations are separately enforceable on individual licence owners but normally they are fulfilled in the collective actions, and joint venturing, of licence owners, operators and drivers.

It is very unusual for service providers not to have independent and autonomous discretion to determine their hours of operation, the location where their services will be provided, and who they will target and accept as customers. In the exercising of those discretions, service providers enjoy very considerable freedom. They may, and probably will, elect *not* to offer services when demand is insufficient to cover operating costs (their non-business hours). They may, and probably will, elect *not* to offer services in or to locations that are inconvenient. They are under *no* obligation to provide services at prices that serve a public interest but are unattractive or unprofitable for them.

Taxi licence owners in the collective have no such discretions and it is the absence of these discretions (or autonomy) that makes the taxi industry "*virtually unique*" within the Australian economy. In not acknowledging this point, the Report and its recommendations in relation to the taxi industry are fundamentally flawed.

The ATIA recommends the Report be amended to include an acknowledgement that the taxi industry is unique and therefore warrants different consideration to other service industries.

On page 138 in paragraph 1, the Report states, "*The scarcity of taxi licences has seen prices paid for licences reach over $400,000 in Victoria and NSW, which indicates significant rents in owning a licence and is at odds with the claim that licence numbers are balanced given market conditions*." Again, this appears to be presented as some form of repudiation of the ATIA's comments that are quoted in paragraph 9 on page 137.

However, any deeper analysis of taxi licence values would show that they vary widely across Australia, from $1.00 to more than $500,000. It would show that licence values move unpredictably in direction and timing, and they are not materially different in that regard to share prices on the Australian stock market. It would show that there is no significant correlation between average, median or modal taxi fares and the respective taxi licence prices. Lastly, it would show there is no significant correlation between demand and/or supply for taxi services in an area and the respective taxi licence values.

The Report's inference that taxi licence values, as currently valued in jurisdictions across Australia, are somehow "*at odds with*" or repudiate "*the claim that licence numbers are balanced given market conditions*" seeks to assert a causal relationship when it is not even possible to find evidence of a statistical relationship. Inconveniently for the Report, valid and reliable data sets are available for taxi licence values, taxi demand and taxi supply. Analysis of that data does not support any hypothesis whereby an undersupply of taxi licences produces (causes) a particular or high taxi licence value and/or conversely an oversupply of taxi licences produces (causes) a low or zero taxi licence value. The Report's speculative conclusion is invalid and unreliable.

The ATIA recommends the Report be amended by deletion of paragraph one (1) on page 138.

On page 138 in paragraph 2, the Report notes the estimates by IPART of the impact of quantity restrictions on (NSW) taxi fares. Unfortunately, the IPART analysis is typical of desktop modelling that fail to monetise and include fleet and other efficiencies that are realised by quantity restrictions and that are lost by their removal.

Empirically, the removal of quantity restrictions has generally led to exponential increases in taxi fleet numbers. However, the removal of quantity restrictions has rarely, if ever, generated any significant increase in demand for taxi services[13]. Logically, the relatively same demand spread across a much larger vehicle fleet seriously erodes utilisation efficiencies whether measured by trips by vehicle or trips by driver shift.

It should also be noted that exponential increases in fleet numbers will in due course lead to higher environmental and economic costs (e.g. road and kerbside congestion costs, higher vehicle emissions resulting from less fuel efficient vehicles and higher amounts of "dead running" and idle "cruising", etc).

The ATIA recommends the Report be amended to include a notation that the IPART estimates are based on desktop modelling which is inconsistent with empirical results in jurisdictions that have removed quantity restrictions.

On page 138 in paragraph 3, the Report notes that the taxi industry, nationally and jurisdiction by jurisdiction, has been subject to reviews for more than twenty (20) years. The Report then states, "*However, apart from recent reforms in Victoria (see Box 9.3) there has been little reform undertaken. The Victorian case demonstrates that change for the benefit of consumers is possible*." The Report then proceeds to expand on the virtues of the Victorian taxi reforms in Box 9.3.

In the ATIA's view, the Report's enthusiasm for the Victorian taxi reforms is completely misplaced. Working through the dot points of Box 9.3, point by point is illustrative –

- "*increased pay*" for taxi drivers *cannot* reasonably constitute a public benefit for Competition Policy purposes although "*higher standards for drivers*" could if any higher standards are achieved and they flow through to benefit consumers (NB the new Knowledge Test to date has been a debacle);
- "*improvements to the fare structure*" included an overall increase of more than 12% on 19 May 2014 which *cannot* reasonably constitute a public benefit for Competition Policy purposes (NB no other jurisdiction has had an increase in taxi fares anywhere near this magnitude);
- "*cutting the service fee for card payments*" actually involved the replacement of market determined fees with a 5% cap arbitrarily set by

