

Modernizing Regulation in the Canadian Taxi Industry

1. Introduction¹

The “check engine” light is glowing on the dashboard of the Canadian taxi industry. What has traditionally been a tightly controlled business is now threatened by ride-sharing services that operate outside existing regulations. These new services, like Uber and Lyft, use technology to deliver advanced offerings that can sometimes provide cheaper, higher-quality services for Canadian consumers. Much-maligned taxi operators, bound by existing regulatory rules, are calling on cities to do something about these entrants. Regulators need to make sure that their rules get the overhaul they desperately need, before the whole taxi system seizes up.

The source of the current friction in the Canadian taxi industry is the lack of an even playing field. Traditional taxi operators are constrained by regulations. In many jurisdictions, they cannot vary their prices in response to consumer demand. They must operate certain types of vehicles. Only a limited number of them can be on the road. The list goes on. But then you have new providers who do not follow similar rules.

This leaves the regulators, Canadian municipalities and provinces, in a tough spot. They are trapped between maintaining their existing systems, which severely restrict competition but provide for oversight and public safety, and the demands of consumers, who are attracted to the low prices and high service levels of innovative new providers. Some regulators have tried to use law enforcement and the court system to bring everyone up to the existing standard of regulated taxis, with mixed results for businesses and more negative results for consumers.

The good news is that developments to date point to a clear way forward: If the old ways cannot bring about a satisfactory solution, then all that is left is to embrace change.

Regulators need to allow the forces of competition to shape how the industry will move forward. This demands a re-think of existing regulations to provide an even playing field upon which ride providers can compete. Ultimately, regulations on taxis need to be relaxed, and regulations on new providers may need to be increased to ensure that legitimate policy objectives like public safety are met. What is central to this exercise is ensuring that regulations are no more intrusive than necessary, so the competitive forces can influence how the industry evolves and innovates.

2. Canada’s Taxi Industry

¹ Various municipalities are examining the issue of taxi regulation, and have agreed to receive the Competition Bureau’s input on these issues. The following views are provided by the Commissioner of Competition pursuant to section 126 of the Competition Act, which provides authority for the Commissioner to make representations to provincial, and thus municipal, bodies.

Governments have traditionally regulated taxi services so that they are provided in a safe, predictable, and straightforward manner. To fulfill this public interest role, regulators generally create rules that govern taxi price levels, vehicle safety and insurance requirements, minimum quality standards for service, and entry restrictions in the form of limits on the number of taxi licences (also known as “plates” or “medallions”) that are available within a jurisdiction.

Most municipalities do not issue new taxi plates every year, but rather conduct periodic reviews and issue them based on population growth or other policy considerations. While some taxi drivers may own their plate, others must rent from a taxi brokerage or other private party. In some cities, a substantial share of the available plates are held by owners who do not drive taxis themselves, but instead hold them for rental income or investment purposes.

The release of new plates has rarely kept pace with demand for taxi services,² resulting in a situation whereby plate owners may accrue significant economic rents³ from artificial scarcity. These rents are reflected in the high prices that have traditionally been paid for plates both domestically and abroad; for example, when prices were at their peak, the cost of a single standard taxi plate could reportedly be as high as CDN \$360,000 in Toronto,⁴ AUD \$390,000⁵ in New South Wales, and over USD \$1 million in New York City.⁶ These high prices are of benefit to plate owners but not drivers.

When a limit is placed upon the number of taxis operating in a city, consumers of taxi services have fewer service providers from which to choose. This may lead to higher prices⁷ and poorer quality of service, including long waiting times, unkempt cars, and unpleasant service from drivers. Taxis may be particularly difficult to obtain at certain

² City of Ottawa Taxi and Limousine Regulations and Service Review, "Taxi Economics — Old and New" (October 10, 2015) at page 4.

³ An economic rent from artificial scarcity (sometimes called "monopoly rents") is a wealth potential due to restrictions on other potential competitors, such as barriers to entry (See, for example, Armen A. Alchian, "Rent" in John Eatwell, Murray Milgate and Peter Newman eds., *The New Palgrave: A Dictionary of Economics* (Macmillan Press Limited, 1987)). An important distinction between monopoly rents and scarcity rents or quasi-rents is that the former often lead to allocative inefficiency (i.e., deadweight loss) for the economy.

