



**ICRC**  
INDEPENDENT COMPETITION AND REGULATORY COMMISSION

**An Investigation into the Competition  
Implications of the Provision of Wheelchair  
Accessible Taxi Services by a Single Network in  
the ACT**

**October 2001**





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**An Investigation into the Competition Implications of the  
Provision of Wheelchair Accessible Taxi Services by a  
Single Network in the ACT**

**October 2001**



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## **PREAMBLE**

This is the final report of the Commission's inquiry into the proposed allocation of all wheelchair accessible taxi (WAT) licences to a single new network. The inquiry was conducted in response to a reference dated 14 August 2001 from a Member of the Legislative Assembly, Mr John Hargraves MLA.

As required by the terms of the reference, the Commission has examined the competitive implications associated with the proposed move of WAT licences to a single network. In line with the Commission's objectives, social and environmental considerations have also been examined where appropriate.

The Commission commends its findings and recommendations to the Legislative Assembly for its consideration.



# CONTENTS

- PREAMBLE.....VII**
- LIST OF ABBREVIATIONS ..... 1**
- EXECUTIVE SUMMARY ..... 3**
- 1. INTRODUCTION ..... 5**
- 2. THE STATUTORY AND POLICY FRAMEWORK FOR THE INQUIRY ..... 7**
  - 2.1. CAN THE MARKET INTERVENTION BE JUSTIFIED IN PRINCIPLE? ..... 8
  - 2.2. CAN THE MARKET INTERVENTION BE JUSTIFIED IN FACT? ..... 9
  - 2.3. ARE THERE MORE EFFECTIVE AND EFFICIENT ALTERNATIVE APPROACHES? ..... 10
- 3. OBJECTIVES UNDERPINNING THE PROPOSED MOVE OF WHEELCHAIR ACCESSIBLE TAXI LICENCES... 11**
  - 3.1. BACKGROUND ..... 11
  - 3.2. OBJECTIVES ..... 11
- 4. THE NATURE OF THE RESTRICTION ON COMPETITION ..... 13**
- 5. THE EFFECT OF THE RESTRICTION ON COMPETITION AND ON THE ECONOMY GENERALLY..... 15**
- 6. COSTS AND BENEFITS OF ALLOCATING ALL WHEELCHAIR ACCESSIBLE TAXIS TO A SINGLE NETWORK 17**
  - 6.1. ISSUES RELEVANT TO AN ASSESSMENT OF COSTS AND BENEFITS ..... 17
  - 6.2. COSTS AND BENEFITS..... 30
- 7 ALTERNATIVES THAT ACHIEVE THE DESIRED POLICY OBJECTIVES..... 39**
  - 7.2 ALLOWING WATs TO CHOOSE NETWORKS..... 39
  - 7.3 ALLOWING WATs NETWORK CHOICE AND ISSUING AN ADDITIONAL 10 LICENCES TO YELLOW CABS.. 39
  - 7.4 ALLOCATING ALL EXISTING WATs TO YELLOW CABS AND ISSUING 10 NEW WAT LICENCES ON THE  
CONDITION THEY AFFILIATE WITH CANBERRA CABS ..... 40
  - 7.5 SUBSIDISING DRIVERS TO UNDERTAKE WHEELCHAIR WORK ..... 40
  - 7.6 ALLOCATING EXISTING WATs TO A SECOND NETWORK BUT PUTTING IN PLACE MEASURES TO ALLOW  
NETWORK CHOICE FOR WAT OPERATORS AND USERS OVER TIME ..... 40
- 8 CONCLUSIONS AND RECOMMENDATIONS ..... 41**
  - 8.1 CONCLUSIONS ..... 41
- ATTACHMENT A TERMS OF REFERENCE..... 45**
- ATTACHMENT B SUBMISSIONS..... 47**



**LIST OF ABBREVIATIONS**

<b>Term</b>	<b>Definition</b>
ACT	Australian Capital Territory
COAG	Council of Australian Governments
<i>CPA</i>	<i>Competition Principles Agreement</i>
DPI	Disabled Peoples' Initiative
DUS	Department of Urban Services
HOT	high occupancy taxi
ICRC	Independent Competition and Regulatory Commission
NCP	National Competition Policy
WAT	wheelchair accessible taxi



## **EXECUTIVE SUMMARY**

The terms of reference require the Commission to have regard to the provisions of Schedule 1A of the *Independent Competition and Regulatory Commission Act 1997* relating to legislation reviews under clause 5 of the *Competition Principles Agreement (CPA)*. The CPA commits all governments to ensuring that new and existing legislation does not impose undue competitive restrictions. The so-called ‘competition test’ is intended to establish whether particular restrictions on competition are necessary through an assessment of the costs and benefits of proposed and alternative means of achieving policy objectives.

While Governments should seek to promote competition and remove anti-competitive elements in the economy, National Competition Policy (NCP) generally also provides a framework for government intervention in the economy, particularly where such intervention might restrict competition.

The Commission recognises that the Government’s proposed allocation of WAT licences to a single taxi network is a restriction on competition. That policy, although restricting competition initially, ultimately is expected to lead to the promotion of greater competition.

The Commission identified three main objectives of the Government’s policy of requiring all WATs to affiliate with Yellow Cabs:

- to introduce competition to the taxi network and booking services in the ACT thus providing choice of networks for users and operators/drivers;
- to improve the standard of taxi services to the disabled community in the ACT;
- in the longer-term, to provide disabled taxi users and operators/drivers of WATs with a choice of network.

The Commission finds that the Government’s multiple policy objectives for promoting competitiveness in taxi services, including WATs, can be achieved best by initially allocating all WATs to a second network, to facilitate its establishment and viability. The ultimate objective of providing choice of network for disabled taxi users relies first upon the establishment of a second network. The introduction of network choice is contingent on the allocation of all WATs to the second network to be operated by Yellow Cabs.

The success of the second network depends upon development of a critical mass of taxis in the network. The Commission finds that a second network would require a critical mass of around 60-70 taxis in order to provide an adequate service to the ACT community (ie, one that meets the Government’s service benchmarks) and to be financially viable.

The Commission supports the view that competition in the long term will provide benefits that current market circumstances cannot. Also, the Commission concludes that:

- both the benefits of allocating all existing WATs to a second network outweigh the costs, satisfying its obligations under the National Competition Policy; and
- the objective of improving the standard of taxi services to the disabled community is best served by keeping the existing WAT fleet together.

However, the Commission is concerned about the risk of creating of a long-term monopoly for WAT rather than a maintaining a temporary monopoly designed as a transition to a more competitive environment in the market for network services. To address those risks the Commission recommends a number of measures to allow WAT licensees choice of network after a transition period. The Commission considers that two years should be sufficient for a second network to attract enough standard taxi licensees to maintain the critical mass of taxis needed to provide an adequate service. At that time, consumers would have a choice of network and booking services and WATs should have choice of network affiliation.

The Commission is concerned that, during the transition to a more competitive market, WAT licensees could be financially disadvantaged by increases in base fees. The Commission recommends a number of measures to address this risk.

In summary the Commission disagrees with the proposition that allocating all WAT licences to a single network is an unjustified restriction on competition because it does not give WAT operators a choice of networks. Presently, there is no choice for consumers or WAT operators or standard taxi operators. The Commission is satisfied that, subject to certain conditions reducing risk of adverse outcomes, the Government's policy of imposing a temporary restriction on WAT operators could be expected to lead to more efficient and lower cost services for taxi users and benefits for taxi operators.

## **1. INTRODUCTION**

The Independent Competition and Regulatory Commission is a statutory body established under the *Independent Competition and Regulatory Commission Act 1997*, in part, to investigate matters relating to the regulatory activities of government. Its role is to regulate prices, access and other matters in relation to regulated industries and to investigate competitive neutrality complaints and government-regulated activities. The Commission's objectives are to:

- promote effective competition in the interests of consumers;
- facilitate an appropriate balance between efficiency and environmental and social considerations; and
- ensure non-discriminatory access to monopoly and near-monopoly infrastructure.

Ministers, Members of the Legislative Assembly and the public may direct references under the Act to the Commission. The circumstances under which the Commission may accept a reference are laid out in section 19C and 19K of the Act.

On 14 August 2001 the Commission was provided with terms of reference to undertake a review of the Government's decision to allocate all wheelchair accessible taxis (WATs) to a proposed second taxi network operated by Yellow Cabs (Canberra) Pty Ltd. The terms of reference refers to the Commission an inquiry into:

“The competition implications for the provision of WAT services of the government's decision to allocate all WAT licences to a single network having regard to the provisions of Schedule 1A of the *Independent Competition and Regulatory Commission Act 1997* relating to legislation reviews under clause 5 of the *Competition Principles Agreement*.”

The Commission is required to report on the terms of the reference and to recommend possible courses of action.



## **2. THE STATUTORY AND POLICY FRAMEWORK FOR THE INQUIRY**

The terms of reference requires the Commission to have regard to the provisions of Schedule 1A of the *Independent Competition and Regulatory Commission Act 1997* relating to legislation reviews under clause 5 of the *Competition Principles Agreement (CPA)*.

Schedule 1A of the *Independent Competition and Regulatory Commission Act* contains extracts from the *CPA*. The *CPA* was signed by the Commonwealth, State and Territory governments at the 1995 meeting of the Council of Australian Governments (COAG) and the legislative changes required to implement each government's obligations subsequently enacted into law by their respective Parliament or Legislative Assembly. The *CPA* commits all governments to ensuring that new and existing legislation does not impose undue competitive restrictions:

“The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.”<sup>1</sup>

This test — commonly called the competition test — is intended to establish whether particular restrictions on competition are necessary through an assessment of the costs and benefits of proposed and alternative means of achieving policy objectives.

As well as seeking to ensure that governments do not enact or retain legislation that restricts competition unless it is in the public interest, the objective of National Competition Policy (NCP) more generally is to provide a framework for government intervention in the economy. Governments should seek to promote competition and address anti-competitive behaviour or market structures in the economy, whether these anti-competitive market structures are created through legislative action or as a result of market forces.

As the competition test is built on the presumption that restrictions to competitive economic behaviour impose costs on the community, the burden of proof is on those who wish to retain or establish restrictions to demonstrate the public interest case for their retention (or enactment).

The CPA specifies that competition test reviews should:

- clarify the objectives of legislation;
- identify the nature of the restriction on competition;
- analyse the effect of the restriction on competition and the economy generally;

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<sup>1</sup> Council of Australian Governments, *Competition Principles Agreement*, Sub-clause 5(1).

- assess and balance the costs and benefits of restriction; and
- consider alternative means of achieving the same result.