[13] *Proponents of removing quantity restrictions typically include unrealistic (and unrealised) predictions for significant demand growth in their modelling. Unfortunately for those models, removal of quantity restrictions typically results in higher overall trip prices and reductions in overall service quality, which in combination serve to dampen or retard any upward pressure on demand.*

the Government so this again *cannot* reasonably constitute a public benefit at least for Competition Policy purposes (NB a benefit for consumers but delivered by more not less regulation);

- "*regulated fares moving from prescribed fares to maximum fares*" simply brought Victoria into consistency with the regulation of taxi fares in other States and Territories, so in substance and effect this *cannot* constitute a public benefit for Competition Policy purposes (at least vis-à-vis taxi regulation in other Australian States and Territories);
- introduction of regulations for a "*zoning system*" *cannot* reasonably constitute a public benefit for Competition Policy purposes (i.e. this is more not less regulation);
- "*opening the market with the TSC issuing new licences as the market demands*" possibly may constitute a public benefit for Competition Policy purposes (NB to date this reform has yet to spawn any new business models or service innovations);
- the new "consumer interest test" in regional areas effectively just brought Victoria into consistency with the regulatory approaches of other States and Territories, so in substance and effect this does *not* constitute a public benefit for Competition Policy purposes (at least vis-à-vis taxi regulation in other Australian States and Territories);
- "*enabling taxis and hire cars to compete for contract work*" effectively just brought Victoria into consistency with the regulatory approaches of other States and Territories, so in substance and effect this does *not* constitute a public benefit for Competition Policy purposes (at least vis-à-vis taxi regulation in other Australian States and Territories); and
- "*removing the requirement to offer taxi services on a continual basis*" maybe a benefit to service providers but *cannot* reasonably constitute a public benefit for Competition Policy purposes (NB no benefit for consumers).

The Victorian Reforms have unequivocally increased, not reduced, the quantum and complexity of regulatory burden and intrusion on taxi services in Victoria. They also did not produce a regulatory system that is efficient to administer. The new Victorian taxi regulator, the Taxi Services Commission, has the highest ratio of Full Time Equivalents to taxis (FTEs:taxis) of any taxi regulator in Australia.

As a final area of concern, the Victorian Taxi Industry Inquiry did not institute any benchmark measurement of taxi service efficiency or effectiveness at the start of its enquiry or at anytime during its inquiry. Similarly, the Victorian Government and its Taxi Service Commission did not institute any benchmark measurement of taxi service efficiency or effectiveness prior to implementation of the reform package. In such circumstances, it is entirely unreliable for the Report to present the Victorian approach to taxi reform as a model for other States or Territories, or as a process delivering outcomes congruent with Competition Policy (i.e. quantifiable Net Public Benefit).

The ATIA recommends the Report be amended by deleting the last two (2) sentences of paragraph 3 on page 138 and deleting Box 9.3.

On page 138 in the last paragraph, the Report suggests that technological change is "*disrupting*" the taxi industry and "*forcing change upon it".* The Report then asserts that "*traditional booking methods are being challenged by the*

emergence of apps such as GoCatch and ingogo…". This view assumes that goCatch and ingogo were innovators when launching their smartphone taxi booking apps respectively in June 2011 and August 2011. However, major taxi networks such as CCN in Sydney, 13Cabs in Melbourne and Swan Taxis in Perth launched their respective smartphone taxi booking apps in November 2009, March 2010 and December 2010 – well in advance of goCatch and ingogo. To characterise the taxi industry as other than an embracer and adopter of new technology is a fiction.

By the time Uber commenced operation in Sydney in late 2012, every major taxi network in Australia had a smartphone app available for their customers to book taxi services.

The ATIA recommends the Report be amended to acknowledge the early adoption of new technologies by the Australian taxi industry.

On page 139 in paragraph 1, the Report states that "*regulatory agencies have been questioning [Uber's] legality and fining [its] drivers…*". However, State and Territory Governments and Regulators have consistently declared Uber's ridesharing service, uberX, to be illegal. The position of regulatory agencies cannot reasonably be described as "*questioning*". Such a proposition is inconsistent with the Report's own acknowledgement that uberX drivers have been issued with fines by those same State and Territory regulatory agencies. If the illegality of uberX services was open to question in the minds of taxi regulators, uberX drivers would not be continuing to receive fines.

Later in the same paragraph, the Report states the actions of the regulatory agencies are, "*notwithstanding considerable public demand for its [Uber's] services*." There is no reliable or valid data in the public domain quantifying the demand for Uber's services or Uber's performance supplying services in response to any demand. As far as the ATIA is aware, Uber has not supplied any data directly to the Competition Policy Review, either publicly or confidentially. Of concern, it follows that the Report has presented as accepted fact comments that are simply marketing spin and hyperbole from a company that has a reputation for exaggeration.

