1. EXECUTIVE SUMMARY

1. **The provision of taxi services in Portugal is an activity subject to intense regulation that may restrain competition among service providers and have negative effects on consumer welfare.** Although the correction of market failures and other public policy objectives may justify the need for some degree of regulation for these services, excessive regulation of market access, prices and quality limits the capacity of new market players to access the market as well as the ability of those already in the market to compete on the price/quality pair.

2. **When regulation aims to address identified market failures and/or achieve other public policy objectives, the regulatory intervention should be guided by the principles of efficient regulation,** namely by limiting intervention to the minimum level required for achieving the objectives at hand. Efficient economic regulation implies that the restrictions of competition that follow as a by-product must observe the principles of necessity, proportionality and non-discrimination.

3. **Quantitative restrictions to the provision of taxi services are one of the most intrusive regulatory measures, with strongest impact on competition, such that in general they find little support in the economic literature.** The arguments put forward in favour of quantitative restrictions to market entry relate to negative externalities, such as environmental impact (pollution) or traffic congestion, excess of entry, reduction of productive efficiency, as well as safety and quality. However, the economic literature does not, for the most part, endorse the claims for imposing a *numerus clausus*. The establishment of quotas hinders the dynamic adjustment between supply and demand, which may lead to supply shortages. Currently, access to the activity is limited by quotas and whoever wishes to provide a service, even if they gather the necessary requirements, must obtain a license traded in the secondary market or through a tender\(^1\). In the secondary market, licenses may reach very high values which reflect the economic rents associated with entry restrictions.

4. **The current regulatory provisions regarding tariffs eliminate price as a dimension of competition and reduce taxi drivers’ incentives to compete in prices and quality.** Even though the identified market failures may justify some form of less intrusive regulatory intervention, the setting of administrative pricing may be excessive and lead to welfare losses. In Portugal, the tariffs of taxi services are fixed by convention between the DGAE (Directorate-General of Economic Activities) and the associations representing the license holders. The regulatory provisions on prices may pursue the aim of limiting service providers bargaining power *vis-à-vis* consumers in certain contexts, as well as addressing transaction costs and information asymmetries. They may also arise from the need to limit the market power associated with regulatory restrictions on market access. However, setting prices by convention may restrain competition and prevent the usual

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\(^1\) This is only possible when quotas have not been exhausted, and the municipality where the service provider
supply response to different demand conditions, thus jeopardising economic efficiency. When market failures are identified or some form of price regulation is needed to achieve public policy objectives, the intervention must be restricted to the minimum level required to achieve them.

5. **Regulatory quality requirements may be needed to ensure minimum safety and quality of service in face of information asymmetries, but they can also disproportionately reduce the scope for service differentiation.** Therefore, excessive and disproportionate requirements may give rise to unnecessary barriers to entry, thus compromising variety of choice and deteriorating the conditions of supply in terms of quality and price, to the detriment of consumer welfare. Additionally, quality requirements for for-hire passenger services (e.g., driver certification, vehicle inspection), when they differ for competing service providers, may lead to distortions of competition.

6. **The emergence of transport services based on electronic platforms exacerbated the implications for competition of a restrictive regulatory model for taxi services. It also made clear the need for a modern regulatory framework for the sector.** Banning such business models could deprive consumers of the benefits of technological innovation and the competitive pressure that such services may exercise on traditional taxi services. A highly restrictive regulatory framework could hinder the entry of these new forms of service providers.

7. **On the other hand, the market failures usually associated to taxi services, namely transaction costs and information asymmetries, may be eased by the features of these new business models and their reputation mechanisms.** Thus, the market evolved, with implications for market failure analysis as well as for the adequacy of regulatory provisions, thereby strengthening the need for revisiting the current regulatory framework.

8. **As such, the AdC recommends a regulatory review that, rather than extending current regulatory provisions to new entrants, is aimed at easing the restrictive regulatory framework currently applied to taxi services in Portugal.** The assessment of the need for regulatory intervention should observe the principles of efficient regulation for both traditional taxi services and new entrants. In fact, the current rules restrict the ability of traditional taxi service providers to strategically react to the competitive pressure brought by the new business models, thus weakening their position vis-à-vis new entrants. The less intensive competition could jeopardise the ultimate aim of protecting consumer interests.

9. **The regulatory review must comply with the principles of efficient regulation, in order not to risk aggravating or perpetuating the negative effects on market size.** A regulatory review which fails to observe this principle of efficiency could compromise innovation and the market’s response to the consumers’ needs.

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wishes to operate opens a tender for license allocation.
10. Therefore, the AdC (Portuguese Competition Authority) recommends a review of the regulatory framework that:

   i. **Assesses and considers the necessity and proportionality of quantitative restrictions to entry.** If necessary, an alternative, more efficient and less restrictive regulation should be considered, in order to achieve the public policy objectives envisaged by the legislator; and

   ii. **Reduces the certification and licensing requirements to the minimum required to address market failures** and ensure that important policy objectives are observed (e.g., consumer safety and protection), thus avoiding unnecessary regulatory measures that discriminate between service providers and services segments;

   iii. If it is not possible to encompass different service providers in only one segment:

      a) because the market failures in segments such as street hailing and taxi ranks prove the need for regulation, as opposed to the segment of pre-booked services; or

      b) because other public policy objectives require the existence of a taxi segment with a public service status;

   iv. **Renders the current regulatory provisions applicable to taxi services' tariffs more flexible, allowing for greater freedom to service providers in determining prices,** thus encouraging competition among service providers and easing the market equilibrium between supply and demand.

   Should consumer protection demand an intervention on prices of segments where there are still market failures to be tackled, such intervention should not extend beyond the extent required to accomplish the underlying policy goal, in order to reduce distortions to competition among the different service providers;

   v. **Provides incentives for quality and price competition, removing unneeded and unequal service quality requirements,** and avoiding the artificial standardisation of supply that hinders competition in dimensions other than prices.

11. The AdC considers that this regulatory review should not favour one business model or market segment over another, in order to create a level playing field among service providers, thus improving competition and consumer welfare.
2. INTRODUCTION

12. This document states the view of the AdC regarding the impact on competition of the regulatory framework of occasional for-hire passenger services\(^2\) with driver currently enforced in Portugal.

13. *Currently, this activity includes the provision of:* *i)* taxi services; *ii)* car hire with driver; and *iii)* other services of a different nature (such as tourism services)\(^3\).

14. *The activity is subject to high regulatory intervention, in particular regarding taxi services.* This report undertakes a competition impact assessment of the legal provisions and regulations applicable to taxi services, so as to identify and assess potential restrictions to competition.

15. *Moreover, the emergence of new transport service procurement methods, namely through electronic platforms (usually associated with mobile applications\(^4\)) has brought important challenges,* *at an international level,* as to the rules established for the sector, and Portugal is no exception in this regard.

16. *There is much discussion as to how these new business models fit in the structure of the applicable regulations.* Several countries have responded to these challenges, in however different ways, ranging from decisions to ban these new business models, to the creation of specific regulations to accommodate them or the enactment of new legal provisions aimed at limiting the scope for the provision of these services.

17. *In Portugal, one of the most important electronic platforms providing this service is Uber,* which began operating in Lisbon in July 2014, in Porto in December 2014 and in the Algarve in June 2016. ANTRAL (Portuguese Professional Taxi Association) has submitted an injunction to the District Court of Lisbon that by ruling of 24 April 2015 has ordered the ceasing of the platform-based provision of for-hire passenger services and any other related activities carried out by Uber in Portugal, such as the undertaking’s electronic platform\(^5\). On 16 June 2016, the Portuguese Court of Appeal partially upheld Uber’s

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\(^2\) Occasional road transport is legally defined as a transport not undertaken on a regular basis following a certain itinerary, schedule and prices freely negotiated or set by the provider after being considered individually. The full capacity of the vehicle may be put at the disposal of one or several users, being the latter part expected to use it and pay for the used fraction.

\(^3\) It includes shared services (such as carpooling, which is the use of a private vehicle that is alternately shared by two or more persons), as well as services subject to a type of regulation especially aimed at certain clients, such as patients and children, which will not be considered by this analysis. Additionally, one should also mention that certain services like car sharing and car rental without driver may also, at least partially, satisfy the same transport need.

\(^4\) Software designed to be installed in an electronic mobile device, such as a smartphone, which may be installed by the application developer or the user itself and, in the latter case, against payment or free of charge.

\(^5\) See, respectively, decision of 24 April 2015 of the First Civil Chamber of the District Court of Lisbon in case no. 7730/150T8LSB (injunction) which determines the application of such interim measures, and decision of 25 June 2015 by the same court which maintains these previously adopted interim measures and dismisses the defendant’s opposition.
appeal against the injunction⁶.

18. The challenges brought by these platforms and the need to address them are particularly significant, given that these new business models seem to be widely accepted by consumers. In fact, these platforms have a set of new features that eventually appeal to previously unexplored market demand ("creating market") and offer services perceived by consumers as potential substitutes for traditional taxi services.

19. The traditional taxi service providers have responded to this new business by using similar technologies for consumers to hire their services, namely through electronic platforms. For this reason, the boundary between these two services is becoming increasingly blurred (see ITF 2016a).

20. Accordingly, the Portuguese Government created a working group to modernise the for-hire passenger transport sector that put forward a set of recommendations on July 1st, 2016⁷. According to the media⁸, following these recommendations the IMT (Portuguese Institute for Mobility and Transport) was requested by the Portuguese Government to draft new legislation to regulate the new passenger transport activity in unmarked light passenger vehicles and the functioning of the electronic platforms that provide such services.

21. In 26 September 2016, the AdC received from the Secretary of State of the Environment a request for opinion on a draft Decree-Law establishing the legal provisions applicable to electronic platforms, namely the access requirements and other provisions applicable to transport in unmarked vehicles hired through an electronic platform (TVDE). The comments of the AdC to the draft Decree-Law followed closely the main principles set out in this report.

22. Apart from analysing the applicable regulatory provisions, this report also highlights the principles of efficient regulation that should guide a potential future review of the regulatory framework.

23. Introducing regulatory provisions may prove to be strategic to achieve several public policy objectives⁹ and it is for the legislator to coordinate such objectives. While it is not up to the AdC to weight public policy goals other than the promotion of competition, this report highlights the issues that should be accounted for in terms of competition, and thus, consumer welfare.

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⁶ See Ruling of the Lisbon Court of Appeal in Appeal no. 7730/15078LSB.L1 of 16 June 2016.
⁷ See: http://www.imt-ip.pt/sites/IMTT/Portugues/Noticias/Documents/2016/notaimprensaGTMSTPAL.PDF
⁹ Pursuant to article 2 of the Road Transport System Act, the following shall be taken into account: national defence requirements; strategic needs; guidelines for policies regarding land use planning and local development; quality of life and environment protection; other economic sectors’ needs; the economy of energy use; security requirements for circulation and transport.
24. Thus, whenever provisions aimed at other public interest objectives deviate from the principles of promoting and advocating competition, and without questioning the public interest of such goals, the AdC stresses: \textit{i)} the need to discuss if the legal provisions at hand are effectively and properly designed to achieve the goal; \textit{ii)} the consequences for competition inherent to the provisions at hand, a subject that should be taken into consideration when planning public policies; and \textit{iii)} the need to consider alternative solutions that are less restrictive for competition.

25. Based on this analysis, and bearing in mind that some of the measures deemed necessary to promote other public policy objectives may differ, as mentioned above, from the principles of promoting and advocating competition, the AdC is willing to closely cooperate with the Portuguese Parliament and the Government and other competent authorities, namely the IMT, the AMT (Portuguese Transport Regulatory Body), the DGAE and the municipalities.

3. DESCRIPTION OF THE PORTUGUESE REGULATORY FRAMEWORK

26. In Portugal, occasional for-hire passenger services with driver is an activity that falls within the scope of the Road Transport System Act, approved by Law no. 10/90 of 17 March that establishes the maximum contribution to the economic development and the promotion of consumer welfare as the main objectives.

27. The Road Transport System Act stipulates a free entry regime\textsuperscript{10} for private transport and a licensing regime for public transport subject to technical and identification requirements.

28. In Portugal, occasional for-hire passenger services with driver includes:

\begin{enumerate}[I.]
\item \textbf{taxi services or "transport by taxi"}, which can be defined as a for-hire passenger transport service in a light passenger vehicle\textsuperscript{11};
\item \textbf{transport services in light tourist vehicles (letter "T") and vehicles exempt from bearing the license labels (letter "A"),} to which the provisions for the access to the taxi transport activity are applicable\textsuperscript{12};
\item \textbf{car hire with driver}, it being possible to conclude an additional contract for a driver\textsuperscript{13} or other services, such as those offered by travel and tourism agencies\textsuperscript{14}.
\end{enumerate}

\textsuperscript{10} Article 16 of the Road Transport System Act provides for a free entry regime applicable to private transport, but subjects them to regulatory standards. The vehicles need to meet technical and identification requirements and their actual private nature is to be controlled, according to article 17.


\textsuperscript{12} See Decree-Law no. 251/98, article 23.

\textsuperscript{13} Decree-Law no. 181/2012 of 6 August, amended by Decree-Law no. 207/2015 of 24 September, lays down the access to and exercise of car rental without driver, also known as rent a car.
and agencies of tourism activities\textsuperscript{15}.

3.1. Taxi services

29. Pursuant to the current legislation, transport by taxi consists of transporting passengers from one place to another in a light passenger vehicle. It is a means of public transport in a vehicle equipped with an electronic device for measuring time and distance (taximeter). The vehicle also has specific license labels. According to the legislation, such transport is done exclusively in service of a client and the itinerary he chooses for a price calculated by the taximeter.

30. Considering the features and the procurement method of the services provided, three segments of transport services in light passenger vehicles can be distinguished:

   I. \textit{Street hailing}

   The passenger in need of the transport service hails a taxi currently circulating on a public road.

