Developing a regulatory framework for e-hailing services in South Africa: a comparative study

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DEDICATION

This thesis is dedicated to the e-hailing drivers of South Africa and the entire globe—those who commute daily through the arteries of our cities.

They spend long hours behind the wheel in conditions characterised by regulatory ambiguity, unclear labour protection, and substantial personal danger. They facilitate countless trips to different corners of the world and enhance urban mobility.

Their travails and challenges exemplify the very ills on which this study seeks to shed light. I pay tribute to their resilience, commitment, and hard work with deep reverence.

In addition, I dedicate this thesis to my beloved son, my foremost and enduring renewal. Despite living on a different continent, his presence is constant and reaches me across distance and time. His life and quiet inspiration unlock new frontiers of hope and purpose that I never knew existed.

The information used and presented in this thesis is correct and up to date until 1 October 2025 when research for this thesis was concluded. Any later political, social and/or legal developments have not been considered.

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ABSTRACT

Public transport has long reflected South Africa's social and economic inequalities. What started as an instrument of colonial control and apartheid segregation has developed into a complex regulatory environment struggling to keep pace with twenty-first-century innovations. This study examines how South Africa's transport law, often burdened by exclusion and informality, can adapt to the rise of e-hailing. This digital phenomenon has transformed both mobility and regulation. The e-hailing crisis, often visible as violent clashes and institutional paralysis, is not an isolated incident but the latest sign of longstanding governance failures in public transport.

Chapter 1 sets the stage by presenting the research context, highlighting the 2024 *National Land Transport Amendment Act* and the 2025 Regulations as pivotal moments that finally legitimised e-hailing as a lawful form of public transport. This milestone comes after a decade of chaos, characterised by conflicts between metered taxi groups and e-hailing drivers, weak enforcement, and legal uncertainty. Thereafter, Chapter 2 traces the development of transport regulation from 1809 through to the post-apartheid era, showing how successive regimes each perpetuated a fragmented and unequal system. Chapter 3 explores how platform technologies have disrupted this legacy, revealing the "pacing problem" between rapid technological breakthroughs and sluggish legislative responses. It highlights, among other things, three linked issues in the e-hailing sector: distorted competition, insecure labour conditions, and increasing transport inequality.

Chapters 4 to 6 serve as the analytical and prescriptive core of the thesis. Chapter 4 provides a doctrinal assessment of the *National Land Transport Act*, its 2024 Amendment, the 2025 Regulations, and the *Economic Regulation of Transport Act*. While these instruments introduce long-overdue legal clarity, they remain limited by narrow licensing provisions, inconsistent enforcement, and silence on key labour and pricing questions. Chapter 5 employs a functional comparative method, analysing regulatory models from Kenya, Tanzania, and India; jurisdictions that share similar developmental and institutional constraints. Their experiences with commission caps, fare corridors, and driver protection mechanisms offer valuable lessons for balancing

innovation with accountability. Chapter 6 synthesises these insights into a proposed hybrid framework, combining competition oversight, minimum labour protections, and transport-justice measures to establish a stable, enforceable, and context-sensitive regime.

Ultimately, the study demonstrates that effective e-hailing regulation in South Africa requires more than legislative recognition: it demands an integrated approach that treats transport not merely as an economic service but as a governed public good. By drawing together historical, doctrinal, and comparative analyses, the thesis develops a realistic and actionable pathway for reform; one that aligns technological innovation with fair competition, safer working conditions, and equitable access to mobility.

Keywords:

E-hailing regulation; public transport governance; disruptive technology; transport justice; platform economy; South African public transport regulations.

LIST OF ABBREVIATIONS AND ACRONYMS

AIS-140	Automotive Industry Standard 140 (India – vehicle tracking & safety device rule)
CCMA	Commission for Conciliation, Mediation and Arbitration
CERT-In	Computer Emergency Response Team – India
ECA	*Electronic Communications Act* 36 of 2005
ECTA	*Electronic Communications and Transactions Act* 25 of 2002
E-hailing	Electronic hailing services (digital ride-booking platforms)
GPS	Global positioning system
NLTA	*National Land Transport Act* 5 of 2009
P2P	Peer-to-peer (network or service model)
RICA	*Regulation of Interception of Communications and Provision of Communication-Related Information Act* 70 of 2002
SANTACO	South African National Taxi Council
TNC	Transport network company
WPNTP	White Paper on National Transport Policy

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1 Introduction

Background and context

On 12 September 2025,[1] the Minister of Transport proclaimed that the *National Land Transport Amendment Act* 2024 (Amendment Act),[2] and its operational regulations, the *Second National Land Transport Regulations* 2025[3] have come into effect, formally recognising e-hailing (electronically hailed taxi services) as a distinct category of public transport in South African law. This watershed moment followed over a decade of legal ambiguity during which Uber, Bolt, and other platforms operated in a grey zone, tolerated as "technology companies" rather than licenced transport operators.[4] They were not integrated into the statutory framework, being shoehorned (if at all) into the outdated "metered taxi" provisions of the *National Land Transport Act* 2009 (NLTA).[5] In practice, this regulatory vacuum led to informality, contested authority, and often violence.[6] Metered taxi associations perceived Uber and Bolt as interlopers benefitting from an uneven playing field, while platforms insisted they were mere intermediaries not subject to transport licensing requirements.[7] Government regulators lacked the digital tools and data access to monitor fares, commissions or driver behaviour on these apps. By the time Parliament finally acted with the 2023 version of the NLTA amendment (assented to in 2024 and proclaimed in 2025), conflicts between incumbent taxi operators and e-hailing drivers had already hardened into violent turf wars.

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1 *Proclamation 289 of 2025: National Land Transport Amendment Act: Commencement* Government Gazette 53335 (12 September 2025).

2 *National Land Transport Amendment Act* 23 of 2024.

3 *Second National Land Transport Regulations* 2025.

4 Competition Commission 2021 *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34.

5 *National Land Transport Act* 5 of 2009.

6 Competition Commission *Market Inquiry into Land-based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34. See further discussions in Chapters 2 and 4.

7 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 211; Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 358; Reuters 2017 https://www.reuters.com/article/world/south-african-taxis-block-roads-to-main-airport-in-uber-protest-idUSL5N1GN3KP/#:~:text=Hundreds%20of%20drivers%20blocked%20the,long%20traffic%20jams%20on%20Friday. See further discussion in Chapters 2 and 4.

The consequences of regulatory drift were laid bare on 13 August 2025, when an e-hailing driver was murdered and his vehicle torched outside Maponya Mall in Soweto during clashes with taxi association members.[8] The incident shocked the nation, but it was hardly unusual. In previous years, e-hailing vehicles had been stoned at Gautrain stations, blocked at O.R. Tambo International Airport, and driven away from taxi-dominated areas across Johannesburg and Cape Town.[9] Each flashpoint followed the same pattern: without a clear legal framework, taxi associations enforced rules with force, while platforms avoided accountability by shifting risks onto drivers and passengers. As the Competition Commission's *Public Transport Market Inquiry* reported in 2021, violence between metered taxi and e-hailing operators became a common feature of the industry due to the perceived regulatory imbalance.[10]

The Amendment Act promises change, but, as the discussion will show, it does not fix the deeper issues. Some public transport organisations have already criticised certain changes introduced by the regulatory framework. For example, driver groups argue that the rules are impractical and warn that measures like returning to a designated zone could exacerbate tensions and replicate outdated taxi practices.[11]

Meanwhile, parallel regulatory developments hint at a more comprehensive approach. In June 2024, the *Economic Regulation of Transport Act* (ERTA)[12] was signed into law, establishing a Transport Economic Regulator with broad powers over pricing and market practices in all transport sectors. This Act asserts regulatory oversight that could, in theory, be applied to e-hailing, including capping fares or commissions and investigating anti-competitive conduct as a

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8 Moyo 2025 https://www.itweb.co.za/article/sa-moves-to-regulate-e-hailing-amid-rising-violence/raYAyqor3pjMJ38N; Mbatha 2025 https://www.ewn.co.za/2025/08/14/heavy-police-presence-at-maponya-mall-after-e-hailing-driver-killed-vehicles-torched#error=login_required&state=70f2a2b5-8d66-4bda-81e2-954145b8c520.

9 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 211.

10 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 211-212.

11 Mkwananzi 2025 https://thestar.co.za/news/2025-09-15-e-hailing-services-legitimised-by-new-act-despite-industrys-displeasure/.

12 *Economic Regulation of Transport Act* 6 of 2024.

means to prevent the kind of unchecked market distortions that characterised the last decade, provided the Minister uses the discretionary powers in the Act.[13] However, as of late 2025, significant parts of the Act remain largely dormant:[14] the Minister of Transport has not yet formally brought e-hailing under the ERTA's purview, and the new regulator is still becoming operational. The stage is thus set for a crucial inquiry. With e-hailing now legalised on paper but still fraught with conflict and inequity on the ground, how can South Africa develop a regulatory response that restores order, safeguards workers, and expands access to mobility without suppressing the innovation that initially made app-based transport popular?

Problem statement: the challenges of e-hailing in South Africa

A slow-burn crisis now visible in headlines

What began in the 2010s as the promise of seamless digital mobility has become a site of violent contestation. From Gautrain stations to Soweto shopping malls, news headlines now routinely carry stories of e-hailing vehicles being stoned, torched or attacked, and of deadly stand-offs between rival driver groups.[15] These incidents are not random crimes; they are symptoms of a structural regulatory failure. Specifically, they illustrate the absence of a coherent framework that commands the legitimacy of both incumbents and disruptors in the transport sector.[16] E-hailing's rise essentially poured new wine into old wineskins, a disrupted market superimposed on a fragile, already conflict-prone public transport system, and the result has been a slow-burn crisis now too visible to

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13 In particular, section 4(2)(a) of the *Economic Regulation of Transport Act* 24 allows the Minister to declare any market, including e-hailing, as a regulated entity or a market subject to certain controls and oversight. See discussion under Chapter 4 below.

14 See details of which parts have commenced at SAGOV 2024 https://www.gov.za/documents/acts/economic-regulation-transport-act-6-2024-english-isizulu-11-jun-2024.

15 Ebeid *The invisible hand or the handgun: Ride hailing, violence, and political settlements in the South African urban mobility market* 20-32; Wilmans and Rashied 2021 *Acta Commercii-Independent Research Journal in the Management Sciences* 4; Kute *The Sharing Economy in the Global South: Uber's Precarious Labour Force in Johannesburg* 55-59; Sibiya 2025 https://groundup.org.za/article/hundreds-protest-outside-soweto-mall-after-e-hailing-driver-shot-and-set-alight/.

16 See broad discussion under Chapter 4 below.

ignore.[17] The Maponya Mall killing of August 2025 is only the latest and most tragic emblem of this crisis,[18] underscoring how unresolved tensions over market access and rules can erupt into violence. Without decisive intervention or a sufficient regulatory framework, further deterioration in safety and public order is likely, as both traditional taxi operators and e-hailing drivers feel compelled to take matters into their own hands.

Regulation chasing the train it should be driving

For over a decade, South African regulators lagged far behind technological change in the transport sector. E-hailing services launched in South Africa in 2013 (with Uber as first mover),[19] but lawmakers did not update the NLTA to account for this innovation until 2023. In the meantime, authorities attempted to classify e-hailing services under the 2009 metered taxi regulations, a misfit that caused illegality and confusion.[20] Many Uber and Bolt drivers operated without valid licences or with permits not suitable for their work. In 2015, the Department of Transport attempted to address the impasse with a Practice Note encouraging provincial regulatory entities to process e-hailing applications under the existing metered taxi category.[21] The Practice Note instructed regulatory entities at various levels (specifically the National Public Transport Regulator, Provincial Regulatory Entities and municipal entities) to grant licences to ride hailing services, treating them as a sub-category of metered taxis due to their function, which is described as similar to a meter.[22] The Transport Appeals Tribunal later confirmed this interpretation, directing provinces to grant metered taxi licences to e-hailing applicants.[23] Though pragmatic, this approach lacked legislative backing. This

17 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* v.

18 Sibiya 2025 https://groundup.org.za/article/hundreds-protest-outside-soweto-mall-after-e-hailing-driver-shot-and-set-alight/.

19 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* v.

20 *National Land Transport Act: Practice note on e-hailing services* 2015.

21 *National Land Transport Act: Practice note on e-hailing services* 2015.

22 *National Land Transport Act: Practice note on e-hailing services* 2015, 3.

23 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 13; Ismail *'Roadblocks, speedbumps and potholes': An investigation into the working conditions of e-hailing drivers in Cape Town, with reference to the city's registration system* 26.

workaround could not resolve the systemic problems that stemmed from trying to fit a digital business model into an analogue regulatory regime.

By 2019, it was estimated that 79% of e-hailing drivers in major cities lacked proper licences.[24] This widespread non-compliance resulted from regulatory inertia, as e-hailing apps faced no clear licensing process and provincial boards experienced large delays. Additionally, platforms deliberately sped up driver onboarding, exploiting weak enforcement. They maintained that they were merely intermediaries, even in legal challenges.[25] For example, in labour disputes, Uber's structure made accountability difficult; in *Uber South Africa Technological Services (Pty) Ltd v NUPSAW & Others* (Uber Labour Court),[26] the Labour Court ruled that since drivers contracted with a foreign Uber entity, they could not be considered employees of Uber's South African subsidiary.[27] By the time Parliament responded with the 2023 NLTA amendment, approved in 2024 and now in force, the regulatory ambiguity with respect to e-hailing had already caused serious issues: an unregulated pricing system, frequent violent protests, and a group of workers lacking clear labour protections or redress options.[28]

A problem refracted through three lenses

The challenges of e-hailing in South Africa are multidimensional, cutting across competition, labour, and transport justice concerns. These three lenses are interlinked, revealing why a siloed or one-dimensional regulatory response would be inadequate.

From a competition axis, taxi associations view e-hailing as encroaching on their turf, while platforms exploit weak oversight to capture market share and extract high commissions.[29] The result is rivalry shaped by opacity rather than fair

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24 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 14.

25 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34.

26 *Uber South Africa Technology Services (Pty) Ltd v NUPSAW & Others* (C449/17) [2018] ZALCCT 1; [2018] 4 BLLR 399 (LC); (2018) 39 ILJ 903 (LC) (12 January 2018).

27 *CCMA Labour Court*, para 72.

28 See broad discussion in Chapter 4 below.

29 See discussion under section 4.3.1 below.

competition. Metered taxi operators must comply with strict licence conditions and fare regulations, whereas Uber and Bolt have long operated outside comparable constraints. Platforms further rely on opaque surge pricing and price discrimination, which the Competition Commission found can lead to overcharging and public complaints.[30] Weak enforcement of rules on geographic boundaries or vehicle limits has tilted the field in favour of e-hailing, enabling platforms to leverage network effects without accountability. In short, competition is neither level nor transparent, fuelling conflict and raising classic concerns about dominance and consumer harm.

From a labour perspective, e-hailing drivers shoulder the costs of vehicles, insurance, and volatile demand, while platforms unilaterally set fares, commissions, and deactivation rules.[31] With no wage floor, benefits, or collective bargaining, precariousness is built in. Classified as 'independent contractors', drivers lack both labour protections and true business autonomy. Evidence before the Competition Commission showed that the relationship is not effectively governed by labour law.[32] In South Africa, drivers have limited recourse against unfair deactivations or unilateral contract changes, as illustrated by the 2019 *Mokhutswane v Uber South Africa (Pty) Ltd* case (*Mokhutswane* case),[33] particularly in relation to over-commission hikes. Smith and Stopforth term these challenges as "structural vulnerabilities", defined as disadvantages created by the law, directly or indirectly.[34] E-hailing thus exemplifies essential work performed without the security of employment or the leverage of independent enterprise.

From a transport justice perspective, e-hailing must be assessed by whether it expands equitable access to mobility, not only by regulating entry or market power. South Africa's constitutional commitments to equality[35] and freedom of

30 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 18-20.

31 See discussion under section 4.3.2 below.

32 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34-36.

33 *Mokhutswane v Uber South Africa (Pty) Ltd* (NCT/133158/2019/148(1)) [2019] ZANCT 137 (12 August 2019).

34 See Smit and Stopforth 2023 Law Democracy Development 276.

35 Section 9 of the *Constitution of the Republic of South Africa*, 1996.

movement[36] are undermined if services remain concentrated in wealthy urban centres while townships, informal settlements, and rural areas face long, costly, or unsafe commutes.[37] Although recent reforms embed fare transparency, licensing, and safety obligations, affordability remains unstable under surge pricing, regulatory enforcement is weak, and township mobility needs remain unmet. Moreover, exclusion from negotiated contracts and licensing moratoria reinforce barriers to participation, while local incorporation rules and written-contract requirements have only partially addressed accountability.[38] In short, without proactive use of redistributive tools, such as price regulation, service obligations in underserved areas, and accessible-vehicle mandates, e-hailing risks entrenching spatial inequality under a regulated façade.

Why the discussion is necessary — now

The Maponya Mall killing in August 2025, followed swiftly by the belated statutory recognition of e-hailing, crystallises why governance of digital mobility can no longer be reactive. South Africa cannot afford to let e-hailing replicate the taxi sector's hallmarks of violence, informality, and exclusion.[39] The stakes are both practical, as millions of commuters depend on safe and reliable services, and constitutional, as e-hailing has become a testing ground for rights to equality, mobility, and fair labour. The Amendment Act and 2025 Regulations provide an entry point for a proactive framework; however, the extent to which they address underlying public transport concerns, particularly those highlighted in the Market Inquiry, remains unclear. With subordinate regulations and enforcement mechanisms still in flux, the jury is still out on whether platform mobility evolves into a fair and inclusive system or slides into crisis-driven regulation. This study intervenes at that juncture to assess the adequacy of current reforms and chart the necessary further steps.

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36 Section 9 of the *Constitution*.

37 See generic discussion on apartheid spatial planning in sections 2.3–2.4, as well as the discussion under section 4.3.3 below.

38 See discussion under section 4.3.3 below.

39 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 11. See broad discussion under section 2.6 below.

Research question

A simple but urgent question drives this study:

To what extent does South Africa's e-hailing regulatory framework restore order, safeguard workers, and expand mobility access, and how does it compare to the approaches adopted in Kenya, Tanzania, and India to avoid over-regulation and regulatory capture?

In pursuit of an answer, the thesis breaks the main question into a series of subsidiary inquiries:

i. What combination of competition measures, labour protections, and service obligations would make South Africa's e-hailing regime both stable and enforceable?

ii. Which approach to pricing and commissions is best suited to South Africa's context: Kenya's commission caps, Tanzania's tariff-fixing, India's pricing corridors, or a hybrid tailored to local institutions?

iii. How can the law secure drivers' predictable income, procedural fairness in deactivation, and access to social protections without stifling innovation or misclassifying them?

iv. In what ways can regulation advance transport justice by prioritising affordability and safety, while also accommodating vulnerable groups rather than entrenching apartheid-era exclusions?

v. What institutional reforms are required to prevent capture by taxi associations or platforms, to build digital oversight capacity, and to make regulators accountable in practice rather than only in law?

Hypothesis

The working hypothesis of this thesis is that South Africa can only achieve an inclusive, safe, and sustainable e-hailing regime with a hybrid regulatory model that combines competition rules, labour protections, and transport-justice

measures. Neither unrestricted deregulation, which relies on market forces and platform self-governance, nor strict over-regulation that reduces reform to licensing procedures, will be sufficient. The most promising approach is a carefully calibrated framework—drawing lessons from Kenya, Tanzania, and India—that limits exploitative market practices, ensures fair working conditions, and incorporates public interest obligations to promote equity and accessibility.

This composite hypothesis, which integrates competition, labour, and equity dimensions, is tested with a three-pronged approach. First, a doctrinal analysis of South Africa's regulatory framework (the NLTA, the 2024 Amendment, and the 2025 Regulations) clarifies the statutory baseline. Second, a comparative evaluation of Kenya, Tanzania, and India provides Global South perspectives on shared challenges and alternative solutions. Third, a normative assessment, grounded in policy objectives, evaluates whether a hybrid framework is both feasible and desirable. Taken together, these approaches aim to demonstrate that a balanced regulatory model is not only theoretically coherent but also practically attainable.

