

"Should ride-hailing services be regulated in Hong Kong? If so, why and how? If not, why not?"

**1. Introduction**

Innovation and entrepreneurship has been a driving force in economic growth. In recent years there has been a rise in the so called “sharing economy” involving not only ride hailing services but home sharing services such as Airbnb. The emergence of these sharing platforms has led to legal uncertainty across the globe.

Lawmakers around the world have had to answer the question of how the law should deal with such businesses. Should it introduce new laws, amend existing ones, apply existing one or completely ban them from operation. Hong Kong must now do the same.

This paper seeks to first address what ride hailing services are, secondly whether ride-hailing services should be regulated, thirdly the current problems that exist in taxis and ride hailing services, fourthly how other jurisdictions are regulating such services and lastly how Hong Kong should regulate ride-hailing services. For the purpose of this paper, Uber will be used as the example of ride hailing service due its rapid growth and the controversies it had caused around the world.

**2. What are Ride Hailing Services?**

Ride hailing service have been commonly associated with companies such as Uber<sup>1</sup>. It works by using a smartphone app to connect drivers who are willing to offer rides to passengers who are looking for a ride for a fee. The transaction is done through the app and no cash payment is required. Uber then takes a percentage of the transacted fare and the remaining portion is left for the driver. The main selling point of Uber is that it reduced the cost of searching<sup>2</sup>. Passengers would often get frustrated for not finding a taxi when they need it the most. Taxi drivers may not bother driving around the city to seek for those passengers but instead they stay at hotspots that usually have a high demand such as airports and hotels.

Uber introduced a method of almost guaranteeing you a ride with a click of a button. Instead of having to roam the streets for passengers or drivers, you can stay indoors at your comfort until you see your ride approaching.

### **3. Should Ride Hailing Services be Regulated?**

Ride hailing services has become synonymous with words such as “innovative” and “disruptive”. When innovation disrupts untouched industries regulated by old laws, it brings us to the inevitable question of how to deal with them. In short there are three options Hong Kong can pursue. (1) Ban these services; (2) Deregulate them or (3) Regulate them.

#### **A. Banning**

Banning Uber will receive support from taxi drivers and taxi licence owners who currently enjoy little to no competition in the taxi industry. In fact in their recent protest, they have made clear they would bring a

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<sup>1</sup> Babar, Yash and Burtch, Gordon, Examining the Impact of Ridehailing Services on Public Transit Use (September 25, 2017), 1

<sup>2</sup> Brishen Roger, The Social Costs of Uber (January 31, 2015), University of Chicago Law Review Dialogue, Forthcoming; Temple University Legal Studies Research Paper No. 2015-28, 88

judicial review if ride hailing services were made legal<sup>3</sup>. There are several implications to this decision. Firstly it leaves Hong Kong susceptible to criticisms for their “lack of innovation”, even though Hong Kong has repeatedly mentioned its strive towards being an innovative hub<sup>4</sup>. Secondly it merely delays the problem until another “Uber” comes along and puts us back into the same position, having to answer the same questions again. Thirdly banning ride hailing services does little to protect users from the current market failures that exist.

## **B. Deregulation**

Allowing Uber to operate within Hong Kong without any regulations may cause problems not just to the taxi industry but also to public welfare and safety. Theoretically the lack of regulation in Hong Kong may mean it could drive the taxi industry to the ground to the point where they could no longer compete with Uber. If other ride hailing services are unable to penetrate the market and compete, it provides Uber the opportunity to become a monopoly. This severely limits the users choices of transportation and leaves them vulnerable to exploitation. Furthermore deregulation may jeopardize public safety, as anyone can potentially become a driver even those with a history of reckless driving or health conditions.

## **C. Regulate**

Regulating ride-hailing services appears to be the option that can strike an optimal balance between the welfare of taxis, ride hailing services and the public. With the exponential growth of technology, rigid and outdated

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<sup>3</sup> Cannix Yau, Outraged taxi groups threaten to sue Hong Kong if it allows ride-hailing services as watchdog recommended, SCMP (28 November 2017) < <http://www.scmp.com/news/hong-kong/economy/article/2123373/outraged-taxi-groups-threaten-sue-hong-kong-if-it-allows-ride#comments>> (accessed 23 December 2017)

<sup>4</sup> [http://www.itb.gov.hk/en/about\\_us/role/](http://www.itb.gov.hk/en/about_us/role/) (accessed 23 December 2017)

laws can no longer accommodate for changes that introduce innovative business models into the market.

