

Ridesharing empowers consumers

Submission to the Australian Consumer Law Review

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Synopsis

Uber welcomes the opportunity to contribute to the review of the Australian Consumer Law (ACL). Introduced in 2009, the ACL predates the introduction of modern ridesharing technology platforms to Australia. As a result, this Review is an important opportunity to ensure the ACL is able to effectively address new technology models, including ridesharing platform.

To realise the benefits of new technologies and new models, the ACL must accommodate innovation. It must focus on consumer protection *objectives* rather than the prescriptive *means* for achieving those objectives. This submission outlines the significant advances that ridesharing has made to consumer protections and the importance of a distinct and risk-based approach to regulation.

What is ridesharing?

Ridesharing is a safe, reliable and affordable transport alternative, using personal vehicles to provide rides. Uber is a technology company that uses a technology platform to facilitate ridesharing by connecting registered riders to registered driver-partners in over 400 cities worldwide. The rider makes a pickup request that is transmitted via the Uber app to nearby driver-partners. When a driver-partner accepts the request, the app tracks the subsequent trip, and facilitates an automatic and cashless transaction at the conclusion of the ride between the two parties. The driver-partner pays Uber a service fee for access to the platform.

Ridesharing delivers significant and wide ranging benefits for consumers. Uber uses transparent cashless pricing, GPS tracked trips, with strict rules around driver and vehicle screening. In addition, two way feedback and shared identity mechanisms between driver-partners and riders ensure service standards remain high. In instances of a dispute, customers have access to a 24/7 support service. These innovations have delivered a safe, reliable and affordable new service for Australian consumers. As a result, uberX has created a consumer welfare benefit of more than \$81 million per year¹ nationwide.

The Australian Consumer Law must foster innovation

As relatively recent legislation, the ACL broadly remains fit for purpose and well positioned to meet its objective of improving consumer welfare. By striking the right balance between consumer protection and business compliance, the ACL has remained effective in fostering competition and choice. In addition, by replacing 17 Commonwealth, State and Territory laws, the introduction of the ACL has significantly improved the ease of compliance and resolved inconsistencies in redress mechanisms for consumers.

To ensure the ACL remains effective, it must remain flexible to address emerging issues, innovation and technological change. This was made clear in the Federal Government commissioned Competition Policy Review (Harper Review) which concluded that existing Australian competition law is largely fit for purpose for the digital age². In relation to the sharing economy specifically, the Grattan Institute reiterated the need to maintain flexible competition law to foster innovation and expand offerings and protections for consumers³. The Review of the ACL should fully incorporate this feedback and maintain flexibility to adapt to new and emerging business models.

Maintaining flexibility within the ACL for emerging peer to peer business models is critical for advancing consumer welfare. Peer to peer networks such as Uber present significant consumer benefits, well beyond the statutory minimums mandated under the ACL. The Harper Review into competition policy concluded that community expectations will demand that providers in the digital economy compete on the basis of quality, value and responsiveness of products and services they offer⁴. In addition, peer to peer platforms *“may have a stronger desire to be ‘trusted third parties’ by introducing or ensuring suppliers’ compliance with legislated guarantees of service quality, service delivery, safe payment processes, insurance against risk”*⁵. As governments require businesses to perform a greater co-regulatory function in relation to competition policy⁶, peer to peer models will become increasingly important to advance consumer welfare.

¹ Deloitte Access Economics, Economic effects of ridesharing in Australia, 2016

² Harper et al., Competition Policy Review, 2015

³ Grattan Institute, peer to peer pressure:policy for the sharing economy, 2016

⁴ Ibid.

⁵ Deloitte Access Economics, the Sharing Economy and the Competition and Consumer Act, 2015

⁶ Harper et al., Competition Policy Review, 2015

To maximise the consumer welfare benefit of peer to peer platforms, a bespoke regulatory approach that does not retrofit existing models is required. A point highlighted in a report prepared for the Australian Competition and Consumer Commission (ACCC) into the Act which states “*Regulatory neutrality need not involve identical regulations for the sharing economy and traditional businesses, as long as the same effect is achieved from regulation*”⁷. This was further reinforced by the Harper Review into competition policy which found that to achieve higher industry self-standards, new market entrants require flexibility and distinct treatment⁸.

Peer to peer networks require new and innovative business practices and approaches to interacting with consumers. This includes the need to establish sufficient customer base to create a network effect, use of dynamic pricing models and negotiating with large groups of suppliers that are generally sole traders. Inevitably, this will draw criticism from market incumbents. However, the Review of the ACL must acknowledge and embrace these changes as a means of enhancing competition and therefore consumer welfare.

