Uber in South Africa

Submissions on the Economic Regulation of Transport Bill, October 2020

Uber

Agenda

01 Introduction to Uber in South Africa
02 Potential Application of Bill
03 Concurrency of Jurisdiction
04 Price Controls
05 Access to Information
06 Conclusion

01 - Introduction to Uber in South Africa

Uber by Numbers

10k

Cities where Uber is available

103M

Monthly active riders globally

69

Countries where Uber is available across 6 continents

5M

Active drivers globally

15B

Completed trips cumulatively

18M

Rides happening on a daily basis

South African Milestones

>1m

Monthly Active Riders in SA

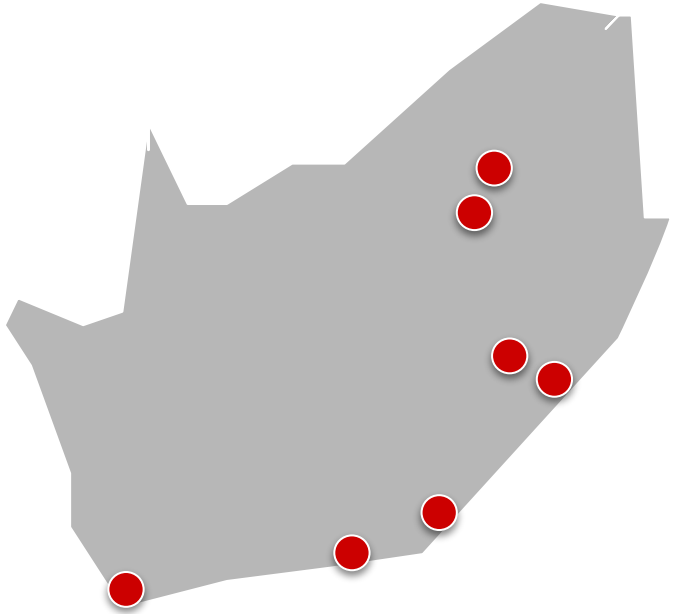
>13K

Monthly Active Driver-Partner in SA

>82

Different nationalities have used Uber in SA

Uber Footprint in SA



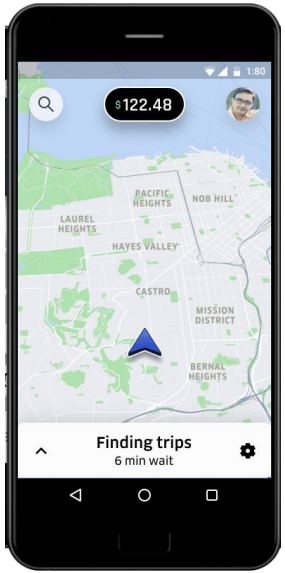
City Footprint

- Buffalo City Municipality
- Cape Town
- Ethekwini
- Ekurhuleni
- Johannesburg
- Makhanda
- Nelson Mandela Bay Municipality
- Pietermaritzburg
- Stellenbosch and Surrounds
- Tshwane
- West Rand Municipality District

Uber is a Technology Company

Rider

Driver



Uber is an app that seamlessly connects riders to drivers at a touch of a button

Drivers

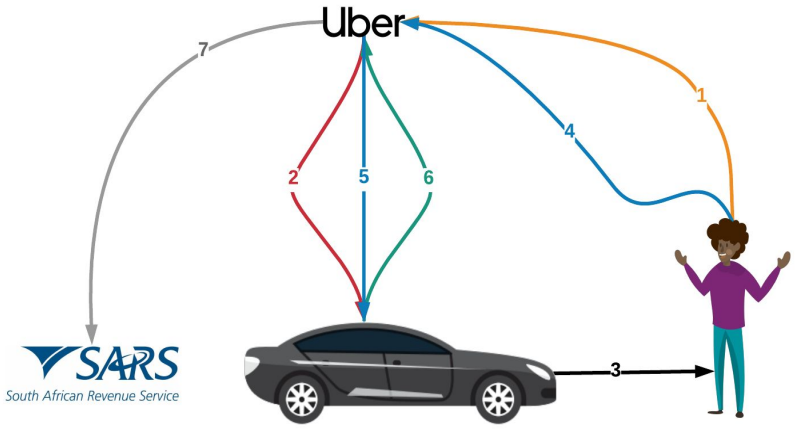
- Flexibility
- Set their own hours
- Choose when and where to work
- Increased earning opportunity
- Safety
- Accountability

No joining fee / ongoing membership fees

Riders

- Reliability
- Affordability
- Transparency
- Accessibility
- Safety
- Accountability

How the Platform Works



1. The rider requests a trip using the Uber app
2. Uber sends the request to the driver
3. The driver accepts the request and completes the trip
4. Uber collects the fare from the rider on behalf of the driver. A trip receipt is issued on behalf of the driver to the rider at the end of each trip.
5. Uber aggregates the driver's fares on a weekly basis and makes payment to driver's on a weekly basis (deducting its service fee)
6. The driver pays Uber for lead generation (service fee)
7. Uber will also remit the VAT which drivers owe on the service directly to SARS.