⁴ City of Ottawa Taxi and Limousine Regulations and Service Review, "Case Studies" (October 1, 2015) ("Ottawa Taxi Review Case Studies") at page 11.

⁵ Ian Harper, Peter Anderson, Su McCluskey and Michael O'Bryan QC, "Competition Policy Review Final Report" (March 2015) ("Australian Competition Policy Review") at page 132. See also Australian Productivity Commission, "Regulation of the Taxi Industry Commission Research Paper" (1999) ("Australian Productivity Commission") at page 15.

⁶ Matt Fregeneimer, "\$1 Million Medallions Stifling the Dreams of Cabdrivers", *New York Times* (November 14, 2013).

⁷ For example, regulated rates are largely based on the average costs of operating a taxi. In this case, entry restrictions may allow more inefficient taxi operators to remain in the market, increasing the average cost and thus the regulated price.

times of high demand,⁸ including evenings and weekends, or periods of bad weather. Regulatory restrictions also reduce the incentives of taxi companies and drivers to find innovative ways to improve service for passengers. While municipalities have enacted regulations to address these difficulties, including prescribed rates and quality standards, the price and quality of taxi service has been the subject of numerous complaints from passengers over the years.⁹

After decades of relatively little change, recently, new technology has permitted the development of innovative platforms and software applications that enable ride-sharing by their users. These applications match passengers with ordinary drivers that do not hold taxi licenses and operate their own private vehicles outside of existing regulations. Providers of these ride-sharing applications, which include companies such as Uber¹⁰ and Lyft, are generally referred to in U.S. jurisdictions as Transportation Network Companies (“TNCs”).¹¹ TNCs form part of the emerging sharing economy, in which peer-to-peer platforms connect people who own certain goods or skills (e.g. private vehicles) with those that wish to make use of them (e.g. passengers).¹² As with many sharing economy business models, TNCs generally employ reputational ranking systems that allow passengers and drivers to rate each other after a ride.¹³

Entry by TNCs into municipalities can represent a meaningful source of competitive pressure on traditional taxi operators. However, the taxi industry requires the flexibility to respond to these pressures. If the industry is provided the opportunity to adjust its operations, entry by TNCs is likely to provide considerable benefits to consumers, including on dimensions of competition such as:

- **Price:** TNCs offer rates that can be substantially lower than the regulated rates imposed by municipal governments.¹⁴ Taxi drivers in several cities have reported that they are experiencing difficulties attracting consumers due to the low rates charged by Uber drivers, to the point that the City of Toronto has reduced the base fare for a taxi ride from \$4.25 to \$3.25 to help traditional taxis compete with Uber drivers.¹⁵

⁸ Taxi Economics — Old and New, supra note 1 at page 5. See also City of Ottawa Taxi and Limousine Regulations and Service Review, "Emerging Issues in the Taxi and Limousine Industry" (October 22, 2015), ("Ottawa Taxi Review Emerging Issues") at page 16.

⁹ See e.g. New York City Taxi & Limousine Commission, "Taxi of Tomorrow Survey Results" (February 2011).

¹⁰ Uber offers several services enabled by its app, including UberBlack (a service connecting passengers with licenced limousine drivers), UberTaxi (a service connecting passengers with licenced taxi drivers), and UberX (a ride-sharing service that connects passengers with drivers operating their private vehicles). The term "Uber" is often used to reference services offered under the UberX model.

¹¹ A TNC is an organization that arranges transportation for a fee using a technology platform such as mobile application (app) or website. From the National Association of Insurance Commissioners, "Transportation Network Companies Insurance Principles for Legislators and Regulators" (March 31, 2015).

¹² See e.g. "All eyes on the sharing economy", *The Economist* (9 March 2013).

¹³ As with many sharing economy business models, TNCs generally employ reputational ranking systems that allow passengers and drivers to rate each other after a ride.

¹⁴ Taxi Economics — Old and New, supra note 1 at page 14.

¹⁵ Nick Westoll, "Toronto taxi base fares drop by \$1", *Toronto Star* (November 1, 2015).