The need to accommodate peer to peer services as new and distinct models is particularly important in the point to point transport sector. Different transport models face different risks and employ different mitigation strategies. They should be regulated in different ways. For example, Uber riders know the identity of the driver-partner, and driver-partners know the identity of the rider. Uber knows the identity of both. Driver-partners cannot ply for hire in the street - the app is the only method by which a rider can verify the affiliated status of a driver-partner. Trips are GPS tracked in real time. Transactions are cashless and automatic.

The consumer welfare and safety features made possible by the Uber platform mitigate many of the risks applicable to traditional point to point transport services. The ridesharing model achieves conventional safety and consumer protection objectives but it does so in a different way using smarter technology. For example, traditional taxis are characterised by their capacity to engage in anonymous hails from the street and from a taxi rank. Anonymous work carries particular risks and requires a particular regulatory response. As a result, regulators around the world have recognised the distinction and developed ridesharing regulations that embrace competition. This risk-based approach focuses on the *outcome* for consumers, not on the prescriptive *means* of achieving it.

There are clear differences in the roles and risks between ridesharing and other point to point transport services. Different regulation is required to guarantee consumer welfare for each. While many of these regulations are not directly related to the ACL, the point remains the same. A discrete, risk-based regulatory approach is essential to maximise the consumer welfare benefit from the sharing economy. This is consistent with the Intergovernmental Agreement on the ACL’s objective to promote proportionate and risk based enforcement⁹.

⁷ Deloitte Access Economics, the Sharing Economy and the Competition and Consumer Act, 2015

⁸ Harper et al., Competition Policy Review, 2015

⁹ Council of Australian Governments, Intergovernmental Agreement on Australian Consumer Law, 2009

Innovative technology improves transparency and competition

The ACL contains broad provisions to address false or misleading claims regarding the price of a good or service. This is particularly relevant in the traditional point to point transport market where price transparency has remained an ongoing and costly challenge. In addition to the ACL's provisions, state legislators have been required to enact strict and onerous price controls and compliance activities on traditional services to guarantee minimum service standards. As a result, competition and customer satisfaction has remained low and prices high¹⁰.

The introduction of ridesharing has delivered unprecedented transparency and competition into point to point transport. This is achieved without burdening Government or consumers with price controls. Uber's fare scheme is available in the app and on the Uber website. Furthermore, riders can obtain a fare estimate through the app prior to requesting a ride. Riders have absolute discretion to accept or reject the fare prior to requesting the vehicle.

Fare estimates available through the app ensure that consumers can find out the expected cost of any ride. Riders are emailed a receipt containing a map of their route and in the event of a query over the efficiency of a route, Uber can adjust the fare after the trip. Transactions are cashless and automatic, and riders must supply their payment details prior to opening an Uber account. This system ensures consumers are well informed to benefit from, and stimulate effective competition.

Increased competition through ridesharing has delivered significant savings for consumers. A study by consumer advocate CHOICE found uberX fares on average are 40% lower than a traditional taxi in Sydney¹¹. In addition, a report by Deloitte found that the consumer welfare benefit of UberX operating in Sydney, Melbourne, Brisbane and Perth is valued at \$81 million per year¹². In addition, the introduction of ridesharing has allowed some jurisdictions such as NSW to deregulate fares for booked taxis, further increasing competition across other point to point services.

In recognition of this benefit for consumers, a report by the ACCC, *Reinvigorating Australia's Competition Policy*¹³, stated:

Services like Uber meet unmet consumer demand: "One of the benefits of such services is that they appear to be responsive to passenger needs (making it easier for consumers to locate, arrange and pay for transportation services) and allow provision of services (reliability, cleanliness etc.) to meet unmet consumer demand."

¹⁰ Independent Pricing and Regulatory Tribunal, Sydney taxi fares to apply and new licences to be released from July 2015, 2015

¹¹ CHOICE, UberX vs taxi: which is best, 2015

¹² Deloitte Access Economics, Economic effects of ridesharing in Australia, 2016

¹³ ACCC, Reinvigorating Australia's Competition Policy, 2014

Rideshare apps have delivered competitive pricing that remains in stark contrast to a number of issues prevalent in other point to point transport providers. In *ACCC v Cabcharge Ltd* (2010), the Federal Court found that Cabcharge sold its taxi meter units at substantially below its direct cost of acquisition. This was determined to be predatory pricing resulting in a \$15 million fine and an agreement to implement a trade practices corporate compliance program. In addition, the *Competition and Consumer Amendment (Payment Surcharges) Act 2016* inserted a new part into the *Competition and Consumer Act 2010* to combat excessive surcharges for particular payment methods including Cabcharge. In addition, it has been frequently commented that taxi operators and networks placing illegitimate exclusivity requirements on drivers as part of bailment agreements. Examples such as this highlight the importance and efficacy of the Australian Consumer Law and broader Competition and Consumer Act regarding fair pricing practices.