02 - Does the Bill Apply to Uber?

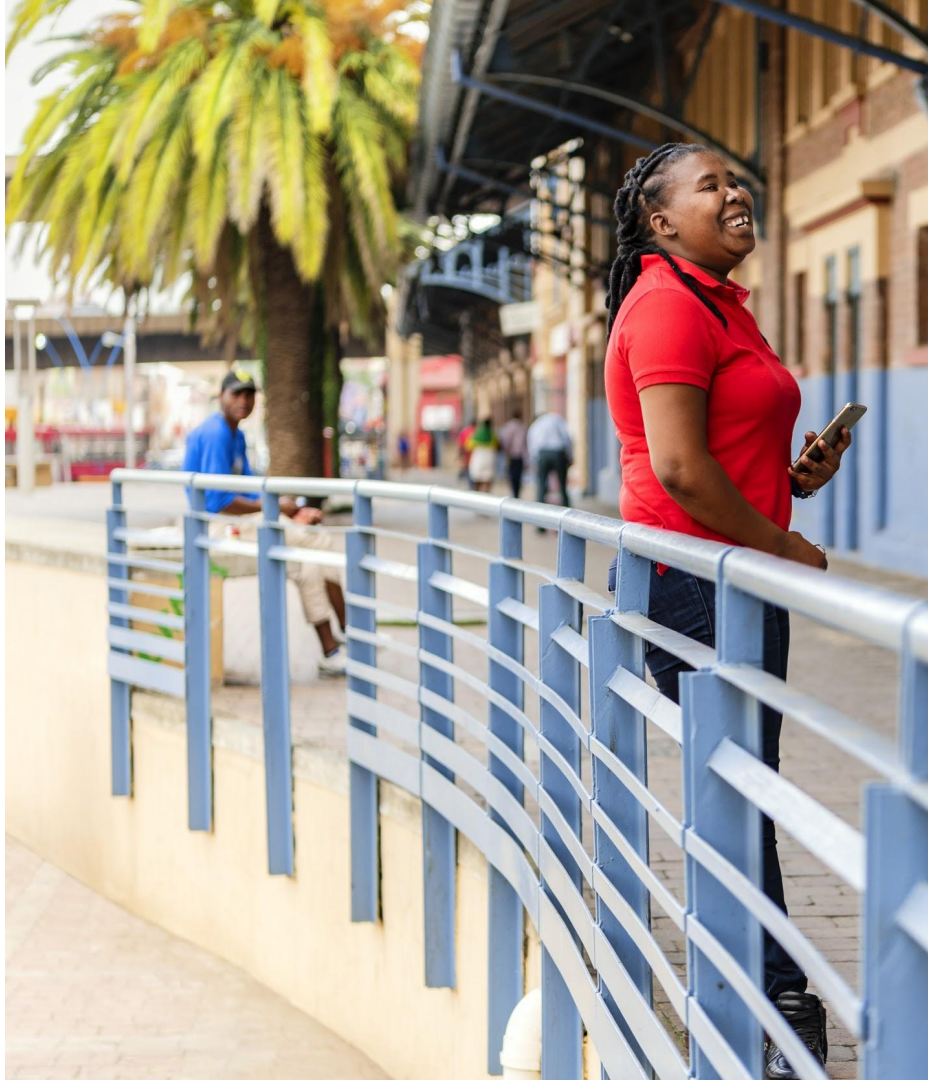
Potential Wide Application of Bill

Relevant Section	Text	Comment
Section 4(2)	The Minister, in consultation with the Regulator, by notice in the Gazette, may declare that this Act applies to any market, or any entity or facility, irrespective whether privately or state owned, within the transport sector, if the Minister has determined that either of the following circumstances apply— (a) a single operator controls more than 70% of the market concerned; or (b) the preconditions for efficiency and cost-effectiveness do not exist in the market concerned.	1. The transport sector is large and contains many different actors, all of which are of a diverse nature, type, size, ownership structure, operating structure, objectives, efficiencies etc; 2. Due to the broad nature by which s4(2) may be interpreted, s4(2) may apply to entities such as Uber; 3. Application of Bill and any regulations must avoid a “one-size-fits-all” approach 4. Market definition - proper market analysis should be conducted