Objectives

The following main objective guides the discussion:

To establish how South Africa can develop a coherent and sound regulatory framework for e-hailing that restores order, protects workers, and broadens fair access to mobility by incorporating competition laws, labour protections, and transport-justice measures and by evaluating these design choices against experiences from other jurisdictions.

The following sub-objectives further guide the discussion under each chapter:

i. To trace how colonial, apartheid, and post-deregulation legacies shaped South Africa's fragmented and exclusionary transport system, showing that

today's e-hailing challenges are rooted in longstanding governance failures.[40]

ii. To analyse how e-hailing disrupted this landscape, causing taxi–platform conflicts, driver precarity, and regulatory gaps, and to explain why weak institutions and the 'pacing problem' of law and technology allowed these issues to continue.[41]

iii. To critically evaluate the NLTA, the Amendment Act, and the 2025 Regulations, highlighting strengths like legal recognition and clear licensing, while also noting weaknesses such as licence moratoria, lack of income protections, weak enforcement, and limited oversight of competition.[42]

iv. To evaluate the regulatory responses of Kenya, Tanzania, and India, including commission caps, tariff bands, and driver-share mandates, extract both successful tools and cautionary lessons, and assess their adaptability in South Africa's institutional context.[43]

v. To synthesise historical, diagnostic, and comparative insights into a prescriptive framework that integrates competition rules, labour protections, and transport-justice levers, and to propose concrete legal and institutional reforms capable of fostering an inclusive and sustainable e-hailing regime.[44]

Assumptions

The analysis and recommendations are based on key assumptions that define the scope and feasibility. These are disclosed here to clarify the context from which conclusions will likely be drawn. They include the following:

i. E-hailing platforms such as Uber and Bolt will remain a permanent part of South Africa's transport system; prohibiting them is neither likely nor

40 See Chapter 2.
41 See Chapter 3.
42 See Chapter 4.
43 See Chapter 5.
44 See Chapter 6.

desirable. The study therefore focuses on reforming and harnessing e-hailing, not debating its existence.

ii. The Amendment Act and the 2025 Regulations, proclaimed in September 2025, are part of the operative law. These reforms are treated as binding and implemented, making any critique a test of the current framework, not a hypothetical vacuum.

iii. Despite capacity shortages, national, provincial, and municipal authorities will make genuine efforts to enforce new rules once clear mandates are in place, responding to political and public pressure to regulate e-hailing effectively.

iv. Drivers will follow licensing regulations if their concerns are addressed, taxi associations will curb violent resistance if fairness is guaranteed, and platforms will pursue legal action but ultimately adhere to reasonable, enforceable rules, considering South Africa's market significance.

v. Kenya, Tanzania, and India are sufficiently similar to South Africa as they share large informal sectors, contested transport governance, and rapid digital adoption, making regulatory lessons transferable, subject to contextual adaptation.

vi. Official reports, such as the Competition Commission's Market Inquiry and official statutes, are accurate. They can therefore be used for context and as a baseline.

Methodology

The methodological design of this thesis is based on three interconnected strands: historical and doctrinal analysis, the functional comparative method, and normative policy evaluation. Together, these approaches create a triangulated framework: history explains how South Africa's transport law reached its current impasse; doctrinal analysis establishes the current legal baseline; functional comparison explores foreign experiments; and normative inquiry assesses those

experiments against South Africa's commitments. Each strand is distinct, but their integration ensures that the discussion is both empirically rooted and normatively justified.

Historical and doctrinal analysis

A legal-historical-doctrinal approach has two complementary aspects. The historical component reconstructs how state and legal phenomena develop and change by employing a disciplined toolkit, and inductive, evolutionary, teleological, comparative, typological, and reconstruction methods to identify patterns of legal functioning under the "specific conditions of the reconstructed period".[45] A key safeguard in this approach is avoiding the conflation of two different logics. As Maitland observed, and as Reid underscores, historians must not confuse "the logic of authority" with "the logic of evidence."[46] The lawyer's logic of authority validates a rule because a competent institution has pronounced it and is binding in the present. The historian's logic of evidence, by contrast, validates a claim because it can be demonstrated from reliable sources from the past. Reid warns that if historians slip into the lawyer's logic, they risk treating obsolete statutes or judgments as if they were still living law; while if lawyers adopt the historian's logic, they risk reducing the binding force of precedent into a mere matter of historical probability.[47]

Placed alongside this caution, the doctrinal strand addresses the practical task of the lawyer. It functions by "arranging, ordering and systematising legal propositions," and through reasoning "creates law".[48] As Reid explains, the practitioner must seek "the latest interpretation of the rule—the last decision in the jurisdiction",[49] not reconstruct medieval history; indeed, "the more modern the decision the more valuable for his purpose".[50] In this sense, history explains causation, while doctrine offers normative precision regarding current authority.

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45 Levytska and Lyudmyla 2022 *East European Historical Bulletin* 237.
46 Reid 1993 *Loy LAL Rev* 195.
47 Reid 1993 *Loy LAL Rev* 195-196.
48 Srivastava "Historical Legal Research" 101.
49 Reid 1993 *Loy LAL Rev* 195.
50 Frederic William Maitland as cited in Reid 1993 *Loy LAL Rev* 195.

When combined, the two strands offer a particularly apt approach to the South African e-hailing issue. The historical perspective highlights legacies of exclusion, informality, and weak enforcement because its aim is the "identification of patterns of… functioning and development" over time.[51] At the same time, historical inquiry, conducted reflexively, "helps [lawyers] understand the prejudices and biases in legal and judicial processes," and curtails them.[52] The doctrinal strand then ensures that any reform is legally grounded, concentrating on what statutes and case law currently require.[53] Together, history and doctrine both clarify why current conflicts over e-hailing take their particular form and ensure that any proposed solutions are firmly rooted in the law as it exists, yet grounded in history.

Functional comparative method

The second methodological strand is functional comparison, which provides the central comparative lens of this discussion. The functional method is not a curiosity of comparative law, but its basic methodological principle. It is often credited to the 1977 works of Zweigert and Kötz, who observed that,

> … different legal systems can be compared only if they solve the same factual problem, that is, answer the same legal need. In other words, the institutions of different legal systems can be meaningfully compared only if they perform the same task, if they serve the same function. Function is the start-point and basis of all comparative law. It is the 'tertium comparationis'…[54]

The premise is simple but impactful: law is a response to social issues, and when different jurisdictions encounter similarly functional problems, their legal solutions can be genuinely compared, even if doctrinal categories differ. As Michaels states, "institutions, both legal and non-legal, even doctrinally different ones, are comparable if they are functionally equivalent, if they fulfil similar functions in different legal systems".[55]

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51 Levytska and Lyudmyla 2022 *East European Historical Bulletin* 227.
52 Srivastava "Historical Legal Research" 106.
53 Srivastava "Historical Legal Research" 101.
54 Zweigert, Kötz and Weir *Introduction to comparative law: Volume 1, The Framework* 36.
55 Michaels "The functional method of comparative law" 342.

Platsas frames this as the defining orthodoxy of comparative law: "as long as in law things fulfil the same function, then they are normally comparable".[56] For this reason, functionality has been described as "a common, unifying and mutually intelligible denominator amongst comparative lawyers around the world".[57] It offers a way to transcend doctrinal silos and enable comparisons that focus on the real-world function of legal measures. This approach is especially relevant when regulating e-hailing, where issues of labour insecurity, consumer prices, and market dominance are common across different jurisdictions, but are expressed through various legal frameworks. Relying solely on a doctrinal comparison would be ineffective due to incommensurability; instead, functionalism offers the *tertium comparationis* that enables meaningful cross-jurisdictional analysis.

Consequently, functionalism supplies epistemological clarity. As Michaels observes, "functionalism provides a tool to make sense of the data we find".[58] By reframing comparative inquiry around functions rather than formal categories, it avoids ethnocentrism and grounds analysis in common problems.

Applied to this discussion, a functional comparison justifies selecting Kenya, Tanzania, and India as primary comparators. Each embodies a distinct regulatory approach to addressing the same trio of concerns driving South Africa's debates: competition, labour protection, and transport justice. Kenya's commission cap aims to rebalance driver earnings;[59] Tanzania's fare controls seek to ensure affordability and fairness, though they may limit market participation;[60] India's aggregator guidelines use multiple instruments (commission caps, surge limits, driver protections) to address both consumer and labour issues.[61] The functional perspective enables comparison of these diverse regimes, not by whether they imitate South African law structurally, but by whether they deliver equivalent regulatory functions in their respective contexts.

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56 Platsas 2008 *Electronic Journal of Comparative Law* 2.
57 Platsas 2008 *Electronic Journal of Comparative Law* 1.
58 Michaels "The functional method of comparative law" 364.
59 See discussion under section 5.2 below.
60 See discussion under section 5.3 below.
61 See discussion under section 5.4 below.

Normative and policy analysis

The third strand is normative and policy-oriented evaluation, which ensures that recommendations are not merely efficient but also just. The normative dimension is grounded in South Africa's constitutional framework, particularly the values of fairness, dignity, and equality. For example, section 23 of the *Constitution*'s protection of labour rights informs the insistence on due process in driver deactivations.

Policy analysis adds a pragmatic filter, considering how recommended reforms would be implemented, monitored, and enforced. For example, a proposal to cap commissions must be assessed for enforceability (such as whether platforms can be compelled to submit data, what penalties would apply for breaches, and how drivers might participate in reporting violations). Anticipating unintended consequences is essential, such as whether minimum earnings guarantees could lead to platforms introducing hidden fees, or whether mandatory service in under-served areas might cause "redlining" practices.

Overall, these three strands are not separate silos but mutually reinforcing. Historical-doctrinal analysis diagnoses problems and establishes the legal baseline; functional comparison tests alternative solutions drawn from comparable jurisdictions; and normative-policy analysis ensures that the chosen reforms remain practical. This methodological pluralism, grounded in history and law, disciplined by comparative functionality, and guided by normative commitments, ensures that the thesis produces proposals that are not only legally accurate and contextually informed but also socially just and practically feasible.

Caveats and limitations

First, this study was initially conceived three years ago, before the Amendment Act to the NLTA and the 2025 Regulations had been enacted. It was completed only weeks after these instruments came into force. This created the challenge of reconciling earlier drafts with newly enacted provisions. Efforts were nevertheless made to ensure the discussion reflects the law as it now stands, while

acknowledging the practical difficulty of writing while aiming at a moving legal target.

Second, the comparative analysis in Chapter 5 relies on statutes and regulations from Kenya, Tanzania, and India, rather than on independent fieldwork or interviews in those jurisdictions. This precludes any discussion on the impact of the laws on the ground. The focus, therefore, is on the functional purpose of the law, as opposed to its practical impact, which would require empirical evidence. This is primarily why the functional comparative method was employed.

Third, the discussion does not address related topics such as robo-taxis (autonomous self-driving taxis).[62] For now, the focus should be on regulating e-hailing, with adjustments to the framework made when autonomous taxis become relevant.

Fourth, while the thesis recognises that constitutional values and rights, such as equality, dignity, freedom of movement, and the right to trade, are central to e-hailing regulation, it does not pursue a rights-based or constitutional-law analysis. These rights are regarded as given and part of the contextual background for the research, but not as subjects of doctrinal examination. This is a deliberate delimitation to maintain the study's focus on regulatory design and comparative lessons, rather than extending into wider constitutional litigation debates.

Fifth, the discussion addresses three main challenges: how labour law interacts with competition law and transport justice, and how these fields influence each other. While it may sometimes appear that labour law is subject to the priorities of competition and transport regulation, the analysis does not suggest labour rights can or should be determined by the demands of those other areas. Instead, the study highlights the practical complexities that arise when these legal frameworks overlap, and argues for a regulatory approach that harmonises their objectives. For instance, a well-designed regulatory framework might set commission caps (protecting drivers' earnings as a labour concern), ensure fair access and affordable fares for passengers (advancing transport justice), and foster healthy

62 https://builtin.com/articles/robotaxi.

competition among platforms (upholding market efficiency). In this way, the study demonstrates that it is possible, and necessary, to balance and respect the distinct aims of labour law, transport regulation, and competition law within a single, cohesive system. Lastly, the thesis falls slightly below the prescribed 100 000-word minimum. This is partly a consequence of the field itself, which remains relatively narrow, under-theorised, and characterised by limited academic and policy-oriented literature. The scarcity of secondary sources naturally constrained the breadth of discussion. In addition, the thesis was written while the regulatory landscape was evolving rapidly. Notably, the new provisions governing e-hailing only came into operation in September 2025, and commentary on these developments is still at a nascent stage. As a result, the analysis is necessarily shaped by both the limited availability of authoritative materials and the practical challenge of engaging with a swiftly emerging, highly specialised area of law.

Significance and contribution

This thesis makes interlocking contributions to both scholarship and policy, with particular significance for the regulation of digital platforms in the Global South. Its value lies in bridging conceptual gaps, reframing the stakes of e-hailing regulation, and offering concrete reform tools at a moment when the law is still unravelling.

First, it reconceives e-hailing regulation as a socio-economic endeavour rather than a narrow transport or technology matter. Beyond efficiency or competition, the sector involves equality, dignity, freedom of movement, and administrative justice. By emphasising these rights, the study illustrates that regulation can either reinforce exclusion or promote transformation, offering a justice-focused framework for platform governance.

Second, it highlights a comparative focus on Kenya, Tanzania, and India. Unlike cases in the Global North, these regions share South Africa's realities of informal economies, inadequate public transportation, and pressing equity issues. Their initiatives, particularly Kenya's price caps, Tanzania's restrictive controls, and India's multifaceted regulations, offer lessons more relevant to South African

regulators. In doing so, the thesis addresses a gap by considering Global South approaches as primary sources of insight.

Third, it translates analysis into actionable reform. The study proposes draft clauses relevant to the discussion. The proposals are designed to be implementable, bridging academic criticism with real-world reform. These proposals are crafted to be both practical and catalytic, providing policymakers with language and tools that can be directly applied in the legislative process. By supplying a ready-made reform package, the thesis bridges the gap between academic research and actionable governance.

Overall, the importance of this thesis stems from its dual focus: it offers a thorough and critical analysis while also providing practical, solution-oriented recommendations. It broadens knowledge by methodically exploring e-hailing from historical, doctrinal, comparative, and normative perspectives, while also contributing to policy development by outlining a credible future pathway. More generally, it advances the South African discussion on platform governance, especially as ride hailing becomes the first of many industries to challenge the law's capacity to regulate digital platforms. The insights gained, including regarding the accountability of global platforms, the protection of non-traditional workers, and integrating justice into innovation, could extend beyond transport and anticipate how South Africa might regulate food delivery, e-commerce logistics, and other platform-driven sectors.

Structure of the thesis

The thesis unfolds in six substantive chapters after this introduction, each building logically towards a blueprint for reform.

Chapter 2 examines the evolution of transport regulation from the early 20th century to the present, encompassing the era of apartheid and the transition to democratic times. It illustrates how segregationist policies and deregulation fostered a system characterised by inequality, informality, and conflict, shedding light on why e-hailing has inherited these deep-rooted issues.

Chapter 3 explores how platforms have globally disrupted traditional systems and revealed gaps in regulation. It discusses the pacing problem where laws lag behind technological advances, highlighting issues such as unlicenced operations, conflicts with metered taxis, exploitative contracts, and safety concerns, each of which is connected to core constitutional values like dignity, equality, and security.

Chapter 4 assesses the NLTA, the Amendment Act, the *Economic Regulation of Transport Act,* and the 2025 Regulations. It highlights progress, such as recognising e-hailing and licensing requirements, but criticises gaps: moratoria protecting incumbents, lack of oversight on fares and commissions, silence on labour, and weak enforcement capacity.

Chapter 5 investigates Kenya, Tanzania, and India, drawing lessons from their diverse strategies, commission caps, fare regulations, and aggregator guidelines. It highlights achievements and potential unintended effects, providing South Africa with a range of proven interventions grounded in the realities of the Global South.

Chapter 6 consolidates insights into a prescriptive package. It suggests draft legislative clauses, regulatory reforms, phased implementation steps, and governance innovations such as an advisory council and a mobility fund. The blueprint weaves competition, labour, and justice into a tangible roadmap that policymakers can adopt.

This structure is intentional: Chapters 2 and 3 explain the necessity of regulation, Chapter 4 discusses the achievements and gaps in current law, Chapter 5 explores lessons from other countries, and Chapter 6 presents a specific plan for South Africa. Collectively, these chapters guide the reader from identifying the problem to implementing solutions, striking a balance between theoretical insights and practical guidance.

2 Public transport regulation in South Africa: A historical overview

Introduction

South Africa's legal history is deeply rooted in a legacy of systemic discrimination. As such, any comprehensive understanding of the emergence, development, and complexities of transport regulation must account for the historical factors that shaped it.[63] Specifically, the historical evolution of public transport regulation in South Africa is intrinsically tied to the broader socio-political dynamics of colonialism and apartheid.[64] Consequently, this chapter takes a legal-historical approach,[65] one that emphasises both the formal legal frameworks and the socio-historical underpinnings that influenced public transport governance during these periods.

Despite historical governance and institutional changes, as Walters aptly describes, public transport remains a "burning issue" in South Africa.[66] This is due to the persistent challenges surrounding public transport efficiency and accessibility, which require ongoing attention and proactive management by the state.[67] To contextualise this, Walters notes:

> Public transport policy and its implementation can, however, be seen as one of the most complex areas of transport policy in the country due to its political implications, political linkages, funding constraints, a major push to involve previously excluded businesses in the subsidy system, and being faced with financial constraints and a public outcry over the state of public transport in the country (e.g., adequacy, public transport user costs, accessibility, safety issues, affordability).[68]

In simpler terms, public transport regulation in South Africa is inextricably linked to broader political and socio-economic issues, including efforts to redress

63 Walters 2013 *Research in Transportation Economics* 34.

64 Arguably, the interesting aspect of work of this kind is the unavoidability of a bit of discussion that borders on the political and the historical, because public transport regulation was intricately linked with apartheid policy and regulation.

65 See a broad discussion by Bhat, where the legal historical approach is associated with how internal and external aspects of law affect general and particular legal developments, Bhat "Historical Legal Research: Implications and Applications" 198–229. Bhat speaks of the 'conscience' of a community that underpins or underlies particular legal developments.

66 Walters 2013 *Research in Transportation Economics* 34.

67 Hirschhorn and Veeneman "Public transport governance" 21.

68 Walters 2013 *Research in Transportation Economics* 35.

historical exclusion, ensure financial viability, and address public dissatisfaction with transport services.

There are several caveats to keep in mind when engaging in this discussion. The first caveat concerns the methodological scope of the chapter. The legal and policy frameworks governing public transport regulation, both before and after apartheid, are vast and multifaceted.[69] This chapter does not attempt to catalogue every applicable law or policy exhaustively; rather, it selectively highlights major developments and illustrative examples that shaped the field. These choices are intended to provide a focused narrative rather than an exhaustive account.

The second caveat relates to the availability of primary sources of historical laws and records. As far as the author has been able to establish, the primary records of many of the historical laws and policies related to early public transport regulation are not readily accessible. This necessitates reliance on secondary sources and academic commentary, which provide valuable insights into these frameworks' historical context and evolution.

The third caveat concerns the choice to focus on the taxi industry in particular. As will become evident, while the chapter begins with a general exploration of public transport regulation, its focus narrows to road-based transport, particularly the taxi industry. This deliberate focus stems from the practical realities on the ground. Over time, the taxi industry emerged as a dominant force in public transport, often characterised by regulatory challenges and violence.[70] As such, it warrants particular attention in discussions of public transport governance.