As prices charged by TNC drivers are not regulated, they may significantly increase during periods of high demand, such as evenings and weekends, special events or adverse weather conditions.¹⁶ “Surge pricing” is economically efficient, as it ensures availability by encouraging more drivers to work when they are needed.¹⁷ However, depending on the competitive dynamics within the local taxi industry, there may be a concern that surge pricing may set rates higher than what is needed to ensure appropriate supply. In addition, surge pricing can be unpopular with consumers, as fares may significantly increase during peak periods of high demand. As a result, TNCs have taken steps to ensure that their applications at least notify passengers whenever surge pricing is in effect.¹⁸ As public perception that surge pricing is a form of “price gouging” can be particularly negative when demand is high due to a crisis situation, some TNCs have also developed policies to cap fares during such times of distress.¹⁹

- **Availability and waiting times:** TNCs may reduce waiting times for consumers compared to traditional taxis due to a number of factors. These include an increase in the availability of vehicles for hire, improved dispatching systems, and possibly greater incentives for TNC drivers to provide prompt service to ensure that they receive high ratings from passengers. The Ground Transportation Review Final Report found that Toronto’s taxis provide service across the city with an average waiting time of nine minutes. In contrast, it was found that a passenger could expect a ride from an Uber vehicle within two to four minutes.²⁰ Similarly, passengers in Ottawa will wait between five and fifteen minutes from a traditional taxi, but only 3.7 minutes for an Uber driver.²¹

TNCs may also increase the total size of the industry by responding to the needs of passengers that previously had difficulty receiving taxi services, including lower-income individuals that can afford TNCs. They may also benefit individuals that live in outlying regions of a municipality.²² Some studies have reported that, when the number of taxis in a city is limited, drivers may choose to largely stay in the high-volume downtown areas, leaving more remote areas of the municipality under-served.²³ By increasing the number of vehicles on the road, TNCs can help people living in remote areas receive services at reasonable prices with shorter delays.

¹⁶ The Associated Press, "Uber 'surge pricing' in effect for New Years Eve ride" (December 31, 2014).

¹⁷ For a discussion of peak load pricing, see Jeffrey Church and Roger Ware, *Industrial Organization: A Strategic Approach*, Irwin McGraw Hill, 2000, at page 802.

¹⁸ See e.g. Uber, "What is surge pricing" (retrieved October 23, 2015).

¹⁹ See e.g. Dan Kedmey, "This is how Uber's 'surge pricing' works" (December 15, 2014), *TIME* magazine.

²⁰ City of Toronto "Attachment 1: 2015 Ground Transportation Review Findings Report" (September 2015) ("Toronto Ground Transportation Review") at pages 15, 30.

²¹ Ottawa Taxi Review Emerging Issues, *supra* note 7 at page 9.

²² *Ibid.* at page 16.

²³ See e.g. Taxi Economics — Old and New, *supra* note 1 at page 5, Ottawa Taxi Review Emerging Issues, *supra* note 7 at page 16, and Bruce Schaller, "Entry Controls in Taxi Regulation" (2007), *Transport Policy* 14 (2007) 490-506, at page 10.

- **Convenience:** The software applications used by TNCs offer a number of convenient features to consumers, including the ability to see what vehicles are available in their local area and track a vehicle in real-time once a ride has been requested. Consumers also appreciate the automatic payment method employed by TNCs, rather than having to manually pay through cash or payment card.²⁴
- **Quality of service:** Consumers perceive TNC drivers as offering a higher quality of customer service than traditional taxi drivers.²⁵ TNC drivers may have incentives to provide good service to ensure that they receive good ratings from passengers, as bad ratings may result in fewer rides requested or even removal from the TNC app. The number of taxi complaints received from consumers has decreased in some areas following entry by TNCs, suggesting that competitive pressure from TNCs give taxi drivers incentives to improve the quality of their services.²⁶

Traditional taxi companies have responded to these innovative offerings by introducing their own software applications that include many of the functions offered by TNCs. For example, Toronto taxi companies such as City Taxi and Beck Taxi have been developing new apps to compete with Uber.²⁷ Similar efforts have been undertaken by other taxi companies in Canada and abroad.²⁸ Even the threat of possible future entry by TNCs may provide taxi service providers with an incentive to develop more innovative product offerings. Although regulations in Vancouver prevent the operation of TNCs, four taxi companies have nevertheless jointly launched a software application that allows passengers to request and track taxis, pay with their credit card and rate their driver.²⁹

Taxi companies and drivers have also worked to improve the quality of their offerings, ensuring cleaner vehicles and more timely and courteous service. They are, however, limited in their ability to compete with TNCs on price, as they must charge prescribed rates set by regulation.

