

Submission to the National Transport Authority

Proposal to make regulations under the provisions of the Taxi Regulation Act 2013.

Submission S/14/02

January 2014



The Competition Authority
An tÚdarás Iomaíochta

1. BACKGROUND

- 1.1 The Competition Authority welcomes the opportunity to make a submission to the public consultation issued by the National Transport Authority (NTA). The *Taxi Regulation Act 2013* was signed into law in October last. While the provisions have yet to come into operation, the NTA has prepared draft *Small Public Service Vehicle (Consolidation and Reform) Regulations 2014* ("Draft SPSV Regulations 2014") that consolidate and replace over fifty years of legislation relating to the Small Public Service Vehicle (SPSV) industry, in addition to introducing some new regulations.
- 1.2 One of the Competition Authority's functions is to advise Government Departments, public authorities and other State bodies on the implications for competition of proposed and existing laws, regulations and policies. Over the past decade the Authority has made the following submissions to public consultations organised by the NTA and previously the Commission for Taxi Regulation regarding the SPSV industry¹:
- "Vehicle Standards: Consultation paper for the taxi, hackney and limousine fleet" (2011);
 - "The Economic Review of the SPSV Industry" (2009);
 - "National Review of Taxi, Hackney and Limousine Services and Vehicle Standards" (2005).
- 1.3 The Competition Authority also provided input to "The Taxi Regulation Review" and currently represents the views of consumers on the Taxi Advisory Committee².
- 1.4 The Competition Authority's main focus is to ensure that markets work well for Irish consumers, businesses and the economy. Prior to the Irish High Court decision in 2000 to deregulate entry to the SPSV industry, the Authority consistently highlighted the benefits that deregulation would bring. These benefits appeared in the form of more taxi trips being taken and reduced waiting times³. Since the start of the economic downturn in 2008, the taxi industry, like many others, has seen producer-driven demands for protection, including the reintroduction of quantitative limits on the SPSV numbers. Again, the Authority has pointed out the detriment to consumers that would ensue from such limits⁴. Such detriment would only increase as economic recovery takes hold and supply fails to keep pace with demand, resulting in a return to long queues and poor customer service.

¹ These submissions can be found on the Competition Authority's website: <http://www.tca.ie/EN/Promoting-Competitio/Submissions.aspx>.

² See paragraph 2.4 to 2.7 for more information on the Taxi Regulation Review.

³ See paragraph 2.3 below for more information on the benefits of deregulation.

⁴ In 2008 the Competition Authority appeared before the Joint Oireachtas Committee on Transport to discuss the effect of proposals to reintroduce a quantitative limit on taxi numbers. See press release: <http://www.tca.ie/EN/News--Publications/News-Releases/Competition-Authority-Rejects-Calls-to-Cap-Taxi-Numbers.aspx>.

- 1.5 Limiting the number of operators in a sector is regarded as being the most harmful regulatory restriction on competition. There is no established way to arrive at the appropriate limit on the number of SPSVs and once a cap is in place, given the support it will engender from current industry suppliers who benefit from it, it is very hard to modify or remove it.
- 1.6 The Competition Authority recognises the need to regulate for driver and vehicle standards (i.e., qualitative regulations) to ensure that service quality is of a sufficient standard. However, the Authority has previously raised concerns that a combination of qualitative regulations can in effect create quantitative barriers to entry by increasing the costs of new entrants, not only in absolute terms but in comparison to those already in the industry⁵. For example, while regulations on the maximum permissible age for SPSVs or vehicle branding may not in themselves raise serious competition concerns, the combination of these regulations with other qualitative regulations – namely the requirement since June 2010 that all new taxi and hackney entrants must drive a Wheelchair Accessible Vehicle (WAV)⁶ – will in effect create a quantitative barrier to entry.
- 1.7 In this regard, the Competition Authority is concerned that the inclusion of Section 13, paragraph 3(1) in the *Draft SPSV Regulations 2014* that all new taxi and hackney entrants must drive a WAV that is less than six years old (see paragraph 3.1 for the full text) will create a permanent barrier to entry and will distort the SPSV market, while being ineffective in terms of increasing the number of WAVs and the availability to people with disabilities of those WAVs already in the market. While existing licensed drivers are likely to benefit from this provision, wheelchair users, consumers, businesses and future entrants to the SPSV industry will lose out in the long run.
- 1.8 Moreover, the provisions in Section 48 appear to prohibit advertising on the interior and exterior of hackneys, limousines and new taxi entrants. This seems unjustified and unduly favours existing holders of taxi licences over new taxi entrants and other SPSV licence holders (see paragraph 3.9 for the full text).
- 1.9 More generally, the Competition Authority is concerned regarding:
- The lack of a robust Regulatory Impact Assessment (RIA) and/or a cost-benefit analysis to examine the cost of purchasing and operating WAVs versus standard SPSVs, how this will affect pricing in the long run and the likely effect of the provisions on people with disabilities;
 - The failure to fully account for analysis in the 'Economic Review of the SPSV Industry' and the 'Taxi Regulation Review' that highlights the importance of free entry into the market and the

