



Uber South Africa Technology (Pty) Ltd  
Office 105, Parktown Quarter  
Corner 3rd and 7th Avenue, Parktown North  
Johannesburg, South Africa

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Dear Honourable Chairperson,

**REQUEST FOR AN OPPORTUNITY TO COMMENT ON THE NATIONAL LAND  
TRANSPORT AMENDMENT BILL**

Uber B.V ("**Uber**") would like to take this opportunity to welcome the approval of the National Land Transport Amendment Bill B7B-2016 ("**the Bill**") by the National Assembly on 24 April 2018.

South Africa, along with the rest of the world is witnessing profound shifts across all industries, marked by the emergence of new business models, the disruption of existing systems and the reshaping of systems, including transportation. The contribution that Uber has had in South Africa is net positive in leading the changes brought on through the 4th industrial revolution.

The public transport sector in South Africa has a history of long commuting times, unreliability and accessibility and the advent of technology brings us closer to a public transport system that is safe, reliable and accessible to all. These are the tenets of the Public Transport Strategy and Action Plan approved by Cabinet in 2007. We at Uber are proud of the fact that we have contributed to achieving some of these targets by making public transport easily accessible to everyone including people who are physically challenged.

By way of background, the Uber application was founded in 2009 and launched in South Africa in 2013. The application ("**app**") technology connects independent transportation providers with riders seeking transportation services. Uber is open and non exclusive and many metered taxi operators and minibus taxi operators are already using the app to boost their earnings. The Uber app is accessible in 4 South African provinces and 8 cities - Cape Town, Stellenbosch, eThekweni, uMsunduzi, Johannesburg, Tshwane, Ekurhuleni and Nelson Mandela Bay.

Uber currently has over 12,000 active drivers in South Africa. These drivers are often the breadwinners for their families, and therefore the economic opportunity Uber provides has a direct impact on approximately 40,000 people. Secondary industries also gain from the e-hailing industry. The motor vehicle industry is one that continues to gain from the growth

in e-hailing. Assuming that vehicles are replaced every three years, the positive impact on the manufacture, sale and service of motor vehicles is significant.

It is also important to note the very real benefits of access to on-demand transportation for riders/consumers. Over 600,000 riders book transportation services through Uber monthly, giving them the ability to go to work and school, to visit healthcare facilities, and to visit and support places of entertainment and recreation. Notably, studies have shown that access to transport is the single largest determining factor enabling people to escape poverty by granting them access to employment opportunities.

We estimate that if the concerns (outlined below) around the current system for issuing operating licences cannot be resolved, this would lead to a loss of approximately 9,000 direct job opportunities, with a real, direct negative impact on 27,000 people whose livelihoods depend on the e-hailing industry. All the figures provided above relate to Uber's services, and as such the numbers of those impacted would be larger if the whole industry is taken into account.

Uber therefore submits that the NLTA Bill is a key piece of legislation that can have a real, positive impact on not only the road transport industry, but the South African economy as a whole. Our submissions below take this into account.

Uber supports the objects and purports of the Bill which are, amongst others, to bring the National Land Transport Act, 5 of 2009 ("**NLTA**"), up to date with developments in the road-based public transport industry. One such development has been the arrival of Uber and other digital network or technology-enabled application services. With this in mind, Uber supports the committed endeavor in the Bill to address the changed landscape triggered by technology-enabled mobility solutions, and in particular, electronic hailing or e-hailing. However, Uber respectfully submits that further amendments need to be made to the Bill to ensure that the new technology-enabled mobility solutions work optimally for government, e-hailing companies such as Uber and, most importantly, the commuters who depend on public transport.

**In summary, we ask for the National Council of Provinces to consider the following key concerns and/or comments:**

1. **Section 66(7) that proposes that e-hailing companies switch off operators operating without an operating License or else face a fine of up to R100 000 rands or imprisonment.** In this section we propose that the Minister of Transport delays the implementation of this clause until the challenges being experienced by Public Transport operators in applying for operating licenses are resolved and that

a clear process for challenging decisions made without following the prescripts of the Act is in place. The NCOP's support in this regard would be appreciated; further detail relating to this proposed amendment set out in **Annexe A**.

2. **Special (vehicle) markings (proposed new section 66A(5)(b))**: in the current context of intimidation and violence directed at e-hailing drivers, the introduction of markings would result in an escalation of these targeted attacks. Uber is in support of the principle of special markings; this should however be done when the current violence subsides.
3. **Areas restrictions (proposed new section 66A(2)(b))**: we submit that the ways in which both metered taxis and e-hailing vehicles operate has changed, and that the legislature should look to implement the new legislation in recognition of this change.

We are aware that the Bill has now been referred to the National Council of Provinces ("**NCOP**") where it has already been considered by the Economic and Business Development Standing Committee and has since been referred to the 9 provincial legislatures. In light of this process, we provide our preliminary comments on the Bill in Annexure "**A**" attached hereto.