These tasks can be addressed by answering three questions as set out in the following sections. The overview in the following sections provides the conceptual framework within which this review has been conducted.

### ***2.1. Can the Market Intervention be Justified in Principle?***

Under the CPA, if regulation that restricts competition is to be retained, it must be demonstrated that the objectives of the legislation can only be achieved by restricting competition. In this context, the terms regulation and legislation need to be interpreted broadly to cover any government action that has the effect of requiring market participants to behave in a particular way, even if the government's objectives in intervening are not explicitly spelt out in legislation. For example, in the context of this inquiry, the mechanism the government is using to move the WATs to a second network is done through changes to WAT licence conditions rather than regulations.

To undertake this assessment it is necessary to articulate clearly what the rationale is for government intervention. In the context of competition policy, COAG has agreed that government intervention in markets should generally be restricted to situations of market failure, and that each regulatory intervention should be targeted at addressing (ie, overcoming) the relevant market failure or failures.<sup>2</sup> Market failures include:

- externalities — these are positive or negative impacts (commonly called spillovers) that affect third parties and are not reflected in prices. Pollution is commonly referred to as a negative externality because if producers do not pay to pollute, the cost of this activity will not be reflected in the costs of production and hence the price of goods. Education is commonly used as an example of a positive externality because a more highly educated population benefits the community generally;
- severe information asymmetries — where accurate information is not fairly distributed between producers and consumers, production and consumption decisions may be made which do not maximise community welfare;
- public goods — these goods will tend to be under-produced because they are non-excludable (ie, people who have purchased the good cannot stop others using it up) and non-rivalrous (ie, the use of a good by one consumer does not prevent its consumption by others). Common examples of public goods include a fireworks display and national defence; and
- monopoly — a monopoly exists where a single supplier of goods or services is able to exert market power over its customers by restricting output and raising prices to the

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<sup>2</sup> Council of Australian Governments, *Report of Task Force on Other Issues in the Reform of Government Trading Enterprises*, released as part of the first COAG Communiqué, 1991, p.22.

detriment of consumers and the efficient allocation of resources in the economy. A natural monopoly occurs where for various reasons (eg, economies of scale) a monopoly is more efficient than competition in delivering goods and services and hence is socially optimal. However, a natural monopoly may not be in the interests of all players in the market and governments may be justified in regulating its activities in the public interest. For example, electricity transmission is often argued to be a natural monopoly; to prevent the owners of transmission assets from exploiting their monopoly power, governments often regulate access to, and the price of, transmission services.

Government intervention in markets is rarely couched in terms of market failure. However, while not explicitly using the language of market failure, commonly stated objectives can often be seen as consistent with a market failure framework.

In addition to a market failure rationale, government intervention may also be justified in two broad circumstances:

- to redistribute society's resources — a fundamental rationale for government intervention is to redistribute resources between different sectors, individuals or groups of individuals on social equity grounds; and
- to overcome distortions created by other regulatory interventions — under the economic theory of 'second best', in the presence of a market distortion created by government policy, governments may be justified in enacting further distortions in order to improve the overall efficiency of government intervention and/or market outcomes.<sup>3</sup>

## **2.2. *Can the Market Intervention be Justified in Fact?***

While there may be a legitimate rationale for government intervention in a market, it can only be justified where the benefits of the intervention outweigh the costs.

Thus, it is necessary to identify the costs and benefits of the intervention. Without limiting the matters that may be taken into account in any particular review, the *CPA* states that the following matters shall, where relevant, be taken into account:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;

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<sup>3</sup> However, once the initial distortion is removed or overcome, secondary distortionary policies should be reviewed to assess whether they are still necessary.

- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

It is rare that all these factors will be relevant and considered in any one review.

Once the costs and benefits have been identified it is necessary to seek to quantify them where possible. Often, however, the nature of the costs and benefits are such that quantification is not possible. In such circumstances it is important to provide a qualitative assessment of the nature and the strength of the costs and benefits.

### **2.3. *Are There More Effective and Efficient Alternative Approaches?***

Even when a market intervention can be justified in theory and in practice, it is important to determine if there are alternative approaches that address the identified market failure but in a manner that provides greater net benefits. In particular, when considering restrictions on competition, the CPA requires that governments consider whether their objectives can be achieved through alternative approaches to imposing restrictions on competition.

### **3. OBJECTIVES UNDERPINNING THE PROPOSED MOVE OF WHEELCHAIR ACCESSIBLE TAXI LICENCES**

#### **3.1. Background**

Canberra Cabs has operated a monopoly in the provision of taxi services to the ACT community since 1963. Pursuant to its obligations under NCP, the Government reviewed the regulatory regime covering the taxi industry and the report of the *National Competition Policy Review of ACT Taxi and Hire Car Legislation* (the ‘NCP review’) was released in November 2000. Recommendation 32 of the NCP report stated that “consideration be given to proposals...to establish a competing network in the ACT in order that an important source of competition to the Aerial network may emerge.”<sup>4</sup>

The NCP report also recommended, at least in the initial years of reform, any additional networks be required to operate a minimum of 15 taxis per network and that, for non-dominant networks, minimum response time standards should be removed or reduced significantly to permit new entry at the network level.

The Government accepted these recommendations and embarked on a process of seeking expressions of interest in the establishment of a second network. Out of this process, Yellow Cabs (Canberra) Pty Ltd emerged as the preferred operator. In the course of subsequent negotiations Yellow Cabs sought, and the Government agreed to, the allocation of all existing WATs to Yellow Cabs in order to give the second network the critical mass to get off the ground. Disagreement over this decision by Canberra Cabs and some WAT licensees led to the establishment of this inquiry.

#### **3.2. Objectives**

An objective of taxi regulation as set out in section 3(c) of the *Road Transport (Public Passenger Services) Amendment Bill 2001* is, “to encourage public passenger services that meet the reasonable expectations of the community for safe, reliable and efficient public passenger services”.

The terms of reference asks that the Commission examine the competition implications of the Government’s decision to allocate all WAT licences to a single network. However, this has to be seen in the context of the background to this decision. All WAT licences are already allocated to a single network by virtue of the fact that all taxis, including WATs, are required to affiliate with a network and there is only one network in operation in the ACT. The issue for this inquiry, therefore, is the competitive implications of the Government’s decision to allocate all WAT licences to the proposed second network (to be operated by Yellow Cabs).

As noted, the Government’s objectives in intervening in the market may not necessarily be set out explicitly in legislation. This is the case in this instance. The Commission has been able to

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<sup>4</sup> Freehills Regulatory Group, *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, March 2000, p.122.

## **Independent Competition and Regulatory Commission**

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identify two main objectives underpinning the Government's decision to allocate all WAT licences to a second network operated by Yellow Cabs:

1. to improve the service to disabled taxi users in the ACT provided by WATs; and
2. to facilitate the establishment of a second taxi network in the ACT in order that all taxi operators and users obtain the potential benefits of competition at the network level.

For example, in announcing the establishment of a second network, the Minister for Urban Services stated:

“Regarding the future management of the Wheelchair Accessible Fleet, it is the Government's objective to maximise the efficiency of the service and best serve the needs of the disabled community.”<sup>5</sup>

In its submission to the inquiry the Department of Urban Services (DUS) stated the objectives in these terms:

“The implementation of these recommendations was intended to provide consumers, operators and drivers with greater choice and access to services through effective competition at the network level.”<sup>6</sup>

In the context of the Government's decision to re-allocate the WAT licences, neither of these objectives is set out explicitly in legislation. However, as the terms of reference suggests, it is appropriate and desirable that the framework for assessment underpinning the *CPA* be used to assess the competition implications of the decision.

While not explicitly indicated in any statements by the Government, the Commission's consideration of the issues surrounding this inquiry also assumes that the Government's longer-term objective is that disabled taxi users enjoy the same choice as other taxi users (ie, a choice of networks). In this regard, the Commission will focus its attention on developing a long-term outcome in which WAT services are available from both networks.

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<sup>5</sup> Minister for Urban Services, *Media Release*, 4 May 2001.

<sup>6</sup> Submission 8/2001, p.9.

#### **4. THE NATURE OF THE RESTRICTION ON COMPETITION**

Under the Government's decision, the owners of WAT licences will be required to affiliate with the proposed second network to be operated by Yellow Cabs. In these circumstances, WAT licence holders will not be able to choose to which network operator they affiliate for the period during which this restriction is maintained.

Some WAT licensees have argued that this is a restriction on competition. For example, in his submission to the inquiry, Mr Patrick O'Brien stated that "As a WATS operator I feel it is anti-competitive to force all WAT operators to join a single network."<sup>10</sup>

On the other hand, Mr Craig Wallace, President of Disabled Peoples' Initiative (DPI), a consumer rights organisation for people with disabilities in Canberra, stated in DPI's submission that:

"The resort to competition policy by the drivers who wish to remain with Canberra Cabs is bogus in our view, as the WAT vehicles do not operate in a level marketplace with other vehicles. This is especially true when you take into consideration the reduced cost of plates for these vehicles."<sup>11</sup>

It is true that WATs do not operate on a level playing field with other taxis.

There are 243 taxis in the ACT made up of two types of taxi licences:

- 'standard' taxi licences, of which there are 217; and
- WAT licences, of which there are 26.

Standard taxi licences are released by the Government at its discretion, sold at auction and are perpetual and transferable. DUS suggests "that standard licences currently have a market value of around \$260,000" and "an annual lease on a standard licence can cost up to \$26,000".<sup>12</sup>

On the other hand, WAT licences are leased by the Government for a period of six years, are not transferable and are subject to an annual licence fee of \$1,000. While WATs cost more to purchase and run than a standard taxi, this additional cost is nowhere near \$25,000 per annum, the difference between the cost of leasing a WAT compared to a standard taxi.

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<sup>10</sup> Submission 6/2001, p.1.

<sup>11</sup> Submission 10/2001, p.1.

<sup>12</sup> Submission 8/2001, pp.2&3.



## **5. THE EFFECT OF THE RESTRICTION ON COMPETITION AND ON THE ECONOMY GENERALLY**

The decision to allocate all WAT licences to a single network will have two main effects on competition:

- it removes WAT operators' choice as to which network they affiliate with; and
- means that disabled taxi users would only be able to obtain services from a single network.

For example, in its submission, Canberra Cabs stated that the Government's decisions "removes competition in the provision of WAT services in the community" and "takes away WAT operators' choice to determine what network they operate under and what entity they conduct their businesses with."<sup>13</sup>

The suggestion that the Government's decision removes competition in the provision of WAT services is a curious one. There is currently no competition in the provision of WAT services or any choice for WAT operators as to which network they affiliate because there is only one network operating at this point of time.

