

s.13

s.13

December 14th, 2021

Uber Canada Inc.
1600 – 121 Bloor Street East
Toronto, ON M4W 3M5
Attention: Michael Van Hemmen, Head of City Operations

BY EMAIL: mvh@uber.com

Re: Decision on Passenger Transportation Licence Application #10268-20 TNS

Dear Uber Canada Inc.,

The Passenger Transportation Board (Board) has made a decision on the above noted application.

The Board has refused the application and the decision is attached. Please read it carefully as it explains why the application was refused.

The *Passenger Transportation Act* (Act) provides the Board a limited power to reconsider its decisions. Section 21(4) of the Act states:

The board may reconsider, vary or rescind any decision made by it if the board is satisfied that

- (a) information has become available that was not available at the time the decision was made, or
- (b) there has been an error in procedure.

If you want to request reconsideration, you must complete a “Request for Reconsideration Form (Board form 15). The form and specified attachments must be submitted to our office **within 30 days** of the date that the decision on your application is published in the Board’s Bulletin. This is usually the first Wednesday after the decision date. The form is available on line at: <http://www.th.gov.bc.ca/ptb/forms.htm>

The Board's "*Reference Sheet 14: Options after a Decision*" provides more information on reconsideration. It is available online at: <http://www.th.gov.bc.ca/ptb/forms.htm>

Yours sincerely,

A handwritten signature in dark ink that reads "H. Stewart". The signature is written in a cursive, slightly slanted style.

Heather Stewart
Executive Director
Passenger Transportation Board

pc: Passenger Transportation Branch

Attachments
Uber Canada Inc. (10268-20) - Final Decision.pdf

From: [Passenger Transportation Board TRAN:EX](#)
To: mvh@uber.com
Cc: [Passenger Transportation Br. TRAN:EX](#); jmillard@uber.com; vanique@uber.com; [Passenger Transportation Board TRAN:EX](#)
Subject: Uber Canada Application #10268-20TNS
Date: December 14, 2021 3:02:15 PM
Attachments: [10268-20 TNS Uber Canada Inc. Transmittal Letter.pdf](#)
[Uber Canada Inc. \(10268-20\) - Final Decision.pdf](#)

Good afternoon, Michael Van Hemmen.

Please be advised, the Board has rendered the attached decision on your application.

Thank you,

Carsten Chalk
A/Operations Specialist
Passenger Transportation Board
778-974-4269
www.ptboard.bc.ca

The Passenger Transportation Board acknowledges the traditional territories of the many diverse Indigenous Peoples in the geographic areas we serve. With gratitude and respect, we acknowledge that the Board's office is located on the traditional unceded territories of the Lekwungen-speaking peoples (Songhees and Esquimalt), who are the traditional keepers of this land and whose historical relationships with this land continue today.

Licence Application Decision

(Transportation Network Services - Amendment)

Application #	10268-20 TNS	Applicant	Uber Canada Inc.
Trade Name	Uber		
Principals	Lola Kassim Francois Chadwick		
Address	1600-121 Bloor Street East Toronto, ON M4W 3M5		
Primary Areas of Operation	Originating Area Requested: <ul style="list-style-type: none"> • Region 2 – Capital Regional District (CRD) • Region 3 – Vancouver Island, excluding CRD • Region 4 – Okanagan – Kootenay-Boundary-Cariboo • Region 5 – BC North Central and Other Regions of BC Destination Area: <ul style="list-style-type: none"> • BC or outside BC 		
Current Licence	Transportation Network Service Authorization Licence Number 75266		
Publication of Application	September 9, 2020		
Application Summary	Amend Special Authorization: Transportation Network Services Authorization (TNSA)		
Deadline for Submissions	September 21, 2020 (original submissions) October 13, 2020 (second set of submissions) March 10, 2021 (COVID-19 Board Investigation submission) October 12, 2021 (Investigation Report submission)		
Submitters (and representatives)	<ul style="list-style-type: none"> • BC Taxi Association • Checkmate Cabs (Kelowna) • Kami Cabs Ltd. (Kamloops) • Kelowna Cabs (1981) Ltd. (Kelowna) • Mothers Against Drunk Driving Canada • Okanagan Taxi Association (Kelowna) 		

	<ul style="list-style-type: none"> • Orange Taxi (Sooke) • Penticton Klassic Kabs Ltd. (Penticton) • Safe Ride Sharing Ltd. (Kelowna) • Star Taxi (Cranbrook) • Teco Taxi Ltd. (Fort St John) • Yellow Cab Company Ltd., North Shore Taxi (1966) Ltd., Richmond Cabs Ltd., Bonny's Taxi Ltd., Burnaby Select Metrotown Taxi Ltd., Queen City Taxi Ltd., Royal City Taxi Ltd., Black Top Cabs Ltd., Vancouver Taxi Ltd., Vancouver Taxi Ltd. dba Handicapped Cab, MacLure's Cabs (1984) Ltd. (Vancouver Taxi Association), represented by Peter A. Gall & Associates 		
Board Decision	The special authorization amendment is refused for the reasons set out below.		
Decision Date	December 14, 2021		
Panel Chair	Carmela Allevato	Panel Member	William Bell

1. Introduction

[1] On January 23, 2020, the Passenger Transportation Board (the "Board") granted Uber Canada Inc.'s ("Uber") application for a passenger transportation licence with a special authorization in the form of a transportation network services authorization ("TNSA") enabling it to provide transportation network services ("TNS") in Region 1 (Lower Mainland, Whistler). This decision arises from an application submitted by Uber on August 31, 2020 in which it seeks to amend its operating areas to include: Region 2 – Capital Regional District (CRD); Region 3 – Vancouver Island, excluding CRD; Region 4 – Okanagan-Kootenay-Boundary-Cariboo; and, Region 5 – BC North Central and Other Regions of BC (the "Application"). If the Application is granted, Uber would be permitted to operate in all of British Columbia.

[2] Section 31 of the *Passenger Transportation Act*, S.B.C. 2004, c. 39 (the "Act") provides that a licensee wishing to amend a licence must apply to the Registrar of Passenger Transportation (the "Registrar") and, in that event, Division 3 applies. In this case, the Registrar forwarded the Application to the Board in accordance with section 26 of the Act.

[3] The Board is established under the Act and its powers, duties and functions are set out in section 7 of the Act. In general terms, the Board has authority to make decisions on licence applications for passenger directed vehicles, including TNS, taxis, limousines, and other small shuttle and tour vehicle licences.

[4] Section 28 of the Act governs determinations by the Board about whether to approve, in whole or in part, licence applications for a special authorization such as a TNSA. Section 28 provides that such approval may be granted after the Board considers whether:

- (a) there is a public need for the services that the applicant proposes to provide under the special authorization;
- (b) the applicant is a fit and proper person to provide, and is capable of, providing those services; and
- (c) the application promotes sound economic conditions in the passenger transportation business in British Columbia.

[5] If approved, the Board is required to specify the special authorizations to be included in the licence and establish licence terms and conditions, as provided for in sections 28(3) to (6) of the Act.

[6] For the reasons set out below, the Board refuses the Application.

