

Should ride-hailing services be regulated in Hong Kong?

If so, why and how? If not, why not?

Introduction

In recent years, the development of the sharing economy has led to the emergence of various digital platforms that act as intermediaries to allow private individuals to offer their services to users¹. Among these are ride-hailing platforms, such as Uber and Didi Chuxing, which connect drivers who are willing to carry passengers in their private vehicles to potential customers, offering personalised point-to-point transportation services, a market which has been dominated by taxis. Making use of modern information technology, such as mobile applications and GPS technology, these ride-hailing services have proven to be popular among people in Hong Kong. However, such ride-hailing services remain illegal under current Hong Kong law.

At the same time, complaints against taxi services have been increasing in Hong Kong in recent years². Many demand alternative options, and wonder why ride-hailing services have not been legalised in Hong Kong yet. In a survey commissioned by Uber Hong Kong, over 70% of respondents said they wanted more choices for point-to-point transportation in Hong Kong, and believed the introduction of Uber could enhance such transportation services³.

¹ Vassilis Hatzopoulos et al, '*Caring for sharing? The collaborative economy under EU law*,' (2017) 54 Common Market Law Review 81, 85

² Consumer Council, *More Choices Better Service: A Study of the Competition in the Personalised Point-to-Point Car Transport Service Market* (November 2017), p 2

³ Uber, "Uber and CUHK's Public Polling Results on "HK's Transportation Services" 19 Jun 2017; Available at <https://www.uber.com/en-HK/newsroom/uber-and-cuhk-publicpolling/> (visited 14 Jan 2018)

In light of the above, this essay will explore the current legal status of ride-hailing services in Hong Kong, and argue that they should be allowed and regulated in Hong Kong. Reviewing overseas experience, this essay will offer suggestions on how Hong Kong can regulate ride-hailing services.

Ride-Hailing Services Fall Foul of Current Regulations

Section 25(3) of the Road Traffic Ordinance (Cap. 374) provides that:

- “No person shall-*
- (a) drive or use a motor vehicle; or*
 - (b) suffer or permit a motor vehicle to be driven or used, for the carriage of passengers for hire or reward unless-*
 - (i) the vehicle is licensed as a ... taxi; ...*
 - (iii) a hire car permit is in force in respect of the vehicle.”*

The power to license taxis is vested in the Commissioner of Transport, and are provided for in the Road Traffic Ordinance⁴ and the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E)⁵. As of March 2017, there were around 18,000 licensed taxis in Hong Kong. The Government’s policy is that taxi licenses are issued with reference to the demand for taxi services. Licenses for urban and New Territories taxis were last issued in 1994, and 25 new licenses for Lantau taxis were issued in 2016⁶.

⁴ Section 6, and Part 4

⁵ Regulation 26

⁶ Transport and Housing Bureau, *Public Transport Strategy Study - Role and Positioning Review Personalised and Point-to-point Transport Services* (March 2017), p 2-3

The Commissioner of Transport may also issue hire car permits for private hire car service under the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D)⁷. The maximum number of hire car permits for private hire car service to be issued is 1500⁸, and only 648 such permits have been issued as of July 2017⁹. It has been said that the threshold is high for a successful application for such a permit¹⁰. The applicant must show that the permit is either for the purpose of providing personalised high-end transportation (when applying for a limousine), or for the carriage of residents “of an area where there is no or inadequate transport”¹¹. However, ride-hailing services are generally not limited to such purposes, and thus are unlikely to qualify for a hire car permit.

There is also an obligation on users of motor vehicles to be insured against third party risks under the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272)¹². Uber states that it has secured ride-share liability insurance for its trips¹³, but it is unclear whether such insurance policy is sufficient to discharge the above insurance obligation, and

⁷ Regulation 14

⁸ Hire Car Permits (Limitation on Numbers) Notice (Cap. 374L), paragraph 2(a)

⁹ Consumer Council, *More Choices Better Service: A Study of the Competition in the Personalised Point-to-Point Car Transport Service Market* (November 2017), p 9

¹⁰ “Uber 車難申請「出租汽車許可證」 交諮會雲維熹倡降低門檻”, The Stand News, 18 August 2015; Available at