To accommodate innovation within the law, we should be developing a path to an “innovation –friendly law”<sup>5</sup> where innovations can be encouraged as well as regulated in the interest of everyone involved. The unique aspect of this would be its rapid adaptability. Before proceeding onto how such a law can be introduced, and how ride-hailing services should be regulated it is important to first identify the existing problems in the taxi and ride hailing service market. Only by identifying the problems can we propose the most pragmatic solutions.

#### **4. Problems of Taxis and Ride Hailing Services**

##### **A. Lack of Supply**

The taxi industry generally enjoys greater protection than other transportation services<sup>6</sup>. One of the main justifications for control is because without limiting the amount of taxis on the road, it would end up creating traffic congestion, excessive competition, oversupply, price

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<sup>5</sup> Sofia Ranchordas, Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy (September 7, 2014), *Minnesota Journal of Law, Science & Technology*, 32

<sup>6</sup> Colangelo, Margherita and Maggiolino, Mariateresa, Uber: A New Challenge for Regulation and Competition Law? (September 25, 2017). *Market and Competition Law Review*, 5

competition and an increase in pollution<sup>7</sup>. Regulation also ensures passengers do not get exploited by unreasonable fares but at the same time provide a reasonable income to taxi drivers<sup>8</sup>.

On the contrary regulations has led to an undersupply of taxi services with the number of taxis being restricted at about 18,000<sup>9</sup>. The fact that Hong Kong's population grew since that time inevitably led to a rise in demand. Increasing the supply of taxis may not be a viable solution in the long run<sup>10</sup> and there are other methods to resolve this. What is clear is that the lack of responsiveness to do something about the situation is a form of market failure and a consequence that the public had to bear. The failures inevitably gave the private sector an opportunity to implement their business model and satisfy the public's demands, granting them access to the taxi industry.

## **B. Quality of Service**

The quality of service of taxis has had its fair share of complaints. According to Road Traffic (Public Service Vehicles) Regulations, regulation 37<sup>11</sup>, taxi drivers must adhere to the statutory obligations imposed on to them. As seen in the report conducted by the Consumer Councils, there have been reported cases of contravening such regulations<sup>12</sup>. For example, the data gathered based on 2016 suggested that 15.7% of taxis did not take the most direct route as required by S.37

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<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Michelle J Tao, How Uber can Spur Improvements in Hong Kong Taxi Services <http://www.scmp.com/comment/insight-opinion/article/2109112/how-uber-can-spur-improvements-hong-kongs-taxi-service> (accessed 29 December 2017)

<sup>10</sup> Legislative Council Panel on Transport Public Transport Strategy Study – Role and Positioning Review Personalised and Point-to-Point Transport Services < <https://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170317cb4-666-5-e.pdf>> (accessed 29 December 2017)

<sup>11</sup> Road Traffic (Public Service Vehicles) Regulations, Cap 374D

<sup>12</sup> Consumer Council, A Study of the Competition in the Personalised Point-to-point Car Transport Service Market, 28 November 2017, 10 <[https://www.consumer.org.hk/sites/consumer/files/competition\\_issues/CarHailing/presentation\\_eng.pdf](https://www.consumer.org.hk/sites/consumer/files/competition_issues/CarHailing/presentation_eng.pdf)> accessed: 24<sup>th</sup> December 2017

(d), 26.3% refused hire without reasonable reasons as per S.37 (a), 18.5% overcharged passengers etc...

It should be reminded that these are merely reports that have been reported and the statistics could be a lot higher since nobody knows until the passenger reports the incident. Unless the passenger has evidence of poor behavior it is hard to impose any form of punishment. Moreover public and tourists may not even know such regulations exist. This demonstrates that even with regulations in place, adopting these regulations and applying it to ride hailing services may not be helpful at all. For regulations to be effective the public must be aware such rules have been implemented for their own benefit. By raising awareness it provides incentives for taxi drivers to adhere to the enacted regulation.