While it is true that requiring WATs to affiliate with a single network will restrict competition in principle, this needs to be considered against the background of Government intervention in the taxi industry more generally.

The ACT taxi industry is far from being a competitive market. The Government regulates taxi operations in many ways, including the operation of networks, the number of taxis, the vehicles themselves, taxi drivers and taxi fares. All of these restrictions can be described as anti-competitive. The question is whether the benefits of the restriction outweigh the costs. In terms of the overall regulation of the taxi industry, at this point in time, the Government has implicitly accepted that the benefits of anti-competitive regulation outweigh the costs. Whether this is the case for the decision to allocate all WATs to a second network is assessed in Chapter 6.

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<sup>13</sup> Submission 9/2001, p.5&9.



## **6. COSTS AND BENEFITS OF ALLOCATING ALL WHEELCHAIR ACCESSIBLE TAXIS TO A SINGLE NETWORK**

The assessment of the costs and benefits of allocating all WATs to a second network needs to be considered in relation to the Government's dual objectives of introducing competition into network services in the ACT and improving taxi services to the disabled community.

### **6.1. *Issues Relevant to an Assessment of Costs and Benefits***

This section discusses a number of issues relating to the nature of the taxi industry in the ACT that require elaboration to enable an informed assessment of the costs and benefits of introducing competition into the provision of network services.

#### **6.1.1 What is a Taxi Network?**

It is useful to consider the question, "What is a taxi network?" in order to understand the implications of the Government's policy to introduce competition into the provision of taxi network services. To be accredited in the ACT, a network operator must provide a range of services. Section 29 of the *Road Transport (Public Passenger Services) Amendment Bill 2001*, defines a taxi network as "an entity that provides taxi related services (including a taxi booking service) to affiliated accredited taxi service operators". Section 29A defines a taxi booking service as:

"a service provided by an accredited taxi network provider that—

- (a) accepts bookings for taxis from people; and
- (b) sends messages about bookings to taxi drivers by electromagnetic energy to equipment in taxis that can receive such messages."

Sections 29G and H require an ACT taxi network to:

- operate a taxi booking service;
- maintain service standards (eg, maximum waiting times for bookings);
- deal with customer complaints and enquiries;
- supervise and monitor taxi service network affiliated operators and drivers.

The Government's taxi network accreditation requirements distinguish between a taxi network and a taxi booking service. In the ACT's historically there has been one taxi network and one separate taxi booking service, operated by the network. There may be a mistaken perception that they are essentially the same thing. In other markets such as Sydney, there are

12 taxi companies ('networks') and 3 booking services. Similarly, Melbourne has 7 taxi depots and 2 booking services.<sup>14</sup>

### 6.1.2 Is the Provision of Network Services or Booking Services in the ACT a Natural Monopoly?

The first question in assessing the case for Government intervention in the taxi network market is determining whether a market failure exists. In the circumstances, this means whether or not the existing taxi network and/or booking service is a monopoly. There is only one taxi network and taxi booking service in the ACT; that operated by Canberra Cabs. This finding was supported by the NCP review of the ACT taxi industry, which stated:

“Currently, the ACT Government has only entered into one Taxi Network Contract (Contract). This is between the registrar and Aerial Taxi Cabs Cooperative Society Limited (Aerial). Because Aerial is the only contracted network in the ACT, it holds a monopoly in the ACT taxi booking service market.”<sup>15</sup>

As it has been established that the taxi network and booking service operated by Canberra Cabs is a monopoly, the next question is whether these services are a natural monopoly in the ACT and hence whether or not it is desirable to facilitate the introduction of competition. In other words, can the ACT only support a single network and/or booking service.

The discussion above distinguished between the provision of network services and booking services. To clarify this distinction further, a taxi network could be defined as an entity offering non-booking network services to a group of affiliated taxi operators, while a booking service offers booking and dispatch services to one or more networks.

The Commission is not aware of any evidence that a natural monopoly exists in the provision of non-booking network services. There may be economies of scale involved in the provision of livery and uniforms to taxis operators and drivers, in establishing a complaints service and in auditing a network's records and systems. However, in no way could this be said to constitute a natural monopoly.

Any assessment of monopoly, therefore, needs to focus on the ability of a network (ie, a group of affiliated taxis) to provide an adequate service to the ACT, in particular, its ability to meet the Government's regulated service benchmarks, and whether there is a natural monopoly in the provision of booking services.

There are two aspects to this assessment:

- 1 How many taxis are required to provide an adequate service to the ACT community, taking into geography and the Government's performance benchmarks in respect of maximum waiting times? and

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<sup>14</sup> Freehills Regulatory Group, *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, March 2000, p.118.

<sup>15</sup> Freehills Regulatory Group, *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, March 2000, p.114.

- 2 How many taxis are required to support financially the provision of booking services in the ACT?

No evidence was presented to the inquiry about the number of taxis required to service Canberra in a geographical sense. However, in relation to the number of WATs that would be required in the ACT if a network operator used a normal taxi dispatch system, Mr Leslie Wassell (one of the principals of Yellow Cabs) stated that, “Canberra would require at least 60 or 70 wheelchair taxis to cover the territory within the agreed service times”.<sup>16</sup>

While this statement was made in relation to WATs, it provides an indication of the number of standard taxis that would be needed to provide an adequate service in the ACT. If a fleet of at least 60 taxis is required to provide a wheelchair taxi service to the ACT using a normal dispatch service then, given the higher demand for standard taxis, this suggests that an adequate standard taxi service could not be provided using a normal dispatch service with much less than 60 taxis.

While around 60 may be the minimum number of standard taxis required to provide an adequate service to the ACT region, this does not imply that a network needs a larger number of taxis to service the ACT or, more to the point, that network services in the ACT might be a natural monopoly. If there were any natural monopoly constraints these would appear to be effectively eliminated by the Government’s proposed ‘offload’ provisions. Under this mechanism, if a booking is lodged with a network and not responded to within 10 minutes, the job is offloaded to the second network and becomes available for taxis on either network to take up. However, the offload mechanism would not apply under the Government’s proposal to allocate WATs to a single network because there would be no WATs on the other network to take up offloaded wheelchair bookings.

On the question of the number of taxis required to support financially a taxi booking service, inquiries by the Commission found no evidence that booking services are a natural monopoly in the ACT. Indeed, if the provision of booking services were a natural monopoly, the Government would be justified in regulating access to the service so that other network operators could use Canberra Cabs’ booking service.

In simple terms, booking services provide the technology to take telephone bookings and dispatch jobs to taxis on the road. This can involve sophisticated satellite positioning systems that can identify the nearest vacant taxi to a pick up address and allocate the job to it. With modern communication technologies, such services can be provided remotely and do not have to be physically located in the same area as the taxi network itself.

The cost to a network operator of providing booking services can vary significantly depending on whether it owns and operates the hardware and software itself to provide services to its own network (as in the case of Canberra Cabs) or whether it contracts out such services to a separate booking service operator (as in the case of Yellow Cabs).

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<sup>16</sup> Submission 5/2001, p.2.

## **Independent Competition and Regulatory Commission**

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Consultations carried out in the course of the inquiry suggested that the cost of hardware and software to establish a booking service for Canberra's fleet of around 240 taxis would be around \$2 million, including around \$5,000 per vehicle for in-car equipment. This cost is consistent with estimates made by the NSW Independent Pricing and Regulatory Tribunal in its most recent report on the taxi industry in which it stated that, "The Tribunal estimates the cost of establishing a network service for a fleet of 300 taxis would be in the order of \$1.9m".<sup>17</sup>

However, booking service operators who provide services to a number of networks can realise economies of scale by spreading their fixed costs over a number of networks which, depending on the total number of taxis serviced, would allow services to be provided at a lower cost on a per taxi basis. That such scale economies exist is evidenced by the existence of only 3 booking services servicing 12 taxi companies or cooperatives in Sydney.

An indication of the costs of booking services under a contracting out approach was provided by Queanbeyan Cabs in its submission to the NCP inquiry into taxis. In this regard, the NCP report stated:

"Queanbeyan Co-Operative has stated that technology for a competing network would cost approximately \$120,000 to establish, plus approximately \$4,000 per car for those cars already fitted with a two-way radio, and approximately \$8,000 per car for those cars not currently fitted with a two-way radio."<sup>18</sup>

The evidence suggests that economies of scale in the provision of booking services are significant. In an era where taxi dispatch services use high cost, advanced technologies such as global positioning satellites it is not surprising that such economies exist. Therefore, unless a network operator is servicing enough taxis to exhaust these economies of scale, there are potentially significant differences between the cost of establishing its own booking service compared to contracting these services from a separate booking service provider that is able to achieve these scale economies by spreading the high fixed costs involved over a number of networks.

The use of more advanced and higher cost technologies in the future may increase the costs of establishing a booking and dispatch service and hence increase the number of taxis that need to be serviced before all potential economies of scale are exhausted. If economies of scale in booking services are not exhausted until the number of taxis using the service is significantly higher than the ACT's 243, then retaining a standalone booking service in the ACT would mean higher costs for users and consumers.

In light of the above assessment, the Commission concludes that the provision of network services in the ACT is not a natural monopoly and that a fleet of around 60-70 taxis is required by a second network to offer an adequate service to the Canberra region and be financially sustainable. Once a monopoly is found to exist, the next issue is whether it is

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<sup>17</sup> Independent Pricing and Regulatory Tribunal, *Review of the Taxi and Hire Car Industries*, November 1999, p.75.

<sup>18</sup> Freehills Regulatory Group, *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, March 2000, p.119.

necessary for the Government to intervene to ensure that the second network is able to attract the minimum number of taxis required to reach the critical mass needed to provide an adequate service and be financially viable. The theory of second best (discussed in section 2.1) suggests that, in the presence of market distortions such as a monopoly, governments may be justified in enacting further distortions in order to improve the overall efficiency of market outcomes.

### **6.1.3 Barriers to Entry and Exit in the Market for Network Services**

There are real doubts about whether it would be possible for a second network to attract a critical mass of taxis without Government intervention. The reason for this is the substantial barriers to entry into the taxi industry and the barriers to exit from the existing monopoly.

#### *Barriers to Entry*

There are significant barriers to entry to the taxi industry created by the quota on the number of taxi plates. In addition to the cost of a vehicle and normal running costs, a potential operator needs to purchase a taxi licence (or 'plate'), the cost of which is estimated at around \$260,000. However, the Government has not issued new plates since 1995 and, although they can be purchased if a current owner decides to sell one, this does not increase the number of taxis in operation. Therefore, in the absence of new plates being issued by the Government there is no way for new taxi operators to enter the industry that could join a second network.

