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Competition and Vested Interests in Taxis in Ireland: A Tale of Two Statutory Instruments

By

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Abstract

This paper addresses, for the taxi market in Ireland, whether judicial, legislative and regulatory processes promote taxi users' welfare or taxi license holders' welfare. It is argued that the 2000 decision to remove quantitative restrictions on taxi numbers favoured taxi users; the 2010 decision to re impose such restrictions, with the exception of wheelchair accessible taxis) had the effect of favouring taxi license holders, while doing little to meet its declared object to increase the number of wheelchair accessible taxis and the ready availability of such vehicles for wheelchair customers. Whether the late 2000s/early 2020s will be a rerun of the late 1990s, with increasing waiting times for taxi users, is a moot point. An applicant refused a taxi license might, as in 2000, successfully bring a High Court case contesting the legal basis for the present quantitative restrictions. The Competition and Consumer Protection Commission might spark debate on taxi regulatory policy, while the Minister for Transport, Tourism and Sport might issue a policy direction to the National Transport Authority, the taxi regulator, requiring it to clarify the objectives and benchmarks for success of its existing prohibition on taxi licenses and to consider how best to create incentives for those with wheelchair accessible taxis to use them to service wheelchair users.

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I INTRODUCTION

This paper addresses the question raised at the 2016 Burren Law School: *Is the law as enacted by politicians and adjudicated by judges and regulators adequate to the task of ensuring that the common good prevails over vested interests in these turbulent times?*¹ In addressing this question attention is confined to the taxi market in Ireland.²

The common good is taken to mean the welfare of users of taxi services, measured by waiting time, price and other aspects of service quality. The common good is improved by shorter waiting times, lower taxi fares, and better service quality (e.g. clean cars, safe drivers, new services, etc).

Narrow or vested interests refer to the welfare of taxi license owners, measured in terms of income, hours worked, and the rental/sale value of a taxi license. The welfare of vested interests is promoted by measures that raise the income of taxi license owners such as high fares combined with restrictions on entry of new taxi license owners.

The role of judicial, legislative and regulatory intervention in the taxi market has, to a considerable extent, been the balancing of the common good and vested interests; the importance attached to each varies over time, with, for example, the state of the economy. Nevertheless, such intervention is not always appropriately characterized as a zero sum game, but rather can be in the interests of both the common good and vested interests. Ensuring taxi operators, for example, carry appropriate insurance,

¹ Details of the Burren Law School may be found at: <http://www.burrenlawschool.org/>. Accessed 30 September 2016.

² Taxis are part of the small public service vehicle (SPSV) market, which is divided into: taxis, some of which are wheelchair accessible (or WAT); hackneys, some of which are wheelchair accessible (or WAH), others local area hackney licenses (LAH); and, limousines. A taxi is defined as vehicle that can carry up to eight passengers, can ply for trade on the street or stand for hire or be called out or be pre-booked by a passenger. Taxi fares are subject to maximum regulated rates and can use bus lanes. Hackneys can carry up to eight passengers, must be pre-booked and cannot ply for hire on the streets or stand at taxi ranks. The fare is agreed in advance with the passenger and hackneys cannot use bus lanes. WAH became a separate SPSV category in 2010, while LAH were introduced in 2014 to serve rural areas with transport deficits (i.e. areas which are too small to support a full-time taxi or hackney operator and too far from an adjacent area). A limousine must be suited by its style and condition to be used for ceremonial, corporate or other prestige purposes. Limousines became a separate SPSV category in 2000. Wheelchair accessible vehicles are vehicles that satisfy certain conditions in order to allow its use by persons with their wheelchairs. However, a WAT or WAH (collectively referred to as wheelchair accessible vehicles or WAV) can carry passengers that do not require a wheelchair. For further details see Gorecki (2014a, Table 1, p. 3 and para. 7) and NTA (2015c, pp. 5-6). Taxis are by far the most important component of the SPSV market. In July 2016, for example, taxis accounted for 82.3% (including 4.9% WAT), of all SPSVs, hackneys 9.5% (including 0.3% of WAH) and limousines 8.1%. (NTA (2016a) that did not record LAH as a separate category. However, NTA (2016c, Table 3, p. 5) reports only 14 such licenses in 2015). Unless otherwise stated all figures in the text and notes refer to taxis.

possess the relevant driver qualification and drive a roadworthy vehicle improves both consumer (better quality service) and producer (prevents entry of drivers/vehicles not of the required standard) welfare.

The role of judicial, legislative and regulatory intervention is examined in this paper by considering two key decisions over the past twenty years or so:

- first, the decision by the Minister of State at the Department of the Environment and Local Government (the Minister) through S. I. 367 of 2000 to abolish quantitative limits on the number of taxi licenses, which resulted in a large increase in the number of taxis and improvements in service quality;³ and,
- second, the decision by the Commission for Taxi Regulation through S. I. 250 of 2010 to prohibit indefinitely the issuing of any new taxi licenses, except for wheelchair accessible taxis (WAT), with the object of increasing the number of wheelchair accessible taxis.⁴

We argue that the first decision promotes the common good, the second, in effect, if not object, private interests and conclude by asking the question: will the common good prevail over vested interests in the late 2010s/early 2020s as it did in 2000?

Whether the late 2010s/early 2020s will be a rerun of the late 1990s, with increasing waiting times for taxi users, is a moot point. An applicant refused a taxi license might, as in 2000, successfully bring a High Court case contesting the legal basis for the present quantitative restrictions. The Competition and Consumer Protection Commission might spark debate on taxi regulatory policy, while the Minister for Transport, Tourism and Sport might issue a policy direction to the National Transport Authority, the taxi regulator, requiring it to clarify the objectives and benchmarks for success of its existing prohibition on taxi licenses and to consider how best to create incentives for those with wheelchair accessible taxis to use them to service wheelchair users.