Increased competition from TNCs is also reflected in falling values for taxi plates in municipalities that have faced entry by these service providers. For example, taxi plate values have reportedly fallen in Toronto from a high of CDN\$360,000 in 2012 to

²⁴ TNCs store credit card information to automatically bill passengers.

²⁵ City of Ottawa Taxi and Limousine Regulations and Service Review, "Customer Experience" (October 14, 2015).

²⁶ Ottawa Taxi Review Emerging Issues, supra note 7 at page 16.

²⁷ Ottawa Taxi Review Case Studies, supra note 3 at page 11; Marco Chown Oved, "Beck Taxi to launch app to rival Uber's" (March 10, 2015).

²⁸ Ottawa Taxi Review Case Studies supra note 3. Charles Clover, "Chinese city of Guangzhou to launch Uber rival service" (May 25, 2015), CNBC; David Hellier, "London's black-cab drivers use rival app to compete with upstart Uber" (September 5, 2015).

²⁹ Ottawa Taxi Review Case Studies, supra note 3 at page 21.

CDN\$188,235 in 2014.³⁰ Similarly, the value of taxi medallions in New York City fell from a peak value of USD\$1.05 million to sale prices of USD\$800,000.³¹ This represents a significant loss of value to taxi plate owners.

3. Regulatory Responses to TNCs

Some jurisdictions, including several European countries³² and Canadian cities such as Vancouver,³³ have enacted regulations or taken legal action to explicitly prevent the operation of TNCs. Recognizing that TNCs operate outside of existing regulations, others have treated TNCs as unlicensed “bandit” taxis, and have taken law enforcement action against them. As examples, the City of Montreal has reportedly seized almost 200 private vehicles since the beginning of 2015 for allegedly engaging in illegal ride-sharing,³⁴ City of Ottawa has laid 142 charges against unlicensed drivers believed to be working for Uber,³⁵ and the City of Toronto has laid 208 charges against 104 UberX drivers between 2012 and 2015.³⁶ Until regulations are reformed, many TNCs will continue to operate in ways that may fall outside local bylaws.

Other Canadian municipalities have announced that they are considering enacting or revising bylaws to allow the licensing and operation of TNC drivers within their borders.³⁷ Regulatory frameworks for TNCs have been adopted by a number of U.S. regulators,³⁸ but are still in their relative infancy. These regulatory frameworks generally treat TNCs as a separate class of service provider in vehicle-for-hire legislation. They appear to be intended to ensure that TNCs and their drivers are subject to safety and consumer protection rules similar to those that apply to taxis, particularly with respect to minimum insurance requirements, criminal and driving background checks on drivers, and vehicle inspections.³⁹ Most of these proposed regulatory frameworks propose fewer regulatory restrictions on TNCs compared to traditional taxis, including those dealing with vehicle size and age restrictions, accessibility requirements, and a lack of limits on the number of vehicles that are allowed to operate within a city. However, TNCs also

³⁰ Ibid. at page 11.

³¹ Ibid. at page 6.

³² See e.g. Francois Lenoir, "Uber to suspend unlicensed UberPOP service in Brussels", Reuters (October 13, 2015); Sergio Perez, "Dutch prosecutors: raids on Uber offices in Amsterdam in taxi probe" (September 29, 2015); and Mark Scott, "French law that banned UberPop Service Survives Legal Challenge", New York Times (September 22, 2015).

³³ Ottawa Taxi Review Case Studies, supra note 3 at page 3.

³⁴ Jason Magder, "Montreal and its taxi industry struggle to steer the Uber phenomenon", Montreal Gazette (August 19, 2015).