⁵ Competition Authority (2011), "Vehicle Standards: Consultation paper for the taxi, hackney and limousine fleet". Submission by the Competition Authority to NTA. Available online at: <http://www.tca.ie/EN/Promoting-Competition/Submissions/Vehicle-Standards-Consultation.aspx>

⁶ In June 2010 the Commission for Taxi Regulation introduced a prohibition on the issuing of new taxi and hackney licences. The prohibition did not apply, however to three classes of SPSV licences: two existing classes, wheelchair accessible taxis and limousines; and a third new SPSV category, wheelchair accessible hackneys. The prohibition was not time limited or linked to any specific target.

need to prioritise implementing more effective methods to match WAV demand with supply⁷;

- The current provisions contained within *Draft SPSV Regulations 2014* do not contain any “sunset clause” whereby the regulation would cease to have effect after a certain date or set target has been reached (e.g., where WAVs account for 10% of the total SPSV fleet);
- Similar to the SPSV industry prior to deregulation, the provisions contained within the *Draft SPSV Regulations 2014* have the potential to create a situation whereby demand exceeds supply leading to longer waiting times and fare increases for all consumers.

1.10 The Competition Authority would appreciate the opportunity to meet with the NTA following this public consultation to discuss our concerns in more detail.

⁷ See Section 2 for more information on this research.

2. RESEARCH ON THE SPSV INDUSTRY IN IRELAND

- 2.1 This section briefly outlines publicly available research on the regulation and structure of the SPSV industry in Ireland. It also provides an overview of SPSV numbers within the industry.
- 2.2 None of the research supports a quantitative limit on entry. With regard to increasing the number of Wheelchair Accessible Vehicles (WAVs), the research indicates that people with disabilities have difficulties getting access to suitable WAVs. A number of actions are identified to improve the level of access. However the research does not recommend that all new taxi or hackney entrants must drive a WAV, or drive a WAV of a certain age. There is no evidence indicating that such restrictions are likely to increase the number of WAVs in the market. Indeed, following the prohibition on issuing standard taxi and hackney licences in June 2010, the number of WAV licences as a percentage of total SPSV licences has fallen⁸.

The Economic Review (2009)⁹

- 2.3 The 'Economic Review of the SPSV Industry' was produced by Goodbody Economic Consultants on behalf of the Commission for Taxi Regulation. Its purpose was to undertake a review of the trends in the industry and to assess the economic impact of the deregulation of the SPSV sector. The research was produced prior to the requirement that all new taxi and hackney entrants must drive a WAV and highlighted the following:
- The regulatory structure of the SPSV industry comprising of free entry, maximum fare control and an emphasis on enhancing vehicle and driver standards is being followed in other jurisdictions. The OECD and the World Bank are also in favour of this approach.
 - Since liberalisation, demand in the Dublin market has increased, waiting times have been reduced and there is no evidence that the increase in use and reduction in waiting times has been at the expense of quality of services provided. The Review found that demand in the Dublin market increased by 82% between 1997 and 2008 while the value of the post-liberalisation reduction in waiting times to Dublin SPSV users was estimated to be €300m at a minimum. On a proportional basis, the benefit of waiting time reductions throughout the country was estimated at €780m.
 - The Review found that part-time drivers are more likely to supply services during peak demand compared to full-time drivers. Almost three-quarters of SPSV trips occur between Friday and Saturday night with over half taking place between 6pm and 3am.