<https://www.thestandnews.com/society/uber%E8%BB%8A%E9%9B%A3%E7%94%B3%E8%AB%8B->

<https://www.thestandnews.com/society/uber%E8%BB%8A%E8%A8%B1%E5%8F%AF%E8%AD%89->

<https://www.thestandnews.com/society/uber%E8%BB%8A%E8%A8%B1%E5%8F%B9%E5%80%A1%E9%99%8D%E4%BD%8E%E9%96%80%E6%AA%BB/>

(visited 14 Jan 2018)

¹¹ Transport Department, *Hire Car Permit*; Available at

http://www.td.gov.hk/en/public_services/licences_and_permits/hire_car_permit/index.html (visited 14 Jan 2018)

¹² Section 4

¹³ Uber, “Peace of mind at the push of a button: Insurance for all rides on Uber in Hong Kong”; Available at <https://www.uber.com/en-HK/blog/uber-insurance-hk/> (visited 14 Jan 2018)

the Transport Department has not responded to media inquiries on this point¹⁴.

In any case, insofar as the vehicles used by ride-hailing services are not licensed as taxis or possess a hire car permit, it is illegal for them to carry passengers for reward under current Hong Kong law. In March 2017, 5 Uber drivers were convicted of driving without a hire car permit and third-party insurance, and in May 2017 22 Uber drivers were arrested on the same charges¹⁵.

Therefore, although ride-hailing services are not technically banned in Hong Kong since they too can operate legally if they acquire the appropriate licenses/permits for their vehicles, given that the reluctance of the Government to issue new taxi licences and the difficulty in obtaining a hire car permit, ride-hailing services are in effect banned from entering the point-to-point transportation market.

Should Ride-Hailing Services Be Allowed in Hong Kong?

Before one explores the question of whether ride-hailing services should be *regulated* in Hong Kong, it is necessary to consider whether they should be *allowed* in Hong Kong. To do so, it is helpful to first understand what the advent of ride-hailing services entails, and what benefits they bring to the point-to-point transportation service market that traditional taxi services are unable to offer. The main oppositions to ride-hailing services will then be explored, and it will be argued that the

¹⁴ "Uber 共乘保屬第三保？政府未定論", Ming Pao, 11 March 2017; Available at https://news.mingpao.com/pns/dailynews/web_tc/article/20170311/s00002/1489168315472 (visited 14 Jan 2018)

¹⁵ "22 Uber drivers arrested in undercover Hong Kong police operation", South China Morning Post, 23 May 2017; Available at <http://www.scmp.com/news/hong-kong/law-crime/article/2095336/21-uber-drivers-arrested-hong-kong-undercover-police> (visited 14 Jan 2018)

oppositions, while legitimate, do not justify a blanket ban on ride-hailing services.

How Ride-Hailing Services Improve Point-to-Point Transportation

One main benefit offered by ride-hailing services is the reduction in costs, such as time and costs spent searching for suitable drivers and vice versa. Traditionally, passengers seeking to hail a taxi must either hail one on the street, get one at the taxi stand, or arrange a taxi on the telephone through a call centre¹⁶. An unlucky passenger could have waited on the street for a substantial period of time only to be unsuccessful in hailing a taxi, before then spending more time moving to the nearest taxi stand or arranging a taxi through a call centre. On the flip side, using a ride-hailing app, passengers can check the availability of vehicles and their geographical locations, as vehicles are equipped with GPS technology. Passengers can instantly find out where the vehicle picking them up is and how long the approximate waiting time would be. Ride-hailing services also eliminates the need for certain specialised equipment, such as taxi meters and purpose-built radios¹⁷. The ability for passengers to pay by credit card also simplifies the payment process and reduces possibility for conflict.

Ride-hailing platforms also offer additional information that facilitates the passenger's search for a vehicle which would not be available for a passenger hailing a taxi. Information on the driver, vehicle, route etc. are provided to the passenger, allowing the passenger to choose according to their preference. Ride-hailing platforms also enables better feedback mechanism, allowing the passenger to rate their trip. This

¹⁶ see n 2, p 27

¹⁷ Benjamin G. Edelman et al, "*Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies Like Airbnb and Uber,*" (2016) 19 Stanford Technology Law Review 293, 297

provides incentive for drivers to provide quality service as this directly affects how likely they will be chosen by future passengers. By contrast, taxi passengers know little about the driver's service quality, safety record, and the taxi's conditions etc. before they hop into a taxi.