### **C. Taxi Drivers and Taxi Licence Owners**

The two parties that have felt the detrimental effects of Uber since its operation in Hong Kong are taxi drivers and taxi licence owners. Both parties have their own respective reasons for wanting Uber out of Hong Kong.

The primary concerns of taxi licence owners stem from the fact that taxi licences are valuable assets. These licences are limited in quantity and can reach as high as HKD\$7million<sup>13</sup>. Taxi licence owners see this as a stable investment due to the high barrier to entry that the government has created. The fact that Hong Kong has a growing population while the

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<sup>13</sup> Albert Cheng, Uber can drive a taxi revolution in Hong Kong, 23 August 2015, <<http://www.scmp.com/comment/insight-opinion/article/1851415/uber-can-drive-taxi-revolution-hong-kong#comments>> accessed 28 December 2017

number of taxi licences remains static will only increase the value of such an asset over time as demands for taxis also increases.

On the other hand taxi drivers may not necessarily be taxi licence owners. Their primary concerns lie with the increase in competition that Uber has brought. This inevitably reduces the income of taxi drivers, which affects their livelihood. This highlights the detrimental effect of introducing new technology into a historically untouched industry.

To conduct a fair analysis of the situation we must also take into account that even though services such as Uber may have been “a” cause in the fall of taxi demand, it is not necessarily “the” cause. Relying on this reason to reject ride hailing services which has helped correct market failures is wholly unreasonable. The report made by the Consumer Council highlighted the factors that affected taxi demands. This includes the increase in people that can afford owning a private vehicle, the expansion and improvement of public transport services such as the MTR and the introduction of ride hailing services<sup>14</sup>. It is difficult to determine the true impact of ride hailing services until further empirical data can be gathered.

#### **D. Passenger Safety**

Despite its international reputation Uber has repeatedly made headlines for their lack of corporate governance and passenger safety. For example there have been crimes ranging from assault<sup>15</sup> to kidnapping<sup>16</sup>. There are

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<sup>14</sup> Consumer Council (n13), 16

<sup>15</sup> Jasmine Siu, Hong Kong court slaps HK\$2,000 fine on former Uber driver who slapped company employee, 02 September 2016, < <http://www.scmp.com/news/hong-kong/law-crime/article/2013084/hong-kong-court-slaps-hk2000-fine-former-uber-driver-who>> accessed 27 December 2017

<sup>16</sup> Ashifa Kassam, Uber driver charged with kidnapping female passenger in Canada, 23 May 2017, < <https://www.theguardian.com/technology/2017/jun/06/uber-fires-employees-sexual-harassment-investigation>> accessed 29 December 2017

also overly ambitious Uber drivers who work long hours just to earn extra income increasing fatigue, jeopardizing their passengers and their own safety<sup>17</sup>. Although there have been relatively little known incidents in Hong Kong, these are concerns that we must take into account when determining how ride-hailing services should be regulated. For example Uber claims to conduct background checks on their drivers but it is questionable how thorough the investigation is. In 2017 a class action lawsuit was launched in the United States against Uber alleging their failure to do thorough background checks that resulted in assaults<sup>18</sup>.

## **5. Regulation in Overseas Jurisdiction**

Having identified the current issues in both the taxi and ride sharing services; we now explore how Hong Kong should regulate them. A useful starting point is to see how other jurisdiction approached this problem. By observing the various requirements different jurisdictions have imposed, it can help Hong Kong determine what to include in their own regulation.