We thank you in anticipation of your consideration of these comments and look forward to participating in the upcoming public participation processes that will be conducted by the provincial legislatures. We request the opportunity to make both the oral and written submissions regarding our proposals so that they can be fully discussed before a final decision is made.

Yours sincerely,

**Yolisa Kani**  
Public Policy Head,  
Uber South Africa  
[yolisa@uber.com](mailto:yolisa@uber.com)

**Alon Lits**  
General Manager,  
Sub Saharan Africa  
[alon@uber.com](mailto:alon@uber.com)

**Proposed amendments to the National Land Transport Amendment Bill, B7B-2016****1. PROPOSED NEW PUNITIVE MEASURE**

- 1.1 The National Land Transport Amendment Bill B7B-2016 ("**the Bill**") creates a new criminal offence for e-hailing companies.
- 1.2 This new criminal offence mirrors an existing provision that applies to drivers who are found to operate a vehicle without a valid permit. Under the proposed new section 66(7), e-hailing companies are required to disconnect driver partners that operate without valid operating licences, or the companies are guilty of a criminal offence. This offence is created by the inclusion of the new section 90(IA) read with section 90(2)(a). The penalty attached to this offence is the imposition of a fine of up to R100,000 on the e-hailing company. The existing penalty for drivers has even more severe ramifications for drivers; drivers operating without valid licences are subject to a fine of up to R100,000 and imprisonment of up to 2 years.
- 1.3 Uber remains committed to compliance with the NLTA and the introduction of this provision. However, Uber submits that, considering current challenges with the system for issuing operating licences, the consequences of the application of punitive measures on e-hailing companies, and particularly on individual drivers are severe.
- 1.4 Uber would therefore like to draw attention to the impact that e-hailing services have had in South Africa, as well as the context in which the current provision relating to drivers operates, and within which the new provision relating to e-hailing companies will operate, and the need for the application of both to be reconsidered:
  - 1.4.1 There are challenges with the current process for issuing operating licences. Constraints in the licence approval system mean that licences are not approved within the 60 day time frame mandated by Regulation 6(7) of the NLTA Regulations, and the backlogs continue to grow. Thus, for example, in eThekweni (Durban) there has been a moratorium on the issue of operating licences since 2010 with no justification as to why the moratorium is in place; and in Nelson Mandela Bay (Port Elizabeth) a moratorium has been in place since August 2017. To the best of our

knowledge, no metered taxi or e-hailing operators have been issued with licenses since these dates. In Johannesburg the time period for the issuing of operating licences is approximately 9 to 18 months, while in Cape Town there are applications from 2016 awaiting the City of Cape Town's support before the application can go to the Provincial Regulatory Entity.

- 1.4.2 In addition, when drivers and operators do receive responses to their operating licence applications, such applications are sometimes rejected with no clear reason or rationale for such rejection. While the law does allow for appeals to rejected applications via the Transport Appeal Tribunal (which is constituted under a separate Act), we submit that the National Public Transport Regulator (NPTR) (which currently only addresses concerns in the tourism industry) should set out clear procedures for appeals against rejected applications, and be empowered to regulate and monitor all public transport in South Africa.
- 1.4.3 In these circumstances, and until the operating licence system works efficiently and speedily, we respectfully submit that it would be ill-advised for the new punitive system to be implemented at this stage, either for e-hailing companies or for drivers. Uber's objection to the punitive amendment would not be as strong if the operating licence systems throughout the country ensured that operating licences are issued within a period of 2 months.
- 1.4.4 It is important to note that these are not challenges that affect Uber alone; other e-hailing companies, metered taxis and minibus taxis also experience difficulties with the issuance of operating licences.
- 1.4.5 As mentioned above, individual drivers are also subject to criminal sanctions for operating without an operating licence. This has far-reaching impact.
- 1.4.6 It is therefore in the interests of the industry and the economy as a whole to clear the backlog that currently exists.
- 1.5 Given that the realities of the operating licence system are that applicants face moratoria, long waiting times and backlogs, Uber requests that the provincial legislatures and the NCOP support Uber's recommendation that implementation of section 66A(7) (the requirement for e-hailing companies to

disconnect drivers without valid operating licences) and section 90(IA) (the imposition of a fine or imprisonment) be delayed for up to 5 years, as provided for in the proposed new section 93A of the Bill, and recommend that the Minister of Transport ("**the Minister**") delay implementation of these provisions (for a duration in his discretion) in order to allow for the operating license system to be rectified country-wide: this would involve clearing the existing backlogs and streamlining the licensing process. This will help ensure that compliant operating license applications are considered and finalised within a period of three months, to the benefit of the industry a whole, and to mitigate the risk to drivers and other operators. We would like to emphasise that once the system backlogs and other concerns are resolved this punitive provision should come into effect.