This conclusion is consistent with the findings of the NCP report, which highlighted the barrier to entry by a second network created by the quota on taxi licences and the resultant barriers to exit from the existing network to a new network. On the issue of its support for network competition, the report stated:

“Without additional licences, there is a concern that Aerial’s share premium membership rules which appear to penalise members for leaving Aerial unless they transfer their licence to another Aerial member, may create too high exit barriers for licence holders wishing to join a new network. These rules may constitute a breach of one or more provisions of Part IV of the *Trade Practices Act 1974* (TPA).”<sup>19</sup>

#### *Barriers to Exit*

In the light of difficulties for new operators to enter the taxi industry, the only option for a second network seeking taxis is to attract operators away from the existing monopoly. This is potentially very difficult in the face of barriers to plate owners exiting Canberra Cabs because they would be required to forgo the \$20,000 fee they are required to pay to join the network. This issue was highlighted by DUS, which stated:

“Under Canberra Cabs’ Rules a taxi licensee is required to pay, inter alia, a premium on shares of \$20,000.00 to join the co-operative. This premium is not refundable if the

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<sup>19</sup> Freehills Regulatory Group, *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, March 2000, p.121.

member were to resign from the co-operative to join another network operator. On one side, this represents a high exit barrier to the members who might wish to join another network and on the other side, it represents a high barrier to entry to another network competitor, which is unable to access a pool of taxi licensees.”<sup>20</sup>

This barrier was emphasised by Canberra Cabs itself in a letter to members encouraging them not to leave the cooperative and join a second network. In this letter, the management of Canberra Cabs advised members that, “No individual member can dilute Co-operative funds by cashing in his “share” [\$20,000 share premium]. The rules are clear about this matter”.<sup>21</sup>

The letter also advised members (ie, plate owners) that if they allowed lessees of their plates to operate on a second network they would have to resign as a member or incur ongoing base fees, even though they would not be using network and booking services provided by Canberra Cabs.

The letter stated:

“Should a member allow a leased plate to operate in a network outside of Canberra Cabs, the member would need to resign from Canberra Cabs. Alternatively the member would incur ongoing base fees in accordance with the Rules of the Society until the member did resign.”<sup>22</sup>

There is a question about whether or not such rules would be in breach of the *Trade Practices Act 1974*.

This issue was also highlighted by DUS, which stated:

“The proposal that all WATs be directed to Yellow Cabs also recognised that it will be difficult for Yellow Cabs to attract standard licensees away from the monopoly network Canberra Cabs to establish a viable operation. This difficulty arises from rules adopted by Canberra Cabs. That is, a member of the co-operative is required to resign his membership in the co-operative if he allows his licence to operate in another network and in so doing forfeits his \$20,000 share.”<sup>23</sup>

Another possible barrier to exit for standard taxi owners is in the area of base fees. Base fees for all taxi owners/operators affiliated to the Canberra Cabs network are currently \$1,003 per four weeks. However, cooperative members receive an ‘investment rebate’ of \$157 per four weeks. The investment rebate suggests that members’ \$20,000 share premium is used as a form of advance payment on future base fees. Given that the \$20,000 fee is non-refundable, the effective pre-payment of base fees would provide a disincentive to members leaving the cooperative to affiliate with another network.

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<sup>20</sup> Submission 8/2001, p.3.

<sup>21</sup> JD Muir, Chief Executive, Canberra Cabs, *Letter to Members*, 5 June 2001, p.1.

<sup>22</sup> JD Muir, Chief Executive, Canberra Cabs, *Letter to Members*, 5 June 2001, p.2.

<sup>23</sup> Submission 8/2001, p.10.

*Implications for Competition at the Network Level*

Given the existing quota on the number of standard taxi plates, there are barriers to entry at the network level as a result of the restrictions on additional taxi operators who might join a second network. Moreover, there are significant barriers to exit restricting existing operators leaving the existing network to join a new one. In light of the Government's desire to introduce competition at the network level, it is difficult to see how this could be achieved without intervention to facilitate the establishment of a second network. There would appear to be only two ways of bringing this about: the release of more standard taxi licences and/or WAT licences on the condition they affiliate with a second network or require existing standard plate owners or WAT licensees to move to a second network.

Unlike standard plate owners, WAT licensees are not able to become members of Canberra Cabs and hence not required to pay the \$20,000 joining fee. Moreover, the provisions of WAT licences allow the Government to amend the licences to require them to affiliate with a second network. This would be considerably more difficult, if possible at all, in the case of standard taxi licences because they have perpetual property rights in the plates rather than short-term leases and the owners are equity holders in the cooperative that operates the existing network.

#### **6.1.4 Market Issues Relating to WATs**

While a key focus of any consideration of Government policy relating to WATs should be on their main purpose — that is, the provision of taxi services to Canberra's disabled community — there are other market issues relevant to any comprehensive assessment of the issues.

While WATs were introduced to carry out wheelchair work, for the majority of their time they carry out standard taxi work. Consultations indicated that when there were only 6 WATs and they were heavily micromanaged, 75 percent of their work was standard taxi work. At present, the 26 WATs would carry out standard work for around 90 percent of their time on average. Indeed, some WATs often do no wheelchair work on a particular day because drivers avoid doing such work. (This issue is discussed further below.) For example, Canberra Cabs stated that "It is notable that for the first 26 days of August this year there were an average of 49.73 WAT services per day. This is an average of only 1.91 services per WAT."<sup>24</sup>

Comparable data provided by Canberra Cabs indicated that over the same period, WAT vehicles worked an average of 15.2 standard hirings a day received through the booking system. On the basis that the split between bookings and rank and hail work is about 60:40, a WAT may do an average of around 25 hirings a day in total. On this basis, about 92 percent of WAT work is accounted for by standard taxi work.

Another relevant issue is the fact that WATs are also high occupancy taxis. High occupancy taxis are capable of carrying more passengers than a standard taxi, generally up to 12 passengers. Under the Government's fare regime, a high-occupancy hire is able to be charged at an additional premium of 50 percent over the standard fare. This makes high occupancy taxi work attractive to WAT operators. Given that there are only 2 non-WAT high occupancy

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<sup>24</sup> Submission 9/2001, p.8.

taxis affiliated to Canberra Cabs, a policy requiring that WATs affiliate with Yellow Cabs also has the effect of moving most of the high occupancy taxis in the ACT to Yellow Cabs. This outcome is relevant to any assessment of the costs and benefits of the Government's policy.

### 6.1.5 Existing Service Levels for Disabled Taxi Users

In considering this issue it is appropriate first to assess the current level of service provided to disabled taxi users and examine any causes of current service levels. Overwhelming evidence was presented to the inquiry in support of the view that disabled taxi users are poorly serviced under the current arrangements. The Government's minimum response time standards for WATs require that:

- During peak times (3pm-6pm Mondays to Fridays),
  - 85 percent of hirers wait no more than 18 minutes, and
  - 95 percent of hirers wait no more than 30 minutes.
  
- At all other times,
  - 85 percent of hirers wait no more than 10 minutes, and
  - 95 percent of hirers wait no more than 20 minutes.<sup>25</sup>

In relation to the current levels of service, DUS stated:

“There have been many instances of complaints from members of the public regarding the services provided by Canberra Cabs, in particular, the lengthy waiting times a hirer has to endure for a WAT to turn up at the place of pick-up. It is totally unacceptable that over the past 15 months between 15 and 20 percent of disabled customers experienced a waiting time longer than 20 minutes. In comparison, only one to two percent of standard hirings resulted in waits of more than 20 minutes.”<sup>26</sup>

DUS provided the following information on waiting times experienced by WAT users for the December 2000 and March 2001 quarters.<sup>27</sup>

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<sup>25</sup> Taxi Network Contract between the ACT Government and Aerial Taxi Cabs Co-operative Society Limited (1997-2002).

<sup>26</sup> Submission 8/2001, p.7.

<sup>27</sup> Submission 8/2001, p.7.

**Provision of Wheelchair Accessible Taxi Services by a Single Network in the ACT**

<i>Agreed Performance Standard</i>	<i>Actual Performance</i>
<i>Peak Times</i>	
December 2000	
Maximum 18 minutes wait — 85%	63.5%
Maximum 30 minutes wait — 95%	84.8%
March 2001	
Maximum 18 minutes wait — 85%	70.4%
Maximum 30 minutes wait — 95%	91.9%
<i>All Other Times</i>	
December 2000	
Maximum 10 minutes wait — 85%	52.3%
Maximum 20 minutes wait — 95%	78.4%
March 2001	
Maximum 10 minutes wait — 85%	55.3%
Maximum 20 minutes wait — 95%	83.2%

On any assessment, and in light of the fact that service benchmarks for standard taxi work are generally met, the evidence suggests that the level of service currently provided to disabled taxi users is inadequate. There was a degree of claim and counter-claim in some of the submissions to the inquiry that either Canberra Cabs or WAT drivers were unfairly manipulating the performance statistics to their own ends. However, no evidence of such activity was presented to the Commission and hence it makes no comment on the validity or otherwise of these claims.

The figures above tell one story, but the adequacy of current services is possibly better highlighted through actual examples. For example, DUS told of a particularly concerning case:

“A complaint received within the last fortnight revealed that an 80 year old man was required to wait 1 hour and 50 minutes in inclement weather outside Phillip Medical Centre despite repeated phone calls by his wife for the attendance of the vehicle. On the arrival at his destination the man suffered a seizure.”<sup>28</sup>

There is a general consensus among most in the industry that a root cause of poor service levels is the preference of some drivers for what is considered more profitable standard taxi work over wheelchair work. Another influence appears to be the method in which network

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<sup>28</sup> Submission 8/2001, p.7.

operators manage the WAT fleet and allocate work to it. For example, Leslie Wassell, a principal of Yellow Cabs, stated:

“Currently, operators and drivers can, and do, avoid doing wheelchair jobs. These jobs are usually time consuming and require considerable effort, they are often small jobs and offer less return than those available at more strategic locations such as the airport.”<sup>29</sup>

This view was confirmed by an existing WAT operator Mr Geoff Carruthers:

“It did not take long for the smarter operators to realise that there was more profit to be made in taking 8 person multiple hires from the airport to the city than in taking a wheelchair bound MS sufferer from Charnwood to Belconnen. They couldn’t refuse a wheelchair job, but if the base couldn’t find them to allocate that job they were home free. Some cars spent the day on the various ranks without signing into the dispatch system; they were thus invisible to the dispatch and GPS systems.”<sup>30</sup>

While DUS stated:

“Inquiries and investigations conducted have also indicated an overall reluctance by industry to undertake wheelchair accessible hirings. This was highlighted by a complaint on 1 July 2001 where a customer was required to wait on a Sunday afternoon for one hour and fifteen minutes for a wheelchair accessible taxi to attend. Although there were 10 wheelchair accessible taxis in operation at the time, some drivers appeared to blatantly refuse to acknowledge the request, with some drivers turning off the radio dispatch system. This is totally unacceptable and such practices can’t be condoned.”<sup>31</sup>

Canberra Cabs also put the blame on drivers:

“It is the view of Canberra Cabs that the failure of WATs to reach government benchmarks arises substantially out of a lack of driver incentive, and restricted micro-management. Accordingly, the responsibility for failing to achieve these benchmarks rests significantly in the hands of WAT operators and drivers.”<sup>32</sup>

While there is universal agreement that the avoidance of wheelchair work by drivers is a key cause of poor service, the lack of responsibility for service levels by Canberra Cabs and DUS is inconsistent with their powers and responsibilities to enforce and penalise driver behaviour. For example, clause 1 of the licence between DUS and WAT licensees states:

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<sup>29</sup> Submission 5/20001, p.2.