From an economics' perspective, ride-hailing services promotes efficient allocation of resources¹⁸. Unlike the inflexible traditional model where taxi vehicles are full-time taxis, ride-hailing services allows drivers to easily make use of their personal vehicles for passenger carriage when they would otherwise be idle. Drivers can accept passengers during peak times, while during times of low demands drivers can use their vehicles for other uses, unlike taxis which would possibly remain idle during down time. Additionally, ride-hailing operators are beginning to offer carpooling services, identifying passengers who are travelling in the same direction to share the same vehicle¹⁹. These are some examples of how ride-hailing services are making use of technology to more efficiently allocate resources.

Ride-hailing services also offers potential for flexible pricing²⁰. Currently in Hong Kong, taxi drivers cannot charge above the fares stipulated in Schedule 5 of the Road Traffic (Public Service Vehicles) Regulations²¹, and offering discounts to passengers might be considered soliciting, which is prohibited²². This is to prevent the inconvenience that would result if fares were not fixed, as passengers would have to inquire and negotiate with each individual taxi drivers. Ride-hailing services can eliminate this inconvenience, as passengers can access price information instantly on their mobile phones and compare prices. Flexible pricing

¹⁸ Ibid, p 298

¹⁹ Ibid

²⁰ Ibid, p 301

²¹ Regulation 47(2)

²² Regulation 40

allows prices to more accurately reflect demand and supply, and encourages more drivers to join the market during times of high demand. This becomes practicable on ride-hailing platforms, notwithstanding any legal limitations.

Oppositions to Ride-Hailing Services

Despite the potential brought by ride-hailing services and the ways point-to-point transportation services can be improved, both from the passenger's and the economics' perspective, there has been much resistance against the legalisation of ride-hailing services in Hong Kong.

Much of the objection has been based on safety concerns. Since ride-hailing services are not subject to regulations, they might employ drivers with poor road record and use vehicles in poor conditions if ride-hailing services do not impose stringent standards on these matters. Some ride-hailing services might not secure insurance for their rides, which leaves the passengers vulnerable in case accidents happen. However, these can be easily be solved if regulations impose mandatory standards on drivers eligibility and vehicle conditions, and require ride-hailing platforms to purchase insurance to cover their rides. These are not concerns inherent in the way ride-hailing services are delivered.

There are also concerns about ride-hailing services resulting in over-competition in the point-to-point transportation market. Some have argued that over-competition would lead to poor vehicle maintenance, unsafe driver behaviour, and traffic congestion²³. Vehicle and driver safety concerns can partly be addressed by the relevant regulations, as mentioned in the preceding paragraph. As regards traffic congestion, it is

²³ Lisa Rayle et al, "App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco," (2014) University of California Transportation Center Working Paper, p 3

far from clear whether limiting the number of taxis or ride-hailing vehicles does alleviate congestion²⁴. Even if there is a connection, some have suggested that congestion as a problem can be more directly tackled by imposing congestion fees, instead of limiting the number of taxi vehicles²⁵. In any case, these are not concerns regarding ride-hailing services per se, but about the impact of opening up the taxi market. Ride-hailing services can be legalised and regulated to limit the number of their vehicles.

One of the most frequent objections the taxi industry in Hong Kong makes is that such ride-hailing services are operating illegally in Hong Kong, thus putting taxis at an unfair disadvantage²⁶. While this is true, as compliance costs constitute a substantial portion of the cost of taxi operations²⁷, this is a circular argument and does not explain why or why not ride-hailing services *should* be illegal. On the contrary, this is an argument in favour of regulating ride-hailing services. The fact that ride-hailing services continue to operate in Hong Kong indicates that a demand for such services would exist regardless of its legal status, and that a ban on them would be ineffective. Instead, permitting them ride-hailing services to operate allows them to be regulated, correcting the unfair advantage that ride-hailing services currently have over taxis by saving on compliance costs.