The last caveat concerns the choice to focus on the national regulatory framework. South Africa's devolved governance structure allows municipalities to

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69 Writing on post-apartheid regulation, Walters and Pisa had this to say: "[a] challenge in reviewing public transport policies and strategies for this paper is the sheer volume of policy, strategy, and legislation that has been developed in relation to public transport since the dawn of the South African democracy in 1994", Walters and Pisa 2023 *Research in Transportation Economics* 2.

70 Mitchel and Walters, for example, observe the following in relation to taxis: "[t]he commuter bus transport policy is more complex, has more variables influencing implementation and has more human and political involvement/interference thus leading to conflict situations." Mitchell and Walters 2011 *Journal of Transport and Supply Chain Management* 252.

play a significant role in public transport policy and regulation. However, this chapter primarily focuses on the role of the national government, especially in developing normative frameworks and standards that can influence provincial and municipal practices.[71]

Structurally, this is a chapter of two halves: the first deals with public transport regulation before apartheid,[72] while the second deals with public transport regulation after apartheid.[73]

Public transport governance

Defining public transport governance

Public transport governance fundamentally involves the government's role in the transport sector, particularly its interactions with both private and public stakeholders.[74] It relates to the frameworks, systems, and processes that guide decision making in the transport sector, ensuring the coordination of diverse interests and priorities. Veeneman offers a nuanced definition of public transport governance:

> Governance is seen here as the rule sets supporting decision making in a context of actors with diverging interests. The core actors in public transport obviously are travellers, operators and government, but also these three can be seen as sets with many subsets. Government can be seen as the bureaucratic agencies managing the contracts with operators and as the representative political bodies to which travellers might appeal for better rail services. Operators range from the driver of the bus to the shareholder of the company. Travellers range from regular peak-hour commuters to foreign city trip tourists. These actors all have different interests, or

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71 See section 2(c) of the *National Land Transport Act*, where it is stated that the role of the Act is "to prescribe national principles, requirements, guidelines, frameworks and national norms and standards that must be applied uniformly in the provinces…" Also see, for example, comments by Manuel, who, in commenting on how the post-apartheid government envisioned regulating public transport, observed the following: "Land transport responsibility was allocated to different spheres of government in the new South African Constitution. *National government was to provide broad policy direction*." Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 15. Own emphasis. Also see White Paper on National Transport Policy (1996), where the role of the national government is envisioned to include macro passenger transport policy, norms and standards, strategic planning, etc.

72 Section 2.2-2.4.

73 Section 2.5-2.7.

74 Veeneman "The governance of public transport: Towards integrated design" 137.

different demands from the public transport system, and many rule sets are in place to organise decision making in such a multi-actor context.[75]

This description highlights the multifaceted nature of public transport governance where numerous actors, each with distinct interests and expectations, interact within a complex decision-making environment. At the very least, public transport governance seeks to mediate these varying interests through rule sets that ensure fairness, efficiency, and accountability.

From a general governance perspective, public transport also serves as a platform for advancing values that align with societal needs. For instance, reforms in the sector can promote or hinder values such as sustainability, accessibility, equity, and competition.[76] Further, public transport governance inherently provides several benefits, such as enhancing national connectivity, fostering urban growth, improving access to employment opportunities, and ensuring accessibility for diverse groups, including persons with disabilities.[77] However, realising these benefits necessitates robust legal and policy frameworks to facilitate and optimise their potential.

While legal frameworks often provide clear parameters and mandates, policy frameworks can be less straightforward, though equally vital. As some scholars have asserted, "[p]olicy is a rule or set of rules for control."[78] Here, 'control' is synonymous with 'management,' emphasising the need for structured governance to coordinate "collective transportation affairs and activities between state and non-state actors and stakeholders."[79]

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75 Veeneman "The governance of public transport: Towards integrated design" 139.

76 Hirschhorn and Veeneman "Public transport governance" 22.

77 Veeneman "The governance of public transport: Towards integrated design" 137; Iles *Public transport in developing countries* 7. These are benefits to which South Africa, for example, would aspire. However, some realities cannot be wished away, for example, Thomas holds that "[t]ransportation is an area of public policy that always intersects with other aspects of poverty, but these are particularly deep in the post-apartheid context, and deserving of immediate attention during the period of transition in the early 1990s." see Thomas 2016 *World Journal of Social Science Research* 354.

78 Garrison and Levinson *The transportation experience: policy, planning, and deployment* 23.

79 Mhlanga "An assessment of the regulatory arrangements in the minibus taxi industry in South Africa: a primer for self-regulation" 376.

In essence, public transport governance addresses broad objectives, such as regulating and controlling traffic, developing skills for those involved in the sector, promoting road traffic safety, ensuring economic sustainability, and driving the formalisation and restructuring of the public transport system.[80] Achieving these objectives, however, depends heavily on the commitment and active participation of stakeholders in aligning with the vision outlined in legal and policy frameworks.

Hirschhorn and Veeneman highlight the complexity of this process:

> Each actor involved in PT [public transport] – including politicians and public officials, operators' managers, drivers, users, and non-users – has a different perception of reality; actors have different opinions and preferences on the way PT systems and its subsystems should work and the functions they should fulfil. Because of these differing interests and perceptions, cooperation and coordination between actors cannot be taken for granted. This is the space for governance.[81]

This observation highlights the critical role of governance in mediating stakeholders' often divergent perspectives and priorities. It would seem then, that cooperation and coordination within the sector are essential but not guaranteed, which creates a need for mechanisms that foster alignment and collaboration.

Furthermore, public transport governance touches on several interconnected dimensions. From a *political* perspective, governance focuses on "player constellations, power, and conflicts in the political process,"[82] reflecting the dynamics of decision making and conflict resolution. The polity dimension, on the other hand, emphasises "the structures and rules that influence the players (but can also be shaped by them), that is, the institutional environment."[83] These dimensions are further complemented by the policy dimension, which pertains to the instruments and content of policies implemented in the sector.[84]

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80 Mhlanga "An assessment of the regulatory arrangements in the minibus taxi industry in South Africa: a primer for self-regulation" 376.

81 Hirschhorn and Veeneman "Public transport governance" 23.

82 Hirschhorn and Veeneman "Public transport governance" 23.

83 Hirschhorn and Veeneman "Public transport governance" 23.

84 Hirschhorn and Veeneman "Public transport governance" 23.

As is illustrated below, the interplay between these dimensions has not always yielded effective cooperation and coordination in the context of public transport regulation in South Africa.[85]

The benefits flowing from good public transport governance

Public transport is a vital service that offers an alternative to private vehicle use on increasingly congested roads. It caters to those who cannot or choose not to drive, and provides critical access to educational, employment, and leisure opportunities.[86] The importance of public transport goes beyond individual convenience, however, as it underpins broader social and economic functionality. Public transport infrastructure and its associated services catalyse economic growth and create both direct and indirect employment opportunities in South Africa.[87] However, the government faces multifaceted challenges in delivering an effective public transport system. These include balancing affordability, safety, and accessibility, particularly in the context of:

- high levels of urbanisation in South Africa,
- significant inward migration of individuals from other African countries to urban centres, and
- competing financial demands on government resources, such as healthcare, education, housing, and security services.[88]

This confluence of challenges complicates efforts to meet public transport needs effectively. As Mitchell observes, "the adequacy or otherwise of a country's transport infrastructure plays a significant role in its social and economic development" and that some "suggest that efficient transport is second only to education as a catalyst for a country's growth."[89] For this reason, one could deduce that the primary objective of good public transport governance is to

85 See discussion under sections 2.6 and 2.7 below.
86 Mamabolo and Sebola 2018 *The Business & Management Review* 565.
87 Mamabolo and Sebola 2018 *The Business & Management Review* 565.
88 Walters 2013 *Research in Transportation Economics* 34.
89 Mitchell 2014 *Journal of the South African Institution of Civil Engineering* 35.

ensure the provision of sufficiently frequent, reliable and efficient public transport services in alignment with government policy.[90]

Regulation thus serves as a mechanism to balance demand and supply in the transport sector while safeguarding commuter interests. In this sense, the government must ensure that public transport is safe, efficient, and affordable.[91] In turn, citizens hold the right to access reliable and safe public transportation. As emphasised by Mamabolo and Sebola, "the commuter should be regarded as the most important person, and mutual respect is of paramount importance."[92] In essence, when it functions properly, public transport governance must prioritise the commuter while balancing systemic efficiency and sustainability.

While many more benefits can flow from good public transport governance, two benefits suffice for this discussion: it is good for the economy and the people. In relation to the economy, one finds that historically, public transport services in South Africa were designed to address the need for a centralised labour assembly.[93] This structure transported workers from distant suburbs and low-income residential areas to centralised employment hubs.[94] Terrible as it was, this transport use helped sustain the colonial economy. In modern times, it is accepted that the development and prosperity of any nation are intricately linked to the effectiveness of its public transportation system.[95] Some experts argue that without an efficient public transport network, economic activities may stagnate or fail to expand.[96] The South African Department of Transport encapsulates this

90 Mamabolo and Sebola 2018 *The Business & Management Review* 565.
91 Mamabolo and Sebola 2018 *The Business & Management Review* 567.
92 Mamabolo and Sebola 2018 *The Business & Management Review* 567.
93 Council for Scientific and Industrial Research 2000 *Guidelines for Human Settlement Planning and Design: The red book* 1.
94 Council for Scientific and Industrial Research 2000 *Guidelines for Human Settlement Planning and Design: The red book* 1.
95 Walters and Pisa 2023 *Research in Transportation Economics* 2; SAGOV Date Unknown https://www.gov.za/about-sa/transport; Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa Mamabolo and Sebola 2018 *The Business & Management Review* 564.
96 Hlatshwayo 2022 *The Thinker* 50; Mitchell and Walters 2011 *Journal of Transport and Supply Chain Management* 243; Iles *Public transport in developing countries* 7.

vision in its motto: "Transport: The heartbeat of South Africa's economic growth and social development."[97]

In relation to people, it is evident that public transport not only supports the economy but also directly enhances the quality of life for individuals. A well-functioning system alleviates the stress of delays, enables punctuality for school, work, or university, and improves overall productivity.[98] In other words, minimising transport-related delays contributes to better mental health and work-life balance for commuters. This holds true, particularly when one considers that in 2021, South Africa was ranked the 15th most traffic-congested country in the world by Numbeo, a global cost-of-living monitoring organisation.[99] The report highlighted that South African commuters spend an additional 39.39 minutes per trip due to traffic congestion.[100] As such, good public transport governance could result in efficient public transport systems that can mitigate these delays, offering a faster and more reliable alternative to private vehicle use.

Consequently, these governance criteria, clear roles, enforceable rules, fair pricing, and participatory oversight, serve as the yardstick for Chapter 4's doctrinal analysis and Chapter 5's comparisons.

General foundations of South African public transport regulation

Legal and policy frameworks, at any level, generally emerge as responses to specific societal issues, which may arise from either internal (endogenous) or external (exogenous) factors. In the case of public transport regulation, the need was driven by exogenous factors: developments in mobility, an unprecedented shift at the time. As scholars have noted: "exogenous factors, or forces in society, acting on policymakers strongly influence policymaking, and policy in general

97 DoT Date Unknown https://www.transport.gov.za/?page_id=61.
98 Hlatshwayo 2022 *The Thinker* 56; SAGOV Date Unknown https://www.gov.za/about-sa/transport.
99 Hlatshwayo 2022 *The Thinker* 56; SAGOV Date Unknown https://www.gov.za/about-sa/transport.
100 Hlatshwayo 2022 *The Thinker* 56; SAGOV Date Unknown https://www.gov.za/about-sa/transport.

develops out of a given socio-political context."[101] In South Africa, early public transport regulation reflects these societal shifts. While historical records documenting the exact details of public transport regulation remain sparse,[102] the seminal works of Judge Wilfrid Edward Cooper, particularly his 1982 book *Motor Law*,[103] continue to provide a foundational reference for understanding the regulatory landscape.

However, it is important to distinguish between the regulation of road networks (the development of infrastructure) and the regulation of vehicle use on public roads. As the discussion below will show, the former was relatively uncontroversial and progressed without significant resistance, while the latter often sparked contention, leading to protests and, at times, violence. For this discussion, the focus is on regulating vehicle use, as it directly intersects with societal order, safety, and individual responsibility, matters that are affected by disruptive technologies like Uber.[104]

The discussion that follows takes a historical turn.

1809–1896

Public transport regulation in South Africa began to take shape under the administration of the Earl of Caledon in the Cape Colony in 1809.[105] Recognising the hazards posed by animal-drawn carriages, wagons, and carts, the first set of regulations was published. These rules were intended to address the risks associated with mobility, including threats to human health, animals, and property.

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101 Mitchell and Walters 2011 *Journal of Transport and Supply Chain Management* 248.

102 There is also no general agreement on how the timelines are labelled. For example, Khosa labels the timelines of the development of public transport regulation as follows: "three distinct phases can be identified: first, the era of regulation and protection, c. 1930-1976; second, a period of limited regulation and "controlled competition," c. 1977-1986; and third, deregulation and promotion of competition, since 1987". Khosa 1995 *Antipode* 170. As the discussion shows, Cooper does not necessarily subscribe to a similar distinction of phases.

103 Cooper *Motor Law*.

104 For a discussion on disruptive technologies, see discussion in Chapter 3.

105 Cooper *Motor Law* 4.

The regulations reflected an early understanding of law as a tool for social regulation designed to mitigate potential harm and maintain order.[106]

The first formal regulation by the Earl of Caledon stated:

> All persons whatsoever residing in Cape Town, or in the District of the Cape, or possessing either cart or waggon; to wit, those residing in Cape Town or District, Simon's Town included, also those residing in the environs of the Drostdy of Stellenbosch to three hours' distance, shall, within the space of one month from the date hereof, and the remainder of the said inhabitants before the end of the month of August, give in to the fiscal, or the landdrosts of their respective districts, their names, and likewise how many carts or waggons they possess, in order that the same may be registered, and that they receive a certificate upon a stamp of six stivers for each waggon.[107]

The regulation required owners of carts or wagons to register their vehicles, marking the emergence of ownership accountability in mobility systems. This process introduced the practice of identifying vehicles with specific individuals. Owners were assigned registration numbers, which had to be painted in white on a blackboard along with the owner's name and district of residence.[108] This blackboard was then affixed to the right side of the vehicle.[109] Although primitive by today's standards, this practice likely laid the groundwork for the modern vehicle registration system, which persists as an immutable rule of public transport regulation. It also potentially highlights early efforts to address the conflicts and responsibilities inherent in using shared public roads.

Another measure to reduce confusion and misinterpretation of the rules was the publication of regulations in English, ensuring clarity for road users.[110] Judge Cooper notes that many of today's fundamental traffic rules, such as driving on the left side of the road, can be traced back to these early regulations. Regulation 4, for example, reads:

> ...all carriages of every denomination, whether drawn by horses or by oxen, shall keep on the left-hand side of the road or street, giving always the right-hand to the carriages they meet; and should any damage be done to either carriages, cart or waggon, whilst on its proper side of the road, by another out of its place... the

106 Cooper *Motor Law* 4.
107 Regulation 1 as cited in Cooper *Motor Law* 4.
108 Cooper *Motor Law* 4.
109 Cooper *Motor Law* 4.
110 Cooper *Motor Law* 5.

> owner of such carriage, cart or waggon, shall not only repair and make good the injury sustained [but] in case of refusal, be obliged to pay a fine of 20 rixdollars for having offended against the law.[111]

These rules reflected an early concern for road safety, not only for drivers but also for pedestrians and passengers. They addressed the responsibilities of individuals operating vehicles and sought to ensure accountability for harm caused by reckless or unlawful use of public roads.

By the 1830s, the regulatory framework expanded to include provisions against dangerous driving. *Ordinance 79 of 1830 (C)* introduced penalties for "furious riding," a term used to describe reckless or negligent driving. Offenders could be fined between 10 shillings and £5 or face imprisonment of up to one month with or without hard labour.[112] This marked a significant evolution in public transport regulation, as it emphasised not only property protection, but also the safety of individuals.

It is also during this period that the first known road authority, the Central Road Board, was established in 1843, chaired by John Montagu.[113] While its primary responsibility was the development of rural roads in the Cape Colony, its work laid the foundation for infrastructure improvements critical to supporting a growing transport system. One of its most notable achievements was the construction of the Montagu Pass in 1847, a hard road that remains the oldest unaltered pass in South Africa and a national monument.[114]

The *1809 Regulations* and *Ordinance 79 of 1830* were eventually repealed and replaced by *Ordinance 9 of 1846*, heralded as "the first legislative attempt in Southern Africa to deal comprehensively with road traffic on public roads."[115] This Ordinance was groundbreaking for its time, introducing key measures to address

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111 *Regulation 4* as cited in Cooper *Motor Law* 5

112 Cooper *Motor Law* 6. Judge Cooper, however, observes that there had been earlier offences of furious driving in the Cape *placaats* as early as 1724.

113 Smith 1973 *Civil Engineering=Siviele Ingenieurswese* 253.; Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 240.

114 Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 240; South African History Online Date Unknown https://www.sahistory.org.za/place/montagu-pass

115 Cooper *Motor Law* 6.

negligence and regulate public road use. One notable provision was the liability imposed on drivers of wagons, carts, and other carriages for negligent actions, signalling a shift towards accountability for public road use.[116] Additionally, as ox-drawn carts and wagons were a common mode of transport, it became clear that these vehicles required a "leader" to guide the oxen safely.[117] The Ordinance mandated the employment of leaders, who were required to be at least 16 years old. Failure by a leader to fulfil this responsibility could result in a fine of 40 shillings, a fine that indicates the emphasis on road safety and the responsible use of vehicles.[118]

Rules on the right of way

The Cape Colony was not the only region advancing traffic regulation. The colony of Natal developed its own legal framework with *Law 13 of 1865*, which, among other things, introduced rules on the right of way.[119] It prohibited individuals from interrupting, hindering, or unnecessarily preventing the rightful passage of wagons, carts, or other vehicles on public roads.[120] This reinforced the principle of shared road use and fairness in transport.

Another significant regulatory milestone in Natal came with *Law 20*, which specifically addressed the conveyance of passengers. This law required:

> ...the owner of any conveyance used for carrying passengers along any main road in Natal to obtain an annual licence of £1 sterling from the Resident Magistrate of any district through which the conveyance would be passing. However, before a licence could be granted the conveyance concerned had to be exhibited to the Resident Magistrate who would, upon examination of the conveyance, determine the number of passengers who could safely and conveniently be conveyed therein.[121]

This marked an important evolution in public transport regulation, as it granted authorities the power to deem a vehicle unworthy of public use until repairs were

116 Sections 3 of *Ordinance 9* as cited in Cooper *Motor Law* 6.
117 Sections 4 and 5 of *Ordinance 9* as cited in Cooper *Motor Law* 6.
118 Sections 4 of *Ordinance 9* as cited in Cooper *Motor Law* 7.
119 Section 3 of *Law 13* as cited in Cooper *Motor Law* 8.
120 Section 3 of *Law 13* as cited in Cooper *Motor Law* 8.
121 Sections 1-3 of *Law 20* as cited in Cooper *Motor Law* 10.

made or a licence was renewed.[122] It was also illegal to carry passengers for hire without a valid licence or to exceed the licensed passenger limit.[123] It becomes evident from this discussion that from the early stages, the idea of regulating public transport was for the greater good, beyond the pleasures of those who enjoyed being conveyed in their own vehicles or those who carried others in their vehicles.

Passenger rights and operator responsibilities

Law 20 also introduced early protections for passenger rights, establishing liability for transport operators in specific instances.[124] Drivers or operators could face penalties for:

- leaving their conveyance unattended;
- failing to take due care of goods, parcels, or luggage carried on the conveyance;
- demanding a fare higher than the allowable rate;
- overcharging for specific items of luggage; and
- assaulting or using abusive language towards passengers.[125]

These provisions indicate an early recognition of the importance of regulating not only the safety of vehicles, but also the conduct of operators and their treatment of passengers. The law sought to protect passengers' rights and foster trust in public transport systems by regulating fare limits, luggage handling, and interpersonal conduct.