   II. \textit{Taxi rank}

   The taxi is parked in a specific location where only taxis are allowed (taxi rank). The passenger walks up to a taxi, enters the vehicle and the transport service is then initiated.

   III. \textit{Pre-booked taxi services}

   There are different ways to hire a taxi prior to using the service, namely through the electronic platform, radio dispatch or by written contract.

31. Technological innovation has driven the development of new electronic platforms to hire taxi services, which level out the differences between segments of services hired in the moment they are needed (street hailing and taxi ranks) and pre-booked services. In fact, such platforms allow to better coordinate the drivers on the platform, and when there is a large network of drivers it can deliver reduced waiting times. According to the information submitted to the AdC by Uber, the average waiting time for services hired through the Uber platform in Lisbon and Porto during December 2015 was of 5,7 minutes. For instance, in London, the average waiting time for services hired through the Uber platform, until the actual arrival of the vehicle is 3,6 minutes\textsuperscript{16}.

\textsuperscript{14} The access to and exercise of the activity of travel and tourism agencies was approved by Decree-Law no. 61/2011 of 6 May, amended and re-issued by Decree-Law no. 199/2012 of 24 August and amended by Decree-Law no. 26/2014 of 14 February.

\textsuperscript{15} The access to and exercise of the activity of agencies of tourism activities is laid down by Decree-Law no. 108/2009 of 15 May, and was amended by Decrees-Law no. 95/2013 of 19 July and 186/2015 of 3 September.

\textsuperscript{16} See "Competition and Markets Authority response to Transport for London’s private hire regulations proposals".
32. The law implements the following regulatory provisions:

A. Market entry regulations:

A permit request is to be submitted to the IMT (referred to in the law as “access to the activity”), as well as to the municipality (referred to in the law as “market access”).

Market access is subject to quantitative restrictions (quotas) established by the City Council for a number of municipalities or parishes.

Market access is also subject to the legal requirements applicable to taxi drivers and the vehicles for the provision of such services. Such requirements are closely linked to the market access regime, but they can also be linked to quality and safety issues, as well as other details regarding the activity which will be addressed in a separate section.

B. Price regulations:

Prices are established by an agreement between DGAE and the associations representing taxi license holders.

C. Quality and safety regulations and other aspects of the activity:

The quality and safety regulations and other aspects of the activity established by the law consist of the following: a vehicle certification subject to certain requirements (e.g., size, capacity and appearance of the vehicle); special inspection regime; licensed drivers; the service provision method; on-taxi advertising.

The law also provides for certain practices that must be complied with in the provision of passenger transport services by taxi arising from public service obligations (e.g., it is generally prohibited to refuse a transport service requested by a passenger and to refuse to transport luggage and pets).

3.1.1. Market entry regulations

3.1.1.1. Access to the activity

33. To access the activity, a permit request is to be submitted to the IMT. The permit shall be non-transferable and is to be issued for a period not exceeding 5 years. It shall also be renewable when proof is provided that the requirements for the access to the activity are still being met.

34. The law allows commercial companies, cooperative societies and self-employed entrepreneurs to provide taxi services. Commercial companies may hold several licenses,
while cooperative societies may only hold one\textsuperscript{17}.

35. **Since 2013, the law’s only requirement is for the entity to have the financial means to access the activity so as to ensure the undertaking’s good management**\textsuperscript{18}.

36. **The financial means are stipulated by ordinance** as follows\textsuperscript{19}:

i. in the case of first permit: the entity is required to have at least the minimum share capital established for the setting-up of commercial companies or cooperative societies. In the case of limited companies and sole shareholder limited companies, this requirement was eliminated by Decree-Law no. 33/2011 of 7 March, and may be freely defined by the shareholders;

ii. in the case of permit renewal: the undertaking is required to have a shareholder’s equity of at least EUR 1000 for each licensed taxi.

37. **Given that the minimum share capital requirement for obtaining a first permit only applies to some cases (as the minimum share capital requirement for limited companies and sole shareholder limited companies was eliminated), the currently applicable provisions for this requirement set a differentiated regulatory framework between the market players, and the reason for this is not clear.** In fact, there are two possibilities to consider. If the provision that requires the undertakings to have certain financial means in order to have access to the activity aims to protect the public interest, apart from complying with the requirements of the general provisions that stipulate the minimum share capital of the undertakings or the cooperatives, the restrictions should be equally imposed to every operator (which may consist of a given amount, as is the case for license renewal). Otherwise, these restrictions should not be imposed on any operator.

38. **For the permit renewal, it should be noted that every market player is equally required to have a minimum shareholders’ equity.** However, should this minimum amount not be required to some market players during the first 5 years, that is, until the permit renewal date, this requirement may be deemed unnecessary. Given that not every market player is bound to this requirement in the first five years, it is unclear why compliance with such requirement should be demanded after that period.

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\textsuperscript{17} See Decree-Law no. 251/98, article 3.

\textsuperscript{18} The requirements laid down by Decree-Law no. 251/98 for the access to the activity of taxi services were suitability and the technical or professional skills of the undertaking’s representatives, but such requirements were eliminated by the amendment made by Law no. 5/2013 of 22 January, making them more straightforward. Nonetheless, the financial means of the permit’s owner are still a requirement to be complied with.

\textsuperscript{19} See Decree-Law no. 251/98, articles 4 and 7, and Ordinance no. 334/2000 of 12 June, article 6. Proof of the mentioned required skills shall be submitted: i) in the early stage of the access to the activity, by means of a certificate issued by the commercial registration office stating the undertaking’s share capital and ii) after the undertaking begins its operations, by means of a duplicate or certified copy of the last balance sheet for corporate income tax purposes or by bank guarantee.
39. After considering these differences, the currently applicable provisions relating to the financial means requirement do not seem appropriate to ensure the good management of the undertaking, and they also cause distortions of competition.

3.1.1.2. Market access (quantitative restrictions)

40. The number of market players is limited to a fixed number set by the municipalities for no less than two years, following a prior hearing of the representatives of the sector.

41. Quotas are established by parish, either for a group of parishes or for the parish where the city council is located.

42. Considering the Road Transport System Act, such requirement may have been created for concerns as to the following: i) accessibility, ii) land use planning, iii) environment protection, iv) freedom to choose the procurement method and v) the economy of energy use.

43. These access rules also restrict the provision of taxi services when it comes to the parking of licensed vehicles, which is predetermined by the municipalities. The law provides for the following parking situations\(^{20}\):

   i. Free parking: taxis may circulate freely, being therefore at the disposal of the public, and there is no mandatory parking space;

   ii. Conditioned parking: taxis may park in any of the spaces designated for that effect, until the parking limit is reached;

   iii. Fixed parking: taxis are obliged to park in certain spaces predetermined in their license; and

   iv. Queue parking regime: taxis are obliged to follow a sequential service order.

44. The law also lays down the following specific terms for quotas\(^{21}\):

   i. Special quotas and parking regimes defined by the IMT for taxis that operate mostly out of the municipality, aimed at a better coordination between taxi services and bus stations, railway stations, subway stations, airports and ferry terminals or terminals with intermodal transport services.

   ii. Special quotas for taxis designed for persons with reduced mobility, which are applicable whenever it is impossible to adapt the existing taxis of the municipality to those needs.

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\(^{20}\) See Decree-Law no. 251/98, article 16.

\(^{21}\) See Decree-Law no. 251/98, articles 21 and 22.
45. By imposing a licensing regime subject to quotas defined by the municipality that will lead to *numerus clausus* quantitative entry restrictions, the law is limiting the number of service providers in the market and creating a geographic barrier that prevents the undertakings from offering goods and services. These regulations will be subsequently examined, and the arguments that generally are put forward in favour of quantitative entry restrictions regarding the services at hand shall be analysed, as well as their potential impact on competition.

46. One of the arguments usually put forward in favour of quantitative entry restrictions is that, given the low entry costs, a full free entry scenario would lead to oversupply\(^\text{22}\). These arguments claim that an excess of taxi service providers would reduce the average occupancy rate per taxi, thereby increasing the average costs, and consequently compromising the average productivity of the service and the market players’ performance. This alleged oversupply is also claimed to risk compromising the rational use of the infrastructures, namely in areas where there is greater demand (e.g. airport terminals, the most important taxis stands, city centre).

47. However, these substantial (and non-transitory) overcapacity claims do not seem to find support in the economic literature given that sunk costs\(^\text{23}\) of the activity are not significant. In fact, overcapacity would be a relevant argument if the activity was characterised by substantial sunk costs, for it is the relevance of sunk costs that determine exit decisions in the market. As there is evidence that the fixed costs borne by market players are small and the assets, namely the vehicles, may be traded in the secondary market, sunk costs tend to be, in general, of little relevance (OECD 2007 and ITF 2016a).

48. Moreover, these arguments do not account for the positive impact on consumer welfare of an increase in supply due to reduced waiting times, and the resulting increase in demand. These effects follow from the correlation between supply and demand, in particular from the economies of density. Consumers’ preferences over \(i\) price (tariff structure and prices) and \(ii\) service quality (e.g., reduced waiting times, travelling safety, comfort, the car’s cleanliness, the driver’s interaction quality and knowledge of the routes) determine the demand for for-hire passenger services. A greater supply of taxi services translates into shorter waiting times, which *ceteris paribus* leads to an increase in demand for taxi services.

49. It should be noted that, in some specific circumstances, congestion may occur in some areas (e.g. some taxi ranks in the city centre or airport terminals) following the elimination of quantitative restrictions to entry. If this is the case, those particular situations should be addressed with measures specifically directed at those problems/areas, as a function of capacity and demand in those areas. The regulatory measures adopted should always be those found to be the less intrusive means to address the problems at hand, in compliance with the principles of necessity, proportionality and

\(^{22}\) Some articles also mention that entry excess is driven by the potential lack of information on market conditions and the lack of job opportunities for less qualified workers (e.g., Teal and Berglund, 1987).
non-discrimination (e.g., temporary licenses or optimise infrastructure usage through prices\textsuperscript{24}).

50. **Furthermore, according to the OECD (2007), there is no need to keep enforcing quantitative entry restrictions on equity grounds.** According to the same document, there is no evidence that taxi drivers’ income is higher when entry restrictions are in place. While some drivers may be licensed, others are not, including those employed by the license holders. The value associated to *numerus clausus* is speculatively reflected in the license cost and appropriated by the license holders (without a direct correspondence to the drivers). If these restrictions were removed, those who fulfil the minimum requirements (e.g. taxi drivers that do not hold a license\textsuperscript{25}) would have more opportunities to access the activity. Furthermore, equity arguments would always have to be balanced with the consumer welfare losses that follow from entry restrictions. It should also be noted that, in a dynamic perspective, quantitative entry restrictions and excessive regulatory intervention may compromise investment and innovation stimuli, thus compromising the attractiveness of taxi services vis-à-vis other transport services, that appeal more to consumers. Therefore, excessive restrictions may compromise the sector’s dynamic sustainability in the long run, and its capacity to strategically react to the innovation developed outside the industry.

51. **Another argument put forward by those who support quantitative restrictions to entry relates to the negative externalities brought by the activity, namely pollution and traffic jams,** as a free entry regime would allegedly lead to a number of taxis above the social optimum. These arguments rest on hypothesis that do not find support on the economic literature, namely that entry restrictions on taxis reduce traffic congestion and that the inherent benefits outweigh the costs of such regulations (e.g., supply shortages, higher prices (if prices are not regulated) and increased waiting times). In the balance between costs and benefits, one must also account for the fact that entry restrictions to taxis may cause consumers to substitute away from taxis to private vehicles, even if only partially (e.g., Frankena and Pautler, 1984). In fact, increased use of taxis may lead to less private vehicles in the streets. In fact, the promotion of the use of taxis is sometimes put forward as a measure to reduce traffic congestion. Moreover, there are other ways generally considered more effective to pursue public policy objectives regarding pollution and traffic congestion that are less likely to cause distortions of competition.

52. **Additionally, It is also sometimes claimed that free entry and the ensuing reduced profitability may jeopardise safety and quality of service.** For instance, that in the absence of rules regarding drivers mandatory rest break, they might seek to compensate for the income reduction caused by a decrease in the number of services by working

\textsuperscript{23} Costs that cannot be recovered if the undertaking ceases its activity or exits the market.

\textsuperscript{24} The problem of infrastructure congestion, such taxi ranks in airports or train stations, may be easily solved by charging a fee for its use instead of enforcing entry restrictions (e.g., Frankena and Pautler, 1984).

\textsuperscript{25} The right to access the activity granted to those who fulfil the necessary requirements was one of the leading arguments for one of the court rulings (\textit{Humphrey v Minister for Environment and Local Government, 2000}) that triggered the deregulation process in Ireland in 2000.
longer hours and resting less, which might negatively impact driving safety.

53. **However, the causal relation between quantitative restrictions per se and the safety and quality level is neither proven** nor explained by substantiated theoretical arguments. Issues about safety and quality will be better dealt with through certification and regulation requirements on those two dimension (e.g., of vehicles and drivers). The elimination of *numerus clausus* needs not to be followed by looser quality regulation. It can, in fact, be combined with strengthened rules for quality and certification requirements, should such measures be required to address such concerns. In this regard, the regulatory provisions must prevent unnecessary entry restrictions and be limited to the minimum required to address the objectives at hand.

54. **The quotas and licensing required by the municipalities bring geographic restrictions to the transport service providers, which negatively affects competition** and the efficient use of transport capacity. The provision of occasional passenger transport services with greater geographical freedom increases competition and enables a better balance between supply and demand, namely due to seasonal variations of demand. It also enables a reduction of the costs for clients who travel between nearby municipalities. Currently, the client who travels outside the municipality where the service is requested pays a double fee, as taxi drivers are not allowed to pick up passengers outside their municipality limits. As such, they have to cover their empty return.

55. **Quantitative entry restrictions are a highly intrusive form of regulatory intervention liable to substantially deteriorate competition conditions in the market.** It impedes entry and expansion, and decreases competitive pressure.