<sup>30</sup> Submission 4/2001, p.2.

<sup>31</sup> Submission 8/2001, p.8.

<sup>32</sup> Submission 9/2001, p.8.

“The licensee/operator of a wheelchair accessible taxi (WAT) must always give preference to a hiring by a person in a wheelchair, irrespective of how the offer to hire is made.”<sup>33</sup>

While clause 16 of the Government’s Taxi Network Accreditation Standards requires that a network operator must “ensure that all taxi drivers of wheelchair accessible taxis respond, and give priority to, the disabled community.”

It is the Commission’s view that some responsibility for the poor service provided to disabled taxi users by drivers rests with both Canberra Cabs and DUS given their responsibilities and obligations in relation to the performance of drivers.

Another cause of poor service appears to be the method used to manage and allocate disabled bookings to WATs. There is a general consensus that so-called ‘micro-management’ is the method capable of delivering the highest level of service to disabled users.<sup>34</sup> Indeed, it is argued that services were superior when there were 6 WATs being micro-managed than they are now when there are 26 WATs operating.

Mr Leslie Wassell, the previous manager of Canberra Cabs’ WATs and a principal of Yellow Taxis, gave a brief history of his introduction of micro-management at Canberra Cabs:

“In July 1993, under contract with Aerial Taxis who were the then licensee of the plates, I incorporated the 3 wheelchair accessible taxis into my own taxi group. I found the service to be lacking in all areas, particularly those provided by Aerial Taxis, it offered no assistance to the previous operators and had left them to their own device. As a result the service to the disabled community was a shocker. The same lack of assistance was offered to myself. Aerial didn’t want anything to do with the wheelchair taxi service, the vehicles were treated as “scab cars” or “non member vehicles”, cheap plates that were accused of stealing work from those members who had paid to join their Co-Operative. Within 12 months, under our own micro management system, we turned the business around to a point where it had become viable and provided an acceptable level of service to the disabled.”<sup>35</sup>

On this issue of micromanagement, Yellow Cabs stated:

“Currently, operators and drivers can, and do, avoid doing wheelchair jobs. The system that Aerial provides allows this practice. Drivers use the inadequate system to their advantage with little consideration to the customer, this results in a less than acceptable service level and a large number of customer complaints. Aerial knows the shortfall of the system but refused to accept responsibility, Aerial blame the operators and drivers and have turned their back on the problem.

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<sup>33</sup> Submission 9/2001, Attachment J(i).

<sup>34</sup> Micro-management involves the detailed allocation of WATs to pre-booked jobs so that pick-ups are coordinated in a way that reduces unnecessary travelling between jobs (called ‘dead running’) and equitably allocates work among WATs.

<sup>35</sup> Submission 5/2001, p.1.

Recently, under pressure from the government, Aerial introduced a half hearted attempt at micro-management, permanent hirings and pre-booked hirings are now pre-allocated to vehicles in an inefficient, add-hoc manner by numbers each morning. The service is still inadequate. ... This type of micro-management is not and will not work.”<sup>36</sup>

DUS also presented evidence that in 1999 an adequate service was being provided to the disabled community by the then six WATs under the micro-management approach:

“At that time [August 1999] six Multicabs (or WATs as they were later to be named) were operated by Canberra Cabs, who engaged a contractor to micro-manage the vehicles. Canberra Cabs submitted reports to the Committee [on Urban Services] that showed that all benchmark standards were being comfortably met by the network.”<sup>37</sup>

Following its 1999 inquiry into WAT services, the Legislative Assembly Committee on Urban Services recommended (and the Government agreed to) the release of a further 10 WAT licences. The Committee also recommended that micro-management of WATs should cease. While this was not accepted by the Government, micro-management did eventually cease following disagreements between Canberra Cabs and DUS over how the additional 10 WATs should be managed. Commenting on the situation after the additional 10 WATs began operation and micro-management ceased, Mr Geoff Carruthers stated that, “Remarkably, with 16 cabs instead of 6, the service became substantially worse”.<sup>38</sup>

In the Commission’s view, the use of micro-management to allocate WAT work and greater enforcement of network and WAT operators’ obligations, under their licences and in the Memorandum of Understanding on the provision of WAT services, to give priority to wheelchair work are necessary features of any changes put in place to improve taxi services to the disabled community. The Government also might consider the benefits of a regular independent audit of service standards in the licences and the Memorandum of Understanding. The Government may wish to direct the Commission to undertake the audits, which would be consistent with the Commission’s functions in relation to regulated industries.

### 6.1.6 Conclusion

There are a number of implications of the above discussion for the Government’s policy of facilitating competition in network services in the ACT. Yellow Cabs was chosen by the Government as the preferred operator of a second network in the ACT. Between them, the principles of Yellow Cabs operate 38 taxis, including 6 WATs. Yellow Cabs have advised the Government that they require the remaining 20 WATs in order to be financially sustainable, which would give Yellow Cabs a minimum of 58 taxis. Some standard taxis may transfer to Yellow Cabs over time, although this could not be relied upon due to the barriers to exit from the existing Canberra Cabs monopoly.

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<sup>36</sup> Submission 11/2001, p.2.

<sup>37</sup> Submission 8/2001, p.5.

<sup>38</sup> Submission 4/2001, p.2.

Against this background, the Government's decision to allocate all WATs to Yellow Cabs would appear to have two outcomes — it would give Yellow Cabs:

- in the vicinity of the 60-70 taxis it has been suggested is needed to provide a service to the Canberra region and meet the Government's service benchmarks; and
- the critical mass needed to be financially sustainable.

In principle, it is not the Government's role to intervene in free markets to ensure the financial success or sustainability of market participants. However, as discussed, the taxi industry cannot be described as operating in a free market and many Government interventions from the quota on the number of taxi plates to the regulation of taxi fares are designed to facilitate the financial viability of market participants.

The Commission is not able to assess the extent to which the success of Yellow Cabs is dependent on having all 26 WATs affiliated with its network. However, the contribution the WATs would make to Yellow Cabs reaching the critical mass required to provide an adequate service to the Canberra community (ie, meet minimum response standards) — assessed at around 60-70 taxis — is apparent. Moreover, that Yellow Cabs would make this a condition of proceeding with the establishment of a second network given the time and money already invested in the venture gives an indication of the importance Yellow Cabs places on the matter in terms of its ability to be financially viable in the long term.

The Commission notes that the NCP review recommended (and the Government agreed) that:

“during the initial years of reform [there should be] a minimum of 15 taxis per network. For non-dominant networks, minimum response time standards should be removed or reduced sufficiently to permit new entry at the network level.”<sup>39</sup>

The minimum size for new networks of 15 taxis is an arbitrary figure. There was no suggestion in the NCP report that this would give a network sufficient taxis to be financially viable or to provide an adequate service to the ACT region. Indeed, the proposed relaxation of response time standards suggests that an adequate service could not be provided with 15 taxis. The Commission's investigations in the course of this inquiry supports that view.

In considering the Government's policy of facilitating competition at the network level, the Commission is making its assessment on the basis that the Government is seeking to introduce a second network that will be sustainable in the long-term and capable of providing a service that meets its minimum response time standards. In this context, the 15-taxi minimum recommended by Freehills report is not considered relevant. In light of the fact that one of the key objectives of the Government's policy is to improve services to Canberra's disabled community, the Commission sees little value in an outcome that is not capable of meeting the Government's minimum response time standards, at least as they apply to WAT

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<sup>39</sup> Freehills Regulatory Group, *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, March 2000, p.122.

services. The Commission encourages the Government to consider the benefits of having the standards independently audited to ensure that the standards are met and maintained.

The key conclusions from the forgoing discussion are that:

- the provision of network services in the ACT is a monopoly, however, it is not a natural monopoly, therefore a market failure exists;
- consistent with the principles agreed by COAG and governments' obligations under the *CPA*, the Government should assess the costs and benefits of regulatory intervention to address the market failure;
- in this instance, that intervention should be directed at facilitating the introduction of competition into the provision of network/booking services; and
- in light of current arrangements, changing the licence conditions applying to WATs to require that they affiliate with Yellow Cabs would be one way to provide a second network with the critical mass needed to provide an adequate service and be financially viable.

The next two sections consider the costs and benefits of the Government's policy on WATs for the establishment of a second network and improving the level of taxi services to the disabled community. While the case has been made that a market failure exists, whether or not the Government's proposed action to address this failure has merit can only be determined in light of an assessment of the costs and benefits of the proposed policy action.

## ***6.2 Costs and Benefits***

### **6.2.1 The Costs and Benefits of Competition in Network Services**

#### *Benefits*

The benefits of competition are well established. In general, greater competition usually results in lower prices, higher quality goods and services, greater innovation and more choice for consumers.

The choice facing the ACT Government and community would appear to be to allocate the WAT licences to a second network and ensure its establishment or to not undertake this action and retain the existing monopoly market structure. The competition implications of the proposed allocation are therefore the choice between greater competition and the benefits that would flow from it or the costs associated with the retention of the status quo such as:

- higher network access and other charges, and hence taxi fares, than would be likely to occur in a more competitive environment;
- less innovation in services;
- lower service quality;

- a continuation of the unsatisfactory service being provided to the disabled community; and
- a lack of choice for taxi operators, drivers and users.