2. Procedural Matters

[7] Section 26 of the Act requires the Board to publish notice of the Application, which it did on September 9, 2020. Section 27(2) provides that any person may, within the time period specified by the Board and on payment of the prescribed fee, make a written submission to the Board respecting the Application.

[8] In relation to Uber's Application, the Board received initial submissions from:

- BC Taxi Association, ("BCTA"),
- Checkmate Cabs (Kelowna),
- Kami Cabs Ltd. (Kamloops),
- Kelowna Cabs (1981) Ltd. (Kelowna),
- Mothers Against Drunk Driving (MADD) Canada,
- Okanagan Taxi Association (Kelowna),

- Orange Taxi (Sooke),
- Penticton Klassic Kabs Ltd. (Penticton),
- Safe Ride Sharing Ltd. (Kelowna),
- Star Taxi (Cranbrook),
- Teco Taxi Ltd. (Fort St John), and
- Vancouver Taxi Association (“VTA”)

(collectively and individually, the “Submitter(s)”).

[9] This Application by Uber is one of over 40 applications that have been made by various companies since the introduction of the TNS legislative amendments. Many of the Submitters responded to several issues concerning this Application, but also to other global issues concerning TNS operations in general.

[10] Several of the Submitters asked the Board to conduct an oral hearing in respect of the applications received. The Act confers broad authority on the Board to control its own process when making decisions on licence applications. That authority includes discretion to conduct a written, electronic, or oral hearing, or any combination of them, as the Board considers appropriate. The Board has decided to follow its usual process set out in the in Industry Advisory dated October 30, 2019.

[11] In accordance with the October 30, 2019 Industry Advisory, the Board sent an application package to all Submitters which included the documents provided by Uber in support of its Application (i.e., TNS Declaration Form, TNS Information Sheet, Business Plan, Cash Flow Projections, Statement of Business Assets, Resume, Criminal Record Checks, Signing Authority, and Disclosure of Unlawful Activity and Bankruptcy Form). Consistent with Rule 17 of the Board’s *Rules of Practice and Procedure*, the application package and supporting documentation sent to the Submitters contained redactions which were necessary to protect the personal and confidential business information of Uber. The Submitters then had 14 days to provide further written submissions on the Application. The Board provided copies of the written submissions received from the Submitters to Uber.

[12] Some of the Submitters argued that the Board should decline TNSA applications given the impact of the ongoing coronavirus (“COVID-19”) pandemic. The COVID-19 pandemic has been impacting all facets of the Province since March 2020. On March 17, 2020, the Province of British Columbia declared a state of emergency in response to the novel COVID-19 pandemic. Regulations and orders issued under the *Emergency Program*

Act, RSBC 1996, c. 111, together with orders and guidance from the Provincial Health Officer, curtailed social and economic activities that affected the provincial economy, including the passenger transportation industry. The state of emergency officially ended on June 30, 2021 and provincial health orders were lifted or modified as the Province entered a phased recovery and restrictions were eased.

[13] The Board was concerned it did not have sufficient empirical data to properly consider whether there is a public need for the proposed service and whether granting the Application would promote sound economic conditions in the passenger transportation business, given the impact of COVID-19. The Board is required by section 28 of the *Act* to consider these factors in arriving at a decision. Consequently, on February 24, 2021, the Board sent a letter to Uber and the Submitters inviting submissions as to whether the Board should conduct an investigation on the impact of the COVID-19 pandemic on the passenger transportation business, pursuant to section 27(3) of the *Act*. The Board requested submissions by March 10, 2021, which was later extended to March 26, 2021. The Board received submissions from Uber on March 26, 2021.

[14] On April 20, 2021, the Board determined it would conduct an investigation in accordance with section 27(3)(b) of the *Act* on the impact of the COVID-19 pandemic on the passenger transportation business. This Application was adjourned pending the conclusion of the investigation. The Board's decision was published in the Board's Weekly Bulletin on April 21, 2021.

[15] The Board retained Dr. Dan Hara of Hara Associates, a professional economist, to assist the Board in conducting its investigation. Dr. Hara's report, "Economic Effects of COVID-19 on the Passenger Transportation Industry" (the "Report"), was released on September 17, 2021. A copy of the Report was provided to Uber and the Submitters and all were provided the opportunity to comment on the Report. The Report was also published on the Board's website.

[16] On October 12, 2021, Uber, the VTA, and Orange Taxi provided responses to the Report for the Board's consideration. Uber replied to the Submitters' submissions on October 18, 2021.

[17] The Report and the responses of Uber and the Submitters are canvassed in the reasons that follow.

3. Uber's Application

[18] Uber was federally incorporated on February 8, 2012 and registered as an extra-provincial company in British Columbia on December 15, 2014. With the approval of its TNS application as noted above, Uber was issued Passenger Transportation Licence #75266 effective January 23, 2020 to provide TNS in Region 1, Lower Mainland-Whistler. With this Application, Uber seeks to expand its ride-hailing services to all regions of British Columbia.

[19] Uber submits that the expansion of TNS across BC will benefit not only residents interested in driving or riding with Uber but may spur more innovative offerings and service improvement among existing transportation service providers. It relies on comments by the Competition Bureau of Canada that “competition is good for both business and consumers” and that Transportation Network Companies (“TNCs”) like Uber are likely to make transportation options more affordable and convenient. In-app features such as the rating system and real-time tracking function are also likely to incentivize better service and promote greater transparency.

[20] In its updated Business Plan, Uber notes that it was “born out of a watershed moment in technology” ten years ago and its growth has been fueled by the rise of smartphones, the advent of app stores, and the desire for on-demand work. These factors have supercharged its growth and created an entirely new standard of consumer convenience.

[21] Uber states that it seeks to compete with personal vehicles and considers the market for ridesharing (ride-hailing) to be massive. It refers to an Insurance Corporation of BC estimate that there are more than 2 million personal vehicles across BC, of which 900,000 are outside Metro Vancouver. Its business goal is to grow the service to allow drivers to meet demand from riders and enable an affordable and reliable alternative to personal vehicle ownership through a variety of offerings including ride-hailing.

[22] Uber observes that with ride-hailing, drivers use vehicles approved by regulation to provide transportation services to consumers in a designated region. When it launches its products in a new city, drivers sign up and awareness is created among consumers. As the number of drivers grows, Uber's market coverage improves which brings down average wait times and attracts more consumers. More consumers result in increased trip volumes and higher driver efficiency, which attracts more drivers and enables Uber to expand

service areas and reduce fares for consumers in some cases through the effects of dynamic pricing.

[23] Ride-hailing with Uber involves flexible upfront pricing which incentivizes drivers to meet rider demand for transportation services while also informing riders of the fare they will pay, subject to only a few limitations. Flexible pricing is key to incentivize riders to take trips during low demand periods with low prices and to encourage drivers to go online during peak periods ensuring reliability with low wait times.

[24] Uber says that to maximize earning opportunities for its drivers and ensure a variety of selection for customers, its app categorizes service types such as vehicle type, size, or trim level. If this Application is approved, Uber intends to make the following services available at or near launch:

- UberX (the standard ride-hailing, facilitating private rides for 1-4 people).
- UberXL (vans and SUVs for groups of six or extra luggage). This product is currently capped at 5 riders so the front passenger seat can remain empty to ensure social distancing.
- Subject to market conditions, Uber may add additional selections such as UberComfort (allows drivers to charge a slight premium for newer vehicles with more legroom) and UberPool (matches riders heading in the same direction so they can share rides and costs). This service is suspended due to COVID-19.