56. **Therefore, this kind of market intervention is hardly reconcilable with the principles of an efficient economic regulation, namely in terms of proportionality.** When determining regulatory measures that are particularly intrusive, it is important to back them with robust evidence of the measure’s advantages against the free functioning of the market.

57. **Social objectives, namely transport needs of persons with reduced mobility, may be achieved through regulatory measures that do not imply quantitative entry restrictions.** For example, financial incentives to providers who drive adapted vehicles to help them compensate the additional costs inherent to the purchase or adaptation of such vehicles. Additionally, it is possible that together with congestion in areas of large demand, there may be shortages of supply in areas where scarce demand does not attract sufficient supply to meet the populations transport needs (e.g., less densely populated regions in the countryside), jeopardizing public policy objectives. Should it appear that subsidies

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26 The IMT, DECO (Consumer Protection Association) and the Portuguese Taxi Federation expressed the same concerns in the comments submitted to the AdC on the public consultation procedure concerning the draft version of this report.

27 In the comments submitted to the AdC on the public consultation procedure concerning the draft version of this report, the AMT stands by the fact that the currently applicable framework has specific features of a public service and reflects the importance of taxi services in the national transport system as an alternative means of transport, or complementary to the regular public transport system, designed to tackle or minimise the lack of regular transports
are in order, they should be designed in such a way as to avoid distortions between the different types or segments of providers. Effectively, imposing restrictions or distortions of competition on different segments of providers, such as transport services for persons with reduced mobility, may deteriorate the supply conditions offered to consumers.

58. **The costs of the quantitative entry restrictions depend, among other aspects, on the difference between the number of services provided in a free entry equilibrium and those provided under restricted entry** when the restriction is binding (and thereby, relevant). The larger the gap, the more restrictive is the intervention and the resulting supply shortage. As to the Lisbon municipality, the comments submitted to the AdC by the city council inform that the current total number of quotas was set in 1992 and amounts to 3550 licenses (prior to that, there were 3400). It should also be mentioned that among the 3550 quotas, 3447 taxi licenses were allocated (plus the 50 licenses of the special quotas for taxis designed for people with reduced mobility). The Lisbon city council claims that "there was no tender to allocate the remaining licenses (103) for several reasons, and most of them relate to the excessive number of licensed taxis in Lisbon compared to the significantly decreasing number of residents, a decrease verified in recent years, and associated to the economic crisis, particularly since 2011".

59. **Without clearly established rules substantiated by economic or regulatory models, the degree of discretionary deters a close examination of the established limits for setting quotas.** In this context, an intervention without clearly defined and measurable objectives and which fail to be grounded on models aiming to determine the alleged optimum supply level based on solid economic principles could hardly make improvements vis-a-vis the free entry solution. Moreover, information asymmetries on the part of the decision maker regarding the industry should not be set aside. Thus, even if we were to assume that free entry would lead to an excess of supply compared to the social optimum, which does not seem to be confirmed by the economic literature as remarked above, free market equilibrium would nonetheless be the best available solution (OECD 2007).

60. **The welfare loss inherent to entry restrictions translates into high license costs, which is an example of the economic rents associated with such restriction.** The license cost may represent higher costs for the service providers that are unable to acquire one through a tender. It should be mentioned that Lisbon taxi licenses sell for more than EUR 100 000 on the secondary market.

61. **The license cost reflects the current value of all the additional revenue that accrue to taxi service providers from the restrictions of competition.** It is estimated that the total amount of these annual rents of licenses for Lisbon taxis is between EUR 3.5 million and

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28 See Lisbon City Council Communication of 16 May 2016.
29 According to the advertisements published in websites for classified advertising (e.g., OLX). The City Council states there is no information about the values involved in these transfers/transactions of taxi licenses in Lisbon, but claims that according to the "vox populi" it amounts to between EUR 100 000 and EUR 150 000.
EUR 5.9 million\textsuperscript{30} \textsuperscript{31}. One should note that these figures do not include the additional welfare loss associated with the small market size as a consequence of the restrictive provisions. For example, the costs associated with waiting times are also not considered, as well as the efficiencies that higher competitive pressure in the market would bring in a dynamic perspective.

62. In short, it is our belief that the quantitative entry restrictions are not being adequate and proportional. The legislators and regulators should evaluate and consider the necessity and proportionality of this provision. Additionally, alternative, more efficient and less restrictive regulations should be considered in order to achieve the public policy objectives envisaged by the legislator (e.g., reduction of pollution and traffic congestion, consumer protection and safety). In effect, the economic efficiency and welfare losses associated with entry restrictions, the weak arguments presented in its favour and the lack of proportionality of the regulatory measure prompt the need to reconsider the need for this regulatory instrument.

63. Nonetheless, efficient licensing and certification requirements might be justified to ensure passenger safety, as long as they are limited to the minimum required to achieve them and avoid distortions among market players.

64. Apart from the above mentioned quantitative entry restrictions, only some market players may park in some taxi ranks due to the parking rules established by the municipality for each operator when allocating licenses. This parking regime, the number of market players limited by the quotas and the geographic obstacles associated to them limit the licensed market players as to the service they are authorised to provide (namely the authorisation to park in some taxi ranks)\textsuperscript{32}.

65. Therefore, the provisions about parking rules and their enforcement by the municipalities should be evaluated vis-a-vis the public policy objectives underlying these restrictions (e.g., objectives regarding land use planning policy, territorial coverage, and

\textsuperscript{30} This range is the result of the consideration of two license values: EUR 100 000 and EUR 60 000.

\textsuperscript{31} According to these figures, one may estimate the licenses’ annual rents by applying a discount rate similar to the average profit margin of 10-year bonds for countries within the euro area with the highest rating (AAA of 1.73%), namely Germany, Finland, Austria and the Netherlands. The licenses’ annual rents are estimated to be between EUR 1038 and EUR 1730. By multiplying these estimates by the number of licenses issued in Lisbon (3447), one gets the extreme range of welfare losses estimated for the Lisbon municipality (consequence of the current regulatory framework), and the current market size. The studies carried out by the Spanish Competition Authority (Comisión Nacional de los Mercados y la Competencia, CNMC) perform similar calculations for Malaga and Cordoba (December 2015 and January 2016) considering the average profitability of the Spanish Government 10-year bonds for 2000-2012 (4.6%). By applying a discount rate equal to the average profitability of the Portuguese Government 10-year bonds for 2000-2012 (5.44%), one may estimate the annual rents of licenses issued in Lisbon to be between EUR 11.2 million and EUR 18.9 million. One should also consider the estimates for welfare losses associated with quantitative restrictions for taxi licenses, as mentioned by Gaunt and Black (1996).

\textsuperscript{32} It is worth mentioning the importance of acknowledging the municipalities’ contribution to public policy objectives, for example land use planning policy, traffic management and landscaping, as pointed out by the AMT in the comments submitted to the AdC on the public consultation procedure concerning the draft version of this report.
the risk of congestion of some taxi ranks)\textsuperscript{33}.

66. **The consequences of these quotas are aggravated when tender’s candidate classification criteria discriminate potential market players** (in geographic and seniority terms) or when they introduce added restrictions. In effect, notwithstanding the fact that licenses are allocated on a tender and may be transferred to other undertakings that hold a permit, there may be awarding criteria that bring distortions to competition.

<table>
<thead>
<tr>
<th>Conclusions on quantitative entry restrictions</th>
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<tbody>
<tr>
<td>As to the quantitative entry restrictions:</td>
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<tr>
<td>• their proportionality and adequacy are not proven;</td>
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<tr>
<td>• it is recommended that the necessity and proportionality of quotas are re-assessed. If necessary, an alternative, more efficient and less restrictive regulation should be considered, in order to achieve the public policy objectives envisaged by the legislator;</td>
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<tr>
<td>• issues about safety and quality will be better dealt with through certification and regulation requirements pertaining to the quality level (e.g., of vehicles and drivers);</td>
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<tr>
<td>• social objectives, namely fulfilling the transport need of persons with reduced mobility, may be achieved through regulatory measures that do not imply quantitative entry restrictions.</td>
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The provision of transport services is geographically restricted due to territorial quotas. It is recommended that the necessity and proportionality of this restriction is re-assessed.

The taxi parking regime leads to competition restrictions. It should be reviewed, bearing in mind the possible underlying public policy objectives, such as land use planning and the risk of congestion of some taxi ranks.

If quantitative entry restrictions are to be imposed, the candidate classification criteria for the tender that may discriminate potential market players, namely in geographic and seniority terms, should be removed.

Removing unnecessary entry restrictions would increase the access to the activity by those who fulfil the minimum requirements, namely unlicensed taxi drivers.

\textsuperscript{33} For instance, article 19 of the Lisbon Taxi Regulation provides certain limitations in the tendering procedure considering i) the location of the registered office or residence (to be located in the municipality); ii) the number of years during which the candidate was not included on the tender; iii) the years of activity in the sector and iv) the length of activity or residence in the municipality.
3.1.2. Prices

67. Taxi services are subject to prices set by convention. The tariffs and application principles are fixed by convention between the State, represented by the DGAE, and taxi associations, following the submission of comments by the IMT. The convention is approved by the government member responsible for setting prices.

68. The currently applicable taxi service prices were fixed by convention signed on 27 December 2012 ("2012 Price Convention") by the DGAE, ANTRAL and the Portuguese Taxi Federation.

69. The 2012 Price Convention provides for the applicable tariffs, stipulating that:
   i. different tariffs will apply for daytime and, with a surcharge, for night-time service;
   ii. urban fares and kilometre fares consist of an initial fee and itinerary and duration fractions;
   iii. itinerary and duration fractions are calculated according to negotiated kilometre and waiting-times prices;
   iv. prices for specific itineraries may be fixed in a supplement to the Convention;
   v. taxis (bearing license labels) have a daytime fare (between 6 am and 9 pm) and a night-time fare (between 9 pm and 6 am and for 24 hours on Saturdays, Sundays and public holidays);
   vi. a supplementary fare may be charged for service requested by phone, for luggage and for pet transport.

70. The 2012 Price Convention also provides for the calculation and collection of the several applicable fares: i) fare no. 3 - one way trip (to a destination outside the taxi’s operational area); ii) fare no. 5 - round trip service; and iii) fare no. 6 - per hour fare.

71. Thus, in general, the final fare paid by the passenger consists of an initial fee and itinerary and duration fractions calculated according to the prices set per kilometre and waiting times, respectively. As a requirement for applying the tariffs, the taxi must have a duly approved and accredited taximeter (visible to the passenger).

72. The 2012 Price Convention further provides for a set of information obligations towards the client, namely about the tariffs, the tariff applicable to vehicles with a passenger capacity exceeding 4 seats and obligations to communicate tariff changes for itineraries included in different types of tariffs.

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34 According to Decree-Law no. 297/92.
35 See articles 4 and 10 of the 2012 Price Convention.
73. The grounds for the pricing regime set in Decree-Law no. 297/92 relate to the need to ensure that the citizens (...) have a previous knowledge of all the transport conditions, and are given guarantees, control and transparency. The public service obligations (universality) and the principles laid down in the Road Transport System Act concerning the fair return of investments and compensation for expenditure resulting from public service obligations may be somehow related to the pricing regime.

74. Other than preventing the service providers from freely deciding their fares, these prices set by convention also restrict their ability to compete. In effect, despite contributing to transparency, prices set by convention are the most restrictive form of regulation, as providers are prevented from competing on the basis of the price/quality trade-off. From an economic efficiency perspective, although the regulated tariffs may envisage price variation according to the moment and location where the service is initiated or concluded, setting prices by convention interferes with the supply/demand equilibrium.

75. These restrictions are even more relevant in the face of new business models, as the restrictions weaken traditional taxi service providers' ability to strategically react to new entrants, namely through diversified price and quality strategies. This may aggravate distortions of competition resulting from the regulatory framework and compromise the level playing field among the different service providers.

76. Additionally, given that the tariffs are based on a co-regulated system and considering the information asymmetry between the business community and the government, the established price may be above the competitive price.

77. When reviewing the regulations, it should be noted that quantitative restrictions to entry may increase the need for some form of price regulation, as they increase market power vis-à-vis consumers and the average waiting times for another taxi. As such, it is important to avoid situations where the need for regulation arises, even if only partially, from regulations currently applied at another level, at the risk of overregulating the market.

78. The correlation between price regulation and regulation of other aspects of supply is not confined to the market access topic. By limiting the service providers' ability to differentiate and personalise their services (leading to anonymity), taxi services' standardisation imposed by quality regulations eliminates the repeated interaction between the consumer and a particular supplier, thus compromising the reputation mechanisms that could bring greater competitive pressure. Therefore, this kind of regulatory provision may worsen information issues and weaken the incentives for market players to compete in price.

79. In this regard, and to avoid the circularity of the analysis of the need for regulation, a structured and integrated approach based on a hypothetical situation of lack of regulation should be adopted ("greenfield approach").
80. The transaction costs of the activity are frequently given as the reason to justify price regulations in the taxi services market. Without price regulation, when a taxi pulled over to pick up a passenger on the public roadway (street hailing), the consumer would be faced with uncertainty as to price and service quality, including uncertainty as to the waiting time for another taxi. In a context of free price determination, the consumer would be unable to compare alternative offers, as he would not possess information about relative supply conditions and would be unable to "reserve" the price proposal of the taxi that was picking him up. When the consumer decides to decline the price offer, there is a cost translated into waiting time. As the consumer does not possess information about that cost, he will make his choice with uncertainty (Diamond, 1971). This bargaining context favours the service provider, as it increases his market power vis-à-vis the consumer. In the absence of regulation, this negotiating context encourages the service provider to charge higher prices and exercise a "temporary" market power over the consumer. The situation is worsened by information issues, particularly in situations where the market is unknown to the passenger (e.g., tourists), and by the "passenger sensitivity towards time", which increases the cost of waiting for another taxi.