### **A. United States**

In California, the California Public Utilities Commission created the category of “Transport Network Company” which has its own regulating rules, different from the taxi industry<sup>19</sup>. In New York (NY), NY has had its issue with drivers and medallion owners as well. In 2013 NY medallions can be bought for at least USD\$1million but Uber allegedly

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<sup>17</sup> Sadie Levy Gale, Uber drivers' working hours prompt fears over 'excessive and unsafe' 65-hour weeks 1 May 2016, <http://www.independent.co.uk/news/uk/home-news/concerns-over-unsafe-65-hour-weeks-for-uber-cab-drivers-a7009176.html>>

<sup>18</sup> Katie Roof, Uber dealt with class action lawsuit alleging assault by drivers <<https://techcrunch.com/2017/11/14/uber-dealt-with-harassment-class-action-lawsuit/>> (accessed 3 January 2018)

<sup>19</sup> Katrina M. Wyman, Taxi Regulation in the Age of Uber



caused the value to fall to about USD\$150,000 to \$450,000<sup>20</sup>. NY passed a bill anyway in 2017 that allows operators such as Uber and Lyft to operate in the city. The new requirement for ride hailing services includes a photo of the driver; make, model and colour of vehicle and vehicles plate number. Drivers must also be over 19 years old, a valid licence issued by Department of Motor Vehicles (DMV) and undergo a background check. The ride hailing companies (RHC) must fill an application and submit to the DMV Application fees costs \$100,000 and a \$60,000 renewal fee. RHC must have vehicle liability insurance of \$1.25million whenever a passenger is being driven; must provide workers compensation coverage; adopt anti discriminatory policies against passenger and finally submit all their enrolled drivers in DMV's License Event Notification System.<sup>21</sup>

## **B. Europe**

Uber was once permitted to operate legally in London by using private hire operator license (PHOL). However Transport for London (TfL) has issued out a notice on 22<sup>nd</sup> September 2017 stating that they will no longer re-issue PHOL to them<sup>22</sup>. The reasons cited by TfL were because of Uber's lack of corporate responsibility in public safety and security implications<sup>23</sup>. These included how they reported serious criminal offences, how medical certificates were obtained, its approach to enhanced disclosure and barring services etc...Another issue that had to be addressed was determining the status of Uber and its drivers. Were they employees or independent contractors? In the case of *Aslam &*

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<sup>20</sup> Winnie Hu, Taxi Medallions Once a Safe Investment, Now Drag Owners Into Debt, 10 September 2017 <https://www.nytimes.com/2017/09/10/nyregion/new-york-taxi-medallions-uber.html> (accessed 5 January 2018)

<sup>21</sup> <https://dmv.ny.gov/press-release/press-release-06-28-2017-0> (accessed 3 January 2018)

<sup>22</sup> <https://tfl.gov.uk/info-for/media/press-releases/2017/september/licensing-decision-on-uber-london-limited> (accessed 3 January 2018)

<sup>23</sup> Ibid

*Farrar v Uber*<sup>24</sup> the Employment Appeal Tribunal concluded that Uber drivers were “workers” meaning they are entitled to benefits such as minimum wage and holiday pay. This was largely based on the amount of control Uber had towards their driver, which did not point towards an independent contractor relationship.

In the European Union (EU), the case of *Asociación Profesional Élite Taxi v Uber Systems Spain SL*<sup>25</sup> reached its conclusion at the European Courts of Justice (ECJ). The dispute was whether Uber was engaged in unfair competition because it did not comply with the same rules that applied to taxis. ECJ ruled that Uber was a “Transport Service”<sup>26</sup> as opposed to being an “Information Society Service”. This judgment will be binding on all countries of the EU including the United Kingdom. The implication of this decision meant that Uber must submit to the regulations that are ordinarily imposed upon taxis<sup>27</sup>. This suggests that they must have the requisite licences to operate legally, as well as higher obligations to take responsibilities for their drivers.

It is predicted by some people that the judgment by ECJ will be authority for Hong Kong to force Uber to comply with regulations that apply to the taxi services<sup>28</sup>. It is recommended that Hong Kong should not force ride-hailing service to comply with rules that regulate taxis based on ECJs decision alone. It is a factor to take into account but it is argued there are more lasting benefits for everyone if ride hailing services are regulated independently with their own set of rules.