[25] Uber states that when it initially launched in Vancouver, it rolled out an integrated marketing and communications plan to raise awareness of its service, its benefits and how to safely ride or drive with Uber. Post-launch, Uber has focused on educational messaging and safety tips to keep consumers and drivers safe from COVID-19. As part of its expansion across BC and for cities such as Victoria and Kelowna, Uber's plans are built upon having a few hundred affiliated drivers early on in order for a reliable service to be maintained. It notes smaller communities will naturally require a smaller base of drivers. As it has observed with Vancouver, Uber expects the number of drivers to grow over time. Further, it plans to launch a tailored communications plan for each city to further raise awareness and promote safe use of its platform. This will include email campaigns to affiliated drivers and riders, promotional offers to encourage riders and drivers to experience the Uber platform, and media coverage. Uber has not provided details of how it plans to roll out its service in non-urban areas.

[26] More specifically, Uber indicates that it plans to begin its expansion outside Greater Vancouver in the larger cities across the Province. Further expansion will be contingent on a supply of qualified drivers. Uber's Business Plan included three-year cash flow projections reflecting its expansion plans.

4. The Board's Investigation

[27] As noted above, having received and reviewed Uber's Application and the various submissions, the Board commenced an investigation in accordance with section 27(3)(b) of the Act. The Board retained Dr. Hara to prepare a report on the impact of COVID-19 on the passenger transportation business.

[28] The Report investigated the impact of COVID-19 on monthly trip volumes for taxis and TNCs, as well as consequences for operating costs and market share for both types of licenses. The impact of COVID-19 on key broad economic factors such as employment, airport volumes, and tourism was also considered in the Report. These indicators are primary drivers of business for taxis and TNCs.

[29] The Report provides the Board with trip data for taxis and TNCs in each of the regions of the Province starting in May 2019 and ending in May 2021. This is comparative data as TNS were not approved until January 2020. While trip data for TNCs was readily available through the Data Warehouse, a program operated by the Ministry of Transportation and Infrastructure that gathers data on behalf of the Board, taxi data was not as easily available. The Report explains the issues Dr. Hara identified with the data and then explains how the final estimates were arrived at in the Report.

[30] The Board accepts the data provided in the Report as evidence in this proceeding.

[31] The first TNSAs were issued at the end of January 2020, approximately two months prior to the commencement of the COVID-19 pandemic. TNS activity since January 2020 has been primarily in Region 1 with a small amount of activity in Region 2. There has been no TNS activity in other regions. As the Report indicates, although the Board has issued TNSAs to TNCs in other regions, COVID-19 has affected the start up of those services.

[32] The Report analyzes local and provincial data from a number of sources and concludes that, overall, there was a strong decline in trip volumes in the Province at the commencement of the COVID-19 pandemic followed by a partial recovery to still depressed levels in the months that followed.

[33] The Report compares regional total trips as of May 2021 to total trips in May 2019. Total trips in May 2021 included trips by taxis and TNCs both in Regions 1 and 2. TNCs did not operate in the other regions so the reference to “total trips” means taxi trips. The estimates are as follows:

Region 1 - Total trips declined by 8.8% (taxi trips declined by an estimated 66.3%)

Region 2 - Total trips declined 24.5% (taxi trips declined by an estimated 26.6%)

Region 3 - Total trips declined by 32.7%

Region 4 - Total trips increased by 3.6%¹

Region 5 - Total trips declined by 23.5%

[34] As to Region 4, the Report notes that although there is an increase in the number of trips from May 2019, the May 2021 number is still at 84% of the December 2019 number of trips immediately prior to the pandemic.

[35] The Report also provides data on airport passenger volumes, hotel occupancy, and general unemployment levels on both a provincial and regional level. Generally, as with the trend for total trips, there was an initial dramatic decrease in activity with a slow recovery, but still not to levels observed before the COVID-19 pandemic. The sole exception was Prince George, which saw an increase in hotel occupancy.

[36] The Report suggests that the lower rate of decline in total trips in Region 1 as compared to Region 2 may be due to the “vigorous” presence of TNS services in Region 1. That is, the Report theorizes that more people took passenger directed trips than they normally would have because of the availability of the TNS option, and this led to a greater increase in trip volumes than would have been the case without the TNS. According to the Report, this observation would be consistent with the experiences of other jurisdictions prior to the pandemic where the introduction of TNS led to an overall increase in trips.

[37] However, the Report also states the experience in Region 1 shows that the introduction of TNS has led to a significant loss of market share on the part of taxis. See, for example, the analysis of Region 1 in Section 4 of the Report at pages 22-23:

¹ The Report did not provide a total trip percentage for Region 4 and the Board mirrored the Report’s calculation $[9460 \text{ (Increase)} / 2626100 \text{ (May 2019 total)} = 0.036 \times 100]$ to derive an increase of 3.6%.

Combined trips for TNS and taxis declined 8.8% over the May 2019 to May 2020 period (1,749 thousand to 1,595 thousand). TNS trips rose rapidly to roughly one million trips in May 2021, significantly higher than the 589 thousand taxi trips. By themselves, taxi trips fell an estimated 66.3%, or two-thirds.

As discussed earlier, this rapid growth in TNS trips only occurred in Region 1, where international TNS companies like Uber and Lyft had been licensed to operate and led this expansion. The net result is that total trips have recovered to a little over 90% of previous levels, with more recent data on hotel occupancy and trip volumes suggesting further recovery. Taxi companies, however, have lost significant market share as a large proportion of passengers chose the TNS. TNS trips now exceed taxi trips in the region.

[38] The Report also describes vigorous TNS activity in Region 1 that was, in part, at the expense of taxi companies. This resulted in a lower recovery for taxi companies in Region 1 where by themselves taxi trips fell an estimated 66.3%, a rate significantly higher than other Regions. At pages 4 and 5 of the Report, Dr. Hara writes:

All taxi company reports from both data sources showed the same pattern of a strong decline in trip volume in March/April 2020 when Covid and associated government restrictions on movement and economic activity began. This was followed by a partial recovery to still depressed levels in the months that followed. The common pattern lends credibility to submissions by each company, and the net results recorded.

The same decline in March/April 2020 is also reported by TNS companies, although they had just launched operations at that time. In the case of TNS companies, their later expansion in the Lower Mainland was more aggressive, occurring in part at the expense of market share of taxi companies in that area. As a result, the partial recovery of Lower Mainland taxi companies from the initial shock of Covid has been much lower than for taxi companies in other regions.

[39] The Report also analyzes the impact of COVID-19 on the start up of new TNCs. According to the TNS business model, new companies must have a sufficient number of drivers and vehicles and must advertise so as to gain a market share quickly. The number of vehicles will ensure that customers do not have to wait long and gaining market share will give drivers enough business. The Report states at page 15:

The requirement to enter at a large enough scale imposes natural entry barriers to new companies. Not only must they have enough drivers and vehicles from the beginning to cover the area efficiently, they must also advertise and gain market share quickly to give their drivers enough business.