81. **Transaction costs also exist in the taxi rank segment.** In fact, even though the client may theoretically compare the price of the different taxis on a given rank prior to making his choice, the taxi rank structure may not allow it\(^\text{36}\). Additionally, when the “first in, first out” rule is applied (stipulated in the queue parking regime) the consumer will not be able to choose.

82. **However, the relevance of the transaction costs is mitigated when it comes to pre-booked services.** In the absence of tariff regulations for this segment, the client is allowed to compare prices. Based on the available information, the consumer will seek to choose the price/quality offer that best suits his preferences.

83. **Transaction costs are, thus, different for different segments, and they are more significant for services hired by street hailing or at a taxi rank.** To comply with the principles of necessity and proportionality, the regulatory measure should be restricted to the minimum required to address market failures. In this assessment, the hiring process by electronic platforms should be taken into consideration, as they mitigate asymmetries amongst the different segments (see section 4).

84. **The free setting of prices enables competition and a dynamic supply/demand adjustment.** This option poses, however, more challenges as to the need to ensure price transparency and minimising transaction costs and information asymmetries, to the benefit of competition and consumer welfare.

85. **On the other hand, when market failures are identified, even if confined to some segments (street hailing and taxi ranks), or where public policy objectives are envisaged (e.g., consumer protection), some price regulatory intervention in these segments may**

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\(^{36}\) Namely if the taxi rank structure does not allow the vehicles to drive off in any order.
be justifiable\textsuperscript{37}. There are, however, other forms of price regulation that are more flexible than the currently applicable regulatory provisions, and that would thus be less restrictive of competition.

86. **There are several ways to regulate prices** that allow for different degrees of freedom to service providers in their pricing strategies, and that will thus differ in terms of their impact on the conditions for the adjustment between supply and demand as well as on the competitive conditions in the market. They will also have different implications in terms of the degree of price transparency necessary to ensure their efficiency. Fully liberalised prices (less restrictive) and fixed prices (more restrictive) are at the lower and upper end of the spectrum of options. Between those cases, however, there are other intermediate regulatory options.

87. **Take, for example, the regulation model providing for a maximum price**\textsuperscript{38}. If the legislator pursues public policy objectives, such as consumer protection against price spikes at certain levels of demand and the reduction of uncertainty for the consumer, enforcing maximum prices will allow addressing those concerns in however a less restrictive approach than administratively set prices, for it allows price competition through discounts/reductions against the maximum price.

88. **Nevertheless, this regulatory instrument interferes with the dynamic balance between supply and demand when compared to a scenario with full freedom to set prices. It nonetheless also entails some risks**: the price cap may be provide a focal point for collusion, and the regulated maximum price may in practice become a fixed price.

89. **A continuous monitoring of the effects of regulation based on empirical evidence from the market may reduce these risk**, by regularly reassessing the effectiveness of the currently applicable regulation in terms of necessity and proportionality and considering potential adjustments deemed necessary in light of the observed market responses.

90. **It may also be relevant to assess the effect of the regulatory instrument on innovation.** It is important to avoid regulation that jeopardises innovation on quality of services or pricing models (e.g., no ban on premium services).

91. **In sum, given the discussion about the regulatory framework based on the analysis of the extent of market failures, we conclude that administrative pricing may be excessive and cause welfare losses.** As such, a potential regulatory review should ease regulation on prices, favouring full price liberalisation whenever possible, particularly in segments where market failures are less pronounced (such as the pre-booked services segment).

92. **Regulatory intervention should proactively promote competition** through a framework

\textsuperscript{37} In the comments submitted to the AdC on the preliminary version of the report, the AMT shares the special concern to be given to these market segments.

\textsuperscript{38} It should also be noted that regulatory provisions that impose a minimum and a maximum price (price range) are restrictive of competition and are hardly substantiated by public policy objectives.
that observes the principles of efficient regulation principles, is straightforward and homogeneous for the various service providers, so as to reduce the distortions to competition. It may however be necessary to account for market failures that are unique to certain segments, and which may justify some adjustments.

93. **When market failures are identified or the legislator deems it necessary to impose some regulatory intervention to specific market segments (namely street hailing and taxi ranks)** in order to achieve public policy objectives, such intervention should be **restricted to the minimum required** to achieve them (e.g., setting price caps rather than price levels) and be periodically reviewed.

94. **It is also important to consider other regulatory issues** with an impact on competition and price transparency, namely: *i)* obligations concerning **price advertisements**; *ii)* obligations concerning the **notification of prices**; and *iii)* the **tariff structure** to be applied.

95. **The regulatory options on these matters require an integrated analysis** that considers the following aspects: the price regulation model to adopt (e.g., free versus maximum prices); the broader regulatory framework; the net effect from the trade-off between the potential positive effect on price transparency and the reduction of uncertainty for the consumer, which enhances competition; and the effect on competition of reduced flexibility for market players' strategies, which may hamper the adjustment of supply to market demand.

96. **Finally, it should be mentioned that, regardless of the regulatory provisions on prices, continuous monitoring** of market developments will be key in determining:

   i. the effectiveness of the adopted regulatory measure, namely whether they allowed achieving the envisaged public policy objectives and their impact on competition;

   ii. the market outcomes resulting from a potential liberalisation (partial or full), assessing the relevance of potential market failures and the impact on consumer welfare; and

   iii. if it is necessary to adapt the existing regulations to mitigate or eliminate the impact on competition or to better pursue the public policy objectives envisaged by the legislator.

97. **This analysis must be substantiated by empirical evidence** that illustrates market developments (ITF 2016a; ITF 2016b).

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39 Such as transaction costs, information asymmetries and the need to restrict the providers' bargaining power vis-à-vis the consumers' in certain market contexts.
Conclusions regarding price regulation

* **Fixing prices by convention restricts competition** and may cause welfare losses.

* This restriction takes on greater significance with the emergence of new business models as fixed prices weaken traditional taxi service providers’ ability to strategically react to new entrants.

* **Price regulations should be more flexible**, and price liberalisation should be favoured whenever possible, particularly in segments where market failures are less pronounced (such as the pre-booked services segment).

* When market failures are identified or the legislator deems it necessary to impose some regulatory intervention to specific market segments (namely street hailing and taxi ranks) in order to achieve public policy objectives, such intervention should be restricted to the minimum required to achieve them.

* **In a scenario of price liberalisation, it is important to consider other regulatory issues with impacts on competition and price transparency**, namely: i) obligations concerning price advertisements; ii) obligations concerning the notification of prices; and iii) the tariff structure to be applied.

* The regulatory options related with these subjects require an integrated analysis that takes into consideration not only of the price regulation model to adopt (e.g., minimum and maximum prices), but also a broader regulatory framework and the net effect resulting from the trade-offs at hand.

* **Regardless of the price regulatory provisions that might be adopted, it is key to undertake continuous monitoring** of market developments, duly substantiated by empirical evidence.

3.1.3. Quality, safety and other aspects of the activity:

98. **Quality regulation involves a number of aspects mostly regarding the driver and the vehicle that provide the transport service.** The existing regulation focuses on technical aspects about safety and features of the service provided.

99. **Information asymmetries are traditionally given as the reason for imposing quality regulations in such transport services, as when requesting the transport service the passenger is unaware of the service quality that is about to be provided.** According to these arguments, prior to using the service, the passenger is unaware of several aspects that influence the overall service quality, namely with regard to the cleanliness and comfort of the car, the driver's driving skills and knowledge of traffic and routes. The features of the service that can only be evaluated after the service is provided may be defined as "experience goods". Furthermore, there may be some quality and safety standards that the consumers will not be able to evaluate even after using the service,
known as "credence goods"\textsuperscript{40}.

100. Therefore, in the absence of quality regulations, information asymmetries associated with the lack of reputation effects that rule market strategies may cause the providers to overlook safety and quality aspects. In fact, as the user is unable to foresee the service quality he is about to request and to consider his or other people's previous experiences, the service provider will not have the incentives to incur the additional costs inherent to service quality, as the demand for his service will not increase. Instead, he might be able to reduce his costs by neglecting quality and safety aspects. Such information asymmetry leads to unfavourable selection and decreased quality in the market.

101. In a deregulation scenario where it is possible to differentiate supply and to build a reputation (by creating a "brand"), information asymmetries will decrease and the incentives to compete on quality will increase. In such circumstances, the user will consider his and/or other people's previous experiences before making his decision. In this respect, the provision of services through electronic platforms together with reputation mechanisms based on the evaluation of the service given by previous users may contribute to the reduction of the above-mentioned information asymmetries. Such development may lead to a more intense competition based on the quality of the provided service. It should be noted that, if they are reliable, such reputation mechanisms may be more efficient in providing incentives to increase quality than the imposition of minimum quality requirements to the service providers, especially when there is no efficient monitoring.

102. However, given that on the one hand it is essential to ensure user safety in every circumstance, and that on the other hand there are safety issues that the consumer is unable to perceive\textsuperscript{41}, market failures and public policy objectives might still justify the need for some quality and safety regulation\textsuperscript{42}. In effect, the public policy objectives traditionally given as the reason for imposing quality and safety regulations relate to \textit{i}) passenger, driver and other individuals' safety, \textit{ii}) consumer protection, \textit{iii}) environment protection and \textit{iv}) accessibility for people with reduced mobility. In case the legislator intends to pursue these quality and safety objectives, regulating these matters could be done by stipulating the standards that the undertakings, drivers and vehicles must comply with through a law or other regulatory instruments. As mentioned above, if the legislator deems it necessary to pursue other social objectives, namely to fulfil the transport needs

\textsuperscript{40} "Credence goods" are goods whose quality the consumers are unable to ascertain even after they have consumed them. For instance, in a hypothetical situation, a tourist was provided a service where it was necessary to make a detour that implied more travelling time and a higher price, but the user could not perceive it.

\textsuperscript{41} These aspects that the consumer cannot perceive restrict his ability to evaluate the quality and safety of the service in every way, even after consuming them.

\textsuperscript{42} In the comments submitted to the AdC on the public consultation procedure concerning the draft version of this report, the AMT highlights and supports the need to ensure an appropriate balance between the benefits associated with a less intense regulatory standardisation of taxi services (and the higher degree of differentiation) and the public policy objectives behind the currently applicable rules for vehicle features.
of persons with reduced mobility, there are instruments that may ensure them, but it is also relevant to consider the effects of such measures on competition.

103. Additionally, even though potential information asymmetries faced by consumers concerning service safety in different market segments (street hailing, taxi ranks and pre-booked services) cannot be excluded, it is unlikely that their extent justifies differentiation in safety requirements between segments.

104. With respect to quality dimensions unrelated to safety, which are easily evaluated by the consumer after using the service, there may be different information asymmetries in the different segments. In this regard, as they are frequently associated with reputation mechanisms, business models based on electronic platforms have the potential to solve information asymmetry problems, thus reducing the consumer's uncertainty regarding his choice. To that end, the implemented reputation mechanisms must be credible and trustworthy. Therefore, credible and trustworthy reputation mechanisms reduce the need to set up regulations regarding the conditions of service provision (e.g., Einav et al, 2015).

105. The service quality differentiation will stem from the competition level observed between the providers in the market. However, there may still be market failures, mainly in certain segments (street hailing and taxi ranks). If the legislator deems it necessary to address market failures or other public policy objectives, the minimum requirements must be based on efficiency principles, namely necessity, proportionality and non-discrimination (between different transport services or users).

106. Thus, the regulatory provisions must be restricted to the minimum required to meet market failures and achieve public policy objectives. The quality standards must be those found to be strictly essential and proportionate to achieve the objectives envisaged by the legislator and should not establish unnecessary entry and competition restrictions. Furthermore, the regulatory provisions must take the technological evolutions experienced by the industry into account and should not inhibit innovation. For instance, other than the already mentioned electronic platforms, introducing a GPS service may reduce the need for requirements regarding the drivers' detailed knowledge of the routes.

3.1.3.1. Required procedures and the especial service procurement method

107. The legislation establishes the taxi service provision and charging method i) according to distance travelled and waiting times, ii) per hour, according to the duration of the service; iii) by itinerary, according to the established prices; iv) by contractual arrangement lasting at least 30 days (indicating the duration of the contract, parties and price) and v) per kilometre.43

43 See Decree-Law no. 251/98, article 15.
108. These provisions are in line with other regulatory provisions in the sector, namely the licensing regime and the inherent quantitative and geographic restrictions, as well as with the applicable price regulations. In practice, these provisions prevent the service provider from charging prices below those stipulated for services lasting less than 30 days. Even if it was to be claimed that these provisions aim to protect the consumer, which is difficult to reconcile with the fact that they prevent prices that are lower that the stipulated level, this argument would not be valid for services hired through radio dispatch or electronic platform.

109. Exhaustive legal provisions concerning the taxi service provision and charging method, though covering several collection methods, may restrict new forms of service provision. It should be noted that even though the law provides that the service may be provided "by contract", it should last at least 30 days and is subject to a written agreement, which limits the initiative of the taxi service providers.

110. These legal provisions limit the ability of taxi service providers to freely compete in the market. On the one hand, they constrain the ability of service providers from differentiating their product from their competitors, and on the other hand, they also limit their ability to provide the same service for which other providers may be legally entitled (freely deciding the duration and price of the contract).

111. Given all the arguments above and the relevance of providing flexibility for taxi service providers to adjust their market strategies, we consider that the elimination of extensive regulation concerning the service provision and charging method should be contemplated. This should, however, be discussed along with solutions to be adopted regarding licencing quotas and the applicable pricing regime.

112. Following the same reasoning, we also consider that the legal provision stipulating 30 days minimum duration for contract-based taxi services should be eliminated.

3.1.3.2. Regulation regarding vehicle features and on-taxi advertising

113. The activity is subjected to a set of rules regarding vehicle features and appearance. There is a set of requirements that restrict the choice of the vehicle model, including: i) a national license plate, ii) closed vehicle, iii) a minimum wheelbase distance of 2.5 metres, iv) at least four doors, two of them on the right-hand side, v) passenger capacity of up to 9 seats, including the driver, vi) the car body must be painted ivory beige or sea-green and black and vii) be equipped with a taximeter.