From as early as the mid-19th century, a clear relationship emerged between the right to operate public transport, the availability of public roads, and the rights of passengers. These elements formed the foundation for today's complex and often

122 Cooper *Motor Law* 10.
123 Section 6 of *Law 20* as cited in Cooper *Motor Law* 10.
124 Section 7 of *Law 20* as cited in Cooper *Motor Law* 10.
125 Cooper *Motor Law* 11.

contested issues surrounding public transport regulation, particularly in South Africa's taxi industry. Consequently, although these early regulations applied to basic modes of transport such as carts and wagons, their principles remain relevant. They highlight the balance between facilitating transport and ensuring public safety and fairness, issues that persist in modern transport systems.

Overall, while the Cape Colony and Natal led the way in creating foundational laws for public road use and transport regulation, contributions from the Transvaal and the Orange Free State were comparatively limited.[126] The period between 1897 and 1913, however, marked a turning point, with the colonies making significant advancements in transport regulation. These developments laid the groundwork for the legal framework of modern public transport in South Africa.

1897–1910

Although laws and ordinances regulating animal-drawn vehicles and other non-self-propelled vehicles had existed for some time, the arrival of the first self-propelled motor car in South Africa in 1896 marked a turning point in the history of transport regulation.[127] Publicly, the first car was formally introduced in Pretoria in 1897,[128] which coincides with the Transvaal Republic's *Law 8 of 1897*, the earliest recorded regulation of self-propelled vehicles. This law reflected an awareness of the evolving transport landscape and introduced several important provisions. First, weight limits were introduced on roads: "Wagons passing over roads and bridges may not be loaded more heavily than 8 000 lbs, unless the load consists of one indivisible piece."[129] This clause clearly recognises the need to protect public infrastructure from damage as a result of excessive loads. Secondly, rules for steam-powered vehicles were created: "Locomobiles, locomotives, and other steam-engines may not be propelled by steam along the main road or transport roads unless special permission is obtained from the road inspector or district council."[130] This restriction acknowledged the potential hazards of steam-

126 Cooper *Motor Law* 14.
127 Cooper *Motor Law* 4.
128 Cooper *Motor Law* 15.
129 Article 1 of *Law 8* as cited in Cooper *Motor Law* 15.
130 Article 1 of *Law 8* as cited in Cooper *Motor Law* 15.

powered vehicles on public roads, reflecting concerns about safety and compatibility with existing traffic.

Additionally, *Law 8 of 1897* demonstrated a nuanced understanding of the challenges posed by evolving transport technology. For instance, it included specific provisions for mountain roads and passing wagons, such as the following in brief:

- On mountain slopes, descending wagons were required to keep to the inner side of the road to prevent accidents.
- On level ground, on slopes at drifts or where slopes were sheer, all wagons were required to keep to the left.
- For ox-wagons passing one another or passing other vehicles, a leader had to walk ahead of the ox-wagon to ensure safety.[131]

Arguably, these nuanced rules reflected an understanding of the differences in speed and control between animal-driven carts and emerging self-propelled vehicles. Over time, with the increasing use of motorised vehicles, the regulatory framework evolved to keep pace with these developments.[132]

With the proliferation of self-propelled vehicles, local authorities across South Africa began to assume greater responsibility for regulating road use and vehicle operations. These powers were increasingly formalised, giving municipalities control over licensing, vehicle dimensions, and road safety measures. Judge Cooper noted that regulations in cities like Johannesburg and Pretoria imposed territorial restrictions on vehicle use.[133] For example, individuals could not operate

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131 Article 6 of *Law* 8 as cited in Cooper *Motor Law* 16. The exact text was as follows: "Where the road runs along mountain slopes, when wagons pass, a descending wagon shall keep to the inner side, while on level ground and also on slopes at drifts and where the slopes are sheer the wagons shall always keep to the left. When ox-wagons are passing one another or ox-wagons are passing other vehicles, in each instance a leader must be ahead of the ox-wagon."

132 Cooper *Motor Law* 16. Many regulations were made during this time, but these are not necessary to canvas because there are just too many. Even Judge Cooper does not discuss them but merely lists them. For this list, see Cooper *Motor Law* 16.

133 Reg IV.1 of the (1902) Jhb Regulations and Reg 151 of the Pta Regulations as cited in Cooper *Motor Law* 17.

vehicles outside municipal boundaries without explicit permission. Vehicle licensing became mandatory, and licences were kept on record at the Inspector of Vehicles' office.[134]

The way vehicles were identified and licensed also evolved during this period. For example, the *1902 Johannesburg Regulations* mandated that a vehicle's licence number be affixed to its back.[135] If affixing it to the back was impractical, the number had to be painted or displayed on both sides of the vehicle. Furthermore, by the time of the *1905 Johannesburg Regulations*, stricter identification rules were introduced, requiring vehicles to display two plates, one at the front and one at the back.[136]

In Durban and Pietermaritzburg, a dual licensing system emerged, requiring both a vehicle and a separate driver's licence.[137] This marked a critical shift towards recognising the importance of driver competence in ensuring road safety. However, signs of the racialised nature of South Africa's regulatory system also began to appear. Only an authorised council official or a 'European Police Constable' could stop a car and demand to see a licence.[138] Failure to produce the driving or vehicle licence was deemed an offense, with penalties imposed. Evidently, these early regulations highlight how racial discrimination began to permeate even technical areas like traffic regulation, foreshadowing broader systemic inequities in the country.

Also, during this transformative period, regulations introduced minimum safety standards for vehicles, developments that reflected the increasing complexity of motorised transport.[139] Key measures included specifying the dimensions of the vehicles allowed on public roads, requiring vehicles to have a certain number of

134 Reg IV.13 of the (1902) Jhb Regulations and Reg 165 of the Pta Regulations as cited in Cooper *Motor Law* 17.
135 Reg III C 3 of the (1902) Jhb Regulations as cited in Cooper *Motor Law* 17.
136 Reg III C 3(a) of the (1905) Jhb Regulations as cited in Cooper *Motor Law* 17.
137 Reg 13*d* of the Dbn Regulations of 1906 as cited in Cooper *Motor Law* 18.
138 Reg 13*g* of the Dbn Regulations of 1906 as cited in Cooper *Motor Law* 19.
139 See general discussion in Cooper *Motor Law* 20.

brakes to ensure sufficient stopping power, and mandating the installation of lights for nighttime driving to reduce accidents.[140]

These rules not only prioritised safety for road users but also signalled the growing sophistication of regulatory systems to address the unique risks motor vehicles pose.

Strict regulations during the Union period (1910–1961) and the apartheid legacy (1948–1989)

During the Union period, which commenced in 1910 and ended in 1961, a concerted effort was made to integrate the transport networks of the two British colonies, the Cape Colony and Natal, and the Boer republics of the Orange Free State and Transvaal.[141] Efforts to achieve uniformity in South Africa's transport system led to the promulgation of Motor Car Ordinances by all four provinces by 1914.[142] These laws introduced regulations for vehicle and driver licensing, as well as uniform rules for the use of public roads. These ordinances marked the first unified attempts to address the potential hazards of public road usage through standardised regulations.

Furthermore, these efforts culminated in the establishment of South Africa's first national railway organisation. Rail transport, established early on, was vital in linking the colonies. However, this period also saw tensions arising between the growing rail network and the emerging road infrastructure. The rapid expansion of the road network led to fierce competition between rail and road transport, particularly from the 1920s onward. This tension can be explained in economic terms, as detailed by Havenga and Pienaar:

> One of the key reasons for this [rising tension] was the differential tariffing system applied by rail to support the government's economic objectives: low tariffs for mining and agriculture, and high tariffs for industrial goods. This was the first form of cross-subsidisation and the first threat to rail density as higher-value goods sought to move to road transport, because of the inordinately high tariffs charged

140 See general discussion in Cooper *Motor Law* 20.
141 Havenga and Pienaar 2012 *Economic History of Developing Regions* 89
142 Cooper *Motor Law* 26–27.

> for rail transportation. The modal shift reduced rail density and applied cost pressures on lower-value commodities.[143]

These were the first signs of strife, the foreshadowing of the eventual competition-related challenges that would burden the public transport system in South Africa during and after apartheid. These tensions resulted in the government establishing the Road Motor Competition Commission (commonly known as the Le Roux Commission), which investigated the growing tensions between rail and road transport.[144] Although records of the Commission are scarce, it was reported that one of its main findings was that "road transportation was disordered, unrestricted and uncontrolled"[145] and that "public transport in South Africa was 'one of great confusion and disorder' because 'competition was unrestricted and uncontrolled.'"[146] The Commission's recommendation was to establish a National Roads Board, which led to the enactment of the 1930 *Motor Carrier Transportation Act*.[147]

The *Motor Carrier Transportation Act* sought to regulate public transport and created the Central Road Transportation Board, as well as decentralised Local Road Transportation Boards in each of the four provinces.[148] While it was the first attempt at a concerted, nationwide regulation of public transport, it simultaneously limited competition, paving the way for monopolies.[149] The Act restricted the operational freedom of all road freight, except for those used by farmers, local authorities, and government departments.[150] Permits were required for transporting certain goods, such as perishable items: "permits for transporting isolated categories such as perishable goods could be obtained by road

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143 Havenga and Pienaar 2012 *Economic History of Developing Regions* 89.

144 Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 241; Smith 1973 *Civil Engineering–Siviele Ingenieurswese* 253.

145 Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 241.

146 Khosa 1995 *Antipode* 171.

147 *Motor Carrier Transportation Act* 39 of 1930. The writer searched for copies of this law, but none could be found in libraries or online.

148 Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 241; Khosa 1995 *Antipode* 171.

149 Khosa 1995 *Antipode* 171.

150 Havenga and Pienaar 2012 *Economic History of Developing Regions* 90.

transporters, but the Act, enforced by railway police inspectors, ensured that most land-freight was rail-based."[151]

The consequences of this Act were profound. Although its purpose was to protect railways from competition, it gave Local Road Transportation Boards the authority to set quotas, limiting competition in areas without rail services.[152] The restrictions had significant effects, particularly for African independent transport operators nationwide. In particular, the Act also imposed strict regulations on the operation of taxis, further stifling competition and economic mobility for non-white South Africans.[153]

Group Areas Act and its legacy

At this point, the discussion cannot be complete without reference to the *Group Areas Act*[154] and its impact on public transport regulation. As a starting point, it remains perhaps apartheid's most enduring legacy,[155] continuing to affect South Africa's transport landscape today. The Act mandated racial segregation, prescribing where different racial groups could live. From a transport perspective, the *Group Areas Act* ensured that white areas were well-served with well-maintained roads and efficient public transport systems.[156] However, this was not the case for black South Africans, who lived in less accessible areas, far from urban centres and transport hubs.[157] Many could not afford private vehicles. As a result, mass transit systems became the dominant mode of transport in black

151 Havenga and Pienaar 2012 *Economic History of Developing Regions* 90.

152 Khosa 1995 *Antipode* 171; Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 241. The law prohibited the public transportation of peoples, except with the use of a permit. Such a permit had to be sought at the Local Transportation board for operation in a specific 'transport area'.

153 Khosa 1995 *Antipode* 171.

154 *Group Areas Act* 41 of 1950.

155 Kani 2018 https://www.news24.com/fin24/sa-public-transport-is-steeped-in-a-history-rarely-told-20180506-2.

156 Loop 2023 https://www.looptaxi.co.za/post/history-of-the-minibus-taxi-industry-in-south-africa.

157 Havenga and Pienaar 2012 *Economic History of Developing Regions* 89.

communities, paving the way for the rise of minibus taxis.[158] The primary reason for the rise of taxis was the inefficiencies of buses and trains:

> In the late 1970s and early 1980s, a new form of transportation emerged in the townships — the minibus taxi. These taxis were small vans that could carry up to 16 passengers and were operated by private individuals. The taxis were cheaper and more efficient than the government-run buses and were able to navigate the narrow and winding streets of the townships, where larger vehicles could not go. The minibus taxi industry grew rapidly, with thousands of drivers and operators joining the trade.[159]

The taxi industry became a focal point of internal and external contestation between operators themselves and between the government and operators. While the government needed to transport workers to urban areas, its own public transportation systems were inadequate. As privately owned businesses, the taxi industry had an economic incentive to continue operating despite the challenges.[160] Conflict in the industry often centred on routes and passengers.[161] The government's attempts to regulate the sector with strict licensing requirements were often ineffective, with many operators continuing to operate illegally.[162]

Consequently, the legacy of transport disadvantage, or the exclusion from equitable access to transportation, remains a profound issue in South Africa.[163] This disadvantage is a direct consequence of apartheid-era spatial planning and the economic inequalities that persist in the post-apartheid era. As noted by Jennings, transport disadvantage:

> ...is regarded as a consequence of the inequitable distribution of transportation benefits and impacts – and in South Africa in particular, transport disadvantage is

158 Loop 2023 https://www.looptaxi.co.za/post/history-of-the-minibus-taxi-industry-in-south-africa.
159 Loop 2023 https://www.looptaxi.co.za/post/history-of-the-minibus-taxi-industry-in-south-africa.
160 Loop 2023 https://www.looptaxi.co.za/post/history-of-the-minibus-taxi-industry-in-south-africa.
161 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 356.
162 Loop 2023 https://www.looptaxi.co.za/post/history-of-the-minibus-taxi-industry-in-south-africa.
163 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 766.

> increased by both apartheid's spatial legacy and subsequent low-income housing patterns, which mean that the distance between home and work is significant.[164]

Overall, it appears that even as the *Group Areas Act* indirectly led to the growth of the (illegal) taxi business to cater for the distances between home and work, as well as general travel, directly fuelling competition. This is because it provided fertile ground for protectionist policies in favour of buses and rail, as the government subsidised these to cater to long-distance travellers and general labour-related travelling.[165] However, public transportation conditions under such subsidised bus and rail services resulted in overcrowding, infrequent services, poor maintenance, and rising costs, which led to widespread frustration.[166] Consequently, bus boycotts became a central element of political struggles during the 1940s, 1950s, and 1980s, as local communities protested the inadequate and unreliable transport services vital for their daily lives.[167]

The *Road Transportation Act* 74 of 1977

On 21 July 1975, the Van Breda Commission was established in response to the growing and unregulated taxi industry.[168] The government viewed its rise as problematic, citing concerns over the 'unauthorised and uncontrolled' operations of taxis. A key contention was that the urban demand for labour, coupled with unregulated taxi operations, could lead to "an oversupply of services in urban areas and an undersupply in outlying areas."[169] In an effort to address these concerns, the Commission recommended stricter regulations to manage competition and maintain balance.[170]

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164 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 766.

165 Mitchell 2014 *Journal of the South African Institution of Civil Engineering* 56.

166 Khosa 1995 *Antipode* 177.

167 Khosa 1995 *Antipode* 177.

168 Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 241.

169 Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 241.

170 Alers "Assessing Public Transport Policies for Driver Fitness in the South African Road Transport Context" 241.

This recommendation culminated in the *Road Transportation Act*,[171] which replaced the *Motor Carrier Transportation Act*. The new law introduced a structured system requiring permits to transport goods or passengers for reward.[172] These permits were classified into public,[173] private,[174] or temporary permits,[175] and applicants were required to apply through Local Road Transportation Boards.[176] The Act also empowered the Minister to designate specific transport areas, which became the focus of regulatory oversight.[177]

The National Transport Commission, an entity created under Act,[178] oversaw permit applications at the national level. Still, decentralisation efforts ensured each transport area had its own Transportation Board to investigate and regulate public transport issues locally.[179] This framework aimed to create a system of accountability and regional oversight.[180]

The permit application process was highly rigorous, placing significant responsibility on the applicant to demonstrate the necessity of their service. A permit could be granted fully, partially, or subject to conditions.[181] Applicants had to prove their suitability and the public benefit of their operations, as outlined in the following criteria:

> (2)*(a)* When an applicant applies for a public permit to undertake road transportation within an area or over a route or between two or more points already served by existing transportation facilities, the onus shall be upon the applicant of proving that-
>
> > (i) such existing transportation facilities are not satisfactory and sufficient to meet the transportation requirements of the public in that area or along that route or between those points;
> >
> > (iii) having regard to the circumstances, it will be expedient in the public interest to grant him the permit; or

171 *Road Transportation Act* 74 of 1977.
172 Khosa 1995 *Antipode* 172.
173 Section 13 of the *Road Transportation Act*.
174 Section 18 of the *Road Transportation Act*.
175 Section 20 of the *Road Transportation Act*.
176 Section 1(1)(xxxiii) of the *Road Transportation Act*.
177 Section 2(a) of the *Road Transportation Act*.
178 Section 3(1)(c)(i) of the *Road Transportation Act*.
179 Section 4(1) of the *Road Transportation Act*.
180 See generally section 7(1) of the *Road Transportation Act*.
181 Section 13(1)(a)-(c) of the *Road Transportation Act*.

(iv) he belongs to the same class as the majority of the persons to be served by the transportation service for which the permit is sought, and that it is in the interests of such persons desirable to grant him the permit; and

(v) he has the ability to provide in a manner satisfactory to the public the transportation for which the permit is sought.[182]

Furthermore, the *Road Transportation Act* further put the onus on the applicant to scout for new routes and then apply for permits for such routes:

(b) When an applicant applies for a public permit to undertake road transportation in circumstances not contemplated in paragraph *(a),* the onus shall be upon the applicant of proving that -

(i) there is a need for such transportation within the area or along the route or between the points in or over or between which he proposes to undertake such transportation; and

(ii) he has the ability to provide in a manner satisfactory to the public the transportation for which such permit is sought.[183]

The Act also introduced stringent conditions on vehicle suitability. Vehicles had to meet standards for the intended class of road transportation and possess valid certificates of fitness under provincial licensing laws. These measures sought to ensure public safety and operational efficiency:

(2) The commission or a board shall not issue any public permit granted, renewed, amended or transferred by it in terms of this Act, unless -

(a) it is satisfied that every motor vehicle in respect of which such permit was so granted, renewed, amended or transferred, is suitable for the class of road transportation for which it is to be used; and

(b) in respect of each such motor vehicle a certificate of fitness issued under the law relating to the licensing and registration of motor vehicles in the province in question, on or after a date determined in the manner prescribed by regulation, or a copy of such a certificate authenticated in the mariner so prescribed, has been submitted to it.[184]

Permits were non-transferable, meaning the holder could not pass the permit to another person or business. Additionally, any changes to designated routes or services required a new permit application or explicit approval, further tightening control over operations:

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182 Section 15(2)(a) of the *Road Transportation Act*.
183 Section 15(2)(b) of the *Road Transportation Act*.
184 Section 21(2) of the *Road Transportation Act*.

(3) Any permit issued by the commission or a board shall specify the following, namely-

> *(a)* the name of the holder and his address, including, in the case of a holder who carries on any road transportation business, his business address, and in the case of a private permit, the address at which or a description of the place or places where, the industry, trade or business in respect of which the private permit was granted, is carried on;[185]

Overall, the *Road Transportation Act* reflected the government's broader efforts to regulate and control the taxi industry, particularly by limiting the number of permits to prevent market saturation. However, this regulatory framework arguably disproportionately affected people of colour, who faced systemic barriers to meeting the application criteria. The stringent requirements, including proving necessity and public benefit, were unattainable for many due to limited resources, discriminatory practices, and systemic exclusion from formal economic opportunities.

As a result, many operators, unable to secure permits, continued their businesses illegally. This likely created an environment of illegality and contestation, where unregulated operations gave rise to violent disputes over routes and passengers. These conditions likely further entrenched inequities in the transport sector, as people of colour likely remained at the margins of formalised regulation and economic participation systems.

Arguably, these discretionary, scarcity-driven controls resonate in today's platform era, where licence categories and enforcement capacity determine who can offer rides and on what terms, as discussed in Chapter 4 and comparatively in Chapter 5.