³⁵ City of Ottawa Taxi and Limousine Regulations and Service Review, "Current Regulatory Regime" (October 1, 2015) ("Ottawa Taxi Review Current Regulatory Regime") at page 18.

³⁶ Toronto Ground Transportation Review, supra note 19 at page 32. The City of Toronto also sought an injunction in 2014 against Uber for failure to abide by the city's taxi regulations. The city's case was dismissed in June 2015 on the basis that the city's bylaws do not capture the service UberX provides, and that Uber is not an illegal taxi service.

³⁷ These municipalities include the City of Toronto, the City of Ottawa, the City of Edmonton and the Region of Waterloo.

³⁸ Ottawa Taxi Review Case Studies, supra note 3 at page 7.

³⁹ Ibid. at pages 7-8.

enjoy fewer privileges, as they are not allowed to accept street hails or use taxi stands located on streets.⁴⁰

4. Principles for Regulating Transportation Services

While TNCs provide a number of competitive benefits to consumers, they also raise legitimate regulatory issues. Taxi regulations play an important role in addressing market failures⁴¹ and ensuring the safe, orderly operation of ground transportation services and keeping drivers, passengers and the general public safe. As TNCs operate outside of traditional regulatory frameworks, they raise a number of issues relating to ensuring public safety, consumer protection, and other public interests.

Many regulators have expressed concern that TNC drivers do not undergo sufficiently robust criminal background checks and/or that they do not carry adequate insurance coverage.⁴² Traditional taxi companies and drivers argue that not only does this create safety and liability concerns, the unlevel playing field may jeopardize investments made by companies and drivers to establish themselves in the taxi business. As discussed above, competition from TNCs may also cause a significant decrease in the value of taxi plates, which may represent significant investment losses to these stakeholders. These concerns have led many regulators to restrict or discourage the entry of TNCs into local areas.

Prohibition, however, is a blunt regulatory instrument. Governments should use a “lighter” regulatory approach where possible, putting in place only those restrictions needed to achieve legitimate policy goals, while otherwise allowing market forces and competition to determine outcomes and drive innovation. Competition is generally the best means of ensuring that consumers have access to the broadest range of products and services at the most competitive prices. Where market forces alone are insufficient to achieve certain policy objectives, a regulatory framework may be appropriate to oversee the practices of transportation service providers.⁴³ However, such regulations should not restrict competition any more than is reasonably necessary to achieve legitimate policy goals, because doing so limits the benefits of these innovations to consumers. Regulations for TNCs which are designed to achieve policy objectives, such

⁴⁰ Ibid. at pages 7-8.

⁴¹ "Market failure" refers to a situation in which free markets do not result in an efficient allocation of resources, resulting in a loss of economic and social welfare. Markets can fail for a variety of reasons, including the presence of a natural monopoly, large sunk costs, information asymmetries, and negative or positive externalities (where a private party's production of goods or services leads to a cost or benefit for unrelated third parties). As an example in the taxi industry, there are information asymmetries between drivers and passengers, as passengers cannot reasonably assess how much insurance the driver has for his vehicle, or whether the vehicle is mechanically sound in all respects.

⁴² See Josh Elliott, "Uber ride share: taxi or tech company?" (October 8, 2014), CTV News; and Sean Silcoff, "Ride-sharing company Uber struggles with insurance policies for drivers" (March 26, 2015), Globe and Mail.

⁴³ As well as policy objectives including safety, consumer protection and accessibility, some commentators have argued that the taxi industry may involve informational asymmetries between consumers and drivers. In addition, economies of scope and scale may lead to uncompetitive conditions in the dispatch market. See Schaller, *supra* note 22 at page 2.

as consumer protection and vehicle safety, are a less intrusive form of oversight than blanket prohibitions.

The same “light” approach to regulation should also be applied to existing industry participants, including traditional taxi companies. Regulations should not be designed or implemented in a manner that favours or protects certain industry participants over others in the absence of legitimate policy goals. Just as regulators should ensure that the regulatory burdens placed on TNCs are not excessively onerous and are strictly tied to achieving policy objectives, they should also consider whether regulatory frameworks governing traditional service providers are unduly burdensome or restrictive. When regulators contemplate how to resolve differences in the regulatory regimes that apply to different business models, they should first look at how the existing regulation can be overhauled, rather than solely imposing restrictions on new entrants.