The NCP report discussed a number of the costs of a monopoly in network services, stating:

“It is our view that the network contract requirements restrict competition in the market for the provision of taxi booking and dispatch services, the effect of which is to raise the prices consumers ultimately pay for taxi services.”<sup>40</sup>

The NCP report also argued that a network services monopoly had resulted in costs for drivers as well as consumers, reporting concerns submitted by the ACT Taxi Drivers’ Association:

“The Association feels that Canberra Cabs has the ability to abuse the monopoly it has, by coercing drivers into signing agreements that require them to abide by a set of By-laws and a Supervisory Committee that are considered to be harsh, unfair, archaic and questionably illegal.”<sup>41</sup>

An example of the potential for greater innovation from greater competition is Yellow Cabs’ proposal to commence a ‘Silver Service’ for business and ‘special occasion’ customers. Yellow Cabs is also offering a package to taxi operators involving significantly lower costs for some services. For example, in a letter to taxi owners, operators and drivers, Yellow Cabs stated:

“Yellow Cabs have negotiated prices for insurance on standard taxis, up to 50% lower than currently available.

Yellow Cabs have negotiated fuel prices at a reduced rate, cheaper than currently available in Canberra.

Our monthly base fees will be around 30% lower than you are currently being charged.”<sup>42</sup>

On the issue of costs, it is useful to compare fees charged by Canberra Cabs with other networks. In Sydney, there are three networks of varying sizes. In 1999, Taxis Combined Services provided services to around 3,000 taxis, Premier Cabs to around 750 taxis and Legion Cabs to around 500 cabs. Each network charged similar network fees of around

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<sup>40</sup> Freehills Regulatory Group, *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, March 2000, p.115.

<sup>41</sup> Freehills Regulatory Group, *National Competition Policy Review of ACT Taxi and Hire Car Legislation*, March 2000, p.116.

<sup>42</sup> Donn McMichael, Managing Director, Yellow Cabs (Canberra) Pty Ltd, *Letter to taxi owners, operators and drivers*, (undated), copy in Submission 9/2001.

## Independent Competition and Regulatory Commission

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\$6,000 per annum (excluding GST).<sup>43</sup> That the fees of a 3,000-taxi network are similar to a 500-taxi network suggests that, while there are economies of scale in the provision of booking services, these economies currently appear to be exhausted somewhere at or below 500 taxis. In comparison, current base fees charged by Canberra Cabs are almost double, at nearly \$12,000 per annum (excluding GST).

### *Costs*

The costs associated with requiring that all WATs affiliate with a single network include the fact that WAT operators and disabled taxi users would not have a choice of network. Given that WATs also operate as HOTs, the users of these services would also be denied choice, although not to the same degree as there are two non-WAT HOTs operating on the Canberra Cabs network.

These issues were highlighted by Canberra Cabs, which stated:

“It would be stating the obvious to say that the Government’s direction to “allocate all WAT licences to a single network”, (read, Yellow Cabs) removes competition in the provision of WAT services to the community. The Government has argued the need for an additional network based on consumer choice and the need to improve service levels. It is contradictory to then prevent competition in the WAT market and to deny WAT users the choice of network.”<sup>44</sup>

The same point has been made by a number of WAT operators. For example, in his Affidavit to the Federal Court in the context of Canberra Cabs injunction against the Government’s action, Patrick O’Brien stated that, “I will lose the right to choose the network with which I operate”.<sup>45</sup> This lack of choice for WAT operators was acknowledged by DUS: “In principle, WAT operators should be able to freely determine their network affiliation arrangements”.<sup>46</sup>

It is true that the permanent allocation of all WAT licences to a single network would reduce choice. The Commission does not see this as a desirable long-term outcome, although as a temporary action it could play a valuable transitional role in terms of the establishment of a second network. However, arguments about lack of choice are somewhat esoteric in light of current arrangements. There is at present only one network provider. In these circumstances, no-one, be it standard taxi operators or users or WAT operators or users, have any choice of network. Against this background, the Commission has difficulty in accepting this as an argument against a policy that has as an objective the introduction of competition at the network level. DUS also emphasised this point, stating:

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<sup>43</sup> Independent Pricing and Regulatory Tribunal, *Review of the Taxi and Hire Car Industries*, November 1999, p.71.

<sup>44</sup> Submission 9/2001, p.6.

<sup>45</sup> Submission 9/2001, Attachment J(i).

<sup>46</sup> Submission 8/2001, p.11.

“WAT operators currently have no choice in relation to network affiliation. There is currently only one network — Canberra Cabs. The Government’s proposal that all WAT [sic] affiliate with Yellow Cabs will not diminish that choice.”<sup>47</sup>

Another potential cost is the loss of income to WAT operators and drivers from affiliating with Yellow Cabs if they are not able to provide the same level of work as that currently available on the Canberra Cabs network. This was a common complaint of WAT operators opposed to the Government’s action. Typical was Peter O’Rourke, who stated:

“We will be placed in a position where the financial profitability of operating our WAT may be seriously affected, with consequential adverse consequences to affect our income and business as a WAT licensee and operator.”<sup>48</sup>

The Commission is unable to verify the validity of such concerns. It is worth noting, however, that the Government’s proposal will have no impact on the demand for taxi services in the ACT nor the number of taxis over which that work will be spread. If, after the establishment of a second network, Canberra Cabs still receives a larger proportion of the booking work than its proportion of taxis in the ACT, and as a result has difficulty satisfying demand, the off-load requirements under the Government’s new taxi network accreditation legislation will see this work made available to taxis on the Yellow Cabs network. In these circumstances, it is difficult to see how the Government’s proposal can have a significant impact on the amount of work available to any given taxi (including a WAT) and hence its financial profitability.

However, the Commission takes seriously the concerns of WAT licensees, whether perceived or real, that they could be financially disadvantaged by the Government’s decision. For example, WAT licensees could be vulnerable to unjustified increases in base fees due to the fact that for the period during which they do not have a choice of networks they would be effectively ‘captives’ of the Yellow Cabs network.

In relation to the concerns of WAT licensees, the Commission notes that the Government has offered WAT licensees who do not wish to affiliate with the Yellow Cabs network a one-off opportunity to transfer their licence. However, the Commission is concerned that, given the implicit subsidy reflected in the cost of leasing a WAT licence in comparison to buying or leasing a standard taxi licence and the fact that WATs carry out standard taxi work for most of the time, it is possible that these licences could potentially be sold at a significant premium. Any premium on the transfer of a WAT licence would represent a windfall for existing licensees at the expense of ACT taxpayers.

In the case of WAT licensees who choose to transfer their licence because they do not wish to affiliate with the Yellow Cabs network, the Commission is also concerned that they may suffer financial disadvantage because of obligations they have undertaken in respect of the purchase or lease of a vehicle.

These issues need to be addressed by the Government in the arrangements for allowing a one-off transfer of WAT licences.

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<sup>47</sup> Submission 8/2001, p.11.

<sup>48</sup> Submission 9/2001, Attachment J(ii).

### *Conclusion*

The objective of the legislation regulating the taxi industry in the ACT is to promote “reliable and efficient public passenger services”. It is difficult to argue, and certainly little evidence exists to support the view, that a monopoly would result in a better outcome for taxi operators and users than even a highly regulated duopoly. Based on the assessment of the issues above, the Commission concludes that the benefits of establishing a second network would outweigh the costs.

The Commission has also highlighted a number of issues relating to the potential for financial hardship for WAT licensees as a result of the Government’s policy. The Commission sets out its views on how these issues might be addressed in Chapter Eight.

### **6.2.2 Costs and Benefits in Relation to Improving Taxi Services to the Disabled Community**

This section discusses the costs and benefits of the Government’s proposal to direct that *all* WATs affiliate with a second network as they relate to improving the level of service to the disabled community. The counterfactual in this assessment is an alternative under which the WAT fleet is split between the existing network and any new entrant.

#### *Costs*

In terms of the level of services to the disabled, the costs of allocating all WATs to a single network relate to the lack of choice of network that would be available to disabled taxi users. This point was highlighted by Canberra Cabs, which stated:

“At present all WAT services are operated through a monopoly under the Canberra Cabs network. All services are booked and allocated to operators through the Canberra Cabs network, and all consumers must go through Canberra Cabs to obtain access to WAT services.

Transfer or allocation of all current and future WAT licences to a second network will not create competition. It will simply change the name of the network and remove any possibility for competition.”<sup>49</sup>

As noted, like all users, disabled users do not presently have a choice of networks because of the existence of a monopoly. While not relevant to disabled taxi services, the Commission notes that the allocation of all WATs to a single network also creates a near monopoly in HOT services.

The Commission is of the view that it would be undesirable as long-term policy to require all WAT licensees (and hence most HOTs) to affiliate with a single network on a permanent basis. In this regard, the Commission would consider any such policy to be temporary and

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<sup>49</sup> Submission 9/2001, p.8. Emphasis in original.

used as a transitional measure only. The Commission notes that DUS concurs with this view. DUS stated:

“It is considered that a short-term restriction in WAT services is justified by the long term benefits that will be created through the establishment of a second taxi network in the ACT.”<sup>50</sup>

### *Benefits*

It is not possible to separate totally the issues of competition in network services and the level of taxi services to the disabled community because the Government’s policy on the allocation of WAT licences is directed at achieving both objectives. The Commission’s conclusions in relation to competition issues in sub-section 6.1.6 pointed to the fact that the allocation of all WAT licences to a second network would help give it the critical mass to establish an adequate and viable service. On this basis, one of the benefits of allocating all WATs to Yellow Cabs would be to facilitate the establishment of a viable second network, which in the longer-term would give disabled taxi users a choice of networks.

This issue was addressed by DUS, which stated:

“It is clear that unless Yellow Cabs is approved as the preferred network for WAT services there will not be a second network in Canberra now or in the foreseeable future. There will be no competition for standard taxis nor will there be an opportunity for competition in the WAT market in the longer term. Consumers and operators will continue to have no choice.”<sup>51</sup>

In relation to the level of services provided to the disabled community, submissions focused on the perceived benefits of having all WATs managed by a single network and, in particular, micro-managed in the way proposed by Yellow Cabs. DPI, which represents the disabled community, was strongly of the view that the wheelchair fleet should be kept together, stating:

“While DPI does not have a view about which company should be operating wheelchair taxis, we do have a view that the WAT fleet should be kept together. There are over-riding public interest considerations which centre around issues of splitting the number of taxi’s available to particular wheelchair users at any period of time. Our information is that the experience across a range of States and Territories where the fleet has been split (from a low base) is universally negative.”<sup>52</sup>

Yellow Cabs, not surprisingly, also argues that all the WATs need to be affiliated with a single network, stating that:

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<sup>50</sup> Submission 8/2001, p.11.

<sup>51</sup> Submission 8/2001, p.11.