Covid added to this barrier. The decline in customers meant less passenger volume, especially at peak weekend times when restaurant and entertainment travel would normally produce a shortage of taxis and an opportunity for new TNS entrants. There is also a shortage of drivers, at first because of the risks, and later because of the general shortage of labour in service occupations as the economy began to revive. BC's requirement for a commercial level driver's licence also adds to the difficulties since upgrading one's BC driver license require an in-person driver test. Covid has meant cancelled tests and a large backlog and long waiting time.

It is apparent from the data that large international companies with good access to long-term capital were able to overcome the additional cost and scale barriers imposed by Covid and launch their services while smaller companies were not. The TNS growth to date is driven by Uber and Lyft in Region 1. Their licenses are restricted to Region 1. Other licensees who employ the TNS/app-based business model have restricted their offering and entry. BC companies like Kuber and Lucky to Go have full rights to operate across the province, but have limited their operations to small scale operations in Region 1 and Region 2. Canadian companies with active and fully functional TNS operations in other provinces, have delayed entry into the BC market (e.g. TappCar, Uride, ReRyde).

The Report expects TNS operations to eventually emerge in all regions of BC from current licensees either because the pandemic comes to an end or COVID-19 becomes endemic and TNCs will stop postponing entry at scale in BC markets.

[40] The labour shortage has also affected taxi companies, some of which suspended operations. The Report notes:

In addition, respondents reported a taxi driver shortage which increased costs and contributed to the decision to suspend operations. This is consistent with media stories from other parts of Canada, and with general reports of labour shortages in the service industry, even though average unemployment rates are still high. (page iii)

[41] The Report elaborates on the impact of driver shortage on taxi companies during the current economic conditions at page 40:

Another feature of the driver shortage is the relative advantage of the TNS business model over the taxi business model with fixed and regulated meter rates.

Within boundaries, the TNS business model allows flexible fares. Fares rise when there is a shortage of vehicles and drivers, attracting more drivers and deterring some customers who will wait for a less busy time. This is an advantage for customers in that it allows reliable supply in peak period, at least for those willing to pay. It is also a disadvantage to customers in that the rate is not fixed, and those wishing to return home on a Saturday night may face a higher fare than they planned for. For fixed rate fares – taxis are the alternative offered by the system.

...

However, in the face of an ongoing driver shortage, taxis can be put under a rate-squeeze.

During a driver (and therefore vehicle) shortage, passenger demand can exceed supply. This will drive up TNS rates, a mixed blessing since the higher rates mean fewer customers, but the higher rates also retain drivers and attract more of them. Since taxi companies have fixed fares, their ability to raise returns to drivers is more limited. During a shortage, taxis will be busier. However, at a given meter rate there is a limit to how many fares can be carried and to the amount that can be earned at a fixed meter rate.

In normal conditions an equilibrium will be reached. But, during an ongoing driver shortage, it is possible that taxi company margins will be squeezed by fixed meter rates to the point where they cannot retain drivers even though taxi demand justifies it. The drivers will then tend to move to TNS where the hourly earnings are higher because of the higher average rates and the high customer demand.

(emphasis in the original)

5. Analysis and Findings

[42] Section 28(1) of the Act sets out the three factors which must be considered by the Board. While the Board does not recite all the information and submissions filed by Uber and the Submitters, it has carefully considered them when making its determination. In

addition, the Board has considered the contents of the Report and the specific submissions made regarding it.

(a) Is there a public need for the service that Uber proposes to provide under the special authorization (s. 28(1)(a))?

[43] The first consideration is whether there is a public need for the service that Uber proposes to provide. This requires Uber to demonstrate that there are people who would use Uber's proposed service. In this respect, Uber first relies on:

- The February 2018 Select Standing Committee report entitled "Transportation Network Companies in British Columbia" (the "2018 TNC Report"),
- A June 2018 report entitled "Modernizing Taxi Regulation" by Hara Associates (the "2018 Hara Report"),
- The March 2019 Select Standing Committee report entitled "Transportation Network Services: Boundaries, Supply, Fares and Drivers' Licences" (the "2019 TNS Report"), and
- The 2018 Hansard Debates relating to the *Passenger Transportation Amendment Act*.

(collectively, the "Background Materials")

[44] Uber submits the following is evidence of public need in Regions 2, 3, 4 and 5:

- Ride-hailing has been deemed an essential service in BC.
- Smaller communities in BC have a need for more reliable options where present services are spotty or non-existent. In this regard, Uber refers to the 2018 Hara Report which observed that cities such as Kelowna face "large fluctuations in demand" – for example, an influx of tourists during summer – to which "taxi service has not been able to respond". It notes in each of these cases ride-hailing offers a potential solution by making it easier and more affordable to get around especially in places underserved by existing transportation options.
- Uber indicates that between September 2019 and August 2020 a significant number of unique users have opened the Uber App in Victoria and Kelowna, indicating a demand for Uber as a transportation option in these communities.
- Uber also notes researchers at Temple University compared rates of alcohol-related crash deaths in cities before and after Uber was available. While there are a number of factors that affect impaired driving trends, findings from the research concluded

that the arrival of Uber in a city led to a 3.6%-5.6% decrease in the number of people killed in alcohol-related car crashes. In this regard, it refers to a Statistics Canada report of 2015 that shows Victoria and Kelowna ranked 4th and 2nd respectively in Canada as cities with police-reported impaired driving offences. This made BC the only Province in Canada with multiple cities in the top 5. Included with its Application was a support letter from MADD Canada that observes ride-hailing by Uber will provide Victoria and Kelowna residents with “a safe ride share option when they need it most” and prevent impaired driving.

- Ride-hailing’s primary competition is private car ownership. Estimates suggest that private cars sit unused more than 95% of the time using 5% of their capacity while still requiring maintenance, repairs, insurance, fuel etc. Ride-hailing avoids the cost of car ownership while maintaining the same convenience allowing riders to pay for transportation only when and to the extent, they need it.
- Public need is not absent because of the taxi industry’s existence. Uber reports Beck Taxi of Toronto experienced growth after the launch of Uber there in September 2014. The Application refers to Beck’s Operations Manager who, in July 2017 indicated assuming monthly trip totals a 20% growth in business since 2015.
- Other reports detailing statistics and comparisons between overall taxi and ride-hailing trips in cities such as Toronto, Montreal, Calgary, Ottawa, Mississauga, Brampton, Hamilton, Markham and the Niagara and Waterloo regions indicate that a new demand and market appeared. Further, taxi growth in some of these markets both grew and declined. The decline in many cities, however, was not due to a shrinking customer base and TNCs did not simply capture existing market share, but rather capitalized on a previously untapped market. Some taxi businesses in some cities saw increases in earnings and rides after the introduction of ride-hailing, while some like Calgary shows that rides may decrease over time even where ride-hailing is not present.

[45] Uber’s submission is that the Background Materials, the Report, together with the reports and research studies it references, letters of support and current user behaviour in the Uber app indicate that there is demand and need for its services outside of Region 1. In its October 12 submission Uber provided two new studies and 13 new letters of support.