Section II examines the decision to abolish quantitative limits on taxis in 2000, Section III the decision to reintroduce such limits a decade later, while Section IV assesses the current state of taxi regulation.

³ There were, at the time, no quantitative restrictions on either hackneys or limousines. However, there was a moratorium on the issuing of hackney licenses in Dublin between August 1997 and September 1998. For details see Gorecki (2013, para. 23).

⁴ The prohibition also applied to hackneys, but not to WAT or limousines.

II THE 2000 DECISION: THE ABOLITION OF QUANTITATIVE RESTRICTIONS

The 2000 decision to remove all quantitative restrictions on the number of taxi licenses was revolution in taxi policy in the State. It was the equivalent of the Big Bang in financial deregulation of the City of London. But why did it occur? What role did judicial, regulatory and legislative decisions play?

During the 1990s it was clear that the common good was not being served by the regulation of the taxi market. There were consistent complaints of long waiting times for taxis, especially at peak times. In 1997 in Dublin the mean waiting time for a taxi was 11.5 minutes.⁵ Tourists, local business and late night revelers complained.

The opening sentence of the seminal High Court judgment on the taxi market in 2000 was “[D]emand for passenger transport services, particularly in the Dublin area, has far exceeded supply at peaks causing queuing, frustration and a chronic under supply but also extends to non-peak times.”⁶

The key to resolving the situation was to increase the supply of taxi licenses. If demand is greater than supply where supply is restricted then the solution is simple: increase the number of taxi licenses. However, there was a problem: strict quantitative limits on the number of licenses. In Dublin, for example, between 1978 and 1997 only 150 or 8.2% new licenses were issued.⁷

The corollary of demand outstripping supply was that taxi licenses, which could be bought and sold on the secondary market, acquired a substantial value. For example, a Mr. Kelly in 1999 paid €136,000 for a taxi license in Ennis.⁸ Over the period 1980 to 2000 the value of a taxi license in Dublin increased by almost tenfold in real terms.⁹

In the 1990s the regulator was the Minister. As regulator the Minister faced a quandary: while the common good clearly demanded an increase in the number of taxi licenses, such a move was against the private interests of taxi owners. The capital value of the license would fall, perhaps to zero with full liberalization. Furthermore, taxi owners would likely defend their interests by blockading Dublin City

⁵ Gorecki (2014a, Table 8, p. 14)

⁶ *Humphrey & ors v Minister for the Environment & ors* [2000] IHEC 149, p.1. Hereinafter *Humphrey*.

⁷ Gorecki (2014a, Table 2, p. 6)

⁸ *Muldoon & ors v The Minister for the Environment & ors*, [2015] IEHC 649, para. 126. Hereinafter *Muldoon*.

⁹ Gorecki (2014a, Table 7, p. 13).

Centre and Dublin Airport. The High Court observed that such an outcome was “*from a political perspective one that was to be avoided if possible.*”¹⁰

Hence the debate during the 1990s was how to resolve this quandary. How could the common good be promoted, yet in such a way that vested interests of taxi license holders were protected? In other words, could a consensus be reached? Numerous ideas were put forward to square the circle.¹¹ None was acceptable to all the interests. In the end it appears that the Minister came to the conclusion that no consensus could be reached and opted for the removal of quantitative restrictions on taxi licenses.¹²

The judiciary played a key role in the taxi story. The regulatory decisions of the Minister were frequently subject to appeal/judicial review to the Courts.¹³ The Courts acted as a referee in conflicts between the Minister and taxi interests. However, in acting in this capacity the High Court made two seminal judgments relevant to the taxi market in the 1990s and in one case to the Minister’s decision to abolish quantitative limits.

First, in a 2000 judgment of the High Court, Mr. Justice Roderick Murphy:¹⁴

- found that section 82 of the Road Traffic Act, 1961, “*does not expressly or necessarily give power to restrict numbers.*”¹⁵ In other words, the Minister exceeded his statutory powers by imposing quantitative limits on the number of taxi licenses; and,
- questioned the constitutionality of quantitative restrictions on the number of taxi licenses on the grounds that it “*manifestly affects the rights of citizens to work in an industry for which they may be qualified and the rights of potential customers to avail of such potential services.*”¹⁶

¹⁰ “*My view from what I have heard in this case, however, is that the taxi industry certainly up to 2000 always appeared to come out on top in the negotiations, with the Minister never being able to achieve what would in an ideal world have seen the growing problem of unmet demand being resolved without running the risk of some industrial action by the industry which could with little difficulty bring the city to a standstill. Experience had shown that this was always a real possibility, and from a political perspective one that was to be avoided if possible.*” *Muldoon*, para. 4.

¹¹ These are outlined and discussed in *Muldoon*, paras. 64-99.

¹² This is certainly the view of the High Court in *Muldoon*, paras. 55, 182. See also Barrett (2003) and Weir (2011) on the events leading up to the removal of quantitative limits.

¹³ See *Muldoon*, for details.

¹⁴ The issue in the case referred to S.I. 3 of 2010 under which the Minister proposed to grant “*an extra license to each existing taxi license owner*” (*Humphrey*, p. 2). The case was brought by individuals who were licensed to drive SPSVs and had a hackney license. Each had applied for a taxi license but had been refused (*Humphrey*, P. 2).

¹⁵ *Humphrey*, p. 37

¹⁶ *Humphrey*, p. 39.

It was after this judgment that the Minister issued S. I. 367 of 2000 abolishing quantitative limits on taxi licenses.

Second, in a 2015 High Court judgment, Mr. Justice Michael Peart decided that there should be no compensation for those whose taxi licenses became worthless overnight due the abolition of quantitative limits.¹⁷ Every ground advanced for compensation was rejected by the Court.