Regulations should be made and tested using empirical evidence wherever possible. Industry participants have an incentive to convince regulators to impose rules that favour and protect their own interests, rather than the public interest. To keep this process honest, regulators should demand and rely on empirical evidence to test the efficacy of any new regulation wherever possible. This evidence-based approach to regulation provides a more objective basis on which regulations should be imposed. Regulators should be able to demonstrate that a rule will have an intended result prior to implementation, and progress should be measured on an ongoing basis to assess whether the rule is having its intended consequence.

Particularly when considering industries that are subject to disruptive innovations and rapid change, regulators should continually question the effectiveness of current restrictions. Existing regulations may no longer be serving their intended purpose and may even stand in the way of desired changes, or may be overly burdensome compared to less intrusive alternatives. Using sunset clauses⁴⁴ may help ensure that regulations are revisited once sufficient time has passed and data have been gathered to evaluate outcomes. At the same time, regulators should ensure that they allow appropriate time to pass between reviews.

5. Avoiding Overregulation of TNCs and Taxis

The Bureau urges regulators to take a less intrusive and more balanced approach when designing and implementing regulations for transportation services, including regulations pertaining to the following issues:

- **Public safety and consumer protection:** Regulators have legitimate objectives in requiring compliance with rules regarding public safety and consumer protection. Municipalities are responsible for the provision of rules that protect the

⁴⁴ A sunset clause refers to a provision in a statute or regulation to the effect that it will automatically expire by a particular date, unless it is extended by legislative action.

safety of passengers, drivers, and third parties⁴⁵ particularly because passengers are not well-placed to judge the mechanical safety of a vehicle or rate the quality of insurance.⁴⁶ Where such rules are determined to be necessary for taxis, they should apply to TNCs and their drivers as well. For example, if a regulator determines that \$2 million of insurance coverage is needed to protect people and property, then both taxi drivers and TNC drivers should be required to carry that amount of insurance. Similarly, if a vehicle inspection regime is set up to ensure that the vehicles used by taxi drivers are safe and in good working condition, similar requirements should be considered for the private vehicles operated by TNC drivers. If the existing inspection regime is too rigorous, it should be relaxed.

- **Quality of service:** To the extent that regulators determine that regulations are needed to ensure that passengers receive a minimum level of service,⁴⁷ these regulations should apply equally to TNCs and traditional taxi drivers.

But, this consideration carries a risk of over-regulation. Regulations should be aimed at correcting market failures – situations where the market will not deliver sufficient quality. For example, while some consumers may prefer that taxi drivers adhere to certain standards of dress, such a restriction may not actually be necessary. Differences in the quality of service are an important way of competing, and unnecessary restrictions, such as the dress code example, prevent industry participants from using these factors for their own competitive advantage.

- **Licensing and training:** Municipalities require taxi drivers to hold a valid taxi driver's licence. As part of the licensing process, drivers must generally hold a valid provincial driver's licence, provide a driving record and the results of a criminal background check, complete required educational programs as well as annual refreshment courses, and pay annual fees.⁴⁸ TNCs generally run background checks on their drivers and offer driver training, but these requirements may not be as rigorous as that imposed by municipalities.⁴⁹

Regulators should consider the appropriate level of background checks and training necessary to ensure that taxi drivers provide safe and knowledgeable services, and similar requirements should apply to both traditional taxi and TNC

⁴⁵ For example, paragraphs 10(2) and 11(2) of Ontario's Municipal Act, 2001, SO 2001, c 25, provide that municipalities may pass by-laws relating to the protections of persons and property, including consumer protection. As another example, section 7 of the Alberta Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, provides that a municipality may pass bylaws to protect the safety, health and welfare of people and the protection of people and property.

⁴⁶ Consumers expect that regulators will establish rules for taxis and TNCs concerning safety and consumer protection. See e.g. Toronto Ground Transportation Review, supra note 19 at page 14.