[46] In one of the studies commissioned by Uber, “*The driver experience: Profile and earnings of drivers on Uber in Vancouver between July 2020 and June 2021*”, Accenture estimated how much money drivers in Vancouver earned on the Uber App. Net earnings were calculated on a per session hour less costs. A session is defined as the driving time and the time the driver is online on the Uber App but not the time en route to and from a

trip. “Costs” include fixed costs and variable costs but do not include the cost of the vehicle – the study assumes that Uber drivers own the vehicle they are driving. The study, which was commissioned by Uber, also attempted to identify decisions drivers can make to influence how much they earn. It concludes that on average Uber drivers take home on a per session hour basis earnings that are 60% higher than the minimum wage.

[47] The second study submitted by Uber, *“The Impact of Uber in Canada: How Uber has transformed the on-demand economy”*, was conducted to help Uber better understand and quantify the impact Uber made in 2020 for consumers and communities across the country. It is based on a national poll, an anonymous survey of 3,000 drivers and delivery people, as well as a literature review. The report concluded that convenience, dependability, and safety were, among others, most often cited as the reason for using Uber. A large majority of drivers and delivery people were satisfied with their work with Uber and said they would continue to use it for the foreseeable future or until their family and working circumstances change.

[48] The letters of support filed by Uber on October 12 indicate that the Application is supported by the Victoria Airport Authority, the Greater Victoria Chamber of Commerce, the City of Langford, the BC Federation of Students, the Ending Violence Association of BC, MADD Canada, the BC Restaurant and Foodservices Association, the Victoria Police Department, and Tourism Kelowna. Uber submits that these letters demonstrate there is a public need and a desire in the community for the services that Uber offers.

[49] In its October 12, 2021 submission regarding the Report, Uber argued the Report establishes there is a public need for the expansion of its service into all Regions of the Province.

[50] Uber emphasizes the growth of TNS trips in Region 1 to over one million in May 2021 and asserts that it demonstrates there are people who used the service in that Region. According to Uber, this strongly implies the same demand is present in other Regions of the Province. Uber relies on the Report’s comparison between Region 1 where TNS activity was vigorous and where the decline in total trips from May 2019 to May 2021 was only 8.8, to Region 2 where TNS activity was minimal and the decline was nearly three times as great at 24.5%. Uber relies on the statement in the Report that it is possible that the lower decline in overall trips was due to the greater activity of TNCs in Region 1 and this is consistent with the experience in other jurisdictions prior to the pandemic.

[51] Uber also points out that between March 2021 and August 2021 there was a 300% increase in the number of people who opened their app to look for rides in Victoria. In Kelowna there was an increase of 250%. Uber submits this is evidence of a large number of people who would use Uber's services if it were available in those communities.

[52] As noted, two Submitters filed submissions in response to the Report: the VTA and Orange Taxi. Orange Taxi's submission was largely irrelevant as it made unfounded allegations of impropriety and referenced a report that has already been addressed by the Board in the January 2020 decision when it issued Uber's initial authorization.

[53] The VTA argues the Report is unable to establish a public need for Uber's services. According to the VTA, the data in the Report is insufficient and unreliable and cannot be used to draw any significant conclusions.

[54] The Board rejects the VTA's submission that the data in the Report is insufficient and unreliable. The Board finds that the data provided in the Report is reliable and the estimates are reasonable.

[55] The VTA takes issue with the Report's finding that the vigorous presence of TNS in Region 1 may have led to a lower decline in the total number of trips in that region. The VTA argues the Report fails to take into account the major differences between Vancouver and the rest of the Province. It further states the Report failed to compare Region 2's data to the other three regions where data was collected. For example, Uber is not operating in Regions 3, 4 and 5, which would suggest that a similar relationship would appear in these other regions. According to the VTA, the vast difference in the numbers in the regions, with Region 4 actually increasing in numbers of trips, indicates that there are other factors driving the difference.

[56] The VTA argues that the Report does not establish that having Uber increases demand or fills a public need before or during the pandemic.

[57] The Board has made clear that it does not consider TNS and taxi service to be equivalent such that the existence of one negates any need for the other. In past decisions, the Board has found that the Background Materials by themselves form an appropriate evidentiary basis for establishing public need for TNS in the Province generally. In this Application, Uber has not simply relied on the Background Materials but has provided additional supporting evidence in the form of studies and letters of support.

[58] However, the data in the Report clearly demonstrates that there has been a decline in demand for passenger transportation services in the Regions. This includes Region 4 where, although the trip numbers were slightly higher in 2021 than in 2019, they were still at lower than immediately prior to COVID-19. The Region 1 numbers show that TNCs grew their business, as much at the expense of taxi market share as to tapping a new market altogether. The relatively small number of TNS trips in Region 2, as compared to Region 1, is also an indication to the Board that there is not as much demand for TNS outside of Region 1. This is also supported by the fact that TNS companies that have been authorized to operate in the Regions applied for have not started up their services.

[59] The Board acknowledges that the Background Materials were preceded by extensive public consultations, submissions, and studies regarding the experience in other jurisdictions. Under normal circumstances the Board would not deviate from its prior decisions that the Background Materials by themselves establish public need. However, while the Background Materials make a general case for the introduction of TNS, they do not address the specific circumstances in a specific Region at a specific time. Additionally, the Background Materials do not contemplate the wide-ranging and significant impact of COVID-19 on the economy and in particular on the passenger transportation industry and its key business drivers.

[60] The Board has approved a number of TNS applications after the declaration of the state of emergency in March 2020. In those applications the Board considered submissions that COVID-19 had financially devastated both the taxi and TNS industries, reduced the demand for services and resulted in a skeleton number of drivers and vehicles providing services. In some applications, the Board also addressed the argument that a TNS application should be refused as there were other TNCs whose applications had been approved and who could provide TNS to those who wished to use the service.

[61] In those cases, the Board did not have objective evidence regarding the impact of COVID-19 on the passenger transportation business. Specifically, the Board did not have the quality and amount of data and information provided in the Report from which it could draw conclusions. In the TappCar decision the Board stated, for example, “[t]he Board has no evidence that additional TNS licence approvals are a threat to existing TNCs”.

[62] That is not the case in this Application. Here, the Board has sufficient evidence that there has been a decline in demand for passenger transportation services across all regions in BC with a slow recovery at less than pre COVID-19 levels. Further, the experience in Region 1 indicates taxi recovery has been slower due to more TNS activity in the Region, which caused the taxi business to lose a significant share of the market to TNCs. Further,

and based on the Report, the Board finds that taxi recovery in Regions 2-5 will have a similar experience particularly with approved TNS operations activating and entering the market at scale.

[63] The Board has considered this evidence in light of the letters of support and the studies and reports tendered by Uber. The Board is persuaded that, in the current economic circumstances, the public need factor in section 28(1)(a) of the Act for Regions 2, 3, 4 and 5 does not exist.

(b) Is the applicant a fit and proper person to provide that service and is the applicant capable of providing that service (section 28(1)(b))?

[64] The second consideration is whether, for section 28(1)(b) purposes, Uber is a fit and proper person, and has the capability, to provide the proposed service.