114. The norms for on-taxi advertising are also regulated by the law and the space available is limited. Advertisements may be placed on the rear fender, on the side doors, except for

the windows, or on the roof.45

115. **Considering the general regulatory framework which establishes, namely, prices set by convention, the law provides for a standardisation of vehicle features**, perhaps with the aim of making them easier to identify and to have a lower impact on the landscape, as well as to meet safety and quality objectives. One should have in mind, however, that it reduces the possibilities of differentiating the providers.

116. **As for the delimitation of the space that can be used for advertisements, the norms may have had underlying considerations of visibility of the driver, and therefore, of safety.** However, Ordinance no. 134/2010 allows advertisements on the roof of the car, and its preamble states that "**on the one hand advertisement display on taxi roofs does not jeopardise road safety, and on the other hand it promotes a better economic exploitation of such activity**".

117. **The regulation of vehicle features and appearance leads to its standardisation**, and consequently to a limited differentiation of the providers, thus discouraging innovation and service quality, as:

i. on the one hand it prevents that different and perhaps cheaper vehicles are used to provide taxi services;

ii. on the other hand it makes it harder to recognise differentiated providers, especially in street hailing.

118. **In short, these measures reduce competition based on the differentiation between providers.** They limit the providers' ability to compete, prevent the emergence of providers specifically seeking to meet certain aspects of demand, namely users that prefer certain vehicles (e.g., smaller vehicles with only two seats, hybrid or electric vehicles), and discourage supply differentiation by limiting the possibility of advertising such features (e.g., vehicle with wi-fi).

119. **Thus, these provisions restrict the capacity to compete on the part of some operators.** They enforce quality standards that benefit certain providers and are of a higher level than a well-informed consumer would prefer to choose.

120. It should be noted that taxis will always be identified by consumers (and the police, when using priority lanes) through the roof-light and the license and permit labels.

121. **Accordingly, it is considered that requirements and restrictions concerning vehicle features should be reconsidered.** Rendering such rules more flexible and reviewing the pricing and market access regime to promote a greater liberalisation would bring increased supply diversity and lower costs. More flexible rules for on-taxi advertising

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might allow a greater range of services on offer, which will impact the service quality.

3.1.3.3. Special inspection regime

122. Taxi service providers must also comply with a special inspection regime. Service quality and safety are the underlying reasons that may translate into restrictions of competition.

123. If the special inspection regime includes provisions that translate into disproportionate costs, the number of service providers may decrease as entry costs are significantly increased. When not compulsory for every service provider, it will have discriminatory effects that will prevent them from competing in a level playing field context.

124. In the scope of an eventual review of the regulatory framework, there should be a verification of whether the current special inspection regime in achieving its objectives. Consideration should also be given to a level playing field for all market players, given the specific features of the type of service provision in question.

3.1.3.4. Insurance

125. With respect to liability insurance obligations, the law does not provide for any legal obligation to insure vehicles used for for-hire public transport services (taxis) other than the general terms for a motor vehicle liability insurance aimed at protecting the victims of traffic accidents. Thus, there seems to be no restriction of competition stemming from the general rules.

126. However, when carrying out a risk analysis, insurance companies may attribute a higher risk to taxi service providers (under the mandatory vehicle circulation rules arising from public service obligations), introducing other conditions and collecting higher insurance premiums than those charged to other transport service providers under the corresponding legal framework, such as car rental, travel and tourism agencies and agencies of tourism activities. The same may apply to workplace accident insurance for taxi drivers.

127. Potential differentiated costs, though they may not stem directly from legal provisions, must be taken into consideration when regulatory design, for for-hire passenger services with driver, as it has an impact on the incentives for several providers.

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46 The special inspection regime provided for by article 10 (3) of Decree-Law no. 251/98 was regulated by Decree-Law no. 144/2012 of 11 July, rectified by the Rectification Declaration no. 44/2012 of 7 September, and amended by Decree-Law no. 100/2013 of 25 July 2013 and the Driver and Vehicle Agency Order no. 5392/99 (series 2) of 1 February 1999, published in the Journal of the Assembly of the Portuguese Republic no. 63 of 16 March 1999. The law provides for a mandatory inspection to be done one year after the registration, and then annually until 7 years after the registration. From the eight year on, inspection is mandatory every six months.

47 See article 4 (80) of Decree-Law no. 291/2007 of 21 August.
3.1.3.5. Professional certification of the driver

128. **The law mandates taxis must be driven by qualified drivers** with a professional taxi driver certification\(^{48}\), which is valid for five years and renewable within every five years from the date of the exam approval or the last certification renewal.

129. **The law establishes requirements to obtain the taxi driver certification** namely the following: *i)* holding a legal and valid license to drive a category B motor vehicle indicating the classification in group 2; *ii)* not be considered unfit; *iii)* having the required compulsory education; *iv)* passing the exam provided for by article 12 of the Decree and *v)* master the Portuguese language. The above-mentioned exam requires attending and obtaining a passing grade in training courses, but the driver may be exempt upon providing proof of previous attendance of training courses on those subjects. The training providers are approved by the IMT, and the requirements related to subjects, the duration and training courses organisation are approved by ordinance\(^{49}\).

130. **The special driver certification regime for drivers**, which, as previously mentioned, likely takes into consideration issues of user safety, may also entail a restriction of competition.

131. **If the regime includes provisions that translate into disproportionate costs, the number of service providers may decrease** as entry costs significantly increase. When not compulsory for every service provider, it will have discriminatory effects that will prevent them from competing in a level playing field context.

132. **In the scope of an eventual review of the regulatory framework concerning for-hire passenger services with driver, there should be a verification of whether the objectives of the special driver certification regime are being met**, given that is mandatory for taxi services. A level playing field for every market player should also be taken into consideration, preserving the specific features of the type of service at hand.

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\(^{48}\) The certificate for the provision of for-hire urban transport services is laid down in article 10 of Decree-Law no. 251/98 and Law no. 6/2013 of 22 January.

\(^{49}\) The certification of training providers is laid down in article 13 of Law no. 6/2013. Ordinance no. 851/2010 of 6 September, amended by Ordinance no. 208/2013 of 26 June, and Ordinance no. 251-A/2015 of 18 August are also applicable.
Conclusions regarding quality and safety regulations

- Quality and safety regulations must be based on principles of efficient regulation and provide for effective monitoring and implementation.

- The regulatory provisions should be restricted to the minimum required to address market failures and the public policy objectives envisaged by the legislator.

- It is unlikely that the possible information asymmetries between different segments (street hailing, taxi ranks and pre-booked services) justify discriminated requirements concerning safety. As quality is more easily evaluated by the consumer, information asymmetries in pre-booked services are less important.

- Hiring services through electronic platforms has led to a mitigation of transaction costs and information asymmetries and the creation of reputation mechanisms to consolidate new ways to discipline the market players' strategies regarding quality (and price). It might be more efficient than imposing regulatory provisions, especially when monitoring is difficult to enforce.

In terms of the imposition of procedures and the special service procurement method, the AdC recommends that:

- elimination of the extensive regulation concerning taxi service provision and charging be considered, so that providers may adopt more flexible market strategies in response to new methods of service provision based on electronic platforms;

- consideration be given to the elimination of the legal provision that stipulates the minimum duration of 30 days for contract-based taxi services;

- market-access rules and price regulations be reconsidered to make them more compatible with regulatory solutions.

As to the regulation of vehicle features and on-taxi advertising, the AdC recommends that:

- prerequisites and restrictions be reconsidered, as rendering such rules more flexible would allow increased supply diversity and lower costs;

- more flexible rules for on-taxi advertising be envisaged, to allow a greater range of services on offer and have an impact on the service quality;

so that taxi service providers may adopt more flexible market strategies in response to new service procurement methods based on electronic platforms.
As to the vehicle inspection regime and the driver certification requirements, the AdC recommends:

- the assessment of the effectiveness of the special inspection regime of taxi service provision regarding the objectives envisaged by the legislator;
- that competing service providers have a level playing field, while accounting for the specificities of each service provision.

3.2. Other means of for-hire passenger services with driver

133. In Portugal, for-hire passenger services are also provided in light tourist vehicles (Letter “T”\(^{50}\)), vehicles exempt from bearing license labels (Letter “A”\(^{51}\)), rental vehicles with driver (rent a car) and travel and tourism agencies\(^{52}\) vehicles are also covered by specific legislation.

134. Regardless of the applicable laws, the current economic background, that is, the appearance of electronic platforms that connect consumers and drivers, allowed these service providers to compete with traditional taxi services.

135. There is a set of regulations which have been concluded to be restrictive of competition in the legal framework applicable to these activities:

i) **Quantitative entry restrictions** arising from quotas applied to light tourist vehicles (Letter "T") and vehicles exempt from bearing license labels (Letter "A") and from the accessory obligations inherent to this transport service compared to services provided by car rental, travel and tourism agencies and agencies of tourism activities.

ii) **The provision of services using vehicles exempt from bearing license labels** (Letter "A") is subject to prices set by convention.

iii) **Regulation of the vehicle features of** light tourist vehicles (Letter "T"), vehicles exempt from bearing license labels (Letter "A") and rental vehicles with driver (rent a car).

iv) **Required procedures and a special service procurement method** which apply to car rental (with driver) and travel and tourism agencies.

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\(^{50}\) Undertakings providing taxi services in light tourist vehicles (Letter "T") are subject to the provisions of article 23 of Decree-Law no. 251/98 (regulation of access to the activity) destined for taxi service providers, and their activity follows a free pricing regime.

\(^{51}\) Vehicles exempt from license labels (Letter "A") are not bound by the same identification requirements applicable to taxis. The applicable regulations are similar to those applied to taxi service providers under article 23 of Decree-Law no. 251/98.

\(^{52}\) Agencies of tourism activities carry out recreational, sport or cultural activities which can be defined as outdoor tourism activities or cultural tourism that are deemed to have tourism interest in the area where they are developed.
3.2.1. Quantitative entry restrictions

136. **Taxi service provided in light tourist vehicles (Letter "T")** are subject to quotas set by tourist zone. For the purpose of setting quotas, Porto, Lisbon and Faro are considered to be tourist zones. The tourist zone to which they are subject determines the start point for the taxi service provision in light tourist vehicles. The quota amount is fixed at i) 20 units for Porto (including the Porto, Braga and Viana do Castelo districts), ii) 100 units for Lisbon (including the Lisbon and Setúbal districts) and iii) 80 units for Faro (district). The quota amount is fixed considering the number of overnight stays, the hotel occupancy rate and other determining aspects of demand, such as frequent conferences. The fact that quotas can only be updated once every two years is also taken into account.

137. **Transport services by vehicles exempt from license labels (Letter "A")** are also subject to quotas regulated by a DGTT Order (currently under the competence of the IMT) following a substantiated proposal of the corresponding city council. The above-mentioned Order authorises the allocation of licenses to the following limits: i) 1 for each city council; ii) 10% of the corresponding quotas, a maximum of 10, for district capitals except for Lisbon and Porto and iii) 25 for Lisbon and Porto. The Order also stipulates that i) preference is to be given to tourism drivers that hold a professional license and ii) the applicants' license seniority (article 6). The vehicle can only be exempt from bearing the license labels for five years from the license registration date and this period may be extended after the vehicle inspection.

138. Similarly to what was referred to above with respect to taxi service quotas, the proportionality and adequacy of quantitative entry restrictions has not been demonstrated, as applied to the taxi service provision by light tourist vehicles (Letter "T") and vehicles exempt from bearing license labels (Letter "A").

139. Hence, the AdC recommends that the need and proportionality of the activity quotas is assessed and considered. If necessary, an alternative, more efficient and less restrictive regulation should be considered, in order to achieve the public policy objectives envisaged by the legislator.

140. **The attribution of preferential positions in the procedure for allocation of licenses to operate as vehicles exempt from bearing license labels (Letter "A"), namely those that take into account the antiquity of the applicants' license introduces a framework which**

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53 See Implementing Decree no. 41/80 of 21 August, amended by Implementing Decree no. 66/85 of 11 October.
54 See Implementing Decree no. 41/80 and Order of 23 November 1981 of the former DGTT (Directorate-General of Road Transport).
56 It should be noted that Decree-Law no. 92/2011 of 27 July repealed the legal framework of professional licenses previously approved by Decree-Law no. 358/84 of 13 November (which included the tourism driver professional license) and stipulated the access to professions. Decree-Law no. 92/2011 has since then been repealed by Decree-Law no. 37/2015 of 10 March which lays down the access to and exercise of professions and professional activities.
may lead to distortions of competition under the terms mentioned in point 66.

141. **Transport service with driver may only be provided by car rental agencies in addition to the vehicle rental.** In fact, the car rental legal framework allows the conclusion of an additional contract, exclusively aimed at the driving of the vehicle that was rented. It is an additional driving service that can only be provided by the renting entity.

142. **The legal framework for travel and tourism agencies includes tourist transport provided during tourist travel as part of the activities of the agency.** Services unrelated to package travels provided by accommodation establishments and transport undertakings through electronic means or the Internet are clearly not included in the travel and tourism agencies activities.

143. **Tourism agencies may provide transport services for touristic activities or client transport, exclusively in the scope of their activities, in vehicles with passenger capacity of up to 9 seats.**

144. The fact that car rental, travel and tourism agencies and agencies of tourism activities may only provide transport services in the exercise of their main activity appears to seek to redirect the provision of for-hire passenger services with driver as a taxi service in general, which will be subject to special provisions as it is considered a public service.

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57 Licenses are issued for five years. This period may be extended after the vehicle inspection.

58 Decree-Law no. 181/2012 of 6 August, amended by Decree-Law no. 207/2015 of 24 September, lays down the access to and exercise of the car rental activity also known as rent a car. Light passenger vehicles, motorcycles, tricycles and quadricycles may be used in the exercise of this activity. Among other aspects, such vehicles may not be older than 5 years since the first registration date, except for those with special features, which are specifically regulated by the IMT. See Decree-Law no. 181/2012, articles 2 and 6.