²⁴ Caleb Holloway, “Uber Unsettled: How Existing Taxicab Regulations Fail to address Transportation Network Companies and Why Local Regulators Should Embrace Uber, Lyft, and Comparable Innovators,” (2015) 16 Wake Forest Journal of Business and Intellectual Property Law 22, 46

²⁵ Katrina M. Wyman, “Taxi Regulation in the Age of Uber”, (2017) 20 N.Y.U. Journal of Legislation and Public Policy 1, 36

²⁶ For example, as reported in “嚴打 Uber：的士業界歡迎 促繼續嚴打”, Oriental Daily News, 25 May 2017; Available at http://hk.on.cc/hk/bkn/cnt/news/20170523/bkn-20170523121615552-0523_00822_001.html (visited 15 Jan 2018)

²⁷ Estimated at around 35% - 40%; Matthew Feeney, “Is Ridesharing Safe?” 767 Cato Institute Policy Analysis, 2

It is argued that legitimate as the above concerns might be, they do not justify banning ride-hailing services, especially in light of the potential benefits brought by such services. Instead, they call for ride-hailing services to be regulated, so as to more effectively address these concerns.

Taxis and Ride-Hailing Services: Not as Different as They Seem

It should be noted that although much of the debate on ride-hailing services have pitted taxis and ride-hailing platforms against each other, the distinction between the two is not as clear cut as it may seem.

Much of the technology employed by ride-hailing services, for example the use of mobile applications, geo-localisation technology, in-app customer feedback mechanism, can be applied to taxis as well. Indeed, there exists many mobile applications in Hong Kong that connects taxis with passengers, such as HKTaxi, Fly Taxi, God Taxi, which make use of the same technology and offer essentially the same services as ride-hailing platforms, except with taxis instead of unlicensed private vehicles²⁸. Even the taxi industry had developed their own mobile application, called TAXI, in May 2016²⁹.

On the other hand, although ride-hailing services resemble the pre-booked segment of the taxi market, it has been argued that they have in

²⁸ As revealed by a search on Google Play; <https://play.google.com/store/search?q=taxi%20hong%20kong&c=apps&hl=en> (visited 15 Jan 2018)

²⁹ “Call me a cab! Free taxi app to launch in Hong Kong”, South China Morning Post, 17 May 2016; Available at: <http://www.scmp.com/news/hong-kong/economy/article/1946165/call-me-cab-free-taxi-app-launch-hong-kong> (visited 15 Jan 2018)

fact blurred the distinction between the hail and pre-booked segments³⁰. In experiments done in various cities in the United States, the average waiting times for an Uber vehicle were between 2 to 4 minutes³¹. This shows that where ride-hailing services are sufficiently developed, they have the potential of being essentially substitutes for taxis in the hail market. Taxis would only be distinct from ride-hailing services in that they are also available to passengers without a credit card or smartphone.

Therefore, it can be said that taxis and ride-hailing services are not the two completely distinct and irreconcilable entities as many believe. Although ride-hailing services have initially distinguished themselves from the traditional taxi industry by their use of technology, this will no longer be the case. Given that there is little opposition when taxis employ the same technologies utilised by ride-hailing services, it is arguable it is not the technological advancement, which many believe is what differentiates ride-hailing services from traditional taxi services, that is the cause of the controversy. The opposition to ride-hailing services is mainly to the fact that these platforms have allowed drivers to partake in the unlawful activity of carrying passengers for reward at much more ease and at a much larger scale than before.

Therefore, the crux of the debate is on whether the taxi market should be open to competition by ride-hailing services. Scholars have suggested that when there exists an innovation that disrupts the existing market and regulatory structures and existing regulations are unable to properly regulate the market, the regulatory bodies should, as far as possible, adopt a neutral approach – in other words a regulatory regime that creates a level-playing field between the incumbent market players

³⁰ James B. Speta, “*Southwest Airlines, MCI, and Now Uber - Lessons for Managing Competitive Entry into Taxi Markets.*” (2016) 43 *Transportation Law Journal* 101, 117

³¹ *Ibid*

and the new innovations, neither favouring nor discouraging the former or latter³². This is because it is important to encourage entrepreneurs to innovate and not deprive consumers of the benefits offered by such innovations, while at the same time ensuring that the incumbent players are not outcompeted by the incomers simply by the reason that the new innovators are not subject to existing regulations and given an unfair advantage. It is only when there are convincing reasons, such as public interest, that this neutral approach should be departed from, giving a regulatory advantage to either the incumbents or the incomers³³.