[65] Fit and proper person is not a defined phrase. The Oxford English Dictionary defines “fit” in part to mean “well adapted or suited to the conditions or circumstances of the case, answering the purpose, proper or appropriate ... possessing the necessary qualifications, properly qualified, competent, deserving”. “Proper” is defined to mean “suitable for a specified or implicit purpose or requirement; appropriate to the circumstances or conditions; of the requisite standard or type; apt, fitting; correct, right”. The context for what is fit and proper is the passenger transportation business in BC. This reflects that a licensee has a responsibility to exercise the powers conferred by the granting of a licence with regard to proper standards of conduct.

[66] When considering whether an applicant is fit and proper, the Board considers factors such as the applicant’s past conduct and the potential risk of harm to the public and the integrity of the transportation business if a licence is granted to the applicant. Where, as here, the applicant is a corporate entity, the Board will consider any relevant information concerning the conduct of the directors and key management staff to assess how the business is likely to be run in this jurisdiction.

[67] When considering capability, the Board considers whether the applicant has demonstrated knowledge and understanding of the relevant regulatory requirements and policies governing passenger transportation, the applicant’s ability to comply with those regulatory requirements, and the applicant’s capability to provide the proposed service in a proper and lawful manner. The Board will also consider whether the applicant has the business knowledge to operate the service. This will include consideration of the business

knowledge and experience demonstrated by management and the applicant's Business Plan and financial statements.

[68] Uber relies on its current TNS experience in the passenger transportation business in BC and Canada to support a conclusion that it is both a fit and proper person and is capable of providing the proposed service. It operates in over 25 jurisdictions in Canada with a strong record of compliance. It notes that it has no record of penalties by the Registrar and states that it "has no convictions under any TNC or taxi law anywhere in Canada".

[69] As in its original decision concerning Uber TNS 6988-19, the Board continues to place considerable weight on reports presented by Uber regarding this Application from other Canadian regulators that confirm Uber's compliance with regulatory requirements.

[70] Uber holds a valid *National Safety Code* ("NSC") certificate issued on August 6, 2019. Lola Kassim signed a Declaration on behalf of Uber under the *Liquor Control and Licensing Act* and the *Cannabis Control and Licensing Act* declaring that Uber will operate its vehicles in accordance with this legislation and that it will comply with the Board's Supplementary Terms and Conditions Respecting Apps. The Disclosure of Unlawful Activity & Bankruptcy Form and Criminal Records Checks were completed to the satisfaction of the Board.

[71] Based on this information, the Board is satisfied that Uber is fit and proper for the purposes of section 28(1)(b).

[72] The Board has reviewed Uber's Business Plan, organization structure including senior management resumes relating to its expanded TNS operations in BC as part of its assessment of Uber's capability to provide the proposed service. Although Uber is headquartered in Toronto, it has a Vancouver office that oversees its western Canadian operations. Key western Canadian management personnel includes Head of Cities, Uber Canada; a Senior Operations Manager, and a Greenlight Hub Manager. Greenlight Hub is its driver support centre located in Surrey, BC which works closely with operations teams to ensure prospective and active drivers receive high-quality in-person support.

[73] Access to the Uber platform by drivers to receive, accept and fulfill ride requests is strictly and centrally controlled by proprietary software through a series of rigorous checks. Before access to the platform is granted, each potential driver who expresses intent to drive with Uber must:

- Present a clear criminal record check that meets provincial regulations and is updated annually,
- Present a driving abstract from ICBC that demonstrates the driver has the appropriate licence class, driving experience and driving record, which is also required to be updated annually, and
- Provide valid and up-to-date documentation for vehicle ownership, vehicle safety inspection and insurance.

[74] Uber drivers are responsible for conducting pre-and-post inspections of their vehicles and must report to Uber any defects, recalls and accidents as well as any other violations. They also must adhere to hours-of-service regulations under the NSC to ensure driver alertness and service quality. Access to the platform may be removed based on driver's self-reports, direction from law enforcement and government regulators, and results from internal investigations and audits.

[75] Uber drivers are also provided a "Driver Addendum for British Columbia" that sets up terms and conditions that are applicable to the regions where passenger transportation services are provided. These communicate regulatory and safety-related requirements to drivers that conform to BC regulations and must be read and accepted before a partnership begins. The addendum includes such matters as fares, ride options and detailed regulatory obligations. The latter covers such topics as inspections and defects, accident reporting, record check updating, vehicle inspection and maintenance, hours of service, liquor and cannabis prohibitions, vehicle identifiers and a Vancouver Airport Authority (YVR) Code of Conduct.

[76] Uber also employs in-app push notifications, videos, SMS, email campaigns and in-app support via phone, chat and messaging to ensure drivers have the information they need to provide service on the platform. Partnerships with MADD Canada, the Canadian National Institute for the Blind, Share the Road (bike safety), Parachute (Vision Zero) and other organizations help ensure affiliated drivers receive appropriate safety and service content tailored to the Canadian context.

[77] In addition, drivers and riders also agree to abide by Uber's Community Guidelines in connection with the use of the platform which reflect respectful treatment and contact, promoting shared safety and compliance with the law.

[78] The Business Plan also included new health safety measures related to the COVID-19 pandemic that includes policies related to matters such as pre-ride face cover verification, car sanitization, distance seating among others.

[79] Uber also states that while no form of transportation is 100% free of incidents, it is committed to reducing public risk and enhancing industry integrity by promoting the safe use of the Uber app. It believes its technology can help make travelling safer, including through the following features:

- Know your Driver – riders see their driver’s photo, along with the make, model, colour, and plate of the driver’s car, to help ensure they enter the right car with the right driver requested through the platform.
- Trip anonymization – there is no need to share contact information as calls and messages sent through the App use phone number anonymization.
- Two-way ratings – to ensure the quality of both the driver-partners and riders.
- Account suspensions and deactivations – a driver’s ability to access the App to provide rides can be deactivated, remotely or immediately and they automatically lose the ability to give rides through the App if their documents expire.
- Real-time ID check – Uber uses selfies for security by prompting drivers to take photos to verify the right driver is behind the wheel on an ongoing basis.
- Safety centre with in-app emergency button feature users can tap on the map in the Uber App during their trip to learn about safety or if needed to contact 9-1-1. The location will appear on the screen so that riders and drivers can provide their exact location directly to the emergency operator.
- Tracking every trip with GPS technology – a record is maintained of every trip.
- Trusted contacts – riders and drivers can designate up to five friends and family members as trusted contacts to share trip details with during every ride or nighttime trip.
- Support 24/7 – customer support includes safety-focused professionals who are ready to respond to questions.

[80] Uber’s Business Plan includes 36-month cash flow projections reflecting expansion and growth in Victoria and Kelowna with any additional markets considered incremental to these projections. Other financial information included a Consolidated Balance Sheet as of December 31, 2019 and June 30, 2020 and a Consolidated Statement of Operations as of December 31, 2019 and June 30, 2020.