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<sup>24</sup> UKEAT/0056/17/DA

<sup>25</sup> C-434/15

<sup>26</sup> Ibid

<sup>27</sup> Mehreen Khan, Uber court judgment has big Implications for European legislation, <<https://www.ft.com/content/cbfd3024-e4a5-11e7-97e2-916d4fbac0da>> (accessed 3 January 2018)

<sup>28</sup> Cannix Yau, EU ruling on Uber will give Hong Kong an ‘excuse’ to block service, unless it follows taxi laws, 20 December 2017 <http://www.scmp.com/news/hong-kong/economy/article/2125130/eu-ruling-uber-will-give-hong-kong-excuse-block-it-unless-it> (accessed 9 January 2018)

## **C. Asia**

Singapore requires Uber and Grab to obtain a private hire car driver's vocational licence to operate. To obtain such a licence a person must pass background and medical checks, be able to read and speak simple English, be a Singaporean resident, have a continuous driving licence of two years and those over 50 years old will be required to have more frequent medical examination. Furthermore they must take a 10-hour PDVL course and pass the tests for them to operate legally<sup>29</sup>.

China also prescribed its own set of regulations for services such as Didi Chuxing. Their regulations include having at least three years of driving experience before being eligible to work on a ride hailing platform, cars cannot have more than seven seats, cars must not be used if it surpassed 600,000km, drivers must have local household registration and user information must be stored in China for at least two years.<sup>30</sup>

## **6. How Should Hong Kong Regulate?**

### **A. Protecting the Public**

In light of what other jurisdictions have done, Hong Kong should implement safety regulations as the first line of protection for the public. Like most jurisdictions, we should impose regulation on background checks. By requiring ride hailing companies to comply with certain background and health checks approved by regulators, at the very least it would provide psychological relief to the public that the unprofessional drivers do not have any criminal records, history of reckless driving or

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<sup>29</sup>[https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicTransport/files/FAQS\\_for\\_PHC\\_drivers.pdf](https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicTransport/files/FAQS_for_PHC_drivers.pdf) (accessed 10 January 2018)

<sup>30</sup> Jon Russell, China issues guidelines to legalize ride-hailing apps like Uber and Didi Chuxing, July 28 2016 <https://techcrunch.com/2016/07/28/china-issues-guidelines-to-legalize-ride-hailing-apps-like-uber-and-didi-chuxing/> (accessed 10 January 2018)

health conditions that may affect their safety. Furthermore regulation should be imposed to ensure the vehicles being used to carry passengers are in safe conditions. This may include mandating the vehicle cannot be over a certain age or certain mileage. Violation may range from monetary fines to licence suspension or repeated offenders may just be banned altogether. Unfortunately the limit of background checking is that it cannot predict whether a driver will commit any offence or inappropriate behavior in the future. It merely filters out those who have exhibited such behavior in the past.

We do not have to rely solely on the law to protect people. All ride hailing service and the taxi industry can adopt something similar to a rating system that Uber has. The rating system provides sufficient checks and balances between driver and passenger. The stars provide an indication to future driver and passengers the conduct and experience of such a person. This in turn affects whether the person get the service they need. Of course such a system has its flaws. Both parties may be reluctant to give low ratings despite poor service due to the fear of being retaliated and be given a low review as well. On the other hand this system provides a starting point in providing better service quality from both passengers and drivers until something better can be implemented.

### **B. Minimizing Impact on Taxi Licence Owners**

A reason for the reluctance of permitting Uber to operate in Hong Kong is because of the fear of upsetting taxi licence owners. It remains puzzling as to why protecting the value of licences are so important that it justifies disregarding a new business model, which the taxi industry can adopt and improve upon which would make them more competitive. It should be reminded that the origins of taxi licences are not there solely for investment purposes. Despite having commercialized such an item; the

original purpose of the licensing scheme was to protect the public and drivers welfare. It is hypothesized that due to the lack of competition, the commercial aspect of such an asset has grown and overshadowed the original purpose of the scheme. The commercial side of taxi licences should be incidental to its purpose of protecting the welfare of passengers and drivers, as opposed to protecting drivers and passengers being incidental to the commercial aspect.

It is proposed that firstly the government should not compensate the loss made by taxi licence owners as that creates a dangerous precedent for the future and also undermines what it means to take an investment risk<sup>31</sup>. Instead we seek to minimize the impact of ride hailing services.