Compounding this error, the Report appears to have recycled Uber's public relations or marketing rhetoric that, "*existing regulation is more concerned with protecting a particular business model than being flexible enough to allow innovative transport services to emerge*." As previously noted, Regulators declaring services to be legal or illegal is not a matter of discretion but a matter of fact. Furthermore, any notion that Regulators should resile from such declarations, and subsequent enforcement actions, is entirely troubling. Apart from the suggestion of corruption, it is completely inconsistent the Report's own assessment that the community rightly "*expect laws to be clear, predictable and reliable and administered by regulators (and applied by the judicial system) without fear or favour*."[14]

The ATIA recommends the Report be amended by deleting from paragraph one (1) on page 138 any –

- ***promotion of the company, Uber;***

[14] *see page 20 paragraph of the Report*

- ***unsubstantiated doubt about the illegality of the uberX service;***
- ***unsubstantiated speculations about demand for Uber's services;***
- ***unsubstantiated speculations about the "concerns" of legislation and/or enforcement agencies when duly upholding of the law.***

On page 139 in paragraph 3, the Report correctly notes that, "*taxi reform is not expected to make a major contribution to national productivity…*". In the ATIA's view, the logical consequence of this statement is compelling, namely that taxi reform does not warrant inclusion on the Panel's list of reform priorities. State and Territory Governments should be left to sovereignly determine the timing, direction, and extent of reviews and reforms for their respective taxi regulations.

The ATIA recommends the Report be amended so that Draft Recommendation 6, if retained, includes a notation that taxi reform is a matter for respective States and Territories and not a matter of priority for Competition Policy at the Commonwealth level.[15]

On page 139 in paragraph 4, the Report casts taxi regulation reform as a matter of "*longstanding failure*" and as something that has "*undermined the credibility of governments' commitment to competition policy*". However, for this to be true it would also need to be the case that Australian taxi services would have to be inferior to taxi services in comparable overseas jurisdictions, and particularly jurisdictions that have removed quantity restrictions. Any such proposition though cannot be sustained empirically. On any comprehensive set of objective performance measures, Australian taxi services outperform their counterparts in overseas jurisdictions. It follows then that the Report's comments are irreconcilable with its statement that, "*the Panel endorses the 'public interest' test as a central tenet of competition policy…*"[16].

The current state of the Australian taxi industry *not* does represent any failure of regulatory review or regulatory reform. As noted in the comments above in relation to paragraph 3 and Box 9.3, it is a fiction for the Report to hold out the Victorian taxi reforms as a model for other States and Territories.

The ATIA recommends the Report be amended by deleting paragraph 4 on page 139.

On page 139 in paragraph 5, the Report advocates a two-fold focus for taxi reforms, namely, "*to reduce or eliminate restrictions on the supply of taxis that limit choice and increase prices for consumers; while ensuring that technological change that can benefit consumers is not discouraged*." As noted consistently in this submission, in the ATIA's view the focus of any review and reform of taxi regulations should be the best promotion of Net Public Benefit. It is completely inappropriate for the Report to pre-empt any independent and objective taxi regulation review by prescribing that the outcomes must be the recommendation of reductions or removal of quantity restrictions.

The ATIA recommends the Report be amended to recommend the focus of taxi regulation reviews and reforms to be the best promotion of Net Public Benefit.

[15] *see also comments re Draft Recommendation 6*
[16] *see page 24 paragraph 3 of the Report*

On page 139 in paragraph 7, the Report advocates increasing the powers of "*independent regulators*". The proposition appears to be suggesting that State and Territory Governments should abdicate their responsibility to set and administer taxi regulation in favour of independent bodies that are not accountable to their respective community. Any such proposition cannot be supported by the ATIA.

Moreover, by passing decision making responsibilities over to independent bodies, it would follow that these bodies' capacity to independently review regulatory decisions and provide objective advice to Governments would be seriously compromised. Any such outcome also appears to be without merit.

The ATIA recommends the Report be amended by deletion of paragraph seven (7) on page 139.

On page 139 in paragraph 8, the Report states that, "Mobile technologies are emerging that compete with traditional taxi booking services...". As noted already, the mobile technologies to which the Report refers were already adopted and embraced by the taxi industry prior to their use by other parties offering on-demand for-profit passenger transport services. In fact, the new smartphone apps were fully integrated into the taxi industry's booking and dispatch systems. It is both illogical and wrong to assert that these "*mobile technologies*" are somehow competing with "*traditional taxi booking services*".

The ATIA recommends the Report be amended by deletion of the first sentence of paragraph 8 on page 139.

Finally, should you require any further information or clarification in regard to any matter raised in this letter, I can be contacted directly on (07) 3467 3560.

Yours sincerely

Blair Davies
Chief Executive Officer