59 The access to and exercise of the activity of travel and tourism agencies was approved by Decree-Law no. 61/2011 of 6 May, amended and re-issued by Decree-Law no. 199/2012 of 24 August and amended by Decree-Law no. 26/2014 of 14 February.

60 Travel agencies may use their own means of transport or vehicles leased for tourist travels. Only when vehicles with a passenger capacity exceeding 9 seats are needed is it mandatory for the driver to be qualified to drive road public transport vehicles, either nationally or internationally. According to the law, a tourist travel is a journey combining at least two of the following services: i) transport, ii) accommodation and iii) tourism services not ancillary to transport or accommodation. Decree-Law 61/2011 also defines package travels as a subcategory of tourist travels. Such packages are sold or offered for an all-in price, last for more than 24 hours or include an overnight stay. Tourism services not ancillary to transport or accommodation, namely those related to sport, religious and cultural events, are an important part of the trip. For more on these matters, see Decree-Law no. 61/2011, articles 3, 13 and 15.

61 The so-called Tuk Tuk are an example of transport services provided by agencies of tourism activities. In Lisbon, they are subject to a specific parking regime that consists of special parking spaces specifically destined for light vehicles, motorcycles, tricycles, quadricycles or mopeds that carry out tourism activities. This regime is laid down in Order no. 123/P/2015 of the Lisbon City Council approved under article 20, paragraph 1 point i) of the Lisbon Parking Regulation. According to this regulation, tricycles and quadricycles owned by tourism agencies may be authorised to enter or park in areas with restricted access to motor vehicles.

62 In this case, should the tourism activities agency be the lessee or employ entities qualified for transport services, the law demands that the vehicles used are owned by the agency, leased, rented on a long-term basis or hired from a car rental agency. It also demands that the driver carries his work schedule and a document indicating the name of the agency, the event, initiative or project, date, time and place of departure and arrival. Such document is to be presented to every competent party that requests it. See Decree-Law no. 186/2015, article 26, paragraphs 3 and 4. Transport services using vehicles with a passenger capacity exceeding 9 seats require a previous license by the IMT or a European license (cf. article 6 of the same Decree).
145. This limitation is, in fact, a quantitative restriction on the supply of for-hire passenger services with driver, and on the other hand it artificially separates it from taxi services, thus limiting consumer choice.

146. Consequently, there is a limitation of the free adjustment of the vehicle fleet to demand for vehicles with or without driver. Such adjustment of supply would enable better management and would minimise the costs of the car rental activity, which could positively affect the consumers.

147. The subjection of transport activities to quotas and supply restrictions based on accessory obligations is restrictive of competition (points 45 to 63). The necessity and proportionality of this provision should be assessed and considered. Additionally, alternative, more efficient and less restrictive regulations must be considered in order to achieve the public policy objectives envisaged by the legislator.

3.2.2. Price regulation

148. Transport services in vehicles exempt from bearing license labels (Letter "A") are subject to the 2012 Price Convention, while light tourist vehicles (Letter "T") benefit from a free pricing regime. It should be noted that while an aggravated daytime and night-time fare will be charged by taxis, vehicles exempt from bearing license labels will charge a kilometre and waiting time charge. It does not vary according to the time and day of the week when the service is provided or whether it is a national holiday or not.

149. The relevance of transaction costs is mitigated in the case of pre-booked services compared to the hail and rank markets (see point 83). The consumer is faced with less transaction costs and is able to compare alternative offers. It is thus harder to explain a price regulation aimed at that segment rather than at the latter two. In fact, prices are freely defined by those operating light tourist vehicles (Letter "T").

150. This limitation regarding price setting takes on greater relevance with the emergence of new business models by undermining the service providers’ ability to strategically react to new entrants.

151. The definition of price per kilometre and waiting time charges, regardless of the time and day when the service is provided or whether it is a national holiday or not also leads to discrimination from taxis that are subject to the general rules. Apart from restricting prices, these legal provisions also significantly raise the costs inherent to the service requirements that some providers incur compared to others, which leads to distortions of competition.

152. The AdC considers that the regulatory provisions regarding price setting should be more

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63 See the 2012 Price Convention, article 4. The Convention also establishes that a copy of the relevant provisions must accompany the vehicle and be certified by one of the signatories (clause 10).

64 See clause 4 of the 2012 Price Convention.
flexible, and price liberalisation should be favoured whenever possible, particularly in segments where market failures are less pronounced (such as the pre-booked services segment).

153. **Price regulation should focus on creating conditions for economic efficiency, transparency and price information** with a view to enhance competition and reduce the distortions that such regulations could create in the market.

3.2.3. **Regulation of vehicle features**

154. **Tourist vehicles (Letter "T")** mandatorily have a single colour and to bear the Letter "T", possibly to ensure common features and to set them apart from the taxis that are subject to the general rules (painted ivory beige or sea-green and black)\(^{65}\).

155. **Tourist vehicles (Letter "T") must meet the following criteria:** *i*) have a closed body and 4 or 5 doors, being the latter exclusively destined for accessing the luggage compartment, *ii*) have a minimum passenger capacity of 5 seats and a maximum of 9 seats including the driver, *iii*) have a motor capacity of 1580 cm\(^3\) or more and *iv*) have 4.40 metres in length or more\(^{66}\). These regulations took quality objectives into consideration, and possibly standardisation matters as well, as the fares are conventionally determined for every provider.

156. **Vehicles exempt from bearing license labels (Letter "A")** must comply with specific requirements, that is, have a cylinder capacity of over 2000 cm\(^3\) and an unladen weight exceeding 1250 kg, in addition to the requirements for hired passenger vehicles for passenger transport. These regulations took quality and safety objectives into consideration and standardisation matters as well, as the fares were determined by convention for every service provider.

157. **The law also lays down a set of mandatory provisions for rental cars.** As a general rule, vehicles may not be over 5 years old so as to ensure a minimum service quality and safety. However, there is no legal provision as to the maximum age of vehicles used for taxi transport.

158. **These provisions limit the capacity to compete of some operators as they enforce quality standards** that benefit certain providers to the detriment of others and are of a higher level than a well-informed consumer would prefer to choose.

159. **The regulation of these features and the appearance of the vehicle leads to their


respective standardisation which limits the differentiation between providers, thus inhibiting innovation, quality improvement and the better differentiation of the services under the terms mentioned in points 110 to 112. Therefore, it is appropriate to reconsider the prerequisites and restrictions applied to vehicle features, for it would allow increased supply diversity and lower costs.

3.2.4. Required procedures and the special service procurement method

160. The form and content of the rental car contract is legally subject to a set of requirements. The contract shall be in writing, signed by the parties and must be kept inside the vehicle. Such documents will prove to the authorities that it has been rented and meets the safety requirements of vehicle circulation. However, it is a more urgent matter in cases of a simple car rental than in cases of an additional driver contract, as the driver himself may provide the proof needed.

161. Travel and tourism agencies are also bound to provide the clients with documents describing the service, the date, price and payments already made before selling any service. By providing this information in written form the client will be reassured of his safety. If interpreted restrictively, this documentation to be presented in writing may represent an additional and unjustified cost for the operators, namely transport service providers. If so interpreted, this requirement represents an additional cost, discriminates the providers and restricts competition, for it prevents service procurement through an electronic means of contact.

162. In addition, the mandatory written form may represent a limitation to the differentiation between services and impose unnecessary costs (such as extended opening hours of the agencies) which will consequently restrict competition, as it renders service procurement through electronic means impossible.

163. In light of the restrictive effects of the formal requirements of the service procurement procedure, both for agencies operating in car rental or in travel or tourism, it is important to reconsider the need to maintain them given their intended objectives and the evolutions in the economic context.

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67 The contract must specify certain data, namely the identity of the parties and the rented vehicle, detailed pricing, security deposit, the stipulated complementary services, the relevant dates and the contacts for assistance. See Decree-Law no. 181/2012, articles 9 and 15.

68 See article 7 of Decree-Law no. 61/2011. The Decree stipulates that every contract must bear the name, the national registry number of the travel and tourism agency and the corresponding head office (article 5), as well as a set of mandatory references and information to be included in the sales contract for travel packages (articles 20 and 21).
As for the regulation of other means of for-hire passenger services with driver:

- the AdC recommends that the need for and proportionality of the **activity quotas** applied to light tourist vehicles (Letter "T") and vehicles exempt from bearing the license labels (Letter "A") be assessed and considered, as well as **supply restrictions based on accessory obligations** imposed on agencies operating in car rental, travel and tourism or tourism activities. An alternative, more efficient and less restrictive regulation should be considered, in order to achieve the public policy objectives envisaged by the legislator.

- The regulatory provisions that **stipulate prices for service provision with vehicles exempt from bearing license labels** (Letter "A") should be more flexible, and favour price liberalisation.

- The **obligations and restrictions concerning the features of vehicles** such as light tourist vehicles (Letter "T"), vehicles exempt from bearing license labels (Letter "A") and rental vehicles with driver should be reconsidered, as bringing greater flexibility would allow more diversity of supply and lower costs.

- The AdC recommends that **the formal requirements for the procurement** of car rental or travel and tourism agencies be reconsidered, as they restrict competition.

4. THE IMPACT OF ELECTRONIC PLATFORMS

164. **Recently, there have been innovations in car service hire, namely through electronic platforms that have led do important market developments that are essential to consider.** Generally, the features of these platforms are based on user or vehicle georeferencing and other technological developments (e.g., payment methods) that may come to meet the consumers’ needs and preferences.

165. **These electronic platforms and their growing popularity and use as a means to procure for-hire passenger services posed regulatory challenges in Portugal and many other countries, raising questions regarding the need to regulate electronic platforms and the services that depend on them.** It is worth pointing out that traditional taxi service providers also came to provide their services through electronic platforms. The growing popularity comes from their features and the added value for users and drivers (see Box 1).
Box 1: Main features of electronic platforms

Allow the user to:

- request a transport service with a specific vehicle/driver;
- know the location of the vehicles available to provide the transport service;
- know the estimated waiting time for the service to start;
- know the average rating of the drivers' service quality;
- rate the drivers' service quality;
- know the applicable tariffs and the estimated cost of the service;
- share the itinerary in real time and analyse it after the ride is finished.

Allow the provider to:

- immediately know the location of the consumer that requested the service;
- know the average ratings by consumers;
- assess consumer conduct during the service that was provided;
- automatically adapt the service tariffs according to demand and supply.

166. The features of the electronic platforms reduce transaction costs and enhance the coordination and creation of economies of density inside this segment. In fact, these platforms ensure a better proximity between the consumers in need of the transport service and the vehicles available to provide it. The cost reduction will be even greater when there are several competing electronic platforms, especially if the user is able to compare the conditions of the services available in each platform in a simple way.

167. The electronic platforms mitigate information asymmetries by providing information to the consumer and reducing uncertainty, namely regarding the conditions of the service that will be provided (price, waiting time, quality). The systems associated with these platforms to rate the performance of the drivers, the individual providers, the undertakings, and the electronic platforms' own reputation mechanisms improve service quality and competition. Currently, these reputation mechanisms are mainly designed to evaluate the drivers, but they may come to enhance price transparency and other aspects of the service (e.g., the vehicle used for the service). According to the ITF (2016a) report, in many markets the consumers share more positive experiences in services that include such a reputation mechanism. The possibility to rate the consumer conduct may decrease the occurrence of behaviours that negatively affect the activity and positively affect

69 It is possible to develop applications/platforms to centralise the availability of the taxis/vehicles associated to the different undertakings/applications/platforms and provide the client with information about the prices charged by those vehicles.
supply. However, only when they are credible do these reputation mechanisms reduce the degree of information asymmetries, that is, when the ratings are trustworthy.

168. Along with supply efficiencies (economies of density), the lower transaction costs and the reduction of information asymmetries enable a better allocation of resources. By promoting a better coordination between demand and supply, it will also lower the barriers to entry, especially of pre-booked services, and will encourage expansion of demand. At the same time, it will ease concerns with congestion where demand is higher. Market expansion will, in turn, improve the differentiation of the services. There are also less concerns as to the potential negative externalities (e.g., pollution, traffic congestion) associated to these services, as there will be less empty cars circulating on the streets due to the better coordination between demand and supply.

169. The features of these platforms bring the different taxi service segments closer (street hailing, taxi ranks and pre-booked services). If the waiting time for a vehicle hired through an application is sufficiently low, the number of consumers preferring these pre-booked services over street hailing might be significant. As a result of lower transaction costs and information asymmetries, it would ease the concerns about situations where users are placed in a weak bargaining position, for example while hailing a cruising taxi or requesting a taxi at the rank. Moreover, there has been greater technological innovation (ITF 2016a) to react to the increased number of traditional taxi service providers that started using electronic platforms to compete against the new business models.

170. In short, the features of the electronic platforms bring important opportunities into the market in terms of efficiency and competition, thus alleviating the concerns about market failures or other public policy objectives that may justify regulating certain aspects of for-hire passenger services that were previously considered. Electronic platforms also enhance economic efficiency by allowing a better use of the existing capacity of other types of services (e.g., car rental).

171. These innovations may affect the extent of the regulation needed for the different occasional passenger transport segments, as well as the necessity and adequacy of the different regulatory provisions enforced on different segments. Even though the features of the hail market may justify some form of regulatory intervention, market developments require a regulatory review based on efficiency principles.

172. If the applicable regulatory framework is not in line with market conditions it may cause distortions on competition between different service providers. Competition authorities from other countries proactively carried out an impact assessment of the regulatory provisions on competition (see Box 2).

70 According to Cramer and Krueger (2016), some drivers that use these platforms spend more time and cover a longer distance travelled carrying passengers than those that do not use them. The aspects that influence the high occupancy rate are the following: inefficient regulatory provisions enforced on traditional taxi services; algorithms; scale effects; the more flexible labour force using the platform.
Box 2. Examples of proactive observations by competition authorities suggesting regulation flexibilisation given the impact of platform-based services

The CNMC (Spanish Competition Authority) and the Canadian Competition Bureau recommended a regulatory review on for-hire passenger services.