⁴⁷ See e.g. Ottawa Taxi Review Current Regulatory Regime, supra note 34 at pages 8-9; Nick Waddell, "Competition from Uber is improving Montreal's taxi business" (October 29, 2015), Cantech Letter.

⁴⁸ See e.g. Ottawa Taxi Review Current Regulatory Regime, supra note 34 at page 7.

⁴⁹ See e.g. Mike Isaac, "Uber's system for screening drivers draws scrutiny" (December 9, 2014), New York Times.

drivers. These requirements should be no more burdensome than necessary to achieve these goals. As an example, the City of Toronto's Ground Transportation Review reported that some taxi drivers felt that certain aspects of continuous training were unnecessary and costly,⁵⁰ and could be replaced by less burdensome training focused on geography and customer service.

- **Limits on street hails:** Most municipalities that have chosen to regulate TNCs do not allow them to accept street hails or use taxi stands, limiting these rights to traditional taxis.⁵¹ Regulators should consider whether it is necessary to prohibit TNCs from providing such services, or whether less restrictive means could be used to achieve their policy goals. This would allow consumers that use street hails to benefit from competitive alternatives offered by TNC drivers. For example, if during their review, regulators determine that passengers who use street hails need more regulatory protections than passengers who order rides through software applications or telephone dispatch,⁵² then enacting the same rules for TNC drivers that accept street hails would be preferable to a complete prohibition. Furthermore, these additional rules should apply to both TNC drivers and traditional taxi drivers, and should be no more burdensome than necessary to protect consumers, ensure public safety, or achieve other policy objectives.
- **Price controls:** Unlike TNCs, taxis must charge regulated rates for their services, which, in some circumstances, may prevent drivers from lowering their prices to stay competitive with TNC drivers. These concerns have been raised by taxi drivers in the context of municipal consultations undertaken during the course of cities' reviews of their regulatory frameworks for urban transportation services.⁵³ Regulators should allow all industry participants to set their fares independently in a more flexible manner.⁵⁴
- **Entry restrictions:** As previously discussed, while municipalities do not restrict the number of TNC drivers and vehicles operating in a jurisdiction, they strictly control the number of taxis through taxi plate systems. Regulators should consider removing entry restrictions by transitioning from "closed entry"⁵⁵ systems, characterized by strict limits on the number of taxi plates, to an "open entry" system that would allow any qualified applicant to operate a vehicle-for-hire. In its 2007 Roundtable on Taxi Services Regulation and Competition, the Organisation for Economic Co-operation and Development

⁵⁰ Toronto Ground Transportation Review, supra note 19 at page 11.

⁵¹ Ottawa Taxi Review Case Studies, supra note 3 at pages 7-8.

⁵² For a discussion of these issues, see e.g. Schaller, supra note 22 at page 3, and OECD, "OECD Policy Roundtables Taxi Services: Competition and Regulation" (2007) at page 19.

⁵³ See e.g. Toronto Ground Transportation Review, supra note 19 at page 10.

⁵⁴ For example, maximum fares as were adopted as a replacement for prescribed fares by the Australian province of Victoria following the regulatory reform of its taxi industry. See Australian Competition Policy Review, supra note 4 at page 133.

⁵⁵ In theory, the taxi industry is not closed as regulators have the authority to issue new plates. However, in practice, regulators have not issued new plates to keep pace with demand, thus closing off the industry to potential new drivers. See Taxi Economics — Old and New, supra note 1 at page 4.

(“OECD”) found that restrictions on taxi numbers may reduce overall economic welfare. It also noted that arguments in favour of limiting the number of taxis based on concerns about pollution or congestion issues were “strongly contested”.⁵⁶

Cities that have moved towards deregulation have experienced mixed results — while supply has generally increased following removal of entry restrictions, there were also reports of higher prices, uninsured or improperly maintained vehicles, and congestion issues at popular taxi pick-up locations, including hotels and airports.⁵⁷ However, in regard to congestion issues, new technologies which provide real-time data on the taxi industry may mitigate problems which previously arose in deregulation experiments. Placing an absolute limit on the number of taxis that can operate in an area is the most restrictive approach that regulators can take, with an associated negative impact on competition and its benefits. Regulators should consider alternative “open entry” regulatory options that are less restrictive to competition among taxis and TNCs, that still allow them to achieve policy goals.⁵⁸