Transport Deregulation Act 80 of 1988

The *Transport Deregulation Act*[186] marked a pivotal shift in South Africa's public transportation landscape. This legislative change followed the 1986 National Transport Policy Study, which highlighted the strategic importance of an effective

185 Section 21(3) of the *Road Transportation Act*.
186 *Transport Deregulation Act*.

transport system for South Africa's economic and social development.[187] Thereafter, in 1987, the *White Paper on National Transport Policy* proposed the idea of legalising the 16-seat minibus taxi industry.[188] This transformative decision would open the market to competition. Previously, under the *Road Transportation Act*, the transport sector was tightly controlled, with a permit system that acted as a significant barrier to entry, particularly for black operators. This system effectively protected government-owned carriers and infrastructure, subsidised to support apartheid's economic and social objectives.[189] As such, the transport monopoly during apartheid focused on maintaining government control over passenger and freight movement, often to the detriment of inclusivity and market access.[190]

Deregulation, underpinned by the *Transport Deregulation Act*, dismantled the restrictive permit system that had previously made it challenging for black operators to enter and thrive in the market.[191] The Act stated as follows:

> (1) Subject to the provisions of subsection (3), the provisions of the Road Transportation Act, 1977 (Act No. 74 of 1977), in so far as they are applicable in relation to the conveyance of -
>
> *(a)* goods; or
>
> *(b)* persons,
>
> shall cease to be in force with effect from a date determined by the Minister by notice in the Gazette.[192]

This legislative change created a competitive environment, granting legal recognition to 16-seater minibuses and allowing operators to travel within a 100-kilometre radius of any central point.[193] Further, the deregulation process fostered open-market competition, reducing the dominance of the bus industry, which had

187 Havenga and Pienaar 2012 *Economic History of Developing Regions.*
188 Walters 2014 *Journal of Transport and Supply Chain Management* 2; Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 15; Khosa 1995 *Antipode* 174.
189 Ellison 1992 *Journal of Transport Economics and Policy* 313.
190 Ellison 1992 *Journal of Transport Economics and Policy* 314.
191 Walters and Pisa 2023 *Research in Transportation Economics* 3.
192 Section 5(1) of the *Transport Deregulation Act*.
193 Walters and Pisa 2023 *Research in Transportation Economics* 3.

historically been shielded from competition.[194] The bus industry eventually recognised the importance of the taxi as a critical player in the passenger transport market, culminating in a 'historic compromise' between the two sectors.[195] However, this transition was not without challenges. For example, following deregulation, the issuing of permits no longer required rigorous demonstration of vehicle safety standards or evidence of passenger demand.[196] This regulatory gap led to rapid and sometimes chaotic growth in the minibus taxi industry.

Deregulation, therefore, helped dismantle apartheid-era restrictions, empowering black entrepreneurs in the taxi industry. Yet, the long-term consequences, including oversaturation of operators and inadequate regulation, underscored the need for subsequent policy interventions to balance market freedom with public safety and efficiency.

Public transport regulation, apartheid, and protests: A summary

The history of public transport in South Africa is deeply intertwined with the socio-economic and political dynamics of apartheid. Public transportation served as both a tool for enforcing segregation and a site of resistance against systemic oppression.[197] As such, three aspects must be considered in this part of the discussion.

First, a structural link exists between labour and public transport. Under apartheid, transportation systems were deliberately designed to serve the economy's needs by facilitating the daily movement of African labourers from the outskirts of urban centres to workplaces in the cities.[198] The spatial segregation imposed by apartheid policies, such as the *Group Areas Act*, relegated African communities to

194 Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 16.

195 Khosa 1995 *Antipode* 173.

196 Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 17.

197 Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.

198 Khosa 1995 *Antipode* 167; Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.

the peripheries, far removed from employment hubs, recreational areas, and shopping facilities. As a result, transportation became essential for bridging these distances, albeit at a significant social and economic cost. This inseparable connection between public transport and labour persists in contemporary South Africa.

Second, public transport served as a crucial site of protest and resistance. As noted by Ngubane, "passenger transport under apartheid, and white minority rule before apartheid, was a critical site of contestation and common protest."[199] Public transportation often became a platform for expressing dissent. For example, former President Nelson Mandela's first political act involved participating in the Alexandra bus boycott of 1943, which was triggered by fare increases.[200] Similar protests recurred throughout apartheid, highlighting the link between transport systems and the economic exploitation of African workers. As Khosa argues, "in time, transport became a site of popular struggles and a dramatic expression of tensions and disputes over control, management and affordability of racially divided spaces."[201] Consequently, it is not surprising that protests and violence continue to shape some of the persistent conflicts within the regulatory framework of public transportation today.

Third, the government became deeply entangled in the competitive dynamics of public transportation, driven by its vested interests in subsidised bus and rail systems. This involvement was motivated by both economic and protectionist imperatives, as affordable public transport was deemed essential for maintaining the migrant labour system. Consequently, transport pricing and availability policies were often structured to enable workers to commute to urban centres without imposing high costs on employers or the state.[202] This approach, along with the legal and policy frameworks designed to support it, systematically excluded the

199 Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.
200 Hlatshwayo 2022 *The Thinker* 52.
201 Khosa 1995 *Antipode* 168.
202 Walters 2014 *Journal of Transport and Supply Chain Management* 2.

rapidly growing taxi industry.[203] Emerging in response to inadequate public transport during the late apartheid era, this sector flourished despite being overlooked in formal planning and regulation. As a result, competition has remained a defining and contentious issue in the regulation and operation of public transport systems.

The question carried forward is whether contemporary platform rules can replace discretionary, protest-driven fixes with reason-giving, enforceable governance. This is explored in later chapters.

Post-apartheid public transport regulation in South Africa

Introduction

To establish a foundation for this discussion, it is essential to outline the general regulatory framework of public transport in South Africa. At the outset, it is evident that the new democratic government inherited a deeply fragmented transportation system, a byproduct of discriminatory apartheid-era policies and bureaucratic inefficiencies.[204] These policies entrenched social exclusion, creating urban geographies that segregated people from their workplaces and essential social services, effectively stifling opportunities for productive and equitable lives.[205] Addressing this legacy has proven to be a significant challenge for the post-apartheid government, which has struggled to reform public transportation in an effective and sustainable manner.[206] As is demonstrated in subsequent chapters, these difficulties have been further exacerbated by the emergence of new developments in the public transport sector, most notably the rise of e-hailing services.[207]

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203 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 357; Walters and Pisa 2023 *Research in Transportation Economics* 3.

204 Simelane *Public Transportation in South Africa: Factors Influencing Modal Choice for Work Trips in Johannesburg and Cape Town* 13.

205 Thomas 2016 *World Journal of Social Science Research* 352; Ellison 1992 *Journal of Transport Economics and Policy* 313.

206 Thomas 2016 *World Journal of Social Science Research* 352.

207 See general discussions in chapter 3.

In contemporary South Africa, public transport is governed by the *Constitution* under Schedule 4, which assigns concurrent jurisdiction over this matter to both national and provincial governments.[208] The Department of Transport (DoT) serves as the principal government entity responsible for regulating public transport.[209] According to its mission statement:

> The Department of Transport aims to lead the development of efficient integrated transport systems by creating a framework of sustainable policies and regulations; and implementable models to support government strategies for economic, social and international development.[210]

The DoT's core responsibilities include conducting research in the sector, developing legislation and policies to set strategic directions, establishing norms and standards, delegating responsibilities to public entities, and monitoring the implementation of its directives.[211]

With this generic introduction, the following discussion traces the legal and policy developments on public transport regulation after apartheid.

The 1996 White Paper on National Transport Policy[212]

Efforts to redefine South Africa's transport policy framework began in 1992 with the establishment of the National Transport Policy Forum. This forum represented a significant turning point, bringing together a wide range of stakeholders to engage in inclusive and participatory discussions on transportation reform, including members of the African National Congress (ANC), the DoT, and civil society organisations.[213] The resulting *White Paper on National Transport Policy* (WPNTP), published in 1996, was informed by the earlier 1986 National Transport Policy Study. It was designed as a foundational framework to guide the regulation

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208 See sections 155(6)(a) and (7) of the Constitution.

209 SAGOV date unknown https://www.gov.za/about-sa/transport

210 DoT Date Unknown https://www.transport.gov.za/?page_id=61 See also Walters 2014 *Journal of Transport and Supply Chain Management* 3; White Paper on National Transport Policy (1996) 7.

211 SAGOV date unknown https://www.gov.za/about-sa/transport.

212 The author could not find a published or pdf version of the policy. The discussion relies on the *White Paper on National Transport Policy* as it appears on the government's website: https://www.gov.za/documents/white-papers/national-transport-policy-white-paper-20-aug-1996.

213 Thomas 2016 *World Journal of Social Science Research* 354.

of public transport across South Africa.[214] The WPNTP outlined an ambitious vision for the transport system:

> [To] provide safe, reliable, effective, efficient, and fully integrated transport operations and infrastructure which will best meet the needs of freight and passenger customers at improving levels of service and cost in a fashion which supports government strategies for economic and social development whilst being environmentally and economically sustainable.[215]

This vision was supported by bold objectives, including promoting fair labour practices, job creation, worker rights, and sound working conditions in the transport sector.[216] These goals were aligned with the government's broader commitment to addressing basic needs, fostering economic growth, and promoting democratic decision making.

The WPNTP emphasised a customer-centred approach, stating that legal and policy frameworks should empower consumers to access transportation services in ways that best meet their needs.[217] This consumer-centric perspective underscored the government's role as a mediator and regulator, balancing the interests of the industry with those of the public. Reflecting on the government's intended role, the WPNTP stated:

> In the past, Government's dominant role has been as a regulator of bureaucratic detail, a provider of infrastructure, and a transport operator, but it has been weak in policy formulation and in strategic planning. Government intends to reverse this legacy, and to focus on policy and strategy formulation which are its prime role, and substantive regulation, which is its responsibility, with a reduced direct involvement in operations and in the provision of infrastructure and services, to allow for a more competitive environment. Government will emphasise strategic planning and bring together key players in broader national strategies which could not be achieved by any single player. Government will retain the regulatory role to ensure unbiased regulation of safety and quality in general, to control market access for transport operators where this is necessary, and to prohibit excessive tariffs in the case of monopolies. This will need a national Government machine which is smaller, more focused and more skilled, and which can regulate more complex relationships with operators. The shift will affect all levels of Government—local, metropolitan, provincial, and national—and it implies a major restructuring of our transport parastatal sector.[218]

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214 Walters 2014 *Journal of Transport and Supply Chain Management* 2.
215 *White Paper on National Transport Policy* (1996).
216 *White Paper on National Transport Policy* (1996).
217 *White Paper on National Transport Policy* (1996).
218 *White Paper on National Transport Policy* (1996).

The expectation created by a goal and vision of this kind is of gargantuan proportions, such that the state's actions in policy formulation and general regulation would be measured against its own view of its role. It is this elaborate role of government that must be kept in mind for the rest of the discussion in this work.

Regulatory principles of the WPNTP

The WPNTP established four core principles of regulation:[219]

- Regulation of monopolies, where the government would oversee tariffs, safety, and service standards to prevent abuse of market dominance.
- Regulation of competing operators, where a 'regulated competition' framework would ensure that operators competed within parameters aligned with government objectives. In road transport, for instance, operators would compete 'for the route' rather than 'on the route.'
- Regulation by contract, where the government would enter contractual agreements with operators to provide specific transport services.
- Regulation of contracted services, where some public transport services provided under contracts—such as bus and taxi operations—would be tightly regulated, with participation terms defined by, for example, a tendering process.

These principles were intended to create a balance between the needs of consumers and operators, and economic sustainability and competition in the transport sector. However, as subsequent discussions illustrate, many of the challenges in public transport regulation today can be traced back to these regulatory domains.

These principles, regulated competition, contract governance and anti-abuse oversight, are re-expressed for digital markets in Chapter 4's licensing, pricing, safety and data duties.

219 *White Paper on National Transport Policy* (1996).

Regulated competition in the taxi industry

One of the key goals of the WPNTP's regulatory framework was the formalisation of the minibus taxi industry.[220] To enhance its economic viability, the government proposed measures such as requiring operators to establish legally registered entities (e.g., cooperatives or companies) or join registered associations.[221] These entities would operate under permissions granted by provincial permit boards, with allocations determined by demand as outlined in passenger transport plans.[222] This approach aimed to foster competition 'for the route' rather than 'on the route' by aligning route allocations with identified needs and existing operations, including those of informal (pirate) operators.[223] Financial and technical assistance was envisioned to help minibus taxi businesses secure permissions or contracts and improve their overall economic viability. Operators could also pursue these opportunities independently or in partnership with bus companies to strengthen their competitiveness.[224]

Overall, the WPNTP represented a significant departure from the apartheid-era system. The state adopted a clear set of objectives, prioritising integration over separation and favouring a pragmatic regulatory approach over restrictive competition and protectionist practices. As the government's principal public transport policy document, the WPNTP had wide-reaching and transformative effects, as becomes evident below.

The 2022 Revised White Paper on National Transport Policy[225]

In 2022, the government revised the WPNTP to address changing circumstances and emerging challenges in the transport sector. The updated policy emphasised the need for dynamism in public policy, stating: "[p]ublic policy cannot be static

220 *White Paper on National Transport Policy* (1996).
221 *White Paper on National Transport Policy* (1996).
222 *White Paper on National Transport Policy* (1996).
223 Walters 2013 *Research in Transportation Economics* 35; *White Paper on National Transport Policy* (1996); Walters and Pisa 2023 *Research in Transportation Economics* 3.
224 *White Paper on National Transport Policy* (1996); Walters and Pisa 2023 *Research in Transportation Economics* 3.
225 There are other developments that happened between the original White Paper and its 2022 revisions. For convenience, only the revision is discussed.

and in a rapidly changing world must strive to be dynamic, responding to changes in the environment within which it operates. Policy therefore needs to be reconsidered and, if necessary, revised on a continuing basis."[226] While the vision[227] and broader goals of the 1996 WPNTP remained unchanged, the revised document introduced a new policy approach based on the "avoid-shift-improve" strategy.[228] This strategy sought to:

- avoid unnecessary motorised travel and reduce travel distances;
- shift travel patterns from individual motorisation to safer, more efficient, and environmentally friendly modes; and
- improve infrastructure and transport services through the adoption of cleaner and safer technologies.[229]

Additionally, the 2022 revision introduced a fifth regulatory principle: Regulation by a Single Transport Economic Regulator (hereafter STER).[230] This new entity was tasked with overseeing all modes of transport to ensure efficiency, cost-effectiveness, and alignment with broader economic and social objectives. This new entity would oversee all modes of transport, ensuring a transport system that is both efficient and cost-effective. Its primary aim would be to support economic growth while addressing social objectives such as reducing poverty, unemployment, and inequality.[231] The STER is envisioned to establish consistent principles for regulating all transport modes. In cases where different treatment is required, it must be justified objectively and based on evidence.[232] Crucially, this

226 *White Paper on National Transport Policy* (2022).
227 To "provide safe, reliable, effective, efficient, and fully integrated transport operations and infrastructure which will best meet the needs of freight and passenger customers at improving levels of service and cost in a fashion which supports government strategies for economic and social development whilst being environmentally and economically sustainable." See *White Paper on National Transport Policy* (2022), 10.
228 *White Paper on National Transport Policy* (2022), 15.
229 *White Paper on National Transport Policy* (2022), 15.
230 *White Paper on National Transport Policy* (2022), 19.
231 *White Paper on National Transport Policy* (2022), 19.
232 *White Paper on National Transport Policy* (2022), 19.

framework for the STER would be completed and formally implemented through dedicated legislation.[233]

The dedicated legislation establishing the STER, known as the *Economic Regulation of Transport Act*,[234] was promulgated in June 2024. However, the law has been implemented in phases, and date for its full implementation has not yet been confirmed.[235] Among its primary objectives, the Act aims to "promote the development of a competitive, efficient and viable South African transport sector contributing to economic growth and development",[236] and to "establish appropriate institutional arrangements and procedures to support the consistent economic regulation of transport facilities and services."[237] The law extends to all markets where the Minister of Transport exercises economic regulation, explicitly including public transport.[238]

Nevertheless, the Minister's powers under this framework are subject to certain parameters. For instance, "[t]he extent of regulation introduced must be proportionate to the competition problems in the market."[239] In essence, any regulatory measures must correspond to the specific challenges or inefficiencies in a particular public transport segment. Only through this targeted approach can regulation foster a competitive and efficient transport system that adequately addresses the needs of both operators and passengers.

The Act also establishes a clear link between public transport regulation and competition-related issues. Specifically, the Regulator is empowered to develop regulations based on the advice of the Competition Commission, provided the Commission has conducted a market inquiry under Chapter 4A of the *Competition*

233 *White Paper on National Transport Policy* (2022), 19.
234 *Economic Regulation of Transport Act.*
235 Chapter 1, Chapter 4 Part A, Chapter 4 Part C except application to the Council, section 71, Schedule 2 item 2: 1 April 2025. Chapter 4 Part B, Chapter 4 Part C in respect to the Council, Schedule 2 item 7: 1 April 2026. Section 4(1), Chapter 2, Chapter 3, Chapter 5, section 70, Schedule 1, Schedule 2 items 1, 3-6: to be proclaimed.
236 Section 3(1)(a) of the *Economic Regulation of Transport Act*.
237 Section 3(1)(d) of the *Economic Regulation of Transport Act*.
238 Section 4(1) of the *Economic Regulation of Transport Act*.
239 Section 4(3) of the *Economic Regulation of Transport Act*.

Act.[240] Such inquiries would only occur if "the preconditions for efficiency and cost-effectiveness do not exist in the market concerned."[241] This raises an intriguing question: Could these market inquiries be triggered by the emergence of new transport technologies that disrupt the traditional public transport ecosystem? The answer to this is explored in the chapters that follow.

It is worth noting that the 2022 revision's 'avoid–shift–improve' approach and shift towards economic regulation strategies anticipate the transparency and data obligations outlined in Chapter 4, as well as the comparative benchmarks discussed in Chapter 5.

The 1998 Moving South Africa Forward (MSA): Toward a Transport Strategy for 2020

The *Moving South Africa Forward* strategy (*MSAF)*,[242] introduced in 1998, was developed as a follow-up to the 1996 WPNTP. Its primary purpose was to provide a more detailed framework for implementing the broad ideas presented in the White Paper while conceptualising actionable, long-term policy initiatives for the next two decades.[243] In essence, the MSA strategy sought to translate the vision of the WPNTP into a practical roadmap that would guide the integration of South Africa's land freight and passenger transport systems in alignment with the country's economic and social development goals.[244]

As with the WPNTP, the MSAF continued the discussion on competition, but nothing in particular about the role of the state in this regulatory domain:

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240 Section 4(4)(b)(i) of the *Economic Regulation of Transport Act*. The Competition Commission completed a market inquiry of this kind was completed in 2021. See discussion in Chapter 3 below.

241 Section 4(2)(b) of the *Economic Regulation of Transport Act*.

242 DoT 1998 *Moving South Africa Forward (MSA): Toward a Transport Strategy for 2020*. The author could not find the original document of this policy. The version referenced in this discussion is the "draft for discussion" document, which is available from the South African History Archive: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.saha.org.za/downloadfile.php%3Fpath%3Dal2878/al2878_a21.09.01.pdf&ved=2ahUKEwjX3vWx2veJAxWArP0HHRM7MiUQFnoECAUQAQ&usg=AOvVaw2fBwK3IBmAfKuBa21XfymY.

243 DoT *Moving South Africa Forward (MSA): Toward a Transport Strategy for 2020* 17; Thomas 2016 *World Journal of Social Science Research* 355.

244 DoT *Moving South Africa Forward (MSA): Toward a Transport Strategy for 2020* 35; Havenga and Pienaar 2012 *Economic History of Developing Regions* 90.