In 2016, the CNMC presented the preliminary results of the study on "the sharing economy". As to the taxi activity and private hire vehicles, it concludes that the following should be eliminated: i) the *numerus clausus* and geographic restrictions of the activity, while establishing proportional and adequate licensing requirements (e.g., minimum insurance coverage); ii) unnecessary and disproportionate quality requirements applicable to the vehicles (e.g., engine power), drivers (e.g., mandatory schedules) and service providers (e.g., the exclusivity attributed to natural persons or cooperatives); iii) tariff regulation; iv) prohibition to rent, sell or assign the vehicle to another; and v) the prohibition of private hire vehicles from competing against taxi services (e.g., prohibition against picking up passengers that did not previously request the service).

The CNMC also claimed that the providers' representatives should not take part in decision-making procedures regarding this sector, and warned against the risks arising from information asymmetries between the industry and the Government. In 2015 and 2016, the CNMC suggested the Government should take measures to declare the restrictive provisions concerning private hire vehicles as unlawful (e.g., prohibition from competing against the street hailing) and taxi service markets.

In 2015, the Canadian Competition Bureau published a White Paper calling for a regulatory review so as to allow taxis and ride sharing services to compete with the least possible distortions to competition.

The Canadian Competition Bureau supported the elimination of unnecessary regulations restricting taxi services. As to the extent of regulation, the Canadian Competition Bureau recommended that it should i) respect the principles of necessity, proportionality and non-discrimination, ii) assess the impact on competition, iii) be designed and proven by empirical data and iv) envisage sunset clauses to ensure that the regulatory framework will be periodically and adequately reviewed.

In this context, a set of principles were outlined that should be considered when defining regulation, exemplifying these in terms of consumer protection safety, price control, entry restrictions and service quality. As to entry restrictions, the Canadian Competition Bureau supports the transition from a quota system to a free entry regime, adding that, should problems arise, alternative solutions that are less restrictive of competition between taxis and electronic platforms for service provision should be considered.

173. In some countries, these new business models were banned for not fitting into any of the service provision categories provided by regulation. Others adapted the existing
regulations to meet the challenges brought by these platforms (e.g., ITF 2016a report). In some cases, the proposed modifications to the law could induce distortions of competition, which led the competition authorities to state their opinions (see examples in Box 3). In this context, it should be noted that on 2 July 2016, the European Commission issued a Communication on the European Agenda for the Collaborative Economy\footnote{Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European agenda for the collaborative economy, COM(2016) 356 final, Brussels, 2.6.2016.} to contribute to the achievement of the benefits that come with this new business model. As such, the Communication provided guidelines and stated that "absolute bans and quantitative restrictions on an activity are normally a measure of last resort, and generally they should only be applied if and where no less restrictive requirements to attain a legitimate public interest objective can be used”.

174. Among the issues and challenges brought by the collaborative economy, there is also the discussion regarding whether the electronic platforms that connect consumers and providers are also to be considered service providers/suppliers. In this regard, the Court of Justice of the European Union will decide if Uber is providing an information society service, a transport service or a combination of the two\footnote{Request for a preliminary ruling from the Juzgado Mercantil No 3 de Barcelona (Spain), Case C-434/15, Asociación Profesional Élite Taxi v Uber Systems Spain, S.L., O.J. C 363/27 of 3.11.2015, p. 21.}.

Box 3. Examples of reactive observations from competition authorities on proposals for policy changes impacting the platform-based services

In 2015, the Competition and Markets Authority (CMA\footnote{CMA is the competition authority of the United Kingdom.}) submitted its comments on a public consultation launched by Transport for London (TfL) on proposals for policy changes regarding private hire vehicles that compete against taxi services. The CMA highlighted the need to protect the consumer but emphasised that the restrictions of competition should be limited to the minimum required to achieve public policy goals.

The CMA expressed its concerns towards unnecessary and excessive proposals that would cause distortions of competition between taxi services and private hire vehicles. These include concerns towards the changes in i) the need to provide booking confirmation details to the passenger at least five minutes prior to the journey (the average wait time for a Uber vehicle in London is 3.6 minutes), ii) the need to seek TfL approval before changing the operating model, iii) the need to have an advance booking system, iv) the prohibition of signals of availability for immediate hire, v) obligation to specify the fare prior to accepting the booking and vi) the requirement that drivers may only work for one operator.

The CMA also considered that market developments justify considering whether there should be differentiated regulation for taxis and private hire vehicles are really to be maintained (currently more restrictive for taxis).
Several of the CMA’s concerns were taken into account by TfL, which did not implement the proposals for policy changes number i), iii), iv) and vi) mentioned above. The proposal for the requirement to specify the fare prior to accepting the booking was substituted for the requirement to give an estimated fare.

In 2013, the French Government approved laws that made it mandatory for the private transport operators (véhicule de tourisme avec chauffeur or VTC) to wait 15 minutes before picking up the passenger. A French court (Conseil d’État) declared the legislation as invalid.

The French Competition Authority stated that the legislation created inappropriate distortions of competition in the segment of pre-booked taxis.

Subsequently, new laws were approved to restrict the activity of the VTC, particularly forcing them to "return to base" before picking up a new passenger.

Once again the French Competition Authority spoke against this specific proposal as it could give rise to distortions of competition and did not tackle the main issues of the taxi services market, especially those pertaining to market entry restrictions (numerus clausus).

175. The current challenges faced by regulation are also a result of regulatory possibilities offered by the new platforms and by the information they provide. In fact, features of the platforms provide the regulators and policy makers with tools to pursue their objectives. The amount of information the platforms provide on the users’ journeys enables the regulators and policy makers to adapt their decisions to the data (“data-led regulation”).

176. The innovation brought by these new business models may bring new challenges in the future, so it is important to follow the market dynamics. In fact, the dimension of the platforms, that is, the numbers of users and/or drivers, may become a barrier to entry. In this regard, it is important to follow, among other aspects, the evolution of competition between different platforms that may benefit the consumer.

5. MARKET DEREGULATION

5.1. Deregulation experiences

177. The taxi industry is still heavily regulated in many countries, but there are several deregulation experiences that may help understand the impact of deregulatory initiatives. However, it should be noted that the impact of flexibilisation greatly depend on pre-existing situation, the gap from open entry equilibrium, as well as the regulatory

75 See: http://www.autoritedelaconcurrence.fr/pdf/avis/14a17.pdf
76 As an example of competition between platforms, one should note the price strategy that Cabify (an electronic platform that initiated its activity in Portugal in May 2016) used to differentiate its services from Uber.
provisions implemented after the review. The results of the experiences must be carefully considered so as to anticipate potential difficulties that could arise from implementing a more flexible regulatory framework. Several countries proceeded with reforms of taxi regulations (e.g., New Zealand, Ireland, the Netherlands, Sweden, and United Kingdom) where entry restrictions to new providers were either removed or reduced.

178. According to the OECD report (2007), deregulation has generally achieved: i) a substantial rise of the number of available taxis sustained in a medium and long term basis as a consequence of lower barriers to entry; ii) a substantial reduction of waiting times and, more generally, improved consumer satisfaction and iii) an uncertain ambiguous impact on prices considering the specific market context. Still, in many cases, prices have fallen following deregulation. On the other hand, the non-reduction of prices following the removal of quantitative restrictions to entry may be linked with the fact that, prior to deregulation, prices were being set artificially low.

179. The OECD report (2007) states that some form of price regulation should be maintained, even in the absence of quantitative restrictions to entry (e.g., setting maximum prices, requirements for prior notification and/or to publicize information about the tariffs applied or setting the tariff structure that may be applied). It is possible that, if prices are not regulated, even in an open entry context, some service providers may exercise a certain market power when setting prices, especially in the rank and street hailing segments. The report mentions that, in a deregulation scenario, a possible solution would be to limit to regulatory protection of consumers to the segments where they are more vulnerable to the exercise of market power, namely the rank and street hailing markets. However, it should be noted that such conclusions do not take the subsequent market evolution into consideration, namely new service providers through platforms, which may mitigate the market failures.

180. The benefits of deregulation and market response depend on several aspects, namely the disequilibrium brought by the free market entry and the structure, implementation and monitoring of deregulation. The OECD report (2017) highlights that the different deregulation experiences may reflect specific aspects of the different reforms. It also mentions that there are assessments drawing different conclusions on the same deregulation case. For example, the deregulation experiences that took place in the 70's and the 90's in the United States, for which some studies conclude there have been positive effects for the consumer, while others show deregulation had negative effects for the consumer77. According to Australia’s National Competition Council78 analysis, most of the problems identified in the assessment relate to failures of quality regulations rather than deregulation of market entry directly. Actually, removing quantitative entry restrictions does not necessarily entail the flexibilisation of quality and safety

77 For example, Teal and Berglund (1987) and Price Waterhouse (1993) generally reach negative conclusions. However, Frankena and Pautler (1984) reach more positive conclusions on the same data. They concluded that even where deregulation problems had arisen, other regulatory measures would still be preferable than restoring entry restrictions (OECD 2007).

78 Australia’s National Competition Council (2002).
requirements. In fact, it may take place in parallel with reinforced regulation at that level.

181. In Ireland, deregulation of taxi services in 2000 led to a significant increase of the number of taxis and decrease in waiting times. However, it was necessary to adopt a regulatory framework for price and service quality to ensure benefits for consumers. Prior to this liberalisation process, there were quantitative entry restrictions, which resulted in supply shortages, with negative impact in consumer welfare (e.g., excessively long waiting times). As result of deregulation, the number of taxis rocketed. In the first five years there was a more than threefold increase (Goodbody Economic Consultants, 2009). In 2001, a survey to users of taxi services found that consumers believed deregulation to be a good measure. The survey concluded that, despite some problems linked with the deregulation, taxi availability had improved substantially and that efficiency of taxi services was likely to have also increased. The total waiting time reduction is estimated to have translated into EUR 300 million every year. A national regulator was created in 2004 and it was necessary to adopt a set of reforms that included a nationwide tariff structure for taxis and new requirements on vehicle and service quality.

182. In 2010, following the providers’ concerns about demand shortages as a consequence of the economic crisis, the Irish regulator halted new license allocation. However, there is evidence that this restrictions is not yet actively affecting the market, therefore no negative effects of such measure are identified. The restriction resulting from the prohibition of new licenses is reinforced by the fact that it is also forbidden (in 2013) to sell already allocated licenses. Should this ban be maintained, it is expected that the restriction will become active and the negative effects identified in the past in the Irish market will occur again (longer waiting times, consumer dissatisfaction) - Gorecki (2014).

183. In New Zealand, the number of taxis operating in major cities tripled after the deregulation in 1989 that removed quantitative entry restrictions (e.g., Morrison, 1997; Bekken, 2006). In addition, after deregulation, there were lower waiting times, a wider range of services and geographic coverage, as well as reduced fares in real terms. The competition between taxi services and other public transport services increased. In 2016, following a public consultation, the New Zealand Government announced a regulatory framework review. The goal was to simplify the provisions and adapt them to the new challenges brought by technological innovation, removing requirements and unnecessary distinctions between the services (see Box 4).

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79 The number of taxis more than tripled in the two years after deregulation. In other Irish cities, the increased number ranged from 110% and 258% (OECD, 2007).

80 The entry restrictions still have no visible impacts possibly because: i) demand has stagnated or decreased after the economic crisis; ii) taxis possibly stayed in the market given the lack of alternative and enticing job offers due to the economic crisis; iii) the economic operators may have foreseen the approval of the ban of license allocation and submitted license applications beforehand; iv) it is still a common practice to grant discounts to the highest service prices; v) the average percentage use of the operating taxis has increased due to the lowering number of new licenses.
Box 4. Examples of convergence in the regulatory approach to different market segments in response to innovation: the case of New Zealand

In April 2016, following a public consultation, the Government of New Zealand announced policy changes in the regulatory framework, with only one category for taxis, private hire vehicles, shuttles and dial-a-driver services.

These changes derive from the existing innovation and aim at creating a level playing field between the operators, to allow them to compete on price, service quality and environmental protection.

The Government also announced, while focusing on ensuring passenger and driver safety, some rules would be removed for entailing costs to the providers and not resulting in significant benefits.

184. The reform implemented in Sweden in 1989 included the removal of quantitative restrictions and price deregulation, resulting in the substantial increase of the number of taxis, as well as of the competitive pressure and service availability. The OECD report (2007) mentions that the number of taxis increased substantially two years after deregulation (namely in Stockholm and Gothenburg). Taxi services became more attractive after deregulation solved supply shortages, decreased waiting times and improved taxi availability (Garling et al., 1995; Kang, 1998). Price deregulation allowed public entities and undertakings to have the possibility to negotiate the prices for service provision. Statistics reveal that, immediately after deregulation, fare levels increased in real terms (however it is important to consider the impact that the introduction of a 20% VAT on transport services had on such levels) and the literature mentions a subsequent price decrease (OECD, 2007). Lastly, deregulation contributed to regional differences in fares.

185. In Sweden, since deregulation, the need to reinforce quality (e.g., new driver licensing regime) and price (minimising problems to transparency and information asymmetry, such as guidelines for on-taxi price advertising, either on the inside or outside of the vehicle) regulation was identified, due to the lack of quantitative entry restrictions and price setting flexibility. As an example of improved price transparency and the consequent consumer protection, in 1998 it was established a contract between the parties was required for services above a specific price level. As another example, in 2015 it was established that when the reference price is above a certain amount, the service provider is obliged to inform the passenger about the maximum fare for the intended service.

186. The Netherlands adopted a staged reform between 2000 and 2002. Quantitative entry restrictions were removed and the number of taxis increased substantially. Prior to deregulation, regulatory restrictions comprised a limited number of taxis, fixed prices and

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81 For a distance of 10 kilometres in 15 minutes.
82 SEK 500.
geographic exclusivity. After deregulation, a maximum fare was established, instead of a fixed fare. However, the consumption pattern changed after deregulation. Despite the increased number of kilometres per passenger, taxi demand decreased and fares increased.