<sup>52</sup> Submission 10/2001, p.1.

“We believe the resources of all wheelchair accessible taxis must be located in the one network to achieve a fair and equitable services, that the network provides a management system that works and that it accepts the responsibility for the provision of this service.”<sup>53</sup>

It would appear that Canberra Cabs is also of the view that keeping the WAT fleet together at this point in time would provide better service outcomes. The Commission was provided with the minutes of the 26 March 2001 meeting of the Transport Reform Advisory Group (TRAG), which is overseen by an independent chair and includes various stakeholders including DUS, Canberra Cabs and representatives of the disabled community, ACTION buses, the Airport Corporation and the hire car industry. TRAG is a forum for stakeholder consultation on transport reform issues. The minutes record a discussion on the WAT fleet, including the contribution by Kim Hancock, who represented Canberra Cabs at the meeting, in the following terms: “Kim Hancock commented that splitting the WAT fleet between two networks is not advisable and that the entire fleet should stay together to provide a better service”.<sup>54</sup>

The other issue relevant to the performance of disabled taxi services is the method of managing the WAT fleet. There is overwhelming evidence that simply allowing WAT drivers to accept wheelchair work off the normal dispatch system does not result in good levels of services — see sub-section 6.3.1 — and that some form of micro-management delivers better services outcomes. Commenting on the current approach being adopted by Canberra Cabs, Mr Geoff Carruthers stated:

“In recent times Canberra Cabs have introduced a micro-management system of sorts. Cars are allocated jobs in advance, but this seems to work on the “two hat” principle; a job is pulled out of one hat, and a car number out of the other without regard for the cars place of origin, or location after previously allocated jobs. In this regard ... WATS cars do travel ridiculous distances between wheelchair jobs, but with a proper micromanagement and a roster system in place this can be fixed.”<sup>55</sup>

Yellow Cabs, on the other hand, proposes a quite intensive form of micromanagement. The following extracts from Yellow Cabs’ draft *Maxi Taxi Rules and Operational Procedures* attempt to summarise the proposed approach:

“Maxi Taxis [ie, WATs] must always give priority to wheelchair hirings.

The day to day operations of the micro managed system for wheelchair hirings will include pre-allocation of permanent hirings, pre booked hirings and school run bookings. Time bookings on the day, for the day, will also be pre-allocated where possible, as they are received.

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<sup>53</sup> Submission 11/2001, p.3.

<sup>54</sup> Transport Reform Advisory Group, *Minutes of Meeting, 26 March 2001*, p.2.

<sup>55</sup> Submission 4/2001, p.3.

Maxi taxis that have received pre-allocated hirings for that day, will be known as “Duty Maxis” and their daily movements and location will be known in advance for most of the day.

Immediate wheelchair accessible bookings on the day will be scanned for suitable “Duty Maxis” and will be allocated to the best-suited vehicle. Should the immediate booking not suit a duty maxi then it will be allocated to a maxi taxi that is not a duty maxi, or held in micro management until it is allocated through the Taxi Dispatch Zone system.

All maxi taxi hirings in the “Taxi Dispatch Zone” will carry the same attribute. (IE. Both wheelchair and high occupancy jobs). Drivers will not be able to distinguish between high occupancy maxi taxi bookings and the wheelchair hiring.

A driver will not take any other hiring prior to a pre-allocated wheelchair hiring if it will prevent him/her from taking that wheelchair hiring out of the system at least 10 minutes prior to the requested time.

It will be considered that a driver is not giving priority to a wheelchair hiring if he/she did not remove the hiring from the system at least 10 minutes prior to the requested time. And in not doing so, that driver, has committed a serious breach of the rules and will be penalised accordingly.

Any Maxi Taxi driver who does not accept and give priority to a wheelchair hiring will be instantly suspended from the radio network and called to the manager’s or supervisor’s office to explain his/her actions.”<sup>56</sup>

DUS was supportive of Yellow Cabs’ proposed WAT management system and expressed confidence that it would lead to improved levels of service. DUS stated:

“These arrangements will provide significant improvements due to drivers being directed to hirings, not just placed on the system in the expectation that a WAT will eventually accept such hirings as presently occurs. As systems and procedures will also be introduced to identify WATs not complying with licence conditions in providing priority to the disabled community, enforcement and disciplinary capabilities for non-compliant WATs will be significantly enhanced.”<sup>57</sup>

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<sup>56</sup> Submission 11/2001, pp.4-7.

<sup>57</sup> Submission 8/2001, p.8.

*Conclusions*

There is no question that the existing level of service to disabled taxi users is inadequate. While there are costs of allocating all WATs to a single network in terms of choice of network for disabled users, this needs to be considered in light of the fact that there is presently no choice of network and the allocation of all WATs to a second network may be critical to it getting off the ground and hence critical to the issue of network choice for users of standard taxis and, in the longer term, disabled users.

At least at this point in time, there also appears to be benefits in relation to the level of service provided to WAT users from keeping the WAT fleet together. As noted, this conclusion is also based on the Commission’s assessment of the number of taxis needed to provide the critical mass necessary for a second network to provide an adequate and sustainable service. As a result, the Commission considers that, on balance, the benefits of allocating all WATs to the proposed Yellow Cabs network outweigh the costs.

However, as noted, the Commission does not see the allocation of all WATs to a single network as a desirable long-term outcome and this issue is addressed in its recommendations. Issues of critical mass would be expected to be addressed over time through market processes as it is likely that Yellow Cabs will be able to attract standard taxi operators to its network over the longer term. Moreover, evidence to the inquiry from both Canberra Cabs and Yellow Cabs suggested that current levels of demand could be satisfied with around 10 WATs. This suggests that there are enough WATs currently operating for two networks to be able to provide an adequate wheelchair service, although as the above discussion indicates, this would likely rely on the micromanagement of WATs.

**6.2.3 Summary of Costs and Benefits**

The following table summarises the main cost and benefit for key stakeholders of allocating all WATs to a second network.

		<i>Benefits</i>	<i>Costs</i>
<b><i>Taxi Users</i></b>	<i>Disabled Taxi Users</i>	Better services	No choice of network
	<i>Standard Taxi Users</i>	Network Choice	None
<b><i>Network</i></b>	<i>Existing Network</i>	None	Loss of Revenue
	<i>Second Network</i>	Critical mass	None
<b><i>Taxi Operators</i></b>	<i>WAT Operators</i>	None	No choice of network
	<i>Standard Taxi Operators</i>	Choice of network	None

The cost to WAT operators of no choice of networks is not ‘additional’ to the status quo because they have no choice now. Moreover, this would only be temporary as the Commission supports the Government’s policy as a transitional measure only, after which WAT operators would be given network choice. Once such choice becomes available for operators, and assuming that some move back to Canberra Cabs, disabled users would also have a choice of networks.

## **7 ALTERNATIVES THAT ACHIEVE THE DESIRED POLICY OBJECTIVES**

In the course of its inquiry the Commission has considered a number of alternative options for achieving the Government's objective of introducing competition in network services that do not involve requiring all WATs to permanently affiliate with the proposed second network.

### ***7.2 Allowing WATs to Choose Networks***

It has been suggested that if WATs were given a choice of networks at this point in time they would probably split 50:50. Leaving aside the 6 WATs operated by one of the principals of Yellow Cabs, this suggests that 10 WATs may choose to stay with Canberra Cabs.

On the basis of the Commission's assessment of the critical mass needed to provide an adequate and viable second network, this would leave Yellow Cabs well short of the number of taxis required. Moreover, Yellow Cabs have indicated to the Government that without the taxi numbers represented by all the WATs, they would not proceed with the establishment of a second network. This option would also not address the arguments that at this point in time a better service to the disabled community would be provided by keeping the WAT fleet together. Against this background, the Commission concludes that this option would not achieve the Government's policy objectives.

### ***7.3 Allowing WATs Network Choice and Issuing an Additional 10 Licences to Yellow Cabs***

Allowing WATs to choose networks and issuing an additional 10 licences to Yellow Cabs would address the possible shortfall in numbers needed by Yellow Cabs under a choice approach. The additional licences could be either WATs or standard licences. There would be little difference in the impact on the industry generally given that WATs spend over 90 percent of their time doing standard taxi work. Indeed, this proportion would increase if more WAT licences were released. However, unless the additional 10 licences were WATs, this approach would not address the concerns by some that the WAT fleet be kept together in the short term to help ensure that service standards to the disabled community are improved.

There is significant resistance in the industry to the issuing of additional licences. This is based on the historical approach to the regulation of the industry under which a quota on taxi numbers is imposed. The Government has not issued standard taxi licences since 1995. The allocation of an additional 20 WAT licences since 1999 has effectively increased the size of the standard taxi fleet by around 18 taxis on the basis that WATs spend at least 90 percent of their time doing standard taxi work on average.

On the issue of the quota on standard taxis, the NCP report recommended that the quota be removed. In its response to the report, the Government did not agree to implement this recommendation immediately, instead indicating that this issue would be reviewed in 2002. Issuing new licences at this point in time would effectively preempt further consideration of this issue by the Government. In light of its assessment of the issues surrounding this approach, the Commission does support this option.

#### ***7.4 Allocating all Existing WATs to Yellow Cabs and Issuing 10 New WAT Licences on the Condition they Affiliate with Canberra Cabs***

This approach would still involve requiring all existing WATs to transfer to Yellow Cabs but would 'compensate' Canberra Cabs by issuing a further 10 WAT licences on the condition they affiliate with Canberra Cabs. This approach would have the benefit of giving disabled users a choice of network. However, as discussed, there are already more than enough WATs to provide an adequate service to the ACT disabled community and it is the way they are managed which appears to have the most significant impact on service levels.

This option raises the same issues as option 7.2 above in terms of the impact on the industry of an additional 10 taxis carrying out, in the main, standard taxi work. The Commission does not support this option.

#### ***7.5 Subsidising Drivers to Undertake Wheelchair Work***

In its submission, Canberra Cabs proposed the introduction of a 'lift fee' to compensate for the additional time taken to carry out wheelchair work to be subsidised by the Government. Canberra Cabs proposed a subsidy of \$15 per wheelchair fare, which they estimated would cost around \$272,000 per annum.

The Commission does not support the provision of a subsidy. WATs are already effectively heavily subsidised by virtue of the relatively low cost of WAT licences. At \$1,000 per annum, compared to the lease cost of up to \$26,000 per annum on a standard taxi licence, provides a significant subsidy to WATs that far outweighs the additional cost of purchasing/leasing and running a WAT. Given that, on average, around 90 percent of work carried out by WATs is standard taxi work, the low lease costs for WATs gives them a significant advantage over standard taxis and compensates them for the additional time involved in wheelchair work.