[81] The projections forecast millions of trips across the region, increasing access to mobility options, generating significant direct earnings for BC drivers, and providing a sustainable return to Uber to continue ongoing operations. To generate the analysis Uber reviewed comparable Canadian markets where Uber operates based upon the total addressable market (as estimated by population), recency of launch, and the level of awareness of the Uber platform. On the cost side of the cash flow analysis, it evaluated key cost areas from other Canadian markets for both the operating periods and, as well, the pre-launch period. The Board is satisfied that Uber has provided reliable information regarding the assumptions used to estimate the cash flow projections and that these assumptions are reasonable.

[82] Viewed as a whole, Uber's Application demonstrates to the Board's satisfaction that it will provide care and control of its drivers and vehicles and that it has the management resources to provide its ride-hailing services in BC. This and Uber's Business Plan and financial information demonstrate that it is capable of providing the proposed service and that it will continue to provide the service in a proper and lawful manner.

(c) Would the application, if granted, promote sound economic conditions in the passenger transportation business in British Columbia (section 28(1)(c))?

[83] The remaining consideration is whether granting the Application would promote sound economic conditions in the passenger transportation business in the Province.

[84] In considering section 28(1)(c), the Board strives to balance public need for available, accessible and reliable commercial passenger transportation services with overall industry viability and competitiveness. The Board considers this issue from a wide-ranging perspective, which includes consideration of harm to other industry participants such as taxi companies. It is the Board's view that, generally speaking, the economic interests of the transportation business overall weigh more heavily than the economic and financial interests of any particular applicant or submitter.

[85] The Submitters that oppose the Application are primarily taxi operators. Most Submitters argue that it will be difficult to survive even without the extra competition of TNS. The Submitters state that the COVID-19 pandemic has resulted in extraordinary circumstances and has financially devastated both the taxi and TNS industries. As a result of the reduced demand for services, it has been a challenge to find business.

[86] One of the Submitters argued that granting this Application, or any TNS application, prior to the review by the Special Committee in July 2023 on the impact of TNS on the taxi industry would effectively destroy the taxi industry as it struggles to compete on an uneven playing field. In response, Uber maintains that its Application should not be further delayed until after the Special Committee's review as that would affect Uber's right to a decision on its Application within a reasonable time period and would run counter to the Board being an independent agency.

[87] The Board agrees with Uber that the Application should not be delayed pending the Special Committee's review. Applicants are entitled to a decision on their applications within a reasonable time. As an independent tribunal, the Board exercises its authority based on the jurisdiction granted to it by the Legislature under the Act.

[88] The Submitters also state that Uber's Application should be refused as there are other TNCs whose applications have been approved and who can provide TNS to those who wish to use this service. The Submitters state that, as the Board cannot know the demand for or supply of TNS at this time, new TNS applications should be refused as they do not promote sound economic conditions in the passenger transportation business.

[89] In response, Uber acknowledges that COVID-19 has clearly impacted a significant portion of the economy but argues approval of its Application to expand its services would promote sound economic conditions. It notes as a new entrant in these regions it would spur new options for riders and competition for drivers who would have more options to earn income as well as more features, choice and better outcomes for those looking to drive. Further, riders as well as drivers can choose the option that best suits their needs.

[90] Some Submitters made specific submissions that granting the Application would not promote sound economic conditions.

[91] Checkmate Cabs noted the growing competition from other transportation companies with General Authorization (GA) licences, such as wine tours that act as taxis and others, such as food delivery and designated driver services.

[92] The Board finds Checkmate Cabs' claim anecdotal with no objective evidence or information to support it and accorded it little weight.

[93] Teco Taxi Ltd. submits that it is heavily dependent on the boom-and-bust economy of the oil and gas industry and, as a highly capable operator, it is able to weather

contractions and downturns without suspending or diminishing service. It argues that Uber has a reputation of ceasing operations or threatening to do so when there are changes to regulations. Examples provided were Austin, Texas which required the fingerprinting of drivers and California because of a possible requirement to classify drivers as employees. Also, according to Teco Taxi Ltd., Uber may drive smaller operators out of business before ceasing its own operations due to unprofitable operations leaving communities without any service.

[94] In response, Uber notes that its business model aligns well with any wax and wane market because drivers offer services flexibly based on rider demand. It refers to the Board's original Uber decision (TNS 6988-19) at paragraph 75 where the Board stated:

The Board recognizes the potential risks of an unlimited fleet size but also accepts that a flexible supply of TNS drivers and vehicles is part of the TNS business model. This is due, in part, to the fact that most drivers only operate part-time and in accordance with their own personal schedules and market incentives. Unlike taxis, which can be used provide rides 24 hours a day, TNS vehicles are private vehicles that may be used for purposes other than offering rides for much of the day. As demonstrated elsewhere, at any given time a low percentage of TNS drivers will be actively providing service and this percentage varies based on demand.

[95] One TNC, who was approved to operate in Region 4, Safe Ride Sharing Ltd. ("SRSL"), submitted there is no public need in approving more TNS applications in BC, particularly during the COVID-19 pandemic and the current economic climate. To demonstrate this reduced demand and the impact on the industry, SRSL included Kelowna International Airport (YLW) information comparing passenger volumes respectively for April and July 2019 and 2020 that show decreases of approximately 68% to 77%. Another Submitter, Kelowna Cabs, refers to significant declines in tourism.

[96] Some of the Submitters made submissions that are generic in nature and relate to the introduction of TNS as a whole, rather than to this specific Application. These Submitters opposed TNS generally, for a variety of reasons relating to:

- Level playing field (including, but not limited to: (a) fleet size, (b) rates and other differences, and (c) predatory pricing;
- Economic impact on taxis including a loss of share values;
- Impact on transit ridership;
- Increased congestion;

- Treatment of TNS drivers; and
- Wheelchair accessibility.

[97] These concerns were addressed in some detail in the Board's past decisions relating to TNS applications made in Whistle (TNS7101-19) (starting at paragraph 55), Uber (TNS6988-19) (starting at paragraph 57) and Lyft (TNS6990-19) (starting at paragraph 54) and need not be repeated here.

[98] In support of this Application, Uber also provided updated data and information on some of the above issues. These included reference to collaborations between ride-hailing and public transportation sectors that evidence public transit's continued support for TNS. Additionally, Transport Canada's latest collision data for 2018 shows a 6.1% decrease in serious injuries and fatalities per 100,000 population and per kilometers that were the second lowest on record. Finally, regarding congestion, Uber pointed to newly released 2019 data from INRIX a major analytics firm that focuses on traffic data and publishes annual traffic reports on cities worldwide. Rankings in 2019 compared to 2018 based on congestion (with a rank of "1" being most congested) show improvements in San Francisco with an impact rank of 30 and in Toronto, where ride-hailing has been present since 2014, with an impact rank of 19. By contrast, in 2019, when Vancouver did not have ride-hailing, it had an impact rank of 45 that showed a decline and worsening.

[99] The VTA argues that the Board has collected a year's worth of data that should allow a review by the Board of the financial harm to the taxi industry by what it describes as unrestricted licences to TNCs.