> Ultimately, it is firms — not nations or regions — that compete. A nation, however, provides the platform from which firms compete. Thus, from the perspective of competitiveness, a region or country is best viewed as a platform for a firm's global strategy, providing a home base that both supports and provides incentives for innovation and upgrading.[245]

Further, one of the core concepts introduced in the strategy was corridor densification, which involves focusing resources and planning efforts on high-demand transport corridors to improve connectivity, efficiency, and accessibility.[246] This approach was designed to stimulate economic activity along these corridors while ensuring the efficient movement of goods and people. From a policy perspective, the WPNTP and the MSAF strategy were complementary and they set the broader governance framework for public transport regulation.

2006 Taxi Recapitalisation Programme

Although it was implemented in 2006, the Taxi Recapitalisation Programme (hereafter TRP) was first introduced in 1999 as a follow-up to the recommendations of the WPNTP and the MSAF strategy. The primary aim of the TRP was to formalise the minibus taxi industry by enabling taxi operators to access capital to renew their vehicle fleets, thereby enhancing the industry's safety, reliability, and sustainability.[247] Taxi operators wishing to participate in the TRP had to meet stringent criteria, including:

- converting radius-based operating permits to route-based operating licences;
- ensuring compliance with labour laws, such as minimum wages, regulated working hours, and leave conditions for drivers;
- obtaining a tax clearance certificate and maintaining adequate passenger liability insurance; and

245 DoT *Moving South Africa Forward (MSA): Toward a Transport Strategy for 2020* 36.

246 DoT *Moving South Africa Forward (MSA): Toward a Transport Strategy for 2020* 132; Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 16.

247 DoT 2021 *Revised Strategic Plan: 2020 - 2025* 24; Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 19; Walters and Pisa 2023 *Research in Transportation Economics* 3; Simelane *Public Transportation in South Africa: Factors Influencing Modal Choice for Work Trips in Johannesburg and Cape Town* 9; Walters 2013 *Research in Transportation Economics* 43.

- meeting the South African Bureau of Standards' requirements for vehicle safety.[248]

Arguably, these requirements were forward-looking at the time and sought to ensure protections for workers while ensuring that the idea of 'for the route' rather than 'on the route' was taking shape. Furthermore, the government sought to ensure that these requirements would support the broad objectives of the programme. For example, one of the objectives was fleet renewal. The idea behind fleet renewal was to encourage the replacement of ageing, unroadworthy minibus taxis with taxis that met the South African Bureau of Standards' safety requirements.[249] The new vehicles had a capacity of between 18 and 35, with improved safety features.[250] A new representative body, the South African National Taxi Council, was to be created, and this entity would represent taxi operators.[251] In terms of functionality, the TRP introduced a scrapping allowance to incentivise taxi operators to replace old vehicles. Operators could trade in their old vehicles for 20% of the cost of a new taxi.[252]

While a practical success of the RTP is that it managed to take a sizeable number of unroadworthy vehicles off the roads,[253] several issues hampered the programme's success. For starters, there was a low uptake of the incentives, as it is estimated that over 75% of the existing taxi fleet at the time was not replaced, with many operators citing the high costs of new vehicles as a barrier.[254] There was a lack of industry buy-in with resistance from the taxi industry, partly due to the perceived inadequacy of the scrapping allowance, which delayed the

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248 Walters 2013 *Research in Transportation Economics* 44; Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 18.

249 Walters 2013 *Research in Transportation Economics* 43.

250 TaxiRecap date unknown https://taxirecap.co.za/our-history/ See also discussion in Walters and Pisa 2023 *Research in Transportation Economics* 3; Walters 2013 *Research in Transportation Economics* 43; Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 18.

251 Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 18.

252 Walters and Pisa 2023 *Research in Transportation Economics* 3.

253 Simelane *Public Transportation in South Africa: Factors Influencing Modal Choice for Work Trips in Johannesburg and Cape Town* 10.

254 Simelane *Public Transportation in South Africa: Factors Influencing Modal Choice for Work Trips in Johannesburg and Cape Town* 9.

programme's rollout.[255] In particular, the DoT notes that "by 2018, a total of 72 653 of the initial target of 135 894 minibus taxis had been successfully scrapped."[256] In view of this, the Department of Transport's revised Strategic Plan: 2020–2025 notes that the TRP has been revised and is now termed the Revised Taxi Recapitalisation Programme.[257] This revised RTP retains the same objectives but increases the money offered to taxis as a scrapping allowance from R91 000 to R124 000.[258] Whether this programme will increase the number of taxis offered for scrapping is yet to be determined.

The 2007 Public Transport Strategy and Action Plan

One of the most consequential government initiatives affecting public transportation in South Africa was the 2007 Public Transport Strategy and Action Plan.[259] Designed with the 2010 FIFA World Cup in mind, the plan aimed to drive significant upgrades to the country's public transport system.[260] It is perhaps unsurprising that the system was initially conceived to enhance transport services for the World Cup, while also addressing long-term urban mobility challenges. The strategy's most notable outcome was the establishment of Integrated Rapid Public Transport Networks (IRPTNs), which sought to introduce reforms across bus, rail, and taxi systems to emulate European-style and South American-style bus rapid transit (BRT) systems.[261] These networks were envisioned to provide seamless, reliable, and cost-effective transport services during the World Cup and in the following decades. The DoT put it thus: "Integrated rapid public transport service networks are the mobility wave of the future and are the only viable option that can ensure sustainable, equitable and uncongested mobility in liveable cities and

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255 DoT *Revised Strategic Plan: 2020 - 2025* 31; Walters and Pisa 2023 *Research in Transportation Economics* 3. A scrapping allowance is the amount given to a taxi operator for exchanging their old taxi for an amount of money to be used towards financing a new taxi.

256 DoT *Revised Strategic Plan: 2020 - 2025* 49.

257 DoT *Revised Strategic Plan: 2020 - 2025* 49.

258 DoT *Revised Strategic Plan: 2020 - 2025* 49.

259 DoT 2007 *Public Transport Strategy* 1-25.

260 Mamabolo and Sebola 2018 *The Business & Management Review* 569; Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 22; DoT *Public Transport Strategy* 12.

261 DoT *Public Transport Strategy* 3; Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 22.

districts."[262] The prevailing public transport, at the time, also necessitated a change in ideas and vision for public transport. As such, commenting on public transport in 2007, Seedat observed, "the passenger transport sector is at a crossroads in 2007. It is time to act decisively now. The choices made in the 2007–2010 period will lock in transport usage patterns for at least the next 30 years."[263] This sentiment was not overstated then, as it reflected the urgency of overhauling the public transport system.

The IRPTNs were partly designed to complement the TRP by improving public transport quality.[264] Key objectives included fleet recapitalisation for buses and taxis, along with refurbishing Metrorail coaches.[265] The IRPTN was intended as a long-term solution to modernise South Africa's public transport system by providing efficient and integrated services. BRT systems, in particular, were highlighted for their efficiency due to the use of dedicated bus lanes that reduce urban traffic congestion.[266] These systems aligned with the MSAF's vision of creating transport corridors, as the dedicated lanes were considered 'priority corridors.'[267] Additionally, BRT systems emphasised professionalisation, employing trained drivers with formal labour relations to improve reliability and commuter experiences.[268] Notable examples of BRT systems in place include MyCiTi in Cape Town, Western Cape; Rea Vaya in Johannesburg, Gauteng; A Re Yeng (Let's go) in Pretoria, Gauteng, and Leeto la Polokwane in Polokwane, Limpopo.[269]

Despite these ambitions, the IRPTN encountered significant resistance from the taxi industry. Taxi operators perceived the IRPTN's regulatory framework and competitive structure as a direct threat to their livelihoods.[270] While formal bus operators generally adapted positively, paratransit operators, including taxi

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262 DoT *Public Transport Strategy* 4.
263 Seedat 2007 *Civil Engineering–Siviele Ingenieurswese* 13; DoT *Public Transport Strategy* 10.
264 DoT *Public Transport Strategy* 4.
265 DoT *Public Transport Strategy* 11-12; Seedat 2007 *Civil Engineering–Siviele Ingenieurswese* 14; Schalekamp and Behrens 2010 *Research in Transportation Economics* 371.
266 DoT *Public Transport Strategy* 13; Mamabolo and Sebola 2018 *The Business & Management Review* 570; Seedat 2007 *Civil Engineering–Siviele Ingenieurswese* 15.
267 See section 2.5.3 above. Also see DoT *Public Transport Strategy* 3.
268 Mamabolo and Sebola 2018 *The Business & Management Review* 570.
269 SAGOV date unknown https://www.gov.za/about-sa/transport
270 Schalekamp and Behrens 2010 *Research in Transportation Economics* 371; Mamabolo and Sebola 2018 *The Business & Management Review* 569.

associations, expressed strong opposition. Their concerns included insufficient consultation and fears about the sustainability of their businesses and jobs.[271] Furthermore, although the IRPTN was initially intended to operate in 12 cities, its implementation faced challenges, prompting national-level interventions to mediate conflicts with the taxi industry.[272] In contrast to the limited reach of IRPTNs, taxis remain pervasive across the country, offering greater accessibility and flexibility. Even disruptive transport technologies like e-hailing platforms have achieved a broader reach than the IRPTNs.[273] This dynamic highlights the enduring regulatory dilemmas and the persistent tension between traditional taxi services and emerging transportation modes, both of which highlight a deeper crisis in South Africa's public transport system.

The 2009 National Land Transport Act

National Land Transport Transition Act

The journey toward promulgating the *National Land Transport Act* (hereafter NLTA),[274] was a carefully considered process, initially laid out by the *National Land Transport Transition Act* (hereafter NLTTA).[275] This transitional legislation was a critical step in addressing longstanding gaps in public transport governance and creating a structured framework for transport planning and service delivery in South Africa.

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271 Schalekamp and Behrens 2010 *Research in Transportation Economics* 371. Mamabolo and Sebola believe the government was perhaps too ambitious as it embarked on costly efforts without proper planning. They observe, for example, that "[t]hus far some of the buses that were developed special for the 2010 World Cup currently are regarded as ghost infrastructures. The government puts multi-billion-rand transport infrastructure plan, which was set to entirely reshape public transport system in South Africa. However, it has been used to reshape what is commonly labelled as ghost infrastructure. This proves that the government continues to introduce strategies that are more costly to the government" Mamabolo and Sebola 2018 *The Business & Management Review* 570.

272 They are in operation in cities like Tshwane, Johannesburg, Cape Town, Rustenburg, Port Elizabeth and Nelson Mandela Metro. See Mamabolo and Sebola 2018 *The Business & Management Review* 569; Schalekamp and Behrens 2010 *Research in Transportation Economics* 371. The plan itself had an ambitious vision: "The longer-term vision until 2020 is to develop a system that places over 85% of a metropolitan city's population within 1 km of an Integrated Rapid Public Transport Network trunk (road and rail) or feeder (road) corridor." See DoT *Public Transport Strategy* 4.

273 See discussion in Chapter 3 below.

274 *National Land Transport Act*.

275 *National Land Transport Transition Act*

Promulgated in December 2000, the NLTTA built on the foundational principles and vision established in the 1996 WPNTP and the MSAF.[276] As the term 'transition' in its name suggests, the NLTTA was designed to be a temporary legal framework, paving the way for a permanent legislative system that would later materialise as the NLTA. To this end, some of the key features of the NLTTA included establishing and clarifying the roles of the national, provincial, and local governments in managing public transport.[277] This Act also established transport authorities,[278] entities that were tasked with managing transport services at the municipal or metropolitan level. Furthermore, the idea of transport planning at a national level and integrated public transport planning at a local level took shape:[279]

> (3) Transport plans must be developed so as to-
>
> > (a) enhance the effective functioning of cities, towns and rural areas through integrated planning of transport infrastructure and facilities, transport operations including freight movement, bulk services and public transport services within the context of those integrated development plans…;
> >
> > (b) direct employment opportunities and activities, mixed land uses and high-density residential development into high utilisation public transport corridors interconnected through development nodes within the corridors, and discourage urban sprawl where public transport services are inadequate;
> >
> > (c) give priority to infilling and densification along public transport corridors;
> >
> > (d) give higher priority to public transport than private transport by ensuring the provision of adequate public transport services and applying travel demand management measures to discourage private transport;
> >
> > (e) enhance accessibility to public transport services and facilities, and transport functionality in the case of persons with disabilities;[280]

It is evident from this provision that the government sought to introduce ideas that were groundbreaking for their time, representing a significant departure from the fragmented and inequitable public transport system of the pre-1996 era.

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276 Thomas 2016 *World Journal of Social Science Research* 355; Walters and Pisa 2023 *Research in Transportation Economics* 2.

277 See Chapters 2 and 3 of the *National Land Transport Transition Act*.

278 See section 10 of the *National Land Transport Transition Act*.

279 See sections 18 and 19 of the *National Land Transport Transition Act.* Integrated public transport planning is addressed in sections 27(1) and (2) of the *National Land Transport Transition Act.*

280 Section 18(3) of the *National Land Transport Transition Act*.

Issues such as labour relations, market competition, and prioritising public transport had previously been neglected or insufficiently addressed. Whether these challenges have been effectively resolved in practice is explored further below.[281]

Another notable feature of the NLTTA was the formal introduction of competitive tendering for public transport services that would only be implemented at the provincial level.[282] In order to qualify for such tendering, operators were required to demonstrate compliance with regulatory standards, including proof of taxpayer registration, a requirement that the taxi industry, historically informal and largely unregulated, struggled to meet. Unsurprisingly, the NLTTA, transitional as it was, encountered resistance from both labour unions and industry stakeholders. Many of these groups expressed concerns that the taxi industry, in particular, would face job losses and competitive disadvantages under the new framework.[283] Nevertheless, the NLTTA laid a critical foundation for subsequent transport policies and legislation despite the resistance. In particular, it served as a precursor to the NLTA.

National Land Transport Act

The NLTA, as its name suggests, specifically focuses on road-based land transport. According to Section 2 of the Act, the NLTA aimed to consolidate and advance the objectives of the NLTTA by giving effect to national policy, establishing uniform national principles, requirements, and frameworks, and consolidating land transport functions within the appropriate levels of government.[284] In essence, the NLTA builds on the ideas and vision of the NLTTA while extending them further.

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281 See discussion under sections 2.6 and 2.7.

282 See section 47(2) of the *National Land Transport Transition Act.* The provision explicitly stated as follows: "Only a provincial department, a transport authority and a core city may enter into a subsidised service contract with a public transport operator".

283 Manuel *Case Study Analysis of Integrated Public Transport Networks in Five South African Cities* 16.

284 Section 2(a)-(d) of the *National Land Transport Act*.

Under its provisions, the Minister of Transport is empowered to regulate various issues, including fare systems and structures,[285] national norms and standards for appointing land transport inspectors,[286] and the types of vehicles permitted or prohibited for public transportation,[287] to mention a few. The NLTA also mandated the establishment of a National Public Transport Regulator,[288] tasked, according to the Department of Transport, with "promoting a safe, reliable, effective, efficient, coordinated, integrated and environmentally friendly public transport system by developing norms and standards to guide the development of public transport for rural and urban passengers."[289]

Additionally, the NLTA requires the preparation of a National Land Transport Strategic Framework every five years.[290] This framework aims to "guide land transport planning countrywide."[291] As of November 2024, a revised Strategic Plan for 2020–2025 has been in effect.[292] Aligned with this revised Strategic Plan, a National Taxi Lekgotla was held in 2020, during which a major resolution was proposed: the inclusion of the taxi industry in state subsidy frameworks. However, it was agreed that such inclusion was contingent upon the formalisation of the taxi industry.[293] This, as history has demonstrated and as is shown later on, is a complex and challenging task.

The NLTA has provisions for both contracted and uncontracted services,[294] indicating the Act's vision of a system encompassing both contracted and uncontracted public transportation services. However, as a largely informal sector,

285 Section 8(1)(b) of the *National Land Transport Act*.
286 Section 8(1)(c) of the *National Land Transport Act*.
287 Section 8(1)(e) of the *National Land Transport Act*.
288 Section 20(1) of the *National Land Transport Act*.
289 DoT date unknown https://www.transport.gov.za/?page_id=1162 Also, see section 21 of the *National Land Transport Act*.
290 Section 34 of the *National Land Transport Act*.
291 Section 34(1) of the *National Land Transport Act*.
292 DoT *Revised Strategic Plan: 2020 - 2025* 1-143.
293 DoT *Revised Strategic Plan: 2020 - 2025* 17.
294 Section 40 of the *National Land Transport Act*.

taxis are not significant beneficiaries of this system due to the lack of formalisation and associated tax compliance requirements.[295]

The NLTA also specifies stricter licensing requirements. Section 50 states: "[n]o person may operate a road-based public transport service, unless he or she is the holder of an operating licence or a permit, subject to sections 47, 48 and 49, issued for the vehicle concerned in terms of this Act."[296] Section 60 further limits eligibility for operating licences to individuals registered as vehicle owners or operators under the *National Road Traffic Act*.[297] Additionally, metered taxis are subject to jurisdictional restrictions, including specific operational areas and conditions tied to their licences.[298] For example:

- If an operating licence designates a specific area, the vehicle can leave only if it returns with the same passengers or returns empty.[299]
- The vehicle may collect passengers outside its designated area provided the fare is pre-booked and the passengers are transported back to the specified area.[300]
- A fare not determined by the meter may be agreed upon in advance for any particular journey, but the meter must remain running for passenger reference.[301]

In June 2024, the President signed the *National Land Transport Amendment Act* into law, introducing significant changes to the NLTA.[302] For the first time in the country's history, the legislation explicitly defines e-hailing as follows:

> a public transport service operated by means of a motor vehicle, which —

295 See also section 44 of the *National Land Transport Act*, which notes that the Minister is responsible for setting the requirements for participation in the tendering for subsidised service contracts.
296 Section 50(1) of the *National Land Transport Act*.
297 Section 64(1) of the *National Land Transport Act*.
298 Section 66(1)(a) of the *National Land Transport Act*.
299 Section 66(1)(b) of the *National Land Transport Act*.
300 Section 66(1)(c) of the *National Land Transport Act*.
301 Section 66(1)(d) of the *National Land Transport Act*.
302 *National Land Transport Amendment Act*.

a) is available for hire by hailing while roaming;

b) may stand for hire at a rank; and

c) is equipped with an electronic e-hailing technology-enabled application, as contemplated in section 66A;[303]

This amendment brings e-hailing services under the regulatory oversight of the NLTA, empowering the Minister of Transport to manage such services under both the original section 8 of the Act and the amended provisions.[304]

From an operational standpoint, permits for e-hailing services can now specify jurisdictional areas of operation.[305] Additionally, vehicles used for e-hailing must be equipped with technology-enabled applications capable of estimating travel costs[306] and providing driver details.[307] Also, businesses offering e-hailing software applications, such as Uber and Bolt, are now legally obligated to ensure that operators using their platforms hold valid permits.[308]

The legislation, however, does not address certain contentious regulatory challenges in the public transport sector, particularly those involving taxis. These challenges are explored further below.

Challenges to the regulation of public transport in post-apartheid South Africa

Having examined the historical and legal framework of public transport regulation in South Africa, it is essential to critically assess the extent to which the post-apartheid government has succeeded or failed in addressing the challenges tied to public transport regulation. Although these challenges are not inherently legal, their resolution requires strong legal and policy frameworks that intersect with economic, social, and political dimensions. As Walters and Pisa aptly observe, "the

303 Section 1(c) of the *National Land Transport Amendment Act*.
304 66A(4)(A) of the *National Land Transport Amendment Act*.
305 Section 66A(1)(b) of the *National Land Transport Amendment Act*.
306 Section 66A(3)(a) of the *National Land Transport Amendment Act*.
307 Section 66A(3)(c) of the *National Land Transport Amendment Act*.
308 66A(6)(a) of the *National Land Transport Amendment Act*.

implementation of a policy is, however, a political decision",[309] a point that must remain central to the brief discussion that follows. However, it is important to emphasise that the challenges outlined in this section (they are not a closed list but merely representative) are presented with a well-informed understanding of the government's difficulties and the realities it must navigate. These observations in no way diminish the significant victories achieved by the government, as there is no doubt that the dynamics of public transport have evolved considerably since 1996.[310]

Overcrowding and safety concerns

The South African public transport system faces significant challenges related to overcrowding and safety. Overcrowding is particularly prevalent on trains, buses, and minibus taxis, where the demand for transport far exceeds the capacity of the available infrastructure.[311] Many road networks are inadequate and unable to accommodate the high numbers of commuters, especially those travelling from townships. This results in delays and contributes to widespread congestion.