Thus the judiciary was very much in line with promoting the common good.¹⁸

But the important question remains was the common good served by the 2000 decision? The answer is an unambiguous yes. Waiting times were reduced dramatically. In Dublin the mean waiting times were halved:

- 1997 – 11.5 minutes;
- 2001 – 9.7 minutes;
- 2005 – 8.3 minutes; and,
- 2008 – 6.2 minutes.¹⁹

Not surprisingly the number of taxi licenses increased: in Dublin from 2,722 in 2000 to 8,609 in 2002 or a threefold increase.²⁰ The Minister no longer regulated taxis; instead the regulatory regime was overhauled with the creation of the Commissioner for Taxi Regulation in 2004, with, *inter alia*, common good aims.²¹ On 1 January 2011 the Commission for Taxi Regulation was rolled into the National Transport Authority.²²

¹⁷ *Muldoon*.

¹⁸ There are a number of reasons why, it could be argued, that compensation should not be paid. First, purchasing a taxi license is an investment decision, analogous to purchasing shares, bonds and real estate. It is difficult to argue that one class of assets should receive State provided free insurance against falls in value. Second, when, for example, Mr. Kelly paid €136,000 in 1999 for a taxi license, there was, as we have seen, an active debate as to how supply of taxi licenses could be expanded to meet the unmet demand. Hence it is difficult to argue that liberalization of the number of taxis was in some sense an unexpected event, although arguably the magnitude of the liberalization was unexpected. Third, the limitation on the number of taxi licenses was a direct result of the opposition of taxi license owners to liberalization. Taxi users suffered through longer waiting times. It seems somewhat perverse to argue that taxi users, through higher taxes, should compensate taxi license owners for the loss of rents due to restrictions on the number of taxi licenses.

¹⁹ Gorecki (2014a, Table 8, p. 14).

²⁰ Gorecki (2014a, Table 3, p. 6).

²¹ Gorecki (2013, p. 249).

²² For further discussion of the legislation that resulted in the creation of the NTA see Barrett (2011)

III THE 2010 DECISION: RESTORING QUANTITATIVE LIMITS

The 2010 decision of the Commission for Taxi Regulation to prohibit new taxi licenses, except for WAT²³ met the demands of private interests to place quantitative limits on taxi licenses. But why did it occur? What role did judicial, regulatory and legislative decisions play?

The judiciary played no role in the restoration of quantitative limits,²⁴ although it may have had an indirect role.²⁵

In contrast to the 1990s, in the 2000s it was clear that taxi regulation served the common good. The Commission for Taxi Regulation appointed Goodbody Economic Consultants (2009) to conduct an economic review of the taxi market. The economic review found that consumers benefited from the abolition of quantitative controls by €780 million (*ibid*, p. 84), mostly through reduced waiting times.

The economic review also considered whether a moratorium should be introduced, a demand of the taxi license owners in view of the onset of the recession. There were claims of economic hardship and low returns to taxi license holders. However, the economic review, after carefully considering the evidence, did not find that the demand for a moratorium was justified (*ibid*, p. 85).²⁶

Taxi license owners exerted pressure on the taxi regulator to revise her position. The tactics of taxi license owners of the 1990s were employed once again. Traffic in city centres throughout the State was brought to a standstill through blockades. Access to Dublin Airport was also denied. The offices of the taxi regulator were occupied.²⁷

Some politicians took up the cause of taxi license holders. The Chair of the Joint Oireachtas Committee on Transport preferred the information gleaned from his five or six taxi journeys to the analysis of the

²³ And WAH.

²⁴ This may reflect two factors: first, the replacement of the Minister as regulator with an independent regulator in 2004. The regulator seems to act as a forum for resolving disputes: and, second, typically in the 1990s legal action was taken by the taxi interests against decisions of the Minister, however, with the introduction of S. I. 250 of 2010 there is little or no reason to undertake such legal action, perhaps with one exception that is discussed in Section IV below.

²⁵ Policy makers accepted that the *Humphrey* “determined that limitation of taxi licences in the interests of existing licence holders could not be sustained.” Department of Transport, Tourism and Sport (2009). Such a limitation included a moratorium. It could be argued that an indirect way of effecting such a limitation was the introduction of S. I. 250 of 2010

²⁶ The Competition Authority (2009) agreed with this position.

²⁷ Gorecki (2013, p. 255).

Goodbody economic review. He likened the Goodbody economic review to reading the *Beano* comic.²⁸ The Committee recommended in July 2009 a three year moratorium on issuing new taxi licenses which it was considered the best way to deliver “... a high quality, more efficient and superior service.”²⁹

The Commission for Taxi Regulation enacted S. I. 250 of 2010, with the *object* of promoting the number of wheelchair accessible vehicles. This is, of course, a perfectly proper public policy objective; it is consistent with the statutory objectives of the Commission for Taxi Regulation.³⁰ However, a number of points are consistent with the view that *effect* of this measure was the reintroduction of quantitative restrictions consistent with the demands of private vested interests.³¹ It has done little, if anything, to meet its stated objective.

First, during the 1990s while there was a great reluctance to issue new taxi licenses by the licensing authority, there was much less reticence to issue WAT licenses due to the higher capital and running costs of wheelchair accessible vehicles.³²

Second, after the passage of S.I. 250 of 2010, the blockades ceased and the taxi regulator’s offices were not occupied. It is a little like the dog that didn’t bark in a Sherlock Holmes story.

Third, S. I. 250 of 2010 contains no benchmarks or targets for the proportion of the taxi fleet that should be wheelchair accessible, despite the fact that the Commission for Taxi Regulation’s (2009, p. 18) Regulatory Impact Analysis (RIA) underlying the introduction of WAT stated that “[S]pecific targets or timeframes would be set.”