⁸ Paragraph 2.12 below provides more information regarding SPSV licence trends.

⁹ Available online from: <http://www.nationaltransport.ie/downloads/taxi-reg/economic-review-spsv-industry.pdf>

- A survey of people with disabilities found that almost 70% of dispatch operators are able to provide an SPSV service, though 26% of people with disabilities have at least on one occasion been informed by dispatch operators that they could not be provided with a service.
- The Review recommended that the present regulatory structure should be retained and concluded that there was insufficient evidence for the introduction of any quantitative restrictions.

The Taxi Regulation Review Group (2012)¹⁰

- 2.4 The 'Taxi Regulation Review' contains a wide ranging analysis of the SPSV industry. The Review was chaired by Mr Alan Kelly TD, Minister of State for Public and Commuter Transport.
- 2.5 To assist it in examining the broader issues of future regulatory policy, the Review Group arranged for an independent economic analysis of the taxi market by Indecon. While sensitive to methodology, Indecon's analysis indicated that there is oversupply in the SPSV market that is influenced by non-compliant operators and low levels of exit from the industry. It found that the quality of service appears to be fairly good.
- 2.6 The Review Group concluded that Indecon's findings support the strengthening of qualitative controls of SPSV licensing but do not justify imposing quantitative restrictions in the sector.
- 2.7 Regarding access to WAVs, the Review found that people with disabilities find it difficult to access SPSV services and that the utilisation of WAVs rather than the number of such vehicles per se should be the key focus of any policy initiatives. In response, short-term and medium-term actions were identified to address the requirement to facilitate easier access to WAVs and to expand the proportion of WAVs in the SPSV fleet. These actions are summarised below:
- **Action 18:** To introduce, on a pilot basis, a single contact point for the ordering of a wheelchair accessible service. The operator of the contact centre will have access to the NTA's database of wheelchair accessible taxi operators. In addition, consideration will be given to the arrangements governing the operation of WAVs linked to dispatch companies. There will also be further analysis undertaken of the usage optimisation of such vehicles.
 - **Action 19:** To produce a website and smartphone application that facilitates self-ordering of WAVs.
 - **Action 20:** To review the existing specifications for wheelchair accessible taxis and hackneys to establish whether an adjustment to the current WAV standards would assist in increasing the supply and availability of WAVs. In particular, consideration will be given to relaxing the current requirement for the vehicle to be able to carry three passengers in addition to an occupied wheelchair to facilitate the possible introduction of a wider range of lower cost WAVs into the SPSV fleet.

¹⁰ Available online from: <http://www.nationaltransport.ie/news/government-report-on-taxi-regulation-review/>