#### ***7.6 Allocating Existing WATs to a Second Network but Putting in Place Measures to Allow Network Choice for WAT Operators and Users Over Time***

The Government has not indicated how long WAT licensees would be required to affiliate with Yellow Cabs. The Commission is concerned that if this restriction was not removed it would lead to the creation of a monopoly for WAT services and a lack of network choice for disabled taxi users. The Commission regards the Government's policy as more appropriately a temporary measure designed as a transition to a more competitive environment in the market for network services. In the Commission's view it would be more preferable to put in place measures now to allow WAT licensees a choice of network after an adequate transition period. In the Commission's view, a transition period of two years would provide the second network time to attract enough standard taxi licensees to maintain the critical mass of taxis needed to provide an adequate service.

In order to bring forward the time when disabled taxi users will have a choice of networks, the Commission takes the view that there should be no restrictions on existing standard taxi operators using WATs instead of standard sedans. This would expand Canberra's fleet of WATs and high occupancy taxis and provide greater choice for the disabled community and users of high occupancy taxis in the short term.

## **8 CONCLUSIONS AND RECOMMENDATIONS**

### **8.1 Conclusions**

In the reference for this investigation, the Commission was asked to inquire into the competition implications for the provision of WAT services of the Government's decision to allocate all WAT licences to a single network. In its inquiry the Commission was directed to have regard to Schedule 1A of the *Independent Competition and Regulatory Act 1997* relating to clause 5 of the Competition Principles Agreement.

The Commission identified two main objectives of the Government's policy of requiring all WATs to affiliate with Yellow Cabs:

- to facilitate the introduction of competition to the provision of taxi network and booking services in the ACT in order to provide a choice of networks for the operators/drivers and users of standard taxis; and
- to improve the standard of taxi services to the disabled community in the ACT.

The Commission also observed that despite the contrary appearance of the short term mandatory allocation of all WAT licences to a single network, that the Government has the longer term objective of providing disabled taxi users and operators/drivers of WATs with a choice of network.

The Commission finds that the multiple objectives of the Government's policy on WATs can be best achieved by a two step process. Initially the allocation of all WATs to a second network is required to facilitate its establishment and viability. Subsequently, the monopoly provision of WAT services can be removed allowing choice of networks for WAT operators/drivers. The introduction of network choice is contingent on the allocation of all WATs to Yellow Cabs. Moreover, the provision of choice of network for disabled taxi users over the longer term requires the establishment of a second network in the first instance.

The Commission concludes that there is a distortion in the provision of taxi network and booking services in the ACT caused by the existence of a monopoly taxi network. The Commission also identified a number of barriers to entry to the network services market and barriers to exit of standard taxi licensees from the existing network to a new one. Against this background, the Commission concludes that a sustainable and adequate second network is unlikely to be able to establish itself in the absence of Government intervention. The Commission acknowledges that requiring all WATs to affiliate with a single network, if only temporarily, is a restriction on competition. However, based on the principle of second best (see section 2.1), the Commission concludes that the Government is justified in intervening in the market for network services to address this market distortion.

A key conclusion of the Commission's inquiry is that, notwithstanding the temporary restriction on competition that will occur, the Government's intervention in the market for taxi network and booking services in the ACT will facilitate the introduction of a second network with the critical mass needed to provide an adequate and viable service to the ACT community and ultimately to an increase in competition in the industry.

## **Independent Competition and Regulatory Commission**

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The Commission finds that a second network would require a critical mass of around 60-70 taxis in order to provide an adequate service to the ACT community (ie, one that meets the Government's service benchmarks) and to be financially viable. It also concludes that, in light of the barriers identified above and the number of taxis operated by the principals of Yellow Cabs, the allocation of all existing WATs to Yellow Cabs is required to provide a second network the critical mass required to establish itself.

The Commission concludes that the benefits of introducing competition in the provision of network services outweigh the costs. It further finds that the benefits to the provision of services to the disabled community of allocating all existing WATs to a second network outweigh the costs. The Commission also concludes that at this point in time the objective of improving the standard of taxi services to the disabled community is best served by keeping the existing WAT fleet together. After considering a range of alternative approaches, the Commission concludes that the Government's policy of allocating all existing WATs to a second network is the best way to bring about its policy objectives.

The Commission considers that by undertaking this action to provide the critical mass for a second network to provide an adequate service to the ACT region, there is no need to relax network performance standards for the Yellow Cabs network as proposed by the NCP report in respect of non-dominant networks.

The Commission, however, is concerned about the creation of a monopoly for WAT services as a long-term result of this policy and sees this action as a temporary measure designed as a transition to a more competitive environment in the market for network services. In this regard, the Commission seeks to put in place measures to allow WAT licensees a choice of network after a transition period. The Commission considers that a period of two years should be sufficient for a second network to attract enough standard taxi licensees to maintain the critical mass of taxis needed to provide an adequate service.

The Commission notes that the Government has offered WAT licensees who do not wish to affiliate with the Yellow Cabs network a one-off opportunity to transfer their licence. Given the implicit subsidy reflected in the cost of leasing a WAT licence in comparison to buying or leasing a standard taxi licence and the fact that WATs carry out standard taxi work for most of the time, it is possible that these licences could potentially be sold at a significant premium. Any premium on the transfer of a WAT licence would represent a windfall for existing licensees at the expense of ACT taxpayers.

The Government's option for a one-off transfer should remain open for a three-month period after the commencement of the second network to give licensees an opportunity to seek out interested parties.

In the case of existing WAT licensees who choose to transfer their licence because they do not wish to affiliate with the Yellow Cabs network, the Commission is concerned that they may suffer financial disadvantage because of obligations they have undertaken in respect of the purchase or lease of a vehicle. To address this, anyone to which an existing WAT licence is transferred should be required to offer to purchase or take over the lease of the existing licensee's vehicle. The existing WAT licensee would have the option of accepting or not accepting the offer made on the vehicle. To ensure that licensees do not seek to use such a sale as a backdoor way of charging a premium for the transfer of their lease they should be prevented from selling their WAT for more than its fair market value. To monitor this, the

Government could consider giving the Commission the role of independently assessing the fair market value of WATs.

In order to bring forward the time when disabled taxi users will have a choice of networks, there should be no restrictions on existing standard taxi licensees/operators operating WATs. This would expand Canberra's fleet of WATs and high occupancy taxis and provide greater choice for the disabled community and users of those services.

The Commission is also concerned that WAT licensees could be financially disadvantaged by increases in base fees due to the fact that for a period of two years they would be effectively 'captives' of the Yellow Cabs network. To address this, if at the expiry of their first annual contract period with the Yellow Cabs network, Yellow Cabs' base fees exceed those being offered by Canberra Cabs at that time (excluding the impact of member investment rebates), the Commission should be given the power to review whether the date at which WAT licensees should be given network choice should be brought forward.

Considering all the findings and conclusions outlined above, the Commission is satisfied that the Government's decision to allocate all WAT licences to a single network is consistent with the intentions of cause 5 of the Competition Principles Agreement. While the Government's long term objectives are consistent with its national competition policy obligations, the Commission notes that short term restrictions on competition may be necessary. To ensure that the long term objectives, which justify short-term restrictions on competition, are achieved, the Commission proposes that the short term arrangements are subject to the following conditions:

- existing taxi service performance standards, including WAT performance standards, should be maintained, not relaxed for the Yellow Cabs network in order to facilitate the establishment of the second network;
- service standards should be independently audited to ensure that the standards established in the Memorandum of Understanding and licence conditions are maintained, the Government may wish to direct the Commission to undertake such audits;
- proposed licence conditions requiring that existing WAT operators affiliate with the Yellow Cabs network be removed after a period of two years following the commencement of the operation of the second network;
- existing licensees are prevented from charging a premium for the transfer of their WAT licence should they take up the Government's offer to transfer their licence should they not wish to affiliate with the Yellow Cabs network;
- WAT licensees' one-off option to transfer their licence be available for three months after the commencement of operation of the second network;
- any person seeking to take over the operation of a transferred WAT licence be required to offer to purchase or take over the lease of the current licensees' vehicle but that licensees be prevented from selling their vehicle for more than the fair market value of the vehicle;

## **Independent Competition and Regulatory Commission**

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- at the expiry of the first annual contract period the Commission should be asked to review the effect of the allocation of the WAT licences to a single network to determine whether it is working as intended; and
- at the expiry of the first annual contract period with the Yellow Cabs network, if Yellow Cabs' base fees exceed those being offered by Canberra Cabs at that time (excluding the impact of member investment rebates), the Commission should review whether it would be appropriate to bring forward the date at which WAT licensees are able to choose their network affiliation.

## **ATTACHMENT A TERMS OF REFERENCE**

### **Background**

The Independent Competition and Regulatory Commission is established under the *Independent Competition and Regulatory Commission Act 1997*, in part, to investigate matters relating to the regulatory activities of government. Ministers, Members of the Legislative Assembly and the public may direct references under the Act to the Commission. The circumstances under which the Commission may accept a reference are laid out in section 19C and 19K of the *Act*.

### **Purpose of the Reference**

As a self-funding referring authority under the Act (a member of the Legislative Assembly), I hereby refer to the Commission an inquiry into the following, and no other matter:

The competition implications for the provision of WAT services of the government's decision to allocate all WAT licences to a single network having regard to the provisions of Schedule 1 A of the Independent Competition and Regulatory Commission Act 1997 relating to legislation reviews under clause 5 of the Competition Principles Agreement.

The inquiry shall not exceed a cost of \$25,000, the amount of the sponsorship granted by the Government for the purpose.

### **Reporting Date**

The Commission shall complete its the investigation and report as soon as possible, and if practicable, before 14 September 2001.

signed  
John Hargraves MLA  
14 August 2001



**ATTACHMENT B SUBMISSIONS**

A list of submissions received by the inquiry is set out in the following table.

<b>Date Received</b>	<b>Submitted by</b>	<b>Submission Number</b>
04/06/01	Forwarded by John Hargreaves MLA (Terms of Reference)	1/2001
24/08/01	Mr Stephen Brown	2/2001
28/08/01	Peter O'Rourke	3/2001
30/08/01	Geoff Carruthers	4/2001
30/08/01	Leslie John Wassell	5/2001
31/08/01	Patrick O'Brien	6/2001
31/08/01	Denis O'Brien	7/2001
03/09/01	Urban Services	8/2001
03/09/01	Canberra Cabs	9/2001
10/08/01	Disabled Persons' Initiative	10/2001
13/09/01	Yellow Cabs (Canberra) Pty Ltd	11/2001