The absence of benchmarks is puzzling because in the Commission for Taxi Regulation’s (2009, p. 7) RIA reference is made to the fact that “the Commission’s existing target for wheelchair accessible vehicles as a proportion of the overall fleet is 10%.”³³

²⁸ For a discussion of the Joint Oireachtas Committee on Transport, see Gorecki (2010, pp. 30-31).

²⁹ As quoted in Gorecki (2013, p. 255).

³⁰ Section 9 (g) and (h) of the Taxi Regulation Act 2003 referred to the need to develop services for those with mobility impairments. The same provision also appears in the Taxi Regulation Act 2013, section 19(2)(g) and (h).

³¹ The distinction between *object* and *effect* draws on competition law. For further discussion see Whish and Bailey (2015, pp. 120-135).

³² *Muldoon*, paras. 73-77. See also Commission for Taxi Regulation (2009, pp.8-10) and Gorecki (2013, pp. 256-257).

³³ A group of organizations representing the disabled, including wheelchair users, argued that the percentage should be 16.7% or one wheelchair accessible taxi to five standard taxis. For details see Disability Federation of Ireland *et al* (2004, p. 11).

This lack of benchmarks continues under the National Transport Authority which assumed responsibility for taxi regulation in 2011. In the National Transport Authority's latest annual report as well as its various strategy documents there is no mention of the success or failure of the policy to encourage more WATs or whether it is time to review the policy.³⁴

Nevertheless, in the 2016 *Programme for a Partnership Government* some credence is given to the 10% target: "[W]e will ... introduce a provision whereby taxi companies who wish to bid for state procurement contracts must ensure that a minimum of 10% of their fleet is wheelchair accessible."³⁵

On the other hand, in the *Ministerial Brief 2016* prepared the incoming Minister for Transport, Tourism and Sport, reference is made to the fact that: "London has a 100% wheelchair accessible taxi fleet while 47% of the Scottish taxi fleet is wheelchair accessible."³⁶

Fourth, and related to the point above, in the Commission for Taxi Regulation's RIA on improving access to WATs, the Competition Authority's (2009) concern that restricting the issuing of new taxi licenses is against competition policy is addressed. Specifically, the Commission for Taxi Regulation (2009, p. 33) states that "the licensing [permitting only WAT and WAH licenses] condition will be for a limited time only." Hence, "[T]his would not have a negative impact on consumers, as the availability of cab services would not be significantly impacted over this short timeframe."³⁷

A time limited restriction would not only have addressed the Competition Authority's comments, but also have been consistent with the Commission for Taxi Regulation's statutory objective of encouraging and promoting competition.³⁸ However, six years on there is no end in sight to the prohibition on issuing new taxi (and hackney) licenses, except for wheelchair accessible vehicles.

Fifth, despite subsidies to assist in the purchasing of wheelchair accessible vehicles the policy appears not to have been a success, indeed, it could be characterized as a failure. In 2010 WAT constituted 6.9%

³⁴ See, for example, NTA (2015a, pp. 43-48). In the introduction, however, the Chief Executive 'Overview' lauds the award of 128 grants for WAT (*ibid*, p. 4). More recently the NTA (2016c, p. 4) stated that the "Authority is focused on increasing this [the proportion of the SPSV fleet accounted for by WAV] percentage," but without specifying the target.

³⁵ Government of Ireland (2016, p. 134).

³⁶ Department of Transport, Tourism and Sport (2016a, p. 86).

³⁷ Commission for Taxi Regulation (2009, p. 33).

³⁸ Section 9(2)(c) of the Taxi Regulation Act 2003. The same provision also appears in the Taxi Regulation Act 2013, section 19(2)(d).

of all taxi licenses;³⁹ in July 2016, 5.9%;⁴⁰ in terms of numbers the decline was from 1,401 to 1,018, respectively. Indeed, there seems to be a long term secular decline, in 2007 and 2008 WAT constituted 7.7% and 7.6% respectively of the taxi fleet.⁴¹

Notwithstanding these trends, there was an increase in the number of WAT between 2014 and July 2016 from 889 to 1,018, due to three factors.⁴² The definition or specification of a wheelchair accessible taxi (and hackney) was changed in 2014⁴³ so as “to make [it] more affordable for operators to invest in” (Department of Transport, Tourism and Sport, 2012).⁴⁴ The Wheelchair Accessible Vehicle Grant Scheme continued. Finally, economic growth will increase demand for taxi services and eventually make it profitable for WAT to enter the market even without a subsidy.⁴⁵

In August 2016 the National Transport Authority (2016e) stated that 389 provisional offers had been made under the Wheelchair Accessible Vehicle Grant Scheme for 2016. Further anticipated funding has become available. If we assume that (say) 400 additional WAT are licensed in 2016, none of the existing WAT exits the market and that the number of taxi licenses remains unchanged, then at this rate it would take two years or until 2018 to reach the 10% target for WAT as a percentage of all taxis (including WAT).⁴⁶ If, on the other hand, the actual number of new WAT’s licensed in 2015 were used as the likely increase in future years then it would not be for five years or until 2021 that the target is reached.⁴⁷

³⁹ NTA (2014, Table 3, p. 5).

⁴⁰ NTA (2016a).

⁴¹ NTA (2014, Table 3, p.5).

⁴² NTA (2015a, Table 26, p. 45) and NTA (2016a). It should be noted that as of July 2016, there were 57 WAH, or 2.9% of all hackneys (NTA, 2016a).

⁴³ The relevant legislation was section 1(1) of Schedule 4 of S.I. No. 165 of 2014. Prior to this change a WAT (and WAH) was defined as a vehicle that could accommodate at least three passengers in addition to an occupied wheelchair; the 2014 legislation reduced this to at least one passenger in addition to an occupied wheelchair.