187. The main regulatory changes made after the 2000 deregulation included an open entry system, efforts to improve service quality and price transparency (e.g., mandatory fare structure), and also envisaged a monitoring system to ensure that regulations were being complied with. According to the impact assessment, there have been issues in the street hailing and taxi rank segments such as increased prices and congestion of some ranks (Baanders and Canoy, 2010).

188. In the United Kingdom, in a context of regional differences in regulation, it was concluded that in 2003 there were more taxis and lower waiting times in regions where an open entry system prevailed (OFT\textsuperscript{83}, 2003). These regional differences in regulation result from the fact that local authorities have the power to establish most of the regulation applicable to taxis. Besides taxis, private hire vehicles may not cruise for hire and pick up customers at taxi ranks as they are not subject to quantity and price restrictions. Private hire vehicles may only be pre-booked. The OFT study concluded that in regions benefiting from an open entry system: i) there was a 30% increase of taxis per inhabitant irrespective of whether it were in urban, rural or mixed areas; ii) reduced use of unlicensed taxis, thus increasing passenger safety; and iii) lower waiting times (between 2% and 7%) estimated at 2.5 million consumer hours. The OFT stated that, although entry restrictions were being considered, quality and safety regulations were still important, and concluded that it was essential to maintain fare regulation to protect vulnerable consumers. Following the request of the DfT for the removal of unjustified quantitative entry restrictions, 1/3 of the local authorities acceded to the request.

189. Following the 2003 OFT study, an assessment was carried out in 2007 on the impact on the market of removing entry restrictions (Europe Economics, 2007). The study revealed benefits for consumers, although the taxi industry suffered a loss of productive efficiency due to a decrease of rides per taxi. It was estimated that in areas where quantitative entry restrictions were removed, i) waiting times were lower, ii) consumers preferred the taxi rank and street hailing markets (instead of pre-booked services) and iii) consumers switched from other modes of transport to taxis. The net effect on productive efficiency was, however, negative due to the longer driver waiting times. There was no evidence of negative impacts on price and quality, but there was an increased taxi supply at night\textsuperscript{84}.

190. The Europe Economics study suggests that the reduction of productive efficiency is

\textsuperscript{83} Office of Fair Trading.

\textsuperscript{84} The study is limited by the fact that the study sample was small and not every relevant factor was taken into account, namely the impact for providers that were able to enter the market after the removal of entry restrictions. Nonetheless, the results of the study were supported by the sector players.
related to free market entry and the high maximum prices levels. It concludes that regulating these prices closer to a market equilibrium level is essential to decrease oversupply and to ensure benefits to the consumer (lower prices and increased productive efficiency). The study concluded that removing quantitative restrictions attracted new entrants and decreased waiting times, but the consumer demand did not increase as expected, as consumers tend to favour price over waiting times. It also mentions the risk that new entrants will tend to charge the regulated maximum price, thus preventing price reductions and enabling oversupply. The study mentions the possibility that, before and after the removal of entry restrictions, the regulated maximum prices were above a market clearing level, sustaining that lower maximum prices would have decreased oversupply and increased productive efficiency. It should be noted, however, that over time it will be hardly possible to maintain oversupply, given the lack of barriers to exit in this sector.

191. These experiences prove that the benefits of deregulation depend on the market context prior to the review, the disequilibrium brought by open entry, the regulations that are to be maintained (or the new and more flexible regulations to be implemented) and the dynamic market development (e.g., innovation). The experiences also reveal that deregulation influences consumer benefits and stress the need for continued monitoring at times of deregulation to evaluate market developments.

5.2. Implementing deregulation/regulatory framework flexibilisation

192. When designing and assessing regulatory rules, it is essential to gather all the facts and information about the market, and to continually collect data on market developments. Accurate data on deregulation/flexibilisation is essential to entirely assess the impacts and to take action if necessary. It is important to ensure that the negative impacts will be addressed in time, and to know their origin and the expected consequences. To this end, it is important to distinguish between transitory effects (that will gradually disappear with the stabilisation of the market that will follow the regulatory review) and structural issues that will require a regulatory adaptation.

193. Additionally, it is important to monitor the impact of recent technological innovation on the market, such as the platform-based services which are constantly evolving. Such innovation will impact the adequacy of the regulatory provisions that are to be maintained or implemented (more flexible), and provide important data on several market dimensions, including quality (reputation mechanisms).

194. This type of monitoring also allows to avoid an assessment of deregulation/flexibilisation on the basis of potential isolated effects. A partial, biased or out of context assessment of the regulatory review impact may strengthen or increase the unwillingness to change the status quo. The amount of data and the assessment of the specific impacts of regulation allow demystifying and contextualising skewed assessments that may jeopardise the regulatory review.
195. The experiences of other countries may help anticipate the risks associated with deregulation implementation and monitoring. One may not exclude the possibility that some form of intervention may be needed after deregulation, even if temporarily, to ensure consumer or specific consumer protection (those that do not have access to information technologies).

196. The deregulation implementation time-frame is thus particularly relevant. It must take into account, on the one hand, to the harm to consumer welfare deriving from provisions that restrict competition and, on the other hand, envisage the possibility that a temporary intervention may be needed for the market to adapt. As for quantitative entry restrictions, not removing them seems hardly justified. As for price deregulation, a staged approach may be justified to allow the market to adapt to the new context. This transitional period may be key to raise consumer awareness to market changes and ensure that information and price transparency are sufficiently conveyed to promote price competition. The staged approach may be important to dissipate concerns about the initial impact of deregulation and allow the market to adjust. The continued monitoring and a regular reassessment will be crucial to determine when the market is ready for a broader deregulation to be implemented.

197. The above-mentioned deregulation experiences show the need to adjust regulatory solutions to the different market dimensions, such as entry, price and quality is essential to enhance competition among the service providers.

198. Implementing a new regulatory framework based on efficiency principles and verifying if they are being complied with may pose new regulatory challenges. From a procedural point of view, the regulatory review may imply conferring to the AMT (the regulator) the regulatory instruments necessary for the performance of its duties.

199. It should be emphasised that potential proposals of policy changes aiming to meet alleged post-deregulation issues must be assessed on efficient regulation principles and follow a competition impact assessment conducted by the AdC. Such an approach might ease restrictions of competition and prevent the implementation of restrictive regulatory provisions liable to jeopardise deregulation benefits to consumer welfare.

200. Lastly, the loss of license value and the compensations claimed by license holders are some of the political challenges that frequently arise from deregulation. However, it is important that these challenges observe efficiency principles, otherwise excessively restrictive regulatory provisions may jeopardise deregulation benefits to consumer welfare.

85 As stated by the AMT in the comments submitted on 9 September to the AdC on the public consultation procedure concerning the draft version of this report. The AMT stresses the need to set up a system to monitor and gather information about the operating service providers (e.g., through a registration system).
6. CONCLUSIONS: PRINCIPLES AND RECOMMENDATIONS FOR THE REGULATORY REVIEW

201. The analysis of the regulatory framework currently applicable to for-hire passenger services with driver demonstrates the welfare losses deriving from maintaining the regulatory status quo, a scenario that is insufficient to ensure competition among service providers and innovation. In fact, the current regulatory framework restricts competition and gives rise to unnecessary distortions between the different service providers.

202. Restrictions to competition were detected in that the regulatory provisions: i) restrict the number of providers able to enter the market (quantitative restrictions); ii) restrict the ability to compete of effective and potential players in the market; or iii) decrease the incentives to compete, as mentioned in the OECD Competition Checklist.\(^{86}\)

203. The emergence of online platform-based transport services strengthened these effects and made them clearer. These new business models stress the need for a modern regulatory framework.

204. Market access is limited by quantitative restrictions to entry, whose proportionality and adequacy is not demonstrated and entail important consumer welfare losses. Therefore, it is recommended that the necessity and proportionality of quotas is assessed and considered. If necessary, an alternative, more efficient and less restrictive regulation should be considered, in order to achieve the public policy objectives envisaged by the legislator.

205. Setting conventional prices in a co-regulated context eliminates price as a dimension of competition and decreases the incentives to compete on the basis of price/quality. Therefore, the AdC recommends an evolution towards price liberalisation. However, market failures may justify some form of short-term price regulation in the hail and rank segments of the market, which should nonetheless be restricted to the minimum necessary (e.g., a price cap) to address them.

206. Quality and safety regulations are liable to standardise supply and discourage competitors from innovating, as it limits product differentiation. Some provisions unnecessarily discriminate between service providers and lead to distortions of competition in the market. This applies, for instance, to the required procedures and special service procurement model, the inspection regime and driver certification. It is recommended that such provisions are reassessed based on the principles of efficient regulation.

207. The service providers, namely traditional taxis, are thus constrained in their ability to compete with new forms of platform-based services. It is therefore important to envisage a regulatory review that provides them with greater freedom to choose their

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market strategies. On the other hand, the current regulatory framework seems hardly appropriate to accommodate innovation that has develop in the market and has appealed to consumers.

208. Thus, there is the need for a regulatory review that does not favour a certain service type of provider over another, and ensures a level playing field that enhances the benefits deriving from competition, which will nonetheless always be subject to the Competition Law, applicable to all service providers.

209. This broad review poses challenges in practical terms, but it entirely fits the purposes and guidelines envisaged by the Road Transport System Act, namely the maximum contribution to the economic development and promotion of consumer welfare by offering i) a supply of services that meet users' needs, both in qualitative and quantitative terms and ii) a progressive reduction of the social and economic costs of transport. The broad review poses challenges in practical terms, but it entirely fits the purposes and guidelines envisaged by the Road Transport System Act, namely the maximum contribution to the economic development and promotion of consumer welfare by offering i) a supply of services that meet users' needs, both in qualitative and quantitative terms and ii) a progressive reduction of the social and economic costs of transport.

210. Even if the legislator intends to pursue public policy objectives that compete with competition advocacy and enforcement, the regulatory framework must include the provisions which are strictly needed to achieve the objectives at hand and follow the principles mentioned below.

### Regulatory principles to be considered

1. The regulatory framework must respect the three pillars of efficient regulation: i) necessity, ii) proportionality and iii) non-discrimination.

2. The regulatory framework must be as general and coherent as possible and not discriminate between the different services.

3. Market entry regulation must, as a general rule, enable a free determination of supply.

4. Price deregulation must be given preference whenever possible, particularly in segments where market failures are less significant (such as the pre-booked services segment).

5. Quality regulations must ensure the protection and safety of users, drivers and third parties, while minimising restrictions to competition and the impact on diversity of choice to consumers.

6. Regulation must be as efficient as possible and impose the least possible restrictions on competition and the exercise of the activity.

7. Continuous monitoring must be carried out to verify if the current regulations remain adequate. Updated data about the market should be gathered to perform a continued and proactive reassessment of the adequacy of the regulatory framework.

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87 See article 2 of the Road Transport System Act.
provisions.

8. Technological innovation and other developments should be considered when assessing the need for implementing/maintaining regulatory provisions.

9. Potential regulatory changes would benefit from an impact assessment on competition and on service provision. In this regard, the AdC should be requested to carry out a competition impact assessment of the regulatory provisions that are to be amended.

211. Therefore, given the powers of the AdC, as set in its Bylaws and the Competition Act, the AdC recommends the following to the Government:

Recommendations

1. The necessity and proportionality of taxi service quotas should be re-assessed. If necessary, an alternative, more efficient and less restrictive regulation should be considered, in order to achieve the public policy objectives envisaged by the legislator.

2. The necessity and proportionality of geographic restrictions and the taxi parking regime should be re-assessed.

3. If quotas are to be maintained, tender awarding criteria that discriminate between market players, namely on grounds of geography and tenure, should be removed.

4. Regulation on prices for taxis and vehicles exempt from bearing license labels (Letter "A") should be made more flexible and price liberalisation should be favoured whenever possible, particularly in segments where market failures are less significant (such as the pre-booked services segment). When market failures are identified or the legislator deems it necessary for some regulatory intervention to specific market segments (namely street hailing and taxi ranks) in order to achieve public policy objectives, this intervention should be restricted to the minimum required to achieve them.

5. In a scenario of more price flexibilisation, it is important to consider other regulatory issues with impacts on competition and the degree of price transparency, namely: i) obligations concerning price advertisements; ii) obligations concerning the notification of prices; and iii) the tariff structure to be applied.

6. Quality regulations should be restricted to the level necessary to address market failures and achieve the public policy objectives envisaged by the legislator, always taking efficient regulation principles into account and ensuring effective monitoring and implementation.

7. Consider reducing the extent of regulations on charging methods for taxi services and the legal provision requiring a written contract with a minimum duration of 30 days for
contract-based taxi services.

8. **Reconsider the prerequisites and restrictions on vehicle features** (as easing these rules would allow for increased diversity of supply and lower costs) and **making the rules for on-taxi advertising more flexible**.

9. **Verify the effectiveness of the current rules on inspection applicable to taxi services in light of its objectives, and ensure a level playing field for different market players, while duly accounting for the specificities of the type of service at hand**.

10. **Verify if the driver certification regime allows for a level playing field for different market players, while duly accounting for the specificities of the type of service at hand**.

11. **Re-assess the need and proportionality of quotas** for transport services in light tourist vehicles (Letter "T") and vehicles exempt from bearing license labels (Letter “A”), and supply restrictions based on ancillary obligations, compared to the ordinary activities of car rental, travel and tourism agencies and agencies of tourism activities. If necessary, an alternative, more efficient and less restrictive regulation should be considered, in order to achieve the public policy objectives envisaged by the legislator.

12. **Reconsider the requirements and restrictions concerning the features** of light tourist vehicles (Letter "T"), vehicles exempt from bearing license labels (Letter "A") and rented cars.

13. **Reconsider the formal requirements for contracting services** imposed on agencies operating in car rental or travel and tourism.
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