If the quantity of vehicles can affect the value, we can instead regulate the quality of what taxis and Uber can do. For example exclusive rights may be vested in taxi services. These exclusive rights may include access to certain areas of Hong Kong such as the airport or the Hong Kong stadium etc... By doing so it gives exclusivity to only those who has a taxi licence enhancing its value. Taxis also have the advantage of not only having access to the “stand” and “hail” market<sup>32</sup> but also through electronic hailing (e-hailing). In fact Hong Kong taxis already have apps to find passengers who prefer using e hailing. If we compare this to Uber who can only rely on e-hailing to connect drivers and passengers and implement the zone restriction imposed upon Uber drivers as recommended above, it should help reduce the impact of Uber on taxi licence owners. In short the increase in quantity shall be compensated by quality.

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<sup>31</sup> Katrina (n19), 89

<sup>32</sup> Consumer Council (n12), 21

## **C. Tax**

When a solution is introduced for one problem, it is not uncommon for new problems to arise as a result of introducing that solution. In this case Uber has helped correct market failures within the taxi industry. It has created incentives for people who normally do not use or own a private vehicle to use it more often or purchase one as investment to generate a side income. Furthermore it has provided the public an alternative choice of transportation as well as made use of under utilized assets.

Unfortunately the price for the market correction was the increase in traffic congestion and negative externalities<sup>33</sup> that arose from using the private vehicles, which drivers would otherwise not have used.<sup>34</sup> It would seem reasonable to introduce a taxing scheme to compensate for this cost to society. Taxing such a service will help government raise revenue as well as compensate for the negative externalities that they have created<sup>35</sup>.

## **D. Employee of Independent Contractors**

Hong Kong may also need to determine whether ride hailing drivers are classified as employees or not. This is important as there needs to be certainty whether drivers are protected under the Employment Ordinance Cap 577 and be entitled to certain benefits. By clarifying their legal status, it will provide legal certainty as to whether it is subject to other existing ordinances in Hong Kong.

## **E. Competition Law**

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<sup>33</sup> Benjamin G. Edelman & Damien Geradin, November 24, 2015, *Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies Like Airbnb and Uber*, 29

<sup>34</sup> *Ibid*

<sup>35</sup> *Ibid*

When analyzing the current situation, one may wonder how the Competition Ordinance could come into play. Hong Kong should keep this in mind because there have been allegations of price fixing in the United States as seen in *Meyer v Kalanick*<sup>36</sup>. In that case Meyer accused Uber who shared profits with their drivers, for conspiring with drivers to charge, “surge pricing” during peak hours, violating the Sherman act<sup>37</sup>.

Ubers current business model relies on a computer algorithm, which adjusts prices by taking various factors into account. These include real time data on supply and demand, competitors price and weather conditions<sup>38</sup> etc.... Uber then profit by taking a percentage of the fee charged. One of the purposes of the Competition Ordinance is to prohibit conduct that prevents, restricts or distorts competition<sup>39</sup>. A question that may arise is whether computer-pricing algorithms in light of *Meyer v Kalanick*<sup>40</sup> falls within the definition of anti competitive behavior of price fixing under the Hong Kong Competition Ordinance. The key element is the fact that the drivers do not get to decide how to set the price. It is all coordinated by the algorithm, which all Uber drivers must use<sup>41</sup>.

Apart from analyzing the ride hailing service, the taxi industry must also be analyzed from the prospective of the Competition Ordinance. Ever since Uber made its way into Hong Kong, taxi drivers and licence owners have been doing everything they can to force Uber out of the city. It begs the question whether having the government at its back means they are entitled to force competition out when they do not play by what the taxi

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<sup>36</sup> No. 16-2750 (2d Cir. Aug. 17, 2017)

<sup>37</sup> 15 U.S.C. § 1

<sup>38</sup> Colangelo (n6), 131

<sup>39</sup> CAP 619 Competition Ordinance Long Title

<sup>40</sup> Benjamin (n33)