On this basis, given the above discussion on the benefits of and opposition to ride-hailing services, it is argued that the market should be open to ride-hailing services, and the oppositions, while legitimate, are not sufficient to justify a complete ban of these services.

Should ride-hailing services be regulated?

Once we have arrived at conclusion that ride-hailing services should be allowed in Hong Kong, it is obvious that the answer to whether they should be regulated is “yes”. It is only if they are regulated that the concerns regarding safety and unfair competition can be addressed. The next issue to consider is – *how* should they be regulated?

How Should Ride-Hailing Services Be Regulated?

Reviewing how overseas jurisdictions have attempted to regulate ride-hailing services reveals that in addressing concerns about safety and unfair competition, as mentioned above, ride-hailing services are imposed

³²Eric Biber et al, “*Regulating Business Innovation as Policy Disruption: From the Model T to Airbnb*,” (2017) 70:5 *Vanderbilt Law Review* 1561, 1607-1609

³³ *Ibid*

with regulations on driver and vehicle standards, as well as restrictions on their operations to limit competition against taxis.

The United States

In the United States, the legal status of ride-hailing services differs depending on the city and state.

California was the first state in the United States to allow ride-hailing services to operate legally³⁴. Since September 2013, the California Public Utilities Commission (the “CPUC”) has allowed ride-hailing services to operate by introducing regulations on Transportation Network Companies (“TNCs”), defined as organisations in any form that provides “prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles”³⁵. TNCs must not operate without a permit from the CPUC. Safety requirements are imposed on TNCs. For example, they are required to maintain commercial liability insurance policies, perform checks on their drivers’ criminal background and driving record, establish a driver training program, maintain a zero-tolerance policy on drugs and alcohol, and inspect vehicles³⁶. TNCs are also restricted to offering prearranged services and cannot accept street hails³⁷. They cannot operate at airports unless with the authorisation of the airport authorities³⁸.

³⁴ Catherine Lee Rassman, “*Regulating Rideshare Without Stifling Innovation: Examining the Drivers, the Insurance “Gap,” and Why Pennsylvania Should Get on Board*,” (2014) 15 *Journal of Technology Law & Policy* 81, 91

³⁵ CPUC, *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*, 19 September 2013; Available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K192/77192335.PDF> (visited 15 Jan 2018)

³⁶ *Ibid*, p 26-29

³⁷ *Ibid*, p 30

³⁸ *Ibid*, p33

Other jurisdictions in the United States have since followed suit and enacted similar regulations to allow ride-hailing services. For example, in June 2014, the Transportation Network Company Act was passed in Colorado containing similar regulations, except without a requirement for background checks³⁹. In September 2014, Chicago amended its Municipal Code which governed taxis to incorporate ride-hailing services as “Transportation Network Providers⁴⁰”. In October 2014, the Vehicle-for-Hire Innovation Amendment Act of 2014 was passed by the Washington D.C. City Council⁴¹, and Uber’s executive called Washington D.C.’s legislation a “model” for other cities⁴². In January 2015, Massachusetts legalised ride-hailing services by amending its existing regulations on for-hire vehicles⁴³.

These regulations largely resemble each other in that ride-hailing services are allowed and regulated as TNCs, and impose safety and insurance requirements as well as a prohibition on street hails.

Australia

Similarly, in Australia the legal status of ride-hailing services differs from state to state. The Australian Capital Territory was the first to regulate ride-hailing services in 2015⁴⁴, followed by other states such as

³⁹ See n 34, p 92

⁴⁰ David K. Suska, “Regulatory Takings and Ridesharing: “Just Compensation” for Taxi Medallion Owners?” (2016) 19 N.Y.U. Journal of Legislation and Public Policy 183, 196-197

⁴¹ Yanelys Crespo, “Uber v. Regulation: 'Ride-Sharing' Creates a Legal Gray Area,” (2016) 25 University of Miami Business Law Review 79, 93-94

⁴² “Uber Exec Calls D.C.'s New Ride-Share Regulations a Model”, *Governing the States and Localities*, 30 October 2014; Available at <http://www.governing.com/topics/urban/gov-uber-plouffe-washington-regulations.html> (visited 15 Jan 2018)

⁴³ See n 40, p 195-196

⁴⁴ By amending the Road Transport (Public Passenger Services) Act 2001

Western Australia⁴⁵, New South Wales⁴⁶, Victoria⁴⁷. In these states, regulations require ride-hailing services to be licensed, and impose safety requirements in relation to drivers, vehicles, and insurance, and prohibit ride-hailing services from accepting street hails.