[100] Since September 3, 2019, the Board has specified data provision requirements for both taxis and TNCs as a condition of licence. The purpose of these requirements is to provide demand and supply and economic impact data that together with other possible triggers (e.g., transit ridership, congestion, treatment of drivers, etc.) would facilitate a meaningful management and assessment of impacts in both sectors and allow the Board to undertake evidence-based decision making. As noted above, the Ministry of Transportation and Infrastructure has established a Data Warehouse where this data is collected on behalf of the Board. According to the Report, the Data Warehouse's data collection in Region 1 is fairly high. However only 44.1% of the taxi fleet reported data in Region 2 and 10.8% in Region 4, with no data collected in Regions 3 and 5. Dr. Hara filled this gap in data by approaching the taxi companies directly and collecting additional data which can be used as a basis for reasonable estimates.

[101] The issues relating to availability and reliability of data must be resolved on an ongoing basis before the Board can begin to address the concerns raised by the VTA and others in the taxi industry.

[102] That said, the Board appreciates that the TNS business model, based as it is on technology, makes it easier to submit the requisite data and that this is not the case for the taxi industry across the Province. The Board acknowledges the taxi industry is having to adjust to the relatively new data requirements. The Report also acknowledged the cooperation by the taxi associations in obtaining sufficient data for the investigation.

[103] The Board also recognizes establishing something like the Data Warehouse is not an easy feat and that it requires resources, expertise, patience and cooperation among all participants. The Board urges all stakeholders to continue to work together to ensure that the Board will have timely, adequate, and reliable data to carry out its responsibilities under the Act.

[104] Uber argues that the Report supports the proposition that granting this Application promotes sound economic conditions because it:

- a. generates more trips overall, and
- b. gives all players a greater market to chase.

[105] Uber emphasizes that the Report found that TNS helped reduce the impact of COVID-19 because total trips recovered to a significantly larger degree in Region 1, where TNS are available, than in other regions where TNCs are effectively absent. TNCs in Region 1 offset the impact of COVID-19 by expanding the market with their different service. The expansion of the size of the market gives other market participants the opportunity to compete to capture the increased clientele which did not exist before TNS was introduced. According to Uber, this is advantageous not just to TNCs but to all market participants, including taxis.

[106] Uber notes that the TNS flexible rate feature is especially valuable in the context of COVID-19 when demand is constrained because TNCs “can automatically right-size themselves”. Uber states that its drivers receive stronger earnings after costs per session hour at a rate which is higher than that of some other occupations including retail person and taxi driver and confirms that taxi drivers “may have found greener pastures as TNS drivers”.

[107] Uber argues that the data in the Report suggest a positive impact post-May 2021 in taxi trip volumes. It asks the Board to draw inferences in its favour due to the taxi data deficiencies identified in the Report.

[108] The VTA relies on the Report's statement that the current labour shortage for drivers favours TNCs over taxis due to the regulated meter rates for taxis and flexible fares for TNS which creates a greater potential income for drivers that can eventually squeeze taxis out of the market. In response, Uber notes that taxi companies are free to obtain a TNSA to avail themselves of flexible pricing and that some have done so.

[109] The VTA points to the fact that there are TNS providers already licenced to offer services throughout the Province and relies on the comment from the Report that the TNS model is more than viable even if not backed by the long-term capital available to large international companies.

[110] The VTA also points to income statement data that it had previously produced on the reduction in the number of taxi trips and fares earned in the months after the issuance of the Uber and Lyft licences prior to the advent of the COVID-19 pandemic and the economic harm experienced by the taxi industry in other jurisdictions in support of its submission that this is harmful competition.

[111] For the purposes of this Application, the Report has provided the Board with evidence that COVID-19 and the accompanying public health measures have had a negative impact on the passenger transportation business. Following an initial sharp decline in total trip volumes there has been a slow but steady shallow recovery. A review of Region 1 shows that in January 2020, prior to the pandemic and the launch of Uber, there were 1,017,921 taxi trips. The following month, after the approval of Uber's initial application, the number of taxi trips fell to 849,520 while the number of TNS trips was 420,425. By May 2021, TNS trips in Region 1 had risen to over 1 million while taxi trips had risen only to 589,328.

[112] While the Board considers taxis and TNCs to engage different business models and that the presence of one does not negate the presence of the other, the Board is nonetheless required to consider the harm to other industry participants such as taxi companies, as well as other TNS licensees. The Report states that in Region 1 where Uber was active, taxi trip volumes declined by a rate that was "much more than the decline from Covid alone in other regions." As well, it is clear that from the numbers in Region 1 that the TNS business grew at the expense of the taxi industry.

[113] In normal economic times, and based on the experience in other jurisdictions, the Board has accepted that declines and increases in the taxi share of the business will occur both before and after the introduction of TNS. However, the Board now has evidence before it from which it infers that the presence of TNS operations has delayed the recovery of the taxi industry in the Lower Mainland. This is due not only to passengers choosing to use TNS, but also because of the impact of COVID-19 on the availability of drivers. As discussed above, the shortage of drivers is exacerbated by the backlog in driver testing for Class 4 licences and the difference in the regulated rate structure for the two sectors which encourages drivers to move from driving taxis to driving for TNCs.

[114] The Board is concerned that the example of Region 1, where the presence of vigorous TNS activity has delayed the recovery of the taxi industry, may play out in other regions of the Province if it approves this Application. The Board is also concerned that granting this Application may be harmful to existing TNS licensees who have been unable to start up because of the decline in passenger demand due to COVID-19. The Board considers it likely that introducing a competitor at this stage may further delay their start as there would be greater competition for drivers and for passengers.

[115] In the Board's view, existing licensees should have the opportunity to start up and be successful in their business without additional competition which may be harmful. This view is consistent with the Board's Operational Policy (publicly posted on the Board's website) principles that TNCs should be provided with the opportunity to be viable and meet the public need for the service and that negative impacts on taxi stakeholders with the introduction of TNS be minimized where possible.

[116] In summary, the Board is concerned that granting this Application at this time would unduly harm existing TNCs and taxi companies. It finds the markets in the Regions applied for are unable to absorb more competition at this time. Having given due consideration to all of the evidence and submissions, the Board refuses the Application at this time.


[117] Having reached that conclusion, the Board wishes to make clear that the opportunity for existing TNS licensees to start operations is not unlimited. Generally, when the Board grants taxi licences, a condition of the licence is that a certain number of the vehicles must be activated within a period of six months and any extension of this period is by application to the Board. There is no similar activation period for a TNSAs, something that makes sense because of the TNS business model. However, when the Board approves an application for a TNSA there is an expectation that the service will be provided within a

reasonable amount of time. Failure to begin operations may well give the Board cause to consider whether certain TNS licensees continue to be fit and capable of providing the service.

[118] The Board will be asking the Registrar to provide the Board with a report on the status and plans of existing TNS licensees regarding plans for commencement of their operations. The Board will also require an update on the activity status of taxi companies that suspended operations due to the pandemic.

6. Conclusion

[119] In this Application, the Board is satisfied that Uber is fit, proper and capable of providing the proposed service. In the current circumstances, however, the Board is not convinced that there exists a public need for the service applied for. Further, the Board considers that the Application, if granted at this time, would not promote sound economic conditions in the passenger transportation business in BC. For these reasons, the Application is refused.

Signature of Panel Chair	
Date	December 14, 2021
Entered by the Executive Director	H. Stewart