- 1.6 Uber further requests that the Minister be granted the power to issue regulations that can alleviate the logjams for applicants. This can be achieved by expressly granting the Minister the power to issue regulations regulating a prescribed time period in which applications must be considered and the ability to deem operating licence receipts (or any other workable solution) as valid licences after a certain period of time has lapsed. The Minister is already granted a similar power to issue regulations relating to the renewal of existing operating licences, and he has done so in Regulation 25(2) of the NLTA Regulations. Uber proposes the introduction of a new section 8(1)(aaA) which provides that the Minister may, after consultation with the MECs, make regulations relating to -

*"the period within which the decision to grant or refuse operating licences must be made, and such regulations may provide that receipts for such operating licences will be deemed to be valid operating licences after the aforementioned period has expired and until such time as the operating licence application is granted or refused;"*

## 2. SPECIAL MARKINGS

- 2.1 The proposed new section 66A(5)(b) of the NLTA provides that:

*"The Minister must make regulations prescribing special markings or other requirements for vehicles used for e-hailing services."*

- 2.2 E-hailing services contemplate consumers pre-booking trips via an e-hailing application. Consequently, e-hailing operators do not practice street hailing or

ranking. Designating vehicles by way of special markings is thus not necessary or appropriate.

- 2.3 Uber reiterates that it supports regulation and the work of law enforcement officers in implementing such regulation. However, the current climate is one characterised by serious conflict, given the tension between metered taxi operators and e-hailing operators which has resulted in violence. In particular, Uber has received reports of over 1400 incidents of intimidation of drivers since January 2017. Such intimidation ranges from preventing driver partners from providing services to riders, riders being pulled out of vehicles, and damage to property to the unfortunate acts of violence that have been reported on in the press.
- 2.4 Regulation 23(e) read with Regulation 24 of the NLTA Regulations provides that holders of operating licences must cause the operating licence number and the type of services to be painted or displayed on a magnetic or other sticker in a conspicuous place on the vehicle. Regulation 27 provides that an operating licence may be issued with a decal which must be fixed to the lower, inside, left-hand corner of the windscreen of the vehicle.
- 2.5 Uber understands that the aforementioned regulations provide for sufficient markings on vehicles for law enforcement officers to differentiate between vehicles holding operating licences from those that don't. Uber therefore submits that the current regulatory regime is appropriate and that the Minister should be permitted to change the current regime only as the Minister deems necessary.
- 2.6 Accordingly, Uber proposes that the section be amended to grant the Minister the discretion to publish regulations rather than make it compulsory for the Minister to do so. This could be achieved by amending the current wording of the section to read:
- "The Minister may make regulations prescribing special markings or other requirements for vehicles used for e-hailing services" (the amendment is underlined)."*
- 2.7 We would also like to point to the fact that rider safety is a key priority for Uber, and prior to entering a vehicle, the rider has access to the name, photograph, car description and licence-plate number of the driver. The rider is therefore able to verify that a driver is duly registered on the Uber app and that they are

entering the correct vehicle prior to commencing a trip. Law enforcement agencies can also identify the vehicles with the operators cards that are displayed on the left hand side of the windscreen.

- 2.8 We therefore propose that the vehicle makings of e-hailing vehicles be re-considered at a later stage through regulations when the tensions between Operators has been quietened down.

### 3. AREA RESTRICTIONS

- 3.1 The new section 66A of the Bill, which sets out to regulate e-hailing operators, substantially reproduces the provisions in section 66, which deals with metered taxis. We submit that the ways in which both metered taxis and e-hailing vehicles operate has changed, and that the legislature should look to implement the new legislation in recognition of this change.

- 3.2 The rationale for area restrictions in section 66A of the Bill is outdated. Area restrictions such as these reduce competition and inhibit more efficient models which lower prices and increase employment. They are therefore no longer suitable in the face of new business models such as those of e-hailing operators.

- 3.3 Uber would like to propose solutions which will look towards the future of transportation to the benefit of consumers and all industry players.

#### 3.4 ***Proposed amendment to the new section 66A(2)(b) of the NLTA***

- 3.4.1 The proposed new section 66A(2)(b) of the NLTA provides for an exception with regard to the area restriction. It allows an e-hailing vehicle to pick up passengers outside of the area, "*if the fare is pre-booked and the passengers will return to such area*".

- 3.4.2 This restriction severely constrains Uber and other e-hailing vehicles as well as traditional meter taxi operators. It needs to be widened to enable vehicles to undertake the sorts of trips which begin in one metro (e.g. OR Tambo International Airport in Ekurhuleni) and end in a different metro (e.g. Tshwane). There are two possible ways in which this could be achieved:

- either, the provision could be amended to read as follows:

*"The vehicle may pick up passengers outside of that area, if the trip is pre-booked."*

- or it could be amended to read as follows:

*"The vehicle may pick up passengers outside of that area, if the trip is pre-booked and the vehicle will return to such area, directly or indirectly."*

Either of these relatively simple amendments will enable both meter taxi e-hailing operators to operate with the area-based freedom which they require.