Despite the availability of various modes of transportation, systemic issues persist.[312] For instance, the poor maintenance of public transport vehicles, many outdated and hazardous to passengers and the environment, pose a danger on

309 Walters and Pisa observe that "[p]olicy is defined as 'a statement of intent' as policy specifies the basic principles to be pursued by the government in attaining specific goals and is often presented as a formal policy with the publication of a White Paper." See Walters and Pisa 2023 *Research in Transportation Economics* 1. As noted in Chapter 1, the language of legal regulations includes both legal and policy frameworks, where appropriate. While legal frameworks are generally less contentious, policy frameworks often hinge on the intent behind their formulation. In other words, how a government presents or enacts a policy can elevate it to function as a governing framework with the equivalent authority of law. Consequently, the impact of policies can sometimes be challenging to quantify or evaluate.

310 See Kani, who observes that "[t]he effects of historically unjust laws on transport are no exception; and a number of public transport solutions have, to a certain extent, met the needs created through these vastly fragmented spaces. The offering started with state-subsidised buses and trains, and then saw the flourishing of the privately owned minibus taxi in the late 1980s. This private sector offering has, historically, had a higher success rate." Kani 2018 https://www.news24.com/fin24/sa-public-transport-is-steeped-in-a-history-rarely-told-20180506-2.

311 Akin and Kona 2021 https://www.southafricanlabourbulletin.org.za/unsafe-and-inefficient-public-transport-endangers-our-lives/.

312 ZEELO Date Unknown https://zeelo.co/blog/the-current-state-of-public-transportation-in-south-africa.

the roads.[313] Buses operate at low speeds for long hours, while minibus taxis contribute to noise pollution by frequently hooting and calling for passengers.[314] Furthermore, the lack of scheduling in public transport also disproportionately affects marginalised groups, particularly black working-class women.[315] These commuters often wake up early to catch the first available transportation, walking long distances to access it. This practice, common in townships, places them at increased risk, particularly during unsafe hours of the day.

Efforts to modernise the taxi industry have been met by significant obstacles. For example, attempts to implement smart card payment systems in some Gauteng taxi ranks failed. This system would have centralised cash collection but was abandoned after resistance from drivers who require cash for daily expenses and fear revealing their earnings to taxi owners.[316] This resistance culminated in violent incidents, including the deaths of 15 passengers, leading to the system's discontinuation.[317]

The safety of commuters remains a critical concern in South Africa's public transport system. The taxi and train industries, for example, have been identified as spaces where gender-based violence, sexual harassment, and other forms of violence are prevalent.[318] Women, youth, and persons with disabilities are particularly vulnerable in these environments.[319] Furthermore, despite representing only 16% of vehicles on South African roads, taxis accounted for nearly 20% of major collisions in 2020.[320] This troubling safety record is attributed to several factors, including reckless driving, overloaded vehicles, and poorly maintained

313 Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.
314 Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.
315 Akin and Kona 2021 https://www.southafricanlabourbulletin.org.za/unsafe-and-inefficient-public-transport-endangers-our-lives/.
316 Hlatshwayo 2022 *The Thinker* 53.
317 Hlatshwayo 2022 *The Thinker* 53.
318 Ngubane date unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.
319 DoT *Revised Strategic Plan: 2020 - 2025* 44.
320 Hlatshwayo 2022 *The Thinker* 53.

taxis that fail to meet basic road safety standards.[321] The taxi industry's informal and largely unregulated nature exacerbates these issues. Since minibus taxis do not have to be registered or to get permits, any taxi can be found on the road, even when it does not meet safety standards.

Apartheid geographical legacies and governance

The current state of public transport in South Africa is deeply rooted in the country's apartheid history.[322] As noted earlier,[323] during apartheid, urban planning deliberately placed black working-class communities on the outskirts of cities, separated from economic hubs by road networks and railway tracks.[324] This historical context highlights the ongoing challenges faced by the public transport system, which remains disjointed, uncoordinated, and, to a large extent, racially segregated.[325] What compounds these geographical legacies is how governance has unfolded. The World Bank, for example, has noted that despite excellent policies, South Africa has experienced "multiple unintended failures in participation",[326] which reflects governance and systemic shortcomings.

Arguably, legal and policy frameworks require robust governance to ensure their successful implementation. Poor governance undermines laws, limiting their ability to achieve their intended outcomes. Beyond legal issues, social determinants, such as poverty, spatial inequality, and systemic inefficiencies, affect the impact and utility of these frameworks. Simelane has observed, for example, that in developing cities, public transport systems are often defined by "poor planning,

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321 Simelane *Public Transportation in South Africa: Factors Influencing Modal Choice for Work Trips in Johannesburg and Cape Town* 18; Mamabolo and Sebola 2018 *The Business & Management Review* 566; Loop 2023 https://www.looptaxi.co.za/post/history-of-the-minibus-taxi-industry-in-south-africa Also see Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.

322 Hlatshwayo 2022 *The Thinker* 56; Kani 2018 https://www.news24.com/fin24/sa-public-transport-is-steeped-in-a-history-rarely-told-20180506-2.

323 See section 2.3.3 above.

324 Hlatshwayo 2022 *The Thinker* 56; Kani 2018 https://www.news24.com/fin24/sa-public-transport-is-steeped-in-a-history-rarely-told-20180506-2.

325 Mitchell 2020 *Civil Engineering–Siviele Ingenieurswese* 22.

326 Walters 2014 *Journal of Transport and Supply Chain Management* 5.

inadequacy, and inefficiency."[327] Consequently, merely drafting transport policies or enacting enabling legislation does not ensure success.[328] Regular monitoring, adjustments, and strengthened implementation processes are essential for achieving desired outcomes.

The governance dimension is also tied to a recurring problem in South African public transport regulation: institutional memory loss. Frequent and widespread changes in administrative personnel, especially following political elections, disrupt the continuity of transport planning and management.[329] At present, institutions responsible for transport planning at national, provincial, and local levels undergo major changes after elections, often replacing entire administrations at the strategic and tactical levels.[330] This turnover forces new appointees to 'find their feet' and familiarise themselves with industry intricacies and governing policies before making critical decisions.

Furthermore, the governance of public passenger services has long been characterised by fragmentation, both within and between government levels.[331] This disjointed institutional framework significantly challenges the coordination and efficiency of public transport systems. Also, institutional fragmentation, coupled with the loss of professional expertise, has been identified as a reason why rural road infrastructure delivery has met with many delays.[332] The lack of skilled personnel and institutional continuity has been identified as a major cause of inadequate infrastructure delivery in rural areas.[333]

Government corruption and vested interests in the taxi industry

According to Hlatshwayo, the policy choices of South Africa's leadership since 1994 have in some ways exacerbated social and economic inequality.[334] One of the

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327 Simelane *Public Transportation in South Africa: Factors Influencing Modal Choice for Work Trips in Johannesburg and Cape Town* 4.
328 Mitchell and Walters 2011 *Journal of Transport and Supply Chain Management* 243.
329 Walters 2014 *Journal of Transport and Supply Chain Management* 5.
330 Walters 2014 *Journal of Transport and Supply Chain Management* 5.
331 Mitchell 2020 *Civil Engineering–Siviele Ingenieurswese* 22.
332 Mitchell 2014 *Civil Engineering–Siviele Ingenieurswese* 57.
333 Mitchell 2014 *Civil Engineering–Siviele Ingenieurswese* 57.
334 Hlatshwayo 2022 *The Thinker* 56.

most critical challenges in the public transport sector is corruption, which has diverted resources meant for infrastructure development to the personal enrichment of members of the ruling party and their networks.[335] This corruption has undermined progress and created an environment of weak enforcement and regulatory failure, particularly in the taxi industry. This industry operates largely without strict laws or effective oversight, partly due to conflicts of interest.[336] For instance, government officials who own taxis often prioritise personal gain over enforcing regulation.[337] Additionally, the pervasive culture of bribery enables traffic offenders to evade penalties, further eroding the rule of law.[338]

Another significant concern is the recurring issue of taxi violence. Since its growth during apartheid, the black-owned taxi industry has been plagued by violence and killings due to competition over lucrative routes.[339] This problem has persisted and even worsened after 1994, partly due to corruption and the lack of decisive government action.[340] Furthermore, government officials and traffic inspectors, often linked to taxi associations, exacerbate the problem by failing to issue permits effectively and neglecting to regulate the industry adequately.[341] This inaction perpetuates lawlessness and ensures that taxi violence remains a fixture of the sector.

Also, the government's approach to large-scale transport projects raises questions. Initiatives like the Gautrain, while symbolising progress, have been criticised for catering primarily to the wealthy and deepening mobility-related exclusion.[342] These mega-projects cost billions and create a two-tier transport system

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335 Hlatshwayo 2022 *The Thinker* 56.

336 Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.

337 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 358.

338 Ngubane Date Unknown https://www.saferspaces.org.za/understand/entry/the-state-of-public-transport-in-south-africa.

339 See further discussion below under section 2.6.4.

340 Hlatshwayo 2022 *The Thinker* 53; Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 358.

341 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 358.

342 Thomas 2016 *World Journal of Social Science Research* 357. It is estimated that the Gautrain Rapid Rail Project cost the government around R30 billion, a staggering amount for one project.

separating wealthy areas from the poor majority.[343] Critics argue that the Gautrain was pursued as a political legacy project, reflecting the government's desire for political symbolism over inclusivity: "[m]ega projects such as the Gautrain are often associated with the government in power at the time, and the quest to leave a legacy may be associated with the Gautrain."[344] It would appear that despite these ills being evident, efforts to address the issues have often fallen short.

The hegemony of the taxi industry

The minibus taxi industry transports a majority of public transport commuters—at least 65% in 2021, with the Department of Transport noting that by 2020, taxis were responsible for transporting approximately 80% of workers.[345] Despite its crucial role in public transport, the government has struggled to regulate the industry effectively. Consequently, the minibus taxi industry in South Africa remains predominantly unregulated, largely due to its control by powerful taxi associations.[346] These associations play a pivotal role in controlling access to lucrative routes, often resulting in rivalry and violence among operators.[347] This unregulated nature has also led to challenges such as instability, lawlessness, and significant infighting. The taxi industry's hyper-competitive nature is another significant issue.[348] Oversupply of services in an already saturated market has heightened competition, often leading to bloody battles and fatalities.[349] The associations governing the industry have been identified as primary instigators of taxi violence and conflicts with various tiers of government due to their vested interests in the industry's profitability.[350]

The hegemony of the taxi industry and the regulation challenges are worsened by the fact that communication between the government and the taxi industry is

343 Thomas 2016 *World Journal of Social Science Research* 358.
344 Thomas 2016 *World Journal of Social Science Research* 359.
345 DoT *Revised Strategic Plan: 2020 - 2025* 47; Gumbo *et al Urban Public Transport Systems Innovation in the Fourth Industrial Revolution Era* 29.
346 Walters and Pisa 2023 *Research in Transportation Economics* 3.
347 Walters 2013 *Research in Transportation Economics* 42.
348 Walters and Pisa 2023 *Research in Transportation Economics* 5
349 Arguably, the increase in modes of transport increases the competition for passengers and business. Mamabolo and Sebola 2018 *The Business & Management Review* 568
350 Walters and Pisa 2023 *Research in Transportation Economics* 3.

minimal at best.[351] An example of this strained relationship could be seen during the COVID-19 pandemic in 2020. When minibus taxi owners invited the Minister of Transport, Fikile Mbalula, to discuss their need for relief funds, he publicly declined on national television, citing concerns over the industry's known violence.[352] This tension stemmed from the COVID-19 government-mandated reduction in taxi passenger capacity, which affected profitability and created a need for financial support.

Ironically, the largely unregulated taxi industry frequently views developments in other public transport systems, such as the BRT systems, as threats.[353] Critics suggest that if current trends continue and the taxi industry's market share grows, South Africa may soon become entirely dependent on the informal minibus taxi sector for workforce transportation.[354] This reliance poses challenges for government policy, as the industry resists regulation, lacks adherence to vehicle safety protocols, and remains unresponsive to labour standards enforcement. It is a known fact that attempts by the government to implement acceptable labour practices, such as fair working hours and compensation, have largely failed.[355] The taxi industry remains intransigent.

Overall, these capacity and political-economy constraints serve as the real testing ground for platform regulation, as becomes clear in the discussions that follow. Chapter 3 demonstrates how digital platforms amplify or exploit such constraints; Chapter 4 investigates whether South Africa's new statutory and draft regulatory tools can overcome them; Chapter 5 uses them as comparative benchmarks; and Chapter 6 returns to the institutional work, data, dispute resolution, auditing, and other factors that can make rules credible.

351 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 357.
352 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 357.
353 Mamabolo and Sebola 2018 *The Business & Management Review* 565.
354 Walters and Pisa 2023 *Research in Transportation Economics* 10.
355 Walters and Pisa 2023 *Research in Transportation Economics* 10.

Competition, labour and the public transport justice

As is evident from the discussion thus far, the public transportation landscape in South Africa has long been characterised by intense competition. Historically, the railways appealed for protection in the 1930s, followed by the bus industry in 1983 and, later, the legal taxi industry in 1987. Each mode sought government intervention to shield it from new market entrants or competitive pressures.[356]

During the apartheid era, the government actively supported the subsidised bus and rail industries to the detriment of minibus taxis, which were excluded from subsidies and faced a loss of customers.[357] This created structural inequalities in the sector that persisted for decades. Minibus taxis, despite their growth as a primary mode of transport, were excluded from formal support systems, deepening tensions in the market.

Competition, labour and the role of the taxi industry in public transport

The taxi industry disrupted the dominance of subsidised buses, presenting itself as a success story for black entrepreneurs during apartheid.[358] This success was notable given the restrictions placed on black-owned businesses. However, the industry became synonymous with violence, lawlessness, and conflict over time.[359] In this regard, Msiza highlights a grim reality: taxi violence is not mindless but rather purposeful to protect "economic interests in a market that is overcrowded and has limited resources."[360] This directly affects labour and competition issues. A more empowered labour force (drivers, for example) would likely chip into profits, while new entrants into the market bring competition for passengers and routes. Consequently, because of the industry's hyper-competitive environment, attempts to reform the industry from a labour and competition perspective have been largely unsuccessful, as the violence, once initiated, persists due to its

356 Khosa 1995 *Antipode* 175.
357 Walters 2014 *Journal of Transport and Supply Chain Management* 2; Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 357.
358 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 357.
359 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 357.
360 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 357.

effectiveness in regulating prices and limiting competition.[361] This ugly head even showed itself in November 2024, when taxi associations prevented private cars from carrying passengers, going as far as stopping motor vehicles to confirm who was in the vehicle.[362]

It bears repeating that taxi violence today is rooted in multiple factors. Previously, conflicts primarily revolved around route disputes. However, hatred and revenge often drive modern disputes.[363] This is why Msiza contrasts the pre-1996 and post-1996 regulatory eras, noting that in the apartheid era, violence in the transport sector was less severe, often limited to physical altercations with traditional weapons like pangas and knobkerries.[364] In contrast, today's disputes are marked by deadly shootings. Critics argue that the government has failed to address this issue, allowing criminal organisations to flourish in the sector.[365]

Arguably, as competition increases with the rise of e-hailing services and other transport innovations, tensions in the taxi industry have and will continue to intensify. Chapter 4 revisits these labour and competition tensions as they reappear in platform guise, commission changes, opaque terms, and deactivation, while Chapter 5 contrasts the legal tools other jurisdictions chose.

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361 See Dugard, who observes that "[t]hat taxi violence continues today is an indication of the efficacy of violence as a *way of regulating the market by keeping prices up and competition down*; of the tenacity of violence once sparked; and of the failure of the African National Congress (ANC) government to crack down on crime and criminal organisations in the post-apartheid era" Dugard *Taxi violence in South Africa, 1987-2000* 4. Own emphasis.

362 See news stories from Nkadimeng 31 October 2024 https://www.timeslive.co.za/news/south-africa/2024-10-31-taxi-patrollers-cannot-stop-motorists-giving-people-lifts-top-cop-masemola/#:~:text=National%20police%20commissioner%20Gen%20Fannie%20Masemola%20says%20taxi%20patrollers%20have,for%20allegedly%20picking%20up%20passengers.; Nkadimeng 01 November 2024 https://www.timeslive.co.za/news/south-africa/2024-11-01-we-cant-be-held-hostage-by-taxi-drivers-public-frustrated-by-patrollers/; Mashilo 30 October 2024 https://www.citizen.co.za/news/south-africa/picking-up-people-is-our-business-santaco-doesnt-want-you-to-give-hitchhikers-a-lift/.

363 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 358.

364 Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 358.

365 Dugard *Taxi violence in South Africa, 1987-2000* 4; Msiza "Managing Violence of Public Transport and Logistics Industry in South Africa" 358.

Towards transport justice

According to Khosa, the shift in state policy regarding transport has evolved significantly over time.[366] From the 1930s, when regulation was seen as a solution to transport challenges, to the 1980s, deregulation became the dominant approach in response to several factors. These included the economic crises of the 1970s, a growing transport subsidy bill, the political legitimacy crisis of the apartheid government, and the increasing politicisation of transport.[367] Whether directly or indirectly, such actions supported either transport justice or transport injustice.

A mechanism for achieving transport justice is public participation, which emphasises the involvement of potential commuters, existing operators, and stakeholders in decision making.[368] Such engagement would ensure that transport reforms are inclusive and reflect the needs of those directly affected. Furthermore, transport justice often refers to the fairness with which transportation impacts (on both consumers and operators), such as its benefits and costs, are distributed.[369] A critical challenge to achieving transport justice lies in defining transport needs and determining whether these should be addressed using public resources. These needs should be defined collectively and supported politically and economically.[370]

Transport justice also includes considering quality-of-life improvements that may arise from new transport services.[371] These include reduced social isolation, enhanced feelings of safety, and secondary effects such as crime reduction, urban

366 Khosa 1995 *Antipode* 176.
367 Khosa 1995 *Antipode* 176.
368 UN Habitat date unknown https://urbanhabitat.org/policy-advocacy/transportation-justice See also Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 767.
369 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 765; UN Habitat date unknown https://urbanhabitat.org/policy-advocacy/transportation-justice
370 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 765; UN Habitat date unknown https://urbanhabitat.org/policy-advocacy/transportation-justice
371 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 766.

regeneration, and increased economic activity.[372] However, these benefits are challenging to quantify and often excluded from traditional cost-benefit analyses.

In view of these dimensions of transport justice, the question remains whether South African public transport regulation truly facilitates transport justice. In South Africa, transport justice is predominantly expressed through policies or interventions to mitigate transport disadvantages.[373] Whether these policies yield practical benefits, particularly in light of the entrance of new players in public transport, is investigated in the forthcoming chapters.

Suffice it to say that this triad—competition, labour, and transport justice—is the evaluative framework used in Chapter 4, the comparative method used in Chapter 5, and it underpins Chapter 6's synthesis.

Summary and conclusion

The regulation of public transport in South Africa is deeply rooted in the country's history of colonialism and apartheid, which shaped socio-economic and spatial inequalities. Early regulations, such as the 1809 Earl of Caledon's rules, sought to address the risks of mobility, introducing basic principles like vehicle registration and road safety measures. During the Union period, transportation systems began to unify. Still, they were heavily influenced by apartheid policies, including the Group Areas Act, which enforced spatial segregation and disadvantaged black communities. The rise of the minibus taxi industry in response to inadequate government services became a critical, albeit contested, aspect of public transport.