Case study: dynamic pricing

Dynamic pricing (“surge pricing”) is essential in the rideshare market to guarantee service quality for consumers. Uber’s dynamic pricing automatically corrects for imbalances between supply and demand, ensuring wait times are short and reliable. When there is high demand for rides in an area, wait times increase. The dynamic pricing multiplier counterbalances this by attracting more driver-partners to the area ensuring wait times return to normal. This model is the most responsive, efficient and accurate way to deliver our product to consumers - a safe and reliable ride on demand.

The Uber app clearly displays changes to fares during periods of high demand. If a rider chooses to book a service during surge pricing they are provided with multiple alerts about surge pricing being in place and the applicable surge multiplier before the trip is requested. Riders are also able to access a fare estimate that calculates an estimated fare during the surge period. If a consumer does not wish to request an Uber during a time of surge pricing, the rider can elect to be notified when the surge ends.

Without the flexibility of dynamic pricing, ridesharing is incapable of offering consumers the reliable service they expect. A study undertaken in partnership with University of Chicago found that in a period of high demand, without surge pricing, wait times increase exponentially. In New York it was found that the absence of surge resulted in a completion rate (number of fulfilled ride requests) to fall from almost 100% to below 20%¹⁴.

Uber’s surge pricing could actually be welfare-enhancing for consumers, because it incentivises an increase in the supply of drivers — as such, dynamic pricing balances the supply of and demand for Uber services¹⁵.

¹⁴ Hall, Kendrick, Nosko, *The Effects of Uber’s Surge Pricing: A Case Study*, University of Chicago, 2015

¹⁵ Deloitte Access Economics, *the Sharing Economy and the Competition and Consumer Act*, 2015

Dynamic pricing is not unique to ridesharing. Industries such as airlines, hotels, petrol stations and sporting venues have used this model for decades to meet flexibility in customer demand. It ensures products and services can be created in the greatest quantity at the lowest overall price for consumers.

The introduction of ridesharing has delivered a point to point transport sector that is highly competitive with efficient pricing. This has been achieved by using modern technology to improve the transparency and integrity of services. This approach should continue to ensure competition and foster emerging point to point services and competition¹⁶.

Consumer guarantees

The existing provisions and definitions regarding consumer guarantees within the ACL remain sufficient to achieve the Act's objective of protecting consumer welfare. Uber is providing an opportunity to enhance consumer guarantees far beyond this statutory minimum and existing point to point transport services. This is more than just Uber practice. It is a necessity of the peer to peer business model:

“Recently, technology has emerged that offers an alternative to regulation in helping to solve information problems. For example, in the context of personal transport services, Uber and Lyft coordinate users and providers of ride-sharing services using internet apps where mandatory feedback from both customers and operators is used to encourage good service standards and passenger behaviour. Such ride-sharing apps, which allow passengers and drivers to post feedback on each other, enable drivers and passengers to establish and trade on their reputations.”¹⁷

Peer to peer networks are entirely reliant on their ability to provide high service standards. Informed and empowered consumers with low barriers to switch products demand an attractive option with a guarantee of service. This was reinforced by the ACCC's submission to the Competition Policy Review

“One of the benefits of such services is that they appear to be responsive to passenger needs (making it easier for consumers to locate, arrange and pay for transportation services) and allow provision of services (reliability, cleanliness etc.) to meet unmet consumer demand.”¹⁸

¹⁶ *ibid.*

¹⁷ Harper et al., Competition Policy Review, 2015

¹⁸ ACCC, Submission to the Competition Policy Review (Harper Review), 2015

Additional choice and creating new products

In addition to providing higher service standards and customer guarantees, ridesharing allows for the expansion of product offerings to consumers. For example, ridesharing is an essential precondition for the development of sophisticated carpooling systems. In San Francisco and other mature ridesharing markets, for instance, almost half of all Uber trips are taken through the uberPOOL product. Uber has facilitated over 100 million trips through the uberPOOL product since launch across 33 cities.

uberPOOL connects two or more consenting riders who are travelling in a similar direction along a similar route. The Uber app re-routes the driver-partner to collect each rider. At the end of the trip, each rider pays a fraction of the normal fare while the driver-partner collects a multiple of their usual fare.