ESRI Policy Paper (2013)¹¹

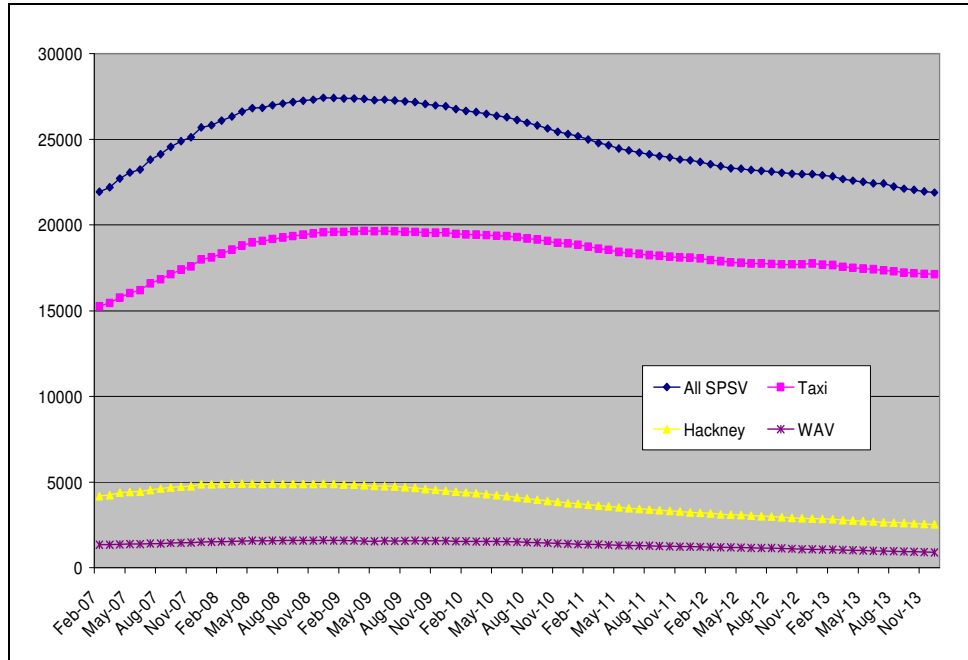
- 2.8 This policy paper produced by Professor Paul Gorecki argued that the SPSV market has adjusted well to the changed economic circumstances since the onset of the recession – prices are being discounted and the number of SPSV operators has been falling in recent years. Since 2010, the number of SPSV licence has declined by 6% a year in 2010 and 2011, and 3.4% in 2012.
- 2.9 He noted that the prohibition whereby all new taxi and hackney entrants must drive WAVs in conjunction with new qualitative measures such as vehicle branding is likely to limit the flexibility of the SPSV market to respond to changes in demand and supply. This means that when the economy revives and demand for SPSV services increases, there will be increased waiting times while fare discounting will end much sooner than it otherwise would.
- 2.10 The current prohibition is also likely to encourage SPSV licence holders to remain in the market rather than exit. In deciding whether or not to exit, an SPSV owner is likely to consider how easy it is to re-enter the market once demand increases as the economy recovers from recession. If entry is easy then the SPSV owner is likely to exit. However, if it is anticipated that entry barriers are likely to be created in the future with the possibility that rents will be earned, then SPSV owners will be discouraged from exiting the market today because of the prospect of future gains.
- 2.11 In particular, Professor Gorecki notes that the higher fixed (65% to 91%) and variable costs (27% for fuel) associated with a WAV means it is reasonable to expect very limited new entry in the current environment. While economic recovery may encourage more WAVs into the market, this does not mean that these SPSVs will supply more services to wheelchair users, since the returns from servicing other users are likely to be higher, especially with restrictions on entry of standard taxis and hackneys.

NTA Statistics on SPSVs

- 2.12 Following a request in January 2014, the NTA provided the Competition Authority with the most recent data on SPSV numbers. Our analysis shows:
- The number of SPSV licences peaked in December 2008 at 27,429 and declined to 21,900 in December 2013 – a fall of just over 20% (see Figure 1). SPSV numbers in 2013 were approximately at the same level compared to 2006.

¹¹ Gorecki, P. (2013), "The Small Public Service Vehicle Market in Ireland: Regulation and Recession," *ESRI Economic and Social Review*, Vol. 44, No.2, Summer, 2013, pp. 247-272.