In many states, not only were regulations introduced to regulate ride-hailing services, regulations relating to taxi operators were also relaxed. For example, in Queensland, maximum age limits for taxi drivers were removed⁴⁸. In Western Australia, government-leased taxi plate fees were reduced, and licence conditions such as restrictions on operating times and hours were removed⁴⁹. In New South Wales, regulations on fares for pre-booked services were removed⁵⁰.

To facilitate the reforms, many states offer assistance and compensation to the taxi industry. In South Australia, taxi licence holders receive AUD\$30,000 per licence, AUD\$50 per week is given to licence licensees for a maximum of 11 months, and the release of new taxi licenses would be frozen for at least 5 years⁵¹. In Tasmania, new taxi licences, which used to be released annually, would not be issued for 3

⁴⁵ By the On-demand Transport Regulations Amendment Regulations 2016

⁴⁶ By the Passenger Transport Amendment (Taxis and Hire Cars) Regulation 2015

⁴⁷ By the Commercial Passenger Vehicle Industry Act 2017

⁴⁸ Stirling Hinchliffe, Minister for Transport and the Commonwealth Games, “New level playing field for personalised transport”, 11 August 2016; Available at <http://statements.qld.gov.au/Statement/2016/8/11/new-level-playing-field-for-personalised-transport> (visited 15 Jan 2018)

⁴⁹ Dean Nalder, Minister for Agriculture and Food, and Transport, “Green light for on-demand transport industry reform”, 18 December 2015; Available at <https://www.mediastatements.wa.gov.au/Pages/Barnett/2015/12/Green-light-for-on-demand-transport-industry-reform.aspx> (visited 15 Jan 2018)

⁵⁰ Transport for NSW, “Point to Point Transport”, 16 November 2017; Available at <https://www.transport.nsw.gov.au/projects/programs/point-to-point-transport> (visited 15 Jan 2018)

⁵¹ Jay Weatherill, Premier of South Australia, “State Government to reform the taxi and chauffeur vehicle industry” (12 April 2016); Available at <https://www.premier.sa.gov.au/index.php/jay-weatherill-news-releases/381-state-government-to-reform-the-taxi-and-chauffeur-vehicle-industry> (visited 15 Jan 2018)

years⁵². New South Wales offers in total AUD\$250 million as compensation to taxi license holders, which would be funded by a AUD\$1 levy imposed on every ride with taxis or ride-hailing services⁵³.

France

In France, ride-hailing services are ostensibly permitted and regulated. The relevant regulations are the Loi Thévenoud, passed by the French Parliament in October 2014⁵⁴. However, the regulations prohibit the use of geo-localisation services by ride-hailing platforms, mandate that drivers must return to their base after each ride, and require drivers to inform passengers of the fare of the trip when the reservation is made⁵⁵. These restrictions are in conflict with the modus operandi of ride-hailing services, which rely on geo-localisation technology to facilitate the matching of drivers and passengers, and in effect prohibit ride-hailing services from operating and realising the benefits brought by information technology.

What About Hong Kong?

From the examples of the above overseas jurisdictions, one can see that in response to safety concerns, regulations are set on driver and vehicle standards, as in the United States and Australia. To this end, it is proposed that regulations on ride-hailing services in Hong Kong should adopt similar standards. Given the importance to ensure fair competition with taxis, it is suggested that such regulations are to be in sync with those that apply to taxis so far as possible. For example, taxi drivers in Hong Kong must have been a holder of a driving licence for a private car

⁵² “Tasmania won’t compensate its taxi industry for Uber’s arrival”, Business Insider, 12 September 2016; Available at <https://www.businessinsider.com.au/tasmania-wont-compensate-its-taxi-industry-for-ubers-arrival-2016-9> (visited 15 Jan 2018)