03 - Concurrent Jurisdiction

Concurrent Jurisdiction

- The Bill allows for instances in which two or more decision makers (e.g. the Regulator and the Competition Commission) have the authority to decide on the same subject matter (concurrent jurisdiction).
- Bill allows for concurrent jurisdiction
- Competition Act only allows for concurrent jurisdiction in certain circumstances
- Bill improperly extends when the Regulator and the Commission may exercise concurrent jurisdiction



Bill Presupposes Concurrent Jurisdiction

Relevant Section	Text	Comment
Section 2(4)	“In respect of any matter arising under this Act, the provisions of this Act prevail in the case of an inconsistency between any provision of this Act, and a provision of any other transport legislation.”	1. The Bill seeks to supercede any transport legislation in the case of any inconsistency; 2. As the Competition Act is not a piece of transport legislation, the Bill therefore presupposes that the Regulator may have concurrent jurisdiction with the Competition Commission

Requirements of Concurrent Jurisdiction

- In terms of section 3(1A)(b) of the Competition Act, two requirements must be met in order for there to be concurrent jurisdiction:
    - the industry or sector must be subject to the jurisdiction of a regulatory authority. This requirement is satisfied by the Bill and its creation of the Regulator; and
    - the regulatory authority must have jurisdiction in respect of conduct regulated under Chapter 2 or 3 of the Competition Act, i.e. Prohibited Practices or Merger Control. This requirement is not satisfied by the Bill

Bill Seeks to Extend Concurrent Jurisdiction where it cannot - s4(4)

Relevant Section	Text	Comment
Section 4(4)	"When making a determination in terms of [section 4(2)(b)], the Regulator must have found that— (a) at least one firm operating in the market has market power; or (b) a facility or resource in the market is an essential facility, after having received and considered— (i) an opinion from the Competition Commission— (aa) after conducting a market inquiry in terms of chapter 4A of the Competition Act; or (bb) on the basis of the Competition Tribunal finding that anti-competitive abuses have occurred within the relevant market; or (ii) a report from the market inquiry, conducted by the Regulator in terms of section 43(2)(b)."	1. The Bill seeks to extend the concurrent jurisdiction of the Commission to powers contained in Chapter 4A of the Competition Act; 2. In terms of the Competition Act, the Commission may only have concurrent jurisdiction in terms of powers provided for in Chapters 2 and 3 of the Competition Act (not Chapter 4A); 3. Therefore section 4(4) of Bill is invalid

Bill Seeks to Extend Concurrent Jurisdiction where it cannot - s45(1)

Relevant Section	Text	Comment
Section 45(1)	“At any time, the Regulator, on its own initiative or in response to a request from the Minister in terms of section 45(1)— (a) may request the Competition Commission to consider whether particular entities, markets, facilities or services within the transport sector are failing to function competitively or are characterised by anti-competitive abuses; or (b) conduct a market inquiry— (i) if it has reasonable grounds to suspect that any feature or combination of features of the market within any transport sector prevents, distorts or restricts competition or leads to anti-competitive outcomes within that market or the economy; or (ii) to achieve the purposes of this Act.”	Similar to section 4(4), section 45(1) gives concurrent jurisdiction to the Regulator and the Commission (iro the power to conduct market inquiries), where the Competition Act does not provide for such concurrency of jurisdiction

