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From: Andrea Coscelli
Acting Chief Executive

28 September 2016

Dear Mr Lonnia

Private Hire Operator and Vehicle Policy

The Competition and Markets Authority (CMA) is an independent non-ministerial government department. The CMA has a statutory duty to seek to promote competition for the benefit of consumers, and our aim is to make markets work well for consumers, businesses and the economy.

As part of its work, the CMA recommends ways in which government can better promote competition. The *Enterprise Act 2002* gives the CMA the function of “making proposals or giving information or advice on matters relating to any of its functions to any Minister ... or other public authority”. In its November 2015 policy document on how competition can secure a better deal for firms and families¹, the Government has asked the CMA to consider how local authorities “can support competition and challenge them when they do not”.

We have become aware that the City Council’s Licensing Committee is due to consider a new Private Hire Operator and Vehicle Policy at its meeting on 29 September 2016.

¹ Page 9 ([HM Treasury report – a better deal: boosting competition to bring down bills for families and firms](#))

The taxi and private hire vehicle (PHV) market in Sheffield

The CMA's understanding of taxi and PHV markets is informed in part by the findings of our examination (concluded October 2015) of a merger between PHV operators in Sheffield², and in part by its analysis of private hire regulation in several locations. You may like to consider its December 2015 response³ to Transport for London's private hire regulation proposals for more detail of the approach.

You will no doubt recall that the CMA decided to clear the merger of Sheffield City Taxis and Mercury Taxis partly on the grounds that, following the merger, the merged business would face competition from mid-size private hire operators, taxis, and new businesses such as Uber and Gett. The CMA would be concerned if, as a result of changes to regulation, the ability of new or existing firms to compete with the merged business was reduced, harming the interests of taxi and PHV passengers in Sheffield.

Protecting passengers

The CMA recognises that regulation of this sector can fulfil a valuable function in protecting passengers. Passengers also generally benefit, in terms of value for money and quality of service, from the spurs to efficiency, quality and innovation that competition can bring. A balance therefore needs to be struck between keeping regulations that are *necessary* for passenger protection, and not regulating so extensively that passengers lose out because competition is inhibited. The CMA therefore believes that the City Council should take care to avoid creating or increasing differences in the way regulation affects taxis and PHVs, as well as differences in the way regulation affects various types of PHV business model, as both are liable to undermine competition. Above all, regulation should not favour certain groups or business models over others and any measures that restrict the choices available to passengers should be minimised.

The CMA applied this approach in its published response to Transport for London's proposals in this sector, referred to above. Some of the TfL proposals were amended in light of the CMA's and others' responses.

Implications for the proposed policy

The CMA notes three sets of provisions in the City Council's proposed new Private Hire Operator and Vehicle Policy that risk undermining competition, creating barriers to entry and innovation and thus harming the interests of passengers:

² [Sheffield City Taxis / Mercury Taxis \(Sheffield\) merger inquiry](#)

³ [CMA response to TFL's private hire regulation proposals](#)

- Conditions 2(d) and 6(d) in Part 6 of the new Private Hire Operator Policy⁴ together require operators to have a helpline based in Sheffield and permanently staffed. This provision appears designed to ensure that passengers can speak to someone other than the driver in the event of a problem, and that licensing authority can speak to someone at the operator at all times of operation. However, as highlighted in the CMA's response to the Transport for London Private Hire Proposals consultation, it does not appear to be necessary to specify the detail of this provision (e.g. the location of the helpline) in order for the passenger to receive a satisfactory resolution. Moreover, the CMA believes that this proposal could raise barriers to entry (new businesses would have to provide both a number and staff to handle calls) as well as restricting innovation (including app-based business models). It could therefore lead to reduced competition between PHVs and, by ruling out the possibility of the helpline staff being based at a lower cost location, increase the cost to PHV firms. This cost increase is likely to be passed on to passengers in the form of higher fares.
- Condition 7(h) in Part 6 of the new Private Hire Operator Policy⁵ proposes that PHV operators must have the ability to take a booking up to seven days in advance. The CMA believes that mandating add-on functions (such as pre-booking) can place undue burdens on some providers, leading to increased costs for PHV firms. Firms who are unable or unwilling to provide these functions will be excluded from the market, thereby reducing competition without materially improving service provision. This is particularly the case when such functions are only compulsory for part of the market (i.e. compulsory for PHVs, but not taxis). The effect here is likely to be a reduction in competition between PHVs and taxis. The CMA's experience is that where consumers find such add-on functions useful, they are likely to be provided by some firms in a competitive market. Were the City Council to find evidence that the market is developing in such a way that certain groups of passengers were inadequately served, it would be open to it at that stage to impose proportionate and targeted interventions without risking harm to competition.
- Clause (a), Change of Operator in Part 14 of the new Private Hire Vehicle Policy⁶ appears to prevent vehicles being operated by more than one operator. In practice, this is likely to mean that drivers who own their vehicle can only work for one operator. This restriction might be reinforced by the requirement⁷ to display the name of the operator on the side of the vehicle. With the development of app-based PHV firms, mandatory single-homing (i.e.