Figure 1: SPSV Licence Trends, 2007-2013



Source: NTA, January 2014

- The number of SPSV licences was falling before the prohibition on standard taxi and hackney licences was introduced in June 2010. It is the Authority’s view that the market is reacting naturally to changing conditions and is moving towards equilibrium.
- Between June 2010 and December 2013, the number of WAV licences has fallen from 1,526 to 916, a fall of almost 40%. During the same period the number of WAV licences as a percentage of total SPSV licences fell from 6% to 4%.
- In comparison, between June 2010 and December 2013 the number of standard hackneys fell by 39%, standard taxis fell by 11% while limousine numbers increased by 6%. The higher fixed and variable costs associated with operating a WAV and the introduction of maximum vehicle age requirements in an increasingly competitive market go some way towards explaining why a significant proportion of WAV drivers either left the industry or switched to driving a newer standard saloon. Indeed, research produced by Indecon for the Taxi Regulation Review shows that since 2007 the number of surrendered licences for WAVs has been much higher compared to standard taxi licences¹².

¹² Page 42, Figure 3.5.

3. OBSERVATIONS ON THE PROPOSED TAXI REGULATIONS

Licensing of Small Public Service Vehicles

3.1 Section 13 paragraph 3(a) of the *Draft SPSV Regulations 2014* states that:

"In respect of an application for the grant of a new small public service vehicle licence other than a limousine licence, the Authority may grant such a licence only where the vehicle the subject of the application has not reached the sixth anniversary of the date of the vehicle and –

- a) the vehicle the subject of the application complies with the specifications relating to the wheelchair accessible taxis or wheelchair accessible hackneys, as appropriate, contained in these Regulation; or*
- b) the application is made in respect of a local area hackney licence."*

3.2 The Competition Authority is concerned about the provision as outlined in paragraph 3.1 that (a) all new taxi and hackney entrants must drive a WAV and (b) that all new WAVs must be less than six years old. We recommend that these provisions should be removed from the *Draft SPSV Regulations 2014*.

3.3 As outlined above, the current provision whereby all new taxi and hackney entrants must drive a WAV and the provision that the WAV must be less than six years old unduly favour existing licence holders over new entrants. This will create a permanent barrier to entry that will distort the SPSV market while being ineffective in terms of increasing the number of WAVs and the availability to people with disabilities of those WAVs already in the market. We note that the current provision does not contain any "sunset clause" whereby the regulation would cease to have effect after a certain date or when a set target has been reached.

3.4 The Competition Authority believes that this provision will create a permanent barrier to entry that is ineffective in terms of increasing the number and availability of WAVs and will raise prices and reduce service levels of all users. While existing drivers are likely to benefit from increased business, this will be at the expense of consumers, businesses, wheelchair users and future entrants to the SPSV industry will lose out in the long run.

3.5 The rationale for our concern is summarised as follows:

- The rule introduced in June 2010 that all new taxi and hackney entrants must use a WAV has not worked and WAV licences as a percentage of total SPSV licences have fallen from 6% to 4% between June 2010 and December 2013¹³.

¹³ See paragraph 2.12 for more information.

- The provision in Section 13 paragraph 3(a) of the *Draft SPSV Regulations 2014* will in effect create a permanent quantitative barrier to entry by requiring that new entrants must use a WAV that is more expensive compared to standard SPSV vehicles. The Competition Authority and economic research commissioned by the Commission for Taxi Regulation and the Minister of State for Public and Commuter Transport have warned against the introduction of any quantitative barriers to entry.
- The *Draft SPSV Regulations 2014* include provisions to allow for cheaper smaller sized WAVs. However, new entrants must also use a WAV that is less than six years old which creates an additional barrier to entry. In contrast, the maximum permissible age requirements for WAVs that are already licensed are to be removed outright as per Section 31, while the maximum permissible age of a standard taxi, standard hackney or local area hackney is ten years from the date of the first registration of the vehicle. Where a standard taxi or hackney licence was granted before 1 January 2009 and was associated with such licence on 1 January 2013, the maximum permissible age of such vehicle is fifteen years from the date of first registration of the vehicle. This provision favours existing licence holders compared to new entrants.
- The higher cost associated with purchasing and driving a WAV compared to a standard taxi or hackney, particularly one that is less than six years old, means it is reasonable to expect very limited new entry in the current environment where prices are being discounted and the number of SPSV operators has been falling.
- When the economy revives and demand for SPSV services increases, the provision contained within Section 13 paragraph 3(a) will mean there will be fewer SPSVs which will limit the flexibility of the market to respond to changes in supply and demand. In particular, the provision will limit the role of part-time drivers who are more likely to supply services during peak demand compared to full-time drivers. As a result there will be increased waiting times while fare discounting is likely to end much sooner than it otherwise would. This is bad news for all consumers, and especially for wheelchair users who already experience considerable difficulty getting access to SPSV services.
- While economic recovery may encourage more WAVs into the market, this does not mean that such SPSVs will supply more services to wheelchair users, since the returns from servicing other users are likely to be higher, especially with restrictions on entry of standard taxis and hackneys. New entrants may also demand fare increases for all SPSVs to cover the higher costs associated with WAVs.