⁵³ Point to Point Transport Commissioner, NSW Government, “Passenger Service Levy Collection”; Available at <https://www.pointtopoint.nsw.gov.au/passenger-service-levy-collection> (visited 15 Jan 2018)

⁵⁴ See n 17, p 307

⁵⁵ Ibid

or light goods vehicle for at least 3 years before applying for a commercial vehicle driving licence, and they must pass a written test regarding taxi operation⁵⁶. Similar requirements can be introduced for drivers for ride-hailing services. In addition, requirements as to service standards, similar to those for taxi drivers in the Road Traffic (Public Services Vehicles) Regulations, should be imposed on drivers for ride-hailing services. Examples include prohibitions on drivers refusing to accept a passenger, or to drive to the requested destinations.

It is observed that in the above overseas jurisdictions, one can see that ride-hailing platforms are usually required to be licensed. It is suggested that a similar requirement be imposed in Hong Kong, as this facilitates monitoring compliance. Instead of having to rely on law enforcement to carry out regular checks on drivers and vehicles, this task can be delegated to the respective ride-hailing platforms, and regular audits of these platforms can be carried out to ensure proper mechanisms are in place to secure compliance. In addition, given that taxi licences are currently limited in Hong Kong, it is proposed that the licences for ride-hailing platforms also remain limited to ensure the incumbent taxi industry is not overwhelmed by a sudden surge in competition.

To address concerns about unfair competition against taxis, restrictions on ride-hailing services to operate in the hail market are imposed in the above overseas jurisdictions, and in some Australian states, compensation and assistance are given to the taxi industry to alleviate detrimental impact caused by the incoming competition. As mentioned before, regulators should strive to adopt a neutral approach so far as

⁵⁶ Transport Department, “Procedures for Obtaining a Full Driving Licence with Driving Test”, Available at http://www.td.gov.hk/en/public_services/licences_and_permits/driving_licences/how_to_apply_for_a_driving_licence/procedures_for_obtaining_a_full_driving_licence/wi/index.html (visited 15 Jan 2018)

possible, neither favouring the incumbent taxi industry nor the incoming ride-hailing services, except when differential treatment is justified by public interest. The approach of these overseas jurisdictions is in conflict with this principle, since only ride-hailing services are prohibited from accepting street hails but taxis are not prohibited from taking bookings on mobile platforms, amounting to differential treatment. However, although in theory this preferential treatment might not be desirable, it might be necessary politically to secure the support of the incumbent taxi industry. Given the vocal opposition by the taxi industry in Hong Kong against the legalisation of ride-hailing services, a similar approach is suggested in order to alleviate the negative impact on the taxi industry, by prohibiting ride-hailing services from taking street hails. In addition, assistance and compensation to the taxi industry can be justified in Hong Kong on the ground that taxi licenses are considered investment assets by some, and introducing competition into the market is likely to cause taxi licence prices to fall⁵⁷. Measures can also be taken to increase the competitiveness of the taxi industry, for example by offering training courses for drivers on customer service and giving assistance to help the taxi industry utilise similar technologies as those employed by ride-hailing services. On the other hand, in protecting the taxi industry against the new competition from ride-hailing services, it is important not to impose too strict regulations on ride-hailing services, as in the case of France, as it would otherwise in effect shut out newcomers from the market. However, in the long term, the regulatory bodies should seek to ensure a level-playing field between taxis and ride-hailing services, without favouring either, in order to allow fair competition.

Conclusion

⁵⁷ “How Hong Kong taxis became a HK\$108b betting market”, South China Morning post, 25 May 2016; Available at <http://www.scmp.com/business/article/1953919/how-hong-kong-taxis-became-hk108b-betting-market> (visited 15 Jan 2018)

In light of the potential benefits offered by ride-hailing services in improving the transportation market, Hong Kong should not be reluctant in legalising and regulating them. The debate on ride-hailing services has implications beyond the transportation context. As the sharing economy develops, similar platforms in other markets, such as AirBnB in the accommodation market, are emerging, and it is inevitable that Hong Kong will be confronted with similar regulatory challenges in the future. Hong Kong should take the regulation of ride-hailing services as an opportunity to reflect on how its laws and regulates will respond to technological disruptions in the future.

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