⁴⁴ However, it is not clear how much it reduced the cost of a wheelchair accessible vehicle. A study for the NTA, Jacobs (2013, p. 17), concluded that: “... reducing the passenger carrying requirements in the accessible taxi specification would allow the use of a very limited number of additional models. As the cost of purchasing these models new is similar to that of currently available models, benefits may be limited. However, reducing the specification could open up the market for additional models to be developed, this increasing availability, which may push costs down. The availability of second hand models would also increase with a revised specification, potentially making some wheelchair accessible vehicles more affordable.”

⁴⁵ See point three in the next section of the paper.

⁴⁶ According to NTA (2016c, Table 4, p. 6) on December 2015 there were 17,429 taxis (including 969 WAT). A 10% target for WAT is 1743. Since there are already 969 WAT the increment to reach the 10% figure is 774 or two years growth at 400 additional WAT per annum.

⁴⁷ In 2015 only 157 new WATs were issued. NTA (2015c, Table 2, p.3). This was substantially above the 52 for 2014.

Sixth, even though a taxi may be wheelchair accessible does not mean that it will be used for passengers requiring a WAT. The costs of supplying taxi passenger services to a person requiring wheelchair access is likely to be higher than those not requiring such facilities. However, the passenger fare is the same. Hence at peak times when demand is high for taxi services passengers requiring WAT may experience longer waiting times.

The evidence is consistent with these views. A 2003/4 survey found, for example, “wheelchair users experienced a high level of refusal of bookings, due to discrimination.”⁴⁸ A 2008 survey found “that 20% full-time wheelchair users find dispatch operators unwilling to provide a service.”⁴⁹ A 2011 survey found that WAT’s were used only 16% of the time to carry wheelchair customers.⁵⁰

This conflict between the higher economic return to a taxi operator of serving a non-wheelchair passenger compared with a wheelchair passenger is likely to increase not decrease. The demand for taxi services is increasing with the economic recovery while the number of taxi licenses remains static or is in decline. The regulator’s policy for creating greater access to wheelchair accessible vehicle by imposing quantitative limits thus contains the seeds of its own destruction; it is incentive incompatible.⁵¹

It thus appears that S.I. 250 of 2010 in *effect*, if not *object*, marks the triumph of narrow vested interests over the common good.

⁴⁸ Disability Federation of Ireland (2004, p. 62). See also pp. 65-66.

⁴⁹ Goodbody (2009, p. 52). The percentage drops to 6.5% for non full-time users.

⁵⁰ Indecon (2011, Table 3.67, p. 46). See also pp. 128-129.

⁵¹ It should be noted that the Commission for Taxi Regulation (2009, pp. 31-32) recognized the problem that wheelchair accessible vehicles, whether taxis or hackneys, may not be used for passengers requiring a WAT or WAH. Furthermore sections 35 to 37 of S. I. No. 165 of 2014 permit the National Transport Authority to request certain information concerning the customers of a wheelchair accessible vehicle while also stating that holders of a WAT or a WAH “shall give priority to bookings in respect of persons with disabilities, including persons who wish to travel in their wheelchairs.” However, it is not at all clear how this is enforced or how successful any such enforcement is, given the strong incentive especially at peak times for operators of a WAT or WAH not to serve a person requiring a wheelchair accessible vehicle before other passengers.

IV CONCLUSION: WILL IT BE DIFFERENT THIS TIME?

Based on the examination of the 2000 and 2010 S.I.s one might be tempted to argue that there are underlying economic conditions or forces that determine taxi policy. These forces transcend the system of politics, law and regulation.

In 2000 when there when the quality of the taxi services were criticized for the long waiting times and taxi licenses were trading for up to €136,000 the system responded by freeing up entry; when taxi operators complained about cut throat competition and excess capacity occasioned by the recession, the system responded again, this time restricting entry in S. I. 250 of 2010.

If history is to repeat itself then we would expect as economic growth picks up in the mid to late 2010s waiting times will increase due to the prohibition on new taxi (and hackney) licenses. Matters will reach a crunch point and quantitative restrictions will be removed. However, it is not clear whether this time the common good will prevail over vested interests.

First, an important factor promoting change in the 1990s was the high value of taxi licenses. Under the Taxi Regulation Act 2013 there is a prohibition on the trading of taxi licenses.⁵² Hence there will be no headlines saying, for example, that a license change hands for €150,000 or €200,000. However, it might be possible to proxy the value of a taxi license by monitoring the level and trend in the rental rates for taxis.⁵³

Second, the National Transport Authority collects a variety of taxi statistics and publishes them on annual basis.⁵⁴ However, neither waiting times nor rental values of taxis (or hackneys) are included. There is no set of benchmarks to deal with these important aspects of the common good. In contrast, the Commission for Taxi Regulation published in 2005 and 2009 economic reviews of the taxi market which contained data on waiting times.⁵⁵

⁵² The Taxi Regulation Act 2013 was introduced in response to issues raised by the recession and its impact of the taxi and more broadly the SPSV market. Arguably the result of the process was to compromise the system of independent regulation and to make the SPSV market less flexible. For further discussion of the background and rationale for the legislative change see Gorecki (2013).

⁵³ For example, at present, for a person with the relevant qualifications to drive a taxi, "Rent A Taxi" will rent for €290 per week a 2012 D Skoda Octavia with a 1.6 Diesel Engine with comprehensive driver insurance. For details see: <http://rentataxidublin.ie/>. Accessed 17 June 2016. These rental rates could be compared to an index of car hire rates for comparable cars from leading car hire firms such as Hertz, Avis, Europcar and Budget.

⁵⁴ NTA (2015c; 2016c).

