



Competition and vested interests in taxis in Ireland: A tale of two statutory instruments

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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 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.

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1. 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

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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.

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.). There is a substantial literature that provides the theoretical and methodological foundations for this view of the common good based on welfare economics.³

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 influence of vested interests on regulatory and legislative outcomes is analysed using interest group or capture theory based on public choice.⁴

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. It will also depend on the independence, mandate and the decision-making transparency of the regulator, which may be a Minister or a regulatory agency.⁵

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, 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 quality⁶; 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.⁷

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 2 examines the decision to abolish quantitative limits on taxis in 2000, Section 3 the decision to reintroduce such limits a decade later, while Section 4 assesses the current state of taxi regulation.

2. 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 min.⁸ 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.”⁹

³ See, for example, Biggar (2011), De Vany (1975) and Fingleton et al. (1998).

⁴ See, for example, Becker (1983) and Posner (1974).

⁵ These factors are discussed in Gorecki (2011).

⁶ 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).

⁷ The prohibition also applied to hackneys, but not to WAH or limousines.

⁸ Gorecki (2014a, Table 8, p. 14).

⁹ *Humphrey & ors v Minister for the Environment & ors* [2000] IHEC 149, p.1. Hereinafter *Humphrey*.

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