In the first four months of 2016 alone, uberPOOL eliminated over 145 million kilometres of driving and saved 16,000 tons of carbon dioxide emissions. With mature carpooling systems like uberPOOL, ten per cent of young people who use Uber have chosen to not buy a car or to dispense with their car because of Uber¹⁹.

Inclusive mobility and greater service for vulnerable consumers

Ridesharing is improving consumer protection and choice for those with mobility difficulties or accessibility needs. Uber has worked with Open Doors and the Australian Network on Disability to create a training programme for driver-partners to ensure that they understand the accessibility needs of different riders. Approximately ten per cent of uberX supply hours are available through this uberASSIST product.

uberASSIST allows riders to request a vehicle than can accommodate folding wheelchairs, walkers and collapsible scooters, and guarantees that the driver-partner has received dedicated education. uberASSIST rides are the same price as a standard uberX ride and can be requested on demand through the app. In addition, in late 2015 Uber trialled its first Wheelchair Accessible Vehicle (WAV) ridesharing service in Australia.

“The sharing economy has many advantages for people who have needs different from the mainstream including its ability to aggregate a market for the delivery of niche services and to receive more detailed feedback about the actual quality of service received. One example of the expansion of services to new demographic groups is UberAssist, which is a version of the Uber service focused on vehicles which are accessible for people with disabilities.”²⁰

¹⁹ Copenhagen Economics, Economic benefits of peer-to-peer transport services, 2015

²⁰ Deloitte Access Economics, the Sharing Economy and the Competition and Consumer Act, 2015

This continued commitment to inclusive mobility presents an important opportunity to help achieve the Intergovernmental Agreement's objective of "meeting the needs of those consumer who are most vulnerable, or at greatest disadvantage²¹."

False and Misleading Advertising

Preventing advertising that is false and misleading improves consumer welfare by allowing people to make informed choices. The ACCC already has sufficient powers to remedy false and misleading conduct through existing provisions. While no amendment to the Act in this regard is suggested, the ACCC should be encouraged to use its substantiation powers in clear or compelling circumstances of false and misleading advertising.

As an example, in August 2015 a campaign by the NSW Taxi Council made an overarching representation that ridesharing services are not safe. In April 2016, the Advertising Standards Bureau found the Taxi Council had breached the following sections of the Advertising Code of Ethics: 1.2 (Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive) and 1.3 (Advertising or Marketing Communications shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor).

In relation to the same advertising campaign, consumer advocate CHOICE requested the ACCC use its substantiation powers under Section 219 of Schedule 2 of the ACL to compel the Taxi Council to provide evidence proving their claims. The ACCC failed to do so despite the Advertising Standards Bureau determining the campaign to be misleading or deceptive and comprising a misrepresentation. In future an investigation by ACCC into such cases presents an important additional deterrent for organisations intentionally misleading consumers.

Conclusion

The existing Australian Consumer Law broadly meets its objectives of protecting consumer welfare. It achieves this through a risk-based regulatory approach that recognises the importance of minimising compliance costs and encouraging co-regulation. Importantly, the ACL remains sufficiently flexible and adaptable to emerging business models.

However, the ACL must foster innovation and emerging business models. Peer to peer platforms present an important opportunity to advance consumer welfare through improved competition, transparency and information. The ability of ridesharing technology to deliver greater consumer welfare in terms of price, safety, service and choice is a clear example of this.

²¹ Council of Australian Governments, Intergovernmental Agreement on Australian Consumer Law, 2009

New business models such as Uber and regulatory approaches to address them will inevitably draw criticism from incumbents. In response, competition regulators should closely scrutinise the representation of new services by both service providers and competitors alike. In addition, governments should acknowledge the consumer benefits of peer to peer networks.

To maximise the consumer welfare benefit of peer to peer models, a bespoke approach to competition policy is required. Peer to peer models are changing conventional approaches to pricing, service guarantees and the role of the network effect in delivering services. This has enhanced competition, consumer welfare and presented new opportunities for meaningful co-regulation. In response, competition regulators are similarly required to innovate. This means focusing on the outcomes for consumers, not on prescriptive methods for achieving them.