⁵⁵ Goodbody (2005, pp. 29-38; 2009, pp. 48-57).

Nevertheless, although the National Transport Authority has not published waiting times for taxis (or hackneys) since it assumed responsibility for taxi regulation on 1 January 2011, it has released for 2015 the hours worked, fare revenue, working times and other indicators of working conditions for a sample of taxis based for Athlone, Cork and Dublin.⁵⁶ This National Transport Authority study was in response to a recommendation that information should be provided to “discourage uniformed new entrants.”⁵⁷ However, given the indefinite prohibition on issuing taxi (or hackney) licenses, apart from those which are wheelchair accessible, there are no new entrants.⁵⁸

Third, WATs has higher costs than ordinary saloon taxis. When it becomes profitable for WATs to enter the market, this implies that the level of business has increased sufficiently to offset the higher costs. The evidence is consistent with this prediction: WAT as a share of all taxis (including WAT) in Dublin peaked in the late 1990s at 19%, before gradually declining to 4.8% in July 2016.⁵⁹ In other words, when quantitative restrictions were at their zenith the share of WATs was at its height. Indeed, the number of WATs in Dublin in 1998 is virtually unchanged 18 years later: 450 vs. 496.

However, if it decided to free up entry these WATs will be at a cost disadvantage compared to an ordinary taxi. Indeed, this was one of the grounds upon which the Taxi Hardship Panel awarded financial relief after the abolition of entry controls in 2000.⁶⁰ How will this issue be resolved? Is this uncertainty discouraging WATs from entering the taxi market today?

Fourth, the number of taxi licenses in 2016 is 15% below at the level in 2007-2008 suggesting that if the economy has returned to its pre-recession level waiting times might start to increase.⁶¹ However, the taxi market may be able to better match supply and demand through services such as Hailo, Lyft and

⁵⁶ NTA (2016d). The data relate to taxis for which there was one driver during March to April 2015.

⁵⁷ NTA (2016d, p. 3). The recommendation was made by Indecon (2011).

⁵⁸ It might also be noted that in its response to Uber’s proposals for ridesharing in Limerick, the National Transport Authority stressed all the difficulties with the proposals, which obviously need to be considered and raised, but paid no attention to whether or not consumers would benefit. The National Transport Authority’s views are summarized in Department of Transport, Tourism & Sport (2016b, p. 14).

⁵⁹ The 19% is from Fingleton, Evans & Hogan (1998, p. 41), the 4.8% figure from NTA (2016a). The Commission for Taxi Regulation (2009, Figure 1, p. 9) shows a concentration by year of registration for WAT between 1998 and 2001.

⁶⁰ According to Gorecki (2014a, p. 10), “[A]fter liberalization in 2000, the State created a Taxi Hardship Panel (2002). One of the hardship categories, accounting for 16% of all claims, was ‘WAT Operators Claiming Higher Operating Costs.’ The Taxi Hardship Panel accepted the claims but noted that the increased WAT costs were offset to some extent against higher occupancy.”

⁶¹ The number of taxi licenses, including WATs was 2007 in 19,496, 21,177 in 2008, but only 17,121 in 2016. Based on NTA (2014, Table 3, p. 5; 2016a).

Uber. Furthermore more bus lanes and in the case of Dublin, the light rail tram system, LUAS, will result in some consumers choosing these modes as opposed to a taxi.

Fifth, when the Taxi Regulation Act 2013 was passed new regulations were introduced by the National Transport Authority. However, although S.I. 250 of 2010 was revoked it was included in S.I. 165 of 2014. The Competition Authority (2014a) in commenting of the draft of these regulations made many of the points set out above concerning competition and restricting entry, but to no avail.⁶²

Sixth, whereas the pre-2000 limitations on entry primarily applied to taxis, with intermittent restrictions on new hackney licenses, the current prohibition refers not only to taxis but also hackneys. It is thus more comprehensive.

For all these reasons it seems likely that it might be different this time. It will be much more difficult for the common good to prevail over narrow vested interests. Furthermore, the common good needs to consider how the welfare of both wheelchair and non-wheelchair users of taxi (and hackney) services can be advanced, rather than be seen as something akin to a zero sum game. Notwithstanding this somewhat pessimistic assessment there are at least three possible, not necessarily mutually exclusive, developments that might lead history to repeat itself.

First, as occurred in 2000, a person who is refused a taxi (or hackney) license might take a successful case to the High Court on the grounds that the current system of taxi licensing denies them their constitutional right to earn a living and perhaps that the ban on issuing taxi and hackney licenses is inconsistent with existing legislation. In other words, the legislative objectives of the National Transport Authority could be met without restricting entry of taxis (and hackneys). However, it is not clear that this option satisfies the demand for wheelchair accessible taxi and hackney services.

Second, the common good might also prevail over vested interests if the Competition and Consumer Commission continues to play an active role in the debate of taxi regulation. The Commission was formed in October 2014 as a result of the merger between the Competition Authority and the National Consumer Agency. With such a broad mandate it is ideally situated to participate, if not lead, the taxi debate. But how?

⁶² The Competition Authority (2014b) made the same points in commenting on the Department of Transport, Tourism and Sports *Statement of Strategy 2015-2017*.