3.6 The Competition Authority recommends that in order to improve the percentage of WAVs in the market the Government should first prioritise finding more effective ways to match demand with supply –

e.g., Action 18 and 19 as identified in the Taxi Regulation Review¹⁴. This is an important first step to create necessary demand to provide existing SPSV drivers and potential entrants with the financial incentive to invest in WAVs.

- 3.7 The Competition Authority welcomes the provisions in Part 4 of the *Draft SPSV Regulations 2014* to allow for smaller WAVs as a means of increasing the supply. Other means of lowering the high cost of WAVs such as changes to Vehicle Registration Tax (VRT) and subsidies for WAVs should also be re-examined. However, such provisions should apply equally to all and should not favour existing SPSV licence holders over new entrants.
- 3.8 The current provision whereby (a) all new taxi and hackney entrants must drive a WAV and (b) the provision that the WAV must be less than six years old favours existing licence holders over new entrants and will create a permanent barrier to entry. This will distort the SPSV market, while being ineffective in terms of increasing the number of WAVs and the availability to people with disabilities of those WAVs already in the market.

Prohibition on advertising

- 3.9 Section 48, paragraph 1 and 2 states that:

"(1) A person shall not display, or permit the display of, any sign of advertisement on the exterior, or on the interior such that it is visible from the exterior, or on the interior such that it is visible from the exterior of the vehicle, of a hackney or limousine unless such a sign or advertisement has been approved in writing by the Authority.

(2) In the case of a taxi licence granted after 1 January 2015, the holder of such licence shall not display, or permit the display of, any sign or advertisement on the exterior, or on the interior such that it is visible from the exterior, or the small public service vehicle which is subject of the licence unless such sign or advertisement -

- a) is in the prescribed form,*
- b) is required by law to be displayed,*
- c) is a sign, badge or symbol installed by the vehicle manufacturer,*
- d) is a sign providing the name and other details of the garage or dealership from which the vehicle was purchased, or*
- e) is otherwise approved in writing by the Authority."*

- 3.10 The NTA has so far provided no justification for the introduction of this provision and advertising is commonly found on the interior and exterior of public buses and trams (e.g., Dublin Bus and the Luas). An outright ban on advertising on the exterior and interior of an SPSV

¹⁴ See paragraph 2.7 for more information.

could in effect restrict competition by prohibiting drivers from promoting differences in price and service quality to consumers. For example, a new SPSV entrant would be prohibited from publically advertising that they are operating as part of the 'Hailo' network or providing services for a reputable dispatch company.

- 3.11 This provision will also limit the earning potential of SPSV drivers, increase demand for fare increases, and again appears to unduly favour existing taxi licence holders by placing new SPSV entrants at a competitive disadvantage compared to existing taxi licence holders who are not subject to this provision.
- 3.12 The Competition Authority recommends that the NTA should provide clearer justification for the inclusion of this provision or remove it from the *Draft SPSV Regulations 2014*. If the NTA wishes to include such a provision, it should apply equally to existing SPSV licence holders and new entrants.

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