<sup>41</sup> Julian Nowag, The UBER-Cartel? UBER between Labour and Competition Law (2016). 2016 Lund Student EU Law Review Vol 3.

industry deems acceptable<sup>42</sup>? Or when the competitors business operations are not in line with their own businesses<sup>43</sup>? Such behavior goes against the purpose of the Competition Ordinance. As stated by the Competition Commissioner: “*The Competition Ordinance is designed to promote competition and prohibit anti-competitive practices.*”<sup>44</sup>. The conduct exhibited by the taxi industry clearly demonstrates their reluctance to have a competitive market so as to provide better choices and services for everyone<sup>45</sup>. Their actions contradict the very purpose of why the Competition Ordinance was introduced. Rather than solely focusing on how ride-hailing services can be regulated, it would be in the best interest for everyone if the taxi industry also explored ways to make themselves more competitive rather than drive out competition completely when they feel threatened<sup>46</sup>.

## **F. Innovation Friendly Laws**

In light of what was discussed above, ultimately ride sharing is still a new concept in the eyes of the law. The above regulations help create a solid foundation of how ride hailing services should operate in Hong Kong. Unfortunately it is difficult to tell whether the regulations imposed are fair or effective until it has been implemented. Furthermore there is no telling when the ride sharing platforms may evolve and bring in another set of innovative ideas that bring legislators back into legal uncertainty again. This means laws will always be a step behind innovation<sup>47</sup>. However it does not mean it cannot be quick at reacting to changes. With such a fast pace environment, it is worth exploring the idea of sunset clauses in order to live up to the name “innovation-friendly law”<sup>48</sup>.

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<sup>42</sup> Eugene Merkert, Antitrust vs. Monopoly: An Uber Disruption, 54

<sup>43</sup> Ibid

<sup>44</sup> [https://www.compcomm.hk/en/practices/what\\_is\\_comp/overview.html](https://www.compcomm.hk/en/practices/what_is_comp/overview.html) (accessed 12 January 2018)

<sup>45</sup> Ibid

<sup>46</sup> Eugene (n42), 54

<sup>47</sup> Sofia (n5), 37

<sup>48</sup> Sofia (n5), 32



By adding sunset clauses it allows legislators to conduct short-term small-scale experiments to see the effect of their regulations on society. Another term to describe this is a “trial period”. On the one hand the government can collect useful data on the problems that arises from implementing such regulations<sup>49</sup>. At the same time there are regulations in place that protect the public even if it is not perfect. The addition of sunset clauses will provide the sufficient flexibility needed to quickly adapt to changing circumstances and provide greater accuracy when amending the law. The long-term benefit derived from the information gathered because of the trial will most likely outweigh the irreversible impact the trial period created during that short period of time when it was in effect<sup>50</sup>. Thus we enhance the speed and efficiency in finding the optimal regulation to this problem at hand.

## **7. Conclusion**

Based on the analysis above it is proposed that ride hailing services should be regulated. Furthermore to ensure we are able to create the optimal regulation in such a dynamic environment, sunset clauses are recommended to ensure a rapid response if the implemented regulations do not have the desired effect.

On a concluding note, one observation that should be kept in mind is the rapid development of automobile technology. The introduction of self-driving vehicles may soon bring a new set of problems to Hong Kong. As mentioned above one of the innovative part of ride hailing services were their business model, which eliminated the cost of searching passengers and riders. This means their next biggest costs are driver especially if ride

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<sup>49</sup> Sofia (n5), 39

<sup>50</sup> Sofia (n5), 39

hailing drivers are deemed to be “employees”. This provides all the more reason for Uber to replace drivers with self-driving cars. It is only a matter of time before this technology is introduced to society, which will no doubt disrupt all industries that require a driver<sup>51</sup>. This inevitably puts taxi drivers and ride-hailing drivers back into the spotlight again except this time it will be a legal battle against autonomous machines. A whole new set of laws must be introduced or amended as laws aimed at regulating human conduct cannot be imposed on machines.

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<sup>51</sup> Jacob D. Walpert, *Carpooling Liability?, Applying Tort Law Principles To The Joint Emergence of Self-Driving Automobiles and Transportation Network Companies*