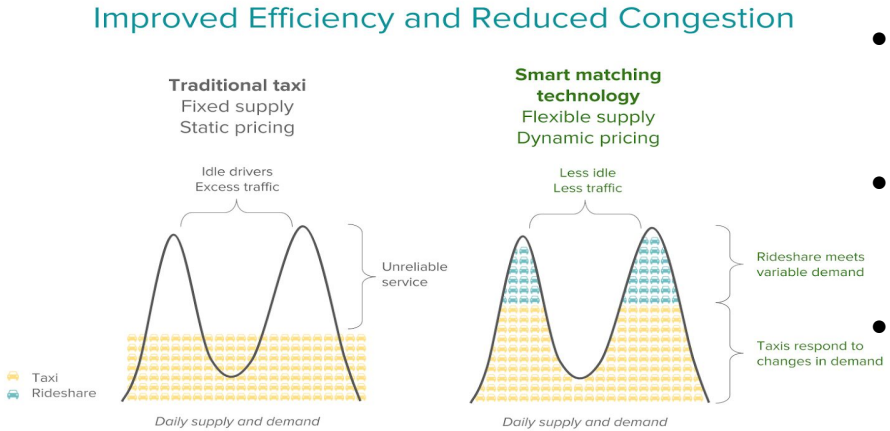
04 - Price Controls

Entities may be subject to Price Controls

Relevant Section	Text	Comment
Section 9(2)	“The price control for a regulated entity may comprise— (a) a schedule of tariffs, charges, fees, tolls or other amounts that may be imposed by the regulated entity for the use of, or access to, any transport service or facility offered by that regulated entity; (b) a limit on the total amount of revenue it may raise from the facilities and services offered by it; (c) a limit on the return it may derive from the assets utilised by it to provide its facilities and services; or (d) any other appropriate pricing method, including any combination of the methods contemplated in paragraphs (a) to (c).”	1. Bill provides for the price control of a “regulated entity”; 2. Unclear if Uber is a “regulated entity” (see s4(2)); 3. Price controls undermine the economic concepts of supply and demand and pricing driven by market dynamics

The problem with price controls

The problem with continuing to impose price controls is precisely that prices are unable to respond efficiently to demand surges, resulting in consumers faced with long waiting times and poor service due to supply not responding appropriately to the excess demand.
This in turn meant that the industry does not develop into a dense and efficient network which is reflective of the e-hailing model today.

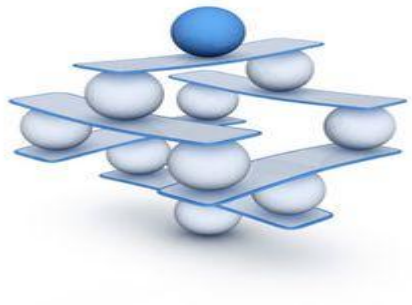


- E-hailing services are better able to respond to the fluctuations in demand by having a more flexible supply ultimately means that consumers are better off.
- This is because waiting times are low even in periods of high demand and also utilisation overall is higher as supply moves to periods of high demand.
- Although a few lucky consumers get a lower cost trip, the average consumer is worse off because they have long wait times or no service because supply has failed to respond to the surge in demand.

Dynamic pricing is an efficient way to meet unusual demand surges

Dynamic pricing has two effects

- People who are not in a hurry wait until the price falls or use an alternative form of transport, thus reducing demand; and
- Driver-partners who are nearby are incentivised to go to that neighbourhood to get the higher fares, increasing supply.



In this way, dynamic pricing:

- creates a **balance** between the number of people wanting a ride and the number of available drivers; and
- ensures that fares return to standard rates at a much faster pace and riders can reliably get rides.

Price Controls may be Unconstitutional

Relevant Section of Constitution	Text	Comment
Section 22	“Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.”	1. *S v Lawrence* 1997 (4) SA 1176 (CC); 2. Price controls by the Regulator must be rational to not infringe the right to freedom of trade; 3. Rational = the price controls are rationally related to the outcome the Bill is seeking to achieve; 4. Where the outcome is efficiency and cost effectiveness - price control is not rational vs dynamic pricing

05 - Access to Information

Access to Information must be subject to PAIA

Relevant Section	Text	Comment
Section 13	“(1) Each regulated entity must submit to the Regulator, in the prescribed manner and form— (a) statistical information related to the transport facilities or services that it provides, or has licenced others to provide; (b) forecasts of demand for the transport facilities or services that it provides, or has licenced others to provide; (c) development plans for the facilities it operates, or has licenced others to operate, or the services that it provides or has licenced others to provide; and (d) any material change in the control of persons it has licenced to operate facilities or provide services. (2) The Regulator may request any other information that is reasonably required by the Regulator to perform its functions in terms of this Act, including confidential information, subject to section 60. (3) The Regulator must maintain the confidentiality of information provided to the Regulator in terms of this section or any provision of this Act.”	1. Regulator may request for a wide list of different information - including confidential information; 2. The Promotion of Access to Information Act (PAIA) already allows for how requests for information can be made to private bodies such as Uber; 3. The Bill seeks to achieve a similar objective, which is inappropriate since a mechanism already exists; 4. Section 13 to be made subject to the relevant PAIA provisions

Thank you