The Competition and Consumer Protection Commission could collect statistics relating to waiting times for consumers (including separately for wheelchair users), the incidence of the use of WAT and WAH by wheelchair users and the rental value of taxi and hackney licenses. Waiting times could employ the methodology of the Goodbody (2005; 2009) and hence provide a time series on waiting times, while wheelchair use of WAT and WAH could perhaps involve the Irish Wheelchair Association and other disability organizations. Rental value is more difficult to collect, but the National Transport Authority could amend the form it requires to be completed for SPSV rental agreements to include rental rates.⁶³

The Competition and Consumer Protection Commission could also promote debate on alternatives to the current prohibition on issuing new taxi (and hackney) licenses as a method of promoting WAT. These alternatives would not only have to promote WATs, but do so in a way that permitted the removal of quantitative controls on the number of taxis. Furthermore such alternatives should be compatible with the incentives of taxi operators to maximize income, rather than at present rely on incompatible incentives resulting in a policy at war with itself in terms of supplying wheelchair accessible services. For example, if there was subsidy payable to the taxi operator related to the differential cost (perhaps with a small premium) of serving a wheelchair user as compared to other users or wheelchair users could be given vouchers (or some other mechanism) which the taxi operator could redeem from the National Transport Authority.⁶⁴

Of course, if the Competition and Consumer Protection Commission demonstrates that there are ways in which the demand for wheelchair accessible taxi (and hackney) services can be met, while at the same time removing the indefinite prohibition on issuing new taxi (and hackney) licenses, then this could be used in evidence by a person refused a taxi (or hackney) license by the National Transport Authority. Indeed, the Competition and Consumer Protection Commission might consider making an application as an *amicus curiae* in such a case.⁶⁵

Third, the Minister for Transport, Tourism and Sports has the legislative authority to issue a policy direction to the National Transport Authority.⁶⁶ Such a policy direction would acknowledge - indeed support - the validity of promoting adequate wheelchair accessible services for wheelchair users, but

⁶³ For details see NTA (2015b).

⁶⁴ See, for example, Indecon (2011, pp. 218-219) and National Disability Authority (2004, pp 116-118).

⁶⁵ The Competition and Consumer Protection Commission's predecessor, the Competition Authority, made such an application on one occasion. For details see Andrews, Gorecki and McFadden (2015, p. 38).

⁶⁶ Section 69 of the Taxi Regulation Act 2013. If the Minister did indeed issue a policy direction then this is likely to change the proposed role in the text of the Competition and Consumer Protection Commission.

would note that the 2010 policy of issuing only WAT (and WAH) not only appears to have difficulty meeting its objectives (which need in any event to be better specified) but also that the 2010 policy is having other effects which are likely to get worst rather than better.

In framing the policy direction that would underpin such a review, the Minister might consider the advice offered in the *Ministerial Brief* issued in 2011 to the then incoming Minister which stated:

Quantitative measures such as – a cap or moratorium – have been mooted by some, but with no consideration of its implications for the consumer, how it would work in practice or how it would be reversed if it was introduced.⁶⁷

However, the Minister would also need to consider in any policy direction the importance of achieving an adequate level of wheelchair accessible services.

Hence the Minister's policy direction to the National Transport Authority could ask it to:

- (i) Specify and justify the target level of WAT and WAH, expressed as an absolute number and/or as a percentage of all taxis and hackneys, respectively, together with a timetable for achieving these targets under S.I of 250 of 2010;
- (ii) Consider the implications of (i) in terms of its the impact on consumers and the removal of quantitative restrictions on taxis (and hackneys) once the targets have been satisfied;
- (iii) Collect and publish on an annual basis: (a) waiting times for taxis and hackneys by, for example, time of day/night, day of the week, and geographic location (e.g. Dublin, rural/urban), for all users and wheelchair users; (b) the proportion of the time that a WAT and a WAH are used to carry wheelchair users; (c) and, rental values for taxis and hackneys by type of car; and,
- Review alternative mechanisms for encouraging the use of wheelchair accessible vehicles (i.e. WAT and WAH) for wheelchair users by incentivizing the WAT or WAH operator to service wheelchair users by, for example, a subsidy that at least offsets the higher cost of servicing a wheelchair user as compared to a non-wheelchair user. This may require some rebalancing (and expansion) of the current subsidy scheme which offsets only the higher fixed, not variable, costs of a WAT and WAH. The best options should be implemented and the current cap or moratorium on issuing new taxi or hackney licenses abolished.

⁶⁷ Department of Transport, Tourism and Sport (2011, n.p.)

Such a policy direction would enable the issue of providing adequate wheelchair accessible services, while at the same time allowing liberalizing taxi and hackney entry to be addressed in a timely manner. Thus it might prevent the scenes that occurred in the late 1990s of long waiting times for taxi users and avoid a possible conflict between wheelchair users and non-wheelchair users of taxis and hackneys.

REFERENCES

- ANDREWS, P, P GORECKI & D MCFADDEN (2015) *Modern Irish Competition Law*. Netherlands: Wolters Kluwer.
- BARRETT, S (2003) "Regulatory Capture, Property Rights and Taxi Deregulation: A Case Study." *Economic Affairs*. Vol. 23, No. 4, Dec. pp. 34-40.
- BARRETT, S (2011) "An Economic Analysis of the Public Transport Regulation Act, 2009." *Economic and Social Review*, Vol. 42, No. 1, Spring, pp. 49-70.
- COMMISSION FOR TAXI REGULATION (2009) *Improving Accessibility to SPSV Services. Commission for Taxi Regulation's Regulatory Impact Analysis (RIA) of Proposed Actions for Building on Progress to Date*. Dublin: the Commission.
- COMPETITION AUTHORITY (2009) *Submission on Economic Review*. Submission S/09/001. Dublin: the Authority.
- COMPETITION AUTHORITY (2014a) *Submission to the National Transport Authority. Proposals to Make Regulations Under the Provisions of the Taxi Regulation Act 2013*. Submission S/14/02. Dublin: the Authority.
- COMPETITION AUTHORITY (2014b) *Submission to the Department of Transport, Tourism and Sport. National Transport Authority. Strategy Statement 2015-2017*. Submission S/14/06. Dublin: the Authority.
- DEPARTMENT OF TRANSPORT, TOURISM & SPORT (2009) "The Need for the Minister of Transport to Introduce a Moratorium on Taxi Numbers." *Dail Adjournment Debate*. 12 March. Press Release. Dublin: the Department.
- DEPARTMENT OF TRANSPORT, TOURISM & SPORT (2011) *Ministerial Brief*. March Dublin: the Department.
- DEPARTMENT OF TRANSPORT, TOURISM & SPORT (2012) *Government Announces Major Changes for Taxi Sector – Minister Alan Kelly*. Press release. 31 January. Dublin: the Department.
- DEPARTMENT OF TRANSPORT, TOURISM & SPORT (2016a) *Ministerial Brief 2016*. Dublin: the Department.
- DEPARTMENT OF TRANSPORT, TOURISM & SPORT (2016b) *Key Issues*. Ministerial Brief. Dublin: the Department.
- DISABILITY FEDERATION OF IRELAND, IRISH WHEELCHAIR ASSOCIATION, NATIONAL COUNCIL FOR THE BLIND OF IRELAND, NATIONAL TRAINING AND DEVELOPMENT INSTITUTE, NOT FOR PROFIT