- **Accessibility:** Regulators may set goals to ensure that there are sufficient accessible transportation options for residents and visitors with disabilities,⁵⁹ such as requiring taxi companies to ensure that a certain percentage of their fleet can provide accessible services. Municipalities frequently issue a separate category of accessible plates that are available only to accessible taxis,⁶⁰ recognizing that drivers who operate these vehicles incur higher equipment costs and spend more time with each passenger, reducing the number of overall fares they receive. Municipalities may also offer financial incentives to drivers of accessible taxis by subsidizing the costs of purchasing the necessary vehicles.⁶¹

Regulators should consider offering similar incentives to both taxi drivers and

⁵⁶ OECD, supra note 51 at page 7.

⁵⁷ See Hara Associates, "Taxicab Regulation in North America" (2012), Taxicab Industry Inquiry — State of Victoria, at page 15, OECD, supra note 51 at pages 8-9, Schaller, supra note 22 at page 8, and Australian Productivity Commission, supra note 4 at page 13.

⁵⁸ Proposals for regulations that could ease restrictions on entry include, for example, open entry with maximum price and quality controls (see OECD, supra note 51 at page 45 and Hara Associates, supra note 56 at pages 15-18), entry management using license fees or fee per trip (see Taxi Economics — Old and New, supra note 1 at pages 24-26), or focusing entry controls on "walk-up" markets (see Schaller, supra note 22 at page 15). It should be noted that municipalities may be limited in their ability to adopt certain regulatory approaches by provincial legislation that limit their ability to apply certain fees or other policy instruments, as discussed in Taxi Economics — Old and New, supra note 1 at page 25. An in-depth discussion of provincial and municipal authority over taxi regulation is beyond the scope of this paper.

⁵⁹ Toronto Ground Transportation Review, supra note 19 at page 23, and City of Ottawa Taxi and Limousine Regulation and Service Review, "Accessibility" (October 22, 2015), ("Ottawa Taxi Review Accessibility").

⁶⁰ Ottawa Taxi Review Accessibility, supra note 58 at page 9.

⁶¹ See e.g. Washington D.C., as discussed in Ottawa Taxi Review Case Studies, supra note 3 at page 29.

TNC drivers to operate accessible vehicles, so that passengers that need accessible services may benefit from the benefits of increased competition.

Regulators may find that designing minimally-intrusive regulations results in similar outcomes for both traditional taxis and TNCs. In such cases, regulators may consider designating both under a single classification, such as vehicles-for-hire, and subject them to the same oversight. If regulators determine instead that there are significant differences between TNCs and taxis, such that different rules are needed to achieve desired policy outcomes, they should design these rules to be no broader than necessary so that passengers will still enjoy the benefits of competition between TNCs and taxis.

6. Conclusion

Competition should be an essential guiding principle in the design and implementation of regulations. Greater competition benefits consumers in terms of lower prices, higher quality of service, increased consumer convenience, and higher levels of innovation.

Competition is an effective means to ensure that consumers have access to the broadest range of products and services at the most competitive prices. Regulatory limits on competition should be based on the best available data, be designed to address legitimate policy concerns, and be no broader than what is reasonably necessary to mitigate those concerns. Regulations should also be subject to regular review to ensure that they are still responsive to market conditions and are still achieving policy outcomes.

Some regulators have begun to re-imagine regulation in the Canadian taxi industry⁶² In doing so, allowing sufficient scope for the forces of competition to operate to the largest extent possible should be a primary focus. Traditional taxis, TNCs, and other new business models that may emerge should be subject to a level playing field, so that all participants in the industry have the opportunity to compete vigorously. Consumers can expect to enjoy the benefits of this increased competition, including lower prices, greater convenience and availability, and better quality of service through improved technology. With the right balance of competition and regulation, passengers can expect that the industry will ensure safe, competitive, and innovative transportation options in the future.

⁶² Ottawa Taxi Review Case Studies, supra note 3 at page 3.