⁴ Pages 26 and 29, Private Hire Operator Policy

⁵ Page 29, Private Hire Operator Policy

⁶ Page 64, Private Hire Vehicle Policy

⁷ Condition 1(d), Part 14, Private Hire Vehicle Policy (page 61)

drivers only being able or allowed to work for one firm) can create a strong “network effect” among drivers who work for such firms, as drivers are likely to choose the firm with the most customers. The consequence could be fewer PHV operators, or even a single dominant firm. This reduces the possibility of competition between such firms and could create the potential for significant harm to the interests of passengers. In fact, the CMA considered the ability of new operators to employ part-time drivers already working for the main PHV operator to be a critical factor in providing sufficient competition to the business being created by the merger of Sheffield City Taxis and Mercury Taxis.

There are other elements of the policy which may risk harming competition between taxis and PHVs and/or between PHV operators, to the potential detriment of passengers. For example:

- If condition 1(f) in Part 6 of the new Private Hire Operator Policy⁸ were to hamper the ability of operators to increase the number of vehicles in operation in response to demand, this could serve as a barrier to expansion and would be likely to put upward pressure on prices.
- If the restrictions on advertising⁹ applicable to PHVs differ substantially from those applicable to taxis, they risk distorting the competition that exists between the two categories and reducing its effectiveness in encouraging better service and lower prices.
- If the provisions on record keeping¹⁰ are enforced in a way that eliminates the possibility of records being kept electronically or online, that risks inhibiting operators using newer and cheaper technologies and thus raises costs, which ultimately are likely to be borne by passengers.

Similarly, there are some provisions which risk imposing burdens or costs on operators which may be disproportionate to the benefits they are designed to secure. These include the possibility of having to undergo emissions compliance tests up to three times a year at the expense of the licensee¹¹ and to renew vehicle licences every 12 months¹².

The CMA is also, like the Law Commission¹³, unconvinced that knowledge tests for taxi and private hire drivers (such as those provided for in your Hackney Carriage

⁸ Page 26, Private Hire Operator Policy

⁹ Part 9, Private Hire Vehicle Policy, page 53

¹⁰ including conditions 3(a)-3(d), 4(a), 5(a) in Part 6 of the new Private Hire Operator Policy (pages 26 – 28); and “Drivers” clause (a) in part 14 of the new Private Hire Vehicle Policy (page 63)

¹¹ Part 7, Private Hire Vehicle Policy, page 50

¹² Part 2, Private Hire Vehicle Policy, page 40

¹³ See the [Law Commission's report on taxi and private hire services \(Taxi and private hire services\)](#)

and Private Hire Drivers' Licence Policy) are appropriate – particularly given that satellite navigation is widely used by PHV drivers. While such tools are not perfect, it is not clear that the skills checked by knowledge tests constitute a necessary or effective backup. Prior to satellite navigation, knowledge tests may have provided some guarantee of effective navigation but it is no longer obvious that they are necessary for that purpose. On the other hand, they do raise barriers to entry, thus reducing the supply of PHVs and may therefore lead to higher prices for passengers. Research carried out for the CMA's predecessor, the Office of Fair Trading, found that passengers are generally unwilling to pay extra for higher quality standards. The research therefore concluded that passenger welfare may not be increased by regulatory measures that seek to raise quality standards above minimum levels. To the extent that different passengers value differing levels of navigational skill, the market might be expected to provide a range of service levels.

The CMA would be grateful if these considerations could be brought to the attention of the Committee to inform its deliberations. I would be happy to discuss any aspect of this further if that would be helpful.

Yours sincerely

Andrea Coscelli
Acting Chief Executive