- BUSINESS ASSOCIATION, REHABCARE, TRANSPORT PLANNING (INTERNATIONAL) LTD (2004) *Towards an Accessible Taxi Service for All*. Dublin: Disability Association of Ireland & ors.
- FINGELTON, J, J EVANS & O HOGAN (1998) *The Dublin Taxi Market: Re-Regulate or Stay Queuing?* Studies in Public Policy: 3. Dublin: the Policy Institute.
- GOODBODY ECONOMIC CONSULTANTS (GOODBODY) (2009) *Economic Review of the Small Public Service Vehicle Industry*. Dublin: Commission for Taxi Regulation.
- GOODBODY ECONOMIC CONSULTANTS IN ASSOCIATION WITH INSTITUTE OF TRANSPORT ECONOMICS, NORWAY, & MILLWARD BROWN IMS (GOODBODY) (2005) *National Review of Taxi, Hackney and Limousine Services*. Dublin: Commission for Taxi Regulation.
- GORECKI, P (2010) "The Recession, Budgets, Competition, and Regulation: Should the State Supply Bespoke Regulation?" in Tim Callan (ed) *Budget Perspectives 2010*. Dublin: ESRI, pp. 19-48.
- GORECKI, P (2012) *Regulating Small Public Service Vehicles in Ireland: Is There a Problem of Oversupply?* Working Paper 441. Dublin: ESRI.
- GORECKI, P (2013) "The Small Public Service Vehicle Market in Ireland: Regulation and the Recession." *Economic and Social Review*, Vol. 44, Summer, No. 2, pp. 247-272.
- GORECKI, P (2014a) *Ex Post Assessment of Government Intervention in the Taxi market in Ireland: 1978-2014*. Paper prepared for Working Party No. 2 on Competition and Regulation. Paris: OECD.
- GORECKI, P. (2014b) "Taxi Regulation in Ireland: Will it be Different This Time?" *ESRI Research Bulletin*, 2014/02/05.
- GOVERNMENT OF IRELAND (2016) *A Programme for a Partnership Government*. Dublin: Department of the Taoiseach.
- INDECON INTERNATIONAL ECONOMIC CONSULTANTS (INDECON) (2011) *Economic Analysis of the Taxi Market*. Report Submitted to the Department of Transport, Tourism & Sport. Dublin: Indecon.
- JACOBS ENGINEERING IRELAND LIMITED (JACOBS) (2013) *Review of Small Wheelchair Accessible Taxis*. Dublin: NTA
- NATIONAL DISABILITY AUTHORITY (2004) *Towards Best Practice in Provision of Transport Services for People with Disabilities in Ireland*. Dublin: National Disability Authority.
- NATIONAL TRANSPORT AUTHORITY (NTA) (2014) *Taxi Statistics for Ireland*. Statistical Bulletin No 02/2014. Dublin: NTA.
- NATIONAL TRANSPORT AUTHORITY (NTA) (2015a) *Annual Report 2014*. Dublin: NTA.
- NATIONAL TRANSPORT AUTHORITY (NTA) (2015b) *Using SPSV Online Service Vehicle Rentals*. Dublin: NTA.

NATIONAL TRANSPORT AUTHORITY (NTA) (2015c) *Taxi Statistics for Ireland*. Statistical Bulletin No 03/2015. Dublin: NTA.

NATIONAL TRANSPORT AUTHORITY (NTA) (2016a). *Vehicle Licences County and Category – 31th July 2016*. Dublin: NTA. <https://www.nationaltransport.ie/taxi-and-bus-licensing/taxi/taxi-statistics/vehicle-licences-county-and-category-30th-april-2015/>

NATIONAL TRANSPORT AUTHORITY (NTA) (2016b) *WAV16 – Wheelchair Accessible Vehicle Grant Scheme Waiting List*. Press Release 20 April. Dublin: NTA.

NATIONAL TRANSPORT AUTHORITY (NTA) (2016c) *Taxi Statistics for Ireland*. Statistical Bulletin No 01/2016. Dublin: NTA.

NATIONAL TRANSPORT AUTHORITY (NTA) (2016d) *Taximeter Survey 2015*. Dublin: NTA.

NATIONAL TRANSPORT AUTHORITY (NTA) (2016e) “WAV16 Reopened August 2016.” *SPSV Industry Update*, Issue 34, August. Dublin: NTA.

WEIR, S (2011) “The Evolution of Taxi Policy in Ireland.” *Journal of Public Affairs*. Vol. 11, No. 2, May, pp. 80-87.

WHISH, R. & D. BAILEY (2015) *Competition Law*. Eighth Edition. Oxford: Oxford University Press.