It became apparent from the discussion that public transport governance in South Africa involves a complex interplay of legal frameworks, stakeholders, and socio-political dynamics. The governance system aims to mediate diverse interests, including operators and commuters, while advancing values like accessibility, safety, and equity. While the post-apartheid era ushered in significant reforms,

372 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 766.

373 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 765.

including the WPNTP, the TRP and the introduction of IRPTNs, these efforts faced implementation challenges due to resistance from industry stakeholders, especially the taxi associations.

As such, despite reforms, the public transport system in South Africa remains fraught with issues such as overcrowding, safety concerns, and inequitable access. The apartheid legacy of spatial segregation continues to exacerbate commuting challenges for marginalised communities, particularly black working-class women. Additionally, governance inefficiencies, corruption, and institutional fragmentation continue to undermine policy execution. The informal and largely unregulated taxi industry dominates public transport and is plagued by violence, unsafe practices, and resistance to formalisation. Furthermore, competition from e-hailing services and the strained relationship between government entities and transport operators intensify these regulatory challenges.

In conclusion, the regulation of public transport in South Africa represents a microcosm of the country's broader struggle to reconcile its apartheid past with the aspirations of a democratic society. While the government has made strides in policy formulation and sector modernisation, systemic issues persist, reflecting deep-seated inequalities and governance shortcomings. The dominance of the taxi industry is illustrative of this and has been aptly described as "a story of informal politics and economics as much as it is of high politics and economics…. Perhaps more than anything, it is a story of South Africa's as yet incomplete transition from apartheid to democracy."[374] If this characterisation holds true, the entry of a new competitor is likely to exacerbate tensions, especially in an environment already marked by weak regulatory frameworks and competition fraught with violence.

The next chapter explores e-hailing as a new entrant and how it constitutes what is termed disruptive technology. Overall, Chapter 3 sets out the nature of the disruption, Chapter 4 examines South Africa's statutory and draft regulatory responses, Chapter 5 compares three recent developments elsewhere, and Chapter 6 weaves these threads into a staged, enforceable blueprint.

[374] Dugard *Taxi violence in South Africa, 1987-2000* 4.

3 Global Perspectives on Disruptive Technology and the Sharing Economy

Introduction

The renowned Thomas Jefferson, former president of the United States, is known to have stated the following:

> Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times.[375]

This poignant statement forms the foundation for this chapter. In other words, the chapter examines how disruptive technology, as illustrated through specifically the sharing economy, has affected society and whether legislative developments have adapted to these disruptions.

What will become clear from the discussion is that the emergence of digital and platform-based innovations in the so-called Fourth Industrial Revolution (4IR)[376] has profoundly challenged traditional legal and regulatory frameworks.[377] Technologies often labelled as 'disruptive', from ride hailing smartphone applications to autonomous vehicles and artificial intelligence, are transforming industries more swiftly than laws can adapt.[378] In the public transport sector, for instance, ride hailing services such as Uber have upended longstanding taxi markets and regulations, raising difficult questions about how to govern these new business models. Regulators worldwide have struggled to comprehend and manage the societal impacts of such innovations, which simultaneously provide enhanced services for consumers and considerable uncertainty for incumbents and policymakers, particularly in developing states like South Africa.

In light of this, the discussion that follows examines the impact of disruptive technologies on law and public transport regulation, eventually focusing on ride

375 Wadhwa 2014 https://www.technologyreview.com/2014/04/15/172377/laws-and-ethics-cant-keep-pace-with-technology/.
376 See discussion under section 3.2 below.
377 See discussion under section 3.2 below.
378 See discussion under section 3.2.1 below.

hailing as a case study. Specifically, the chapter is divided into two parts: the first addresses disruptive technologies and their effect on business and the regulatory framework,[379] and the second examines the sharing economy as a disruptive force, along with how innovation and change are considerations that every society must contend with in this 4IR.[380]

There is one major caveat to consider. By their very nature, disruptive technologies are fast-paced, and some events are spontaneous to the extent that patterns may be difficult to construct.[381] For this reason, this chapter relies heavily on internet sources,[382] particularly for instances where examples of disruption are provided, or where tensions between regulatory authorities and ride hailing companies have collided. This should not, in any way, detract from the central message that technological innovation frequently progresses at a pace and in ways that exceed existing legal regulations, which necessitates a re-evaluation of regulatory approaches in the digital age. For some, this is termed the 'pacing problem': "the gap between the introduction of a new technology and the establishment of laws, regulations, and oversight mechanisms for shaping its safe development".[383] The chapter attempts to show how this manifests in practice.

Understanding disruptive technologies

Defining disruptive innovation

The term disruptive technology (or disruptive innovation) generally refers to an innovation that drastically alters or displaces existing products, services, or business models.[384] In a rather colourful description, Wessel and Christensen[385]

379 See discussions under sections 3.2–3.4.
380 See discussions under sections 3.5–3.6.
381 See discussion under section 3.2.2
382 These are decidedly West-oriented, as ride-hailing evolved from there, and the conundrums that states faced are quite evident from that perspective.
383 Wallach *A Dangerous Master: How to Keep Technology from Slipping beyond Our Control* 60; Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 24; Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1009; Wadhwa 2014 https://www.technologyreview.com/2014/04/15/172377/laws-and-ethics-cant-keep-pace-with-technology/.
384 Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation
385 Wessel and Christensen 2012 *Harvard Business Review* 4.

state that "disruptive innovations are like missiles launched at your business." In business theory, a disruptive innovation is one that creates a new market or value network and eventually overturns established market leaders.[386] Clayton Christensen,[387] who popularised the concept, observed that such innovations are often pioneered by outsider start-ups rather than incumbents, as dominant firms are often constrained by existing profit models and resistance to change.

Thus, what makes a technology 'disruptive' is not merely its novelty or technical complexity but its effect on prevailing structures and business. In particular, it turns an industry on its head by offering something dramatically different or more efficient than the *status quo*.[388] Recent waves of digitalisation have introduced a host of candidates for this label: the Internet of Things (IoT), big data analytics, artificial intelligence (AI), virtual reality, blockchain, and platform-based services, among others.[389] These technologies enable the creation of intelligent, interconnected systems that blur the lines between physical, digital, and even biological spheres.[390] However, while they open unprecedented opportunities for businesses and consumers, they also unsettle established norms.

An important qualification, however, is how disruptive innovation companies or start-ups are categorised or identified. Christensen, Raynor, and McDonald[391] offer a glimpse, arguing that firstly, disruptive innovators are companies that target low-end customers that are often ignored by incumbents, and secondly, they are start-ups that create markets where none existed. However true this might be, it is too narrow a designation. Accordingly, for the discussion to follow, disruptive innovation or technology represents technology that alters a market in ways that

386 Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation Katz 2015 *Berkeley Tech LJ* 1070.

387 Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation.

388 Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation; Katz 2015 *Berkeley Tech LJ* 1070; Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 23.

389 Njontini 2021 *De Jure Law Journal* 175; Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 30; Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1009.

390 Njontini 2021 *De Jure Law Journal* 192; Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 23.

391 Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation.

regulatory authorities never anticipated, such that incumbents either have to adapt or perish.

The disruption, 4IR and the future

Some scholars question whether disruptive technologies truly represent a radical break from the past or rather an evolutionary continuation.[392] Historian David Edgerton's work *The Shock of the Old* challenges the notion that we live in an era of uniquely accelerated change. Edgerton argues that what we consider "new" technologies are often reconfigurations of longstanding techniques and that older technologies continue to play vital roles even as new ones emerge.[393] As he points out, some technologies are products of history that may disappear and re-emerge depending on their relevance to society.[394] In this view, labelling the latest digital platform as revolutionary might be ahistorical, as technological change is always happening, and societies have experienced disruption before.[395] This may be true when one considers that ride sharing apps, for example, use mobile internet and geolocation, a combination of technologies developed decades earlier, in a new package. Nevertheless, even if no technology arises in a vacuum, the scale and speed at which modern digital innovations can spread is unprecedented. The proliferation of smartphones and cloud computing means a new service can gain millions of users and global reach in a matter of months, a dynamic not seen in earlier eras.

What, then, distinguishes the current wave of disruptive technologies? A unifying factor is the convergence of computing power, connectivity, and data.[396] Innovations like AI and IoT allow for machine-to-machine and human-to-machine communication on a massive scale, creating cyber-physical systems or smart networks.[397] The result is that traditional boundaries between online and offline,

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392 Edgerton *The shock of the old: Technology and global history since 1900* xvii.
393 Edgerton *The shock of the old: Technology and global history since 1900* xvii.
394 Edgerton *The shock of the old: Technology and global history since 1900* 22.
395 Katz 2015 *Berkeley Tech LJ* 1098
396 Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 28-29.
397 Njontini 2021 *De Jure Law Journal* 174; Deonarain 2019 *Technological change and sustainable mobility: An overview of global trends and South African developments* 6.

producers and consumers, personal and commercial, are increasingly becoming blurred. For instance, a decade ago, calling a taxi meant engaging a licenced cab company, whereas today, a smartphone app can instantly summon a private driver, process payment, and route navigation in real-time.[398] The digitisation of services has significantly transformed how an information society functions, creating new methods of production and consumption.[399]

Importantly, disruptive innovations are not singular events, and they usually are a process that "plays out over time."[400] As such, these technologies arguably herald paradigm shifts in the economy and society, enabling greater efficiency, customisation, and access.[401]

At the same time, the disruptive impact is not uniformly positive. As discussed here,[402] these innovations tend to outpace existing regulatory frameworks, creating gaps in oversight. Moreover, the benefits of disruption often come with societal costs. Some of these include concerns about privacy, cyber security, labour displacement,[403] and equity, all of which have accompanied the digital revolution.[404]

Consequently, an essential starting point for the analysis is recognising disruptive technology's dual nature: it is at once a creator of new possibilities and a destroyer or challenger of existing arrangements.[405] In the context of public transport, for example, app-based ride hailing has expanded convenient mobility options for riders, but it has also undermined traditional taxi businesses and raised

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398 *City of Toronto v. Uber Canada Inc. et al,* para 38-39; Katz 2015 *Berkeley Tech LJ* 1070.

399 Katz 2015 *Berkeley Tech LJ* 1070; McPeak 2018 *U Tol L Rev* 459; Deonarain *Technological change and sustainable mobility: An overview of global trends and South African developments* 6.

400 Wessel and Christensen 2012 *Harvard Business Review* 4.

401 Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1009; Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 29.

402 See section 3.4 below.

403 With Tesla coming up with autonomous taxis, there are fears that labour might be displaced. See for example comments in Markets.com 2025 https://www.markets.com/education-centre/tesla-robotaxi-2025-what-will-happen-with-tesla-robotaxi.

404 Wadhwa 2014 https://www.technologyreview.com/2014/04/15/172377/laws-and-ethics-cant-keep-pace-with-technology/; Katz 2015 *Berkeley Tech LJ* 1113.

405 Dudley 2018 *Transport Reviews* 680.

safety, labour and competition questions that regulators had not previously confronted.

Overall, whether we call the change 'new' or not, the reach and pace of software-mediated mobility create coordination challenges that older licensing models never had to address: machine-readable data, live compliance, and shared enforcement across national, provincial, and municipal levels.

Business implications of disruptive technologies

Disruptive technologies force a reconsideration of 'business as usual'.[406] Established companies often find that familiar strategies become obsolete when a new entrant leverages technology to deliver greater value or efficiency. The introduction of a disruptive innovation typically reshapes how value is generated, delivered, or captured in an industry.[407] For incumbents, this can mean that revenue streams, cost structures, and competitive advantages that once seemed secure are suddenly in flux.[408] As one commentary puts it, "in the broadest sense, disruptive innovation refers to the phenomenon of a new player coming along and turning an existing industry on its head."[409] This dynamic has been observed repeatedly in recent years across sectors. For example, streaming services upended the DVD rental and cable television markets; digital photography eliminated the mass market for film; and in transportation, ride hailing platforms have challenged taxi and car rental models.[410]

Value creation and competition

Digital disruptive enterprises often compete by blurring market boundaries and undercutting incumbents' cost structures.[411] They might use technology to utilise

406 Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 22; Deonarain *Technological change and sustainable mobility: An overview of global trends and South African developments* 6.

407 Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 22; Edelman and Geradin 2016 *Harvard Business Review* 4.

408 Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1010.

409 McPeak 2018 *U Tol L Rev* 458.

410 Netflix is a good example. See Christensen, Raynor and McDonald 2015; https://hbr.org/2015/12/what-is-disruptive-innovation.

411 Edelman and Geradin 2016 *Harvard Business Review* 9.

idle resources or bypass intermediaries. Uber's core innovation, for instance, was to tap into the vast underused asset of private cars and drivers, converting them into a coordinated transport network via a smartphone platform.[412] This drastically lowered the barriers to supply compared to the licence system of the taxi industry, and it scaled faster since Uber does not purchase vehicles or hire drivers as employees.[413] In this sense, Uber was 'ruthlessly competitive'.[414] The result was a new value network in which Uber, as the platform orchestrator, could grow rapidly without the capital expenditures that burden traditional taxi companies. This is how recent technologies present extraordinary opportunities for consumers, businesses and the economy, by enabling radical new models of production while at the same time blurring the lines between physical, digital and biological domains.[415] However, this is also why later chapters treat e-hailing regulation as three interlocking problems: market structure and competition, labour and worker protection, and transport justice, rather than as a single licensing question.

Moreover, value creation and competition often evolve and become apparent over time:

> Most every innovation—disruptive or not—begins life as a small-scale experiment. Disrupters tend to focus on getting the business model, rather than merely the product, just right. When they succeed, their movement from the fringe (the low end of the market or a new market) to the mainstream erodes first the incumbents' market share and then their profitability. This process can take time, and incumbents can get quite creative in the defense of their established franchises.[416]

For businesses, this means that sources of competitive advantage are shifting. Data has become a key asset (e.g., algorithms that match drivers and riders efficiently), and user experience (e.g., a seamless app interface and reviews) can

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412 Christensen, Raynor and McDonald, for example, do not consider Uber a disruption innovation start-up because, for example, such disrupters arise from servicing low-end customers that are often ignored by incumbents or established businesses. Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation.

413 Edelman and Geradin 2016 *Harvard Business Review* 9.

414 Dewey and Rayle 2016 *How ride sourcing went from 'rogue' to mainstream in San Francisco* 14.

415 Njontini 2021 *De Jure Law Journal* 192.

416 Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation.

trump physical infrastructure.[417] Traditional companies, and in particular jurisdictions like South Africa,[418] are struggling to compete on these new terms. This further exacerbates existing tensions within the already volatile public transport industry.

The impact of disruptive competition on incumbent corporations: To adapt or to perish

When faced with disruptive competition, incumbents typically have a few strategic responses. First, they may resort to legal challenges, which involve lawsuits or lobbying, in ways that seek to enforce existing regulations against the newcomer or to block the newcomer's activities.[419] This was a common initial response by taxi associations confronting Uber, as seen in numerous cities where incumbents petitioned regulators or courts to shut down ride hailing services for operating outside taxi laws.[420] To this day, in South Africa at least, tensions still exist between the ride hailing industry and the erstwhile minibus taxi industry.[421]

Secondly, incumbents may choose to imitate or adopt the practices of the newcomers.[422] Alternatively, incumbents might attempt to embrace aspects of the new model.[423] For instance, taxi companies developing their own e-hailing apps or improving service quality to better compete.[424] Some taxi fleets partnered with technology providers to offer app-based booking, though with mixed success.[425]

Third, incumbents could choose to harness the strengths of newcomers. In this regard, incumbents could also look inward and focus on what they do best (which

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417 Wessel and Christensen 2012 *Harvard Business Review* 10; Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1010.

418 See discussion in Chapter 4 below.

419 Edelman and Geradin 2016 *Harvard Business Review* 4; Katz 2015 *Berkeley Tech LJ* 1076.

420 Dewey and Rayle *How ride sourcing went from 'rogue' to mainstream in San Francisco* 22.

421 See general discussion under Chapter 4 below.

422 Edelman and Geradin 2016 *Harvard Business Review* 4; Wessel and Christensen 2012 *Harvard Business Review* 4; Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation.

423 Wessel and Christensen 2012 *Harvard Business Review* 4.

424 See reference to the development of the Hailo taxi app in response to Uber, under section 4.2 below.

425 Hailo is an example. See discussions in Griffith 2014 https://fortune.com/2014/10/14/hailo-taxi-app-funding-failure/; Edelman and Geradin 2016 *Harvard Business Review* 9; Sharma 2020 https://www.apptunix.com/blog/on-demand-taxi-app/.

the disruptor cannot easily replicate).[426] This might involve emphasising superior service in niches that the disruptor does not cater to (such as specialised transportation for disabled passengers, where regulation and trust are paramount).[427]

Finally, as a last resort, incumbents may have to leave the market. This represents the worst-case scenario if the disruptive model proves overwhelmingly superior and the incumbent cannot adapt.[428] In such instances, incumbents may be compelled to exit the market entirely.[429]

All four of these outcomes could indeed be prevalent in the public transport arena: lawsuits against Uber; traditional taxi companies rolling out apps; taxi businesses focusing on corporate clients or specific services; and, unfortunately, many taxi operators going bankrupt or selling off their licences as their value plummeted in cities where ride hailing dominates. The extent to which this holds true is explored in the coming chapters.[430]

From the perspective of society and the economy, disruptive technology can be a double-edged sword. On the one hand, it stimulates innovation, reduces costs, and can enhance access to services (for instance, ride hailing often serves areas and times of day that taxis previously neglected).[431] Consumers benefit from increased choice and convenience, and new markets are established (e.g., the gig economy for drivers).[432] On the other hand, disruption can externalise costs: workers in disrupted industries may lose jobs or income, and the new model might bypass regulations intended to protect consumers, workers, or competition.[433] In

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426 Edelman and Geradin 2016 *Harvard Business Review* 4; Wessel and Christensen 2012 *Harvard Business Review* 4.

427 Christensen, Raynor and McDonald 2015 https://hbr.org/2015/12/what-is-disruptive-innovation.

428 Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1011; Edelman and Geradin 2016 *Harvard Business Review* 4.

429 Edelman and Geradin 2016 *Harvard Business Review* 4.

430 In particular, this will be explored in Chapters 4 and 5.

431 Deonarain *Technological change and sustainable mobility: An overview of global trends and South African developments* 6; Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1009.

432 Deonarain *Technological change and sustainable mobility: An overview of global trends and South African developments* 6.

433 Sowers 2019 *Law & Contemp Probs* 193; Katz 2015 *Berkeley Tech LJ* 1092.

the case of ride hailing, concerns have been raised regarding driver earnings, lack of benefits, and heightened traffic congestion or emissions due to the large numbers of vehicles circulating while waiting for rides.[434]

Overall, disruptive technologies in business necessitate a re-assessment of value. They alter who captures value (e.g., a platform taking a cut of each transaction instead of a service provider retaining the entire customer relationship) and often enhance overall efficiency.[435] However, they may also undermine established public policy outcomes if those outcomes were achieved through the regulations of the previous business model (for instance, taxi regulations typically included provisions for service to underserved areas, insurance requirements, etc., which a disruptor might initially sidestep).[436] This interplay between innovation and regulation is critical and leads to the next section's focus on how legal systems respond to technological disruption.

Legal dimensions of technological disruption

Technological innovation tends to outpace legal developments, resulting in a divergence between new business models and current legal frameworks. Generally, innovation often makes laws and regulations obsolete.[437] When Uber and similar platforms emerged, they did not seamlessly align with established legal categories governing traditional businesses, such as taxi regulations, employment laws, and insurance frameworks. This created a legal lag, a period during which courts and regulators struggled to adapt outdated definitions to contemporary realities.[438] The case of *Razak v. Uber Technologies, Inc.,* [439] exemplifies this issue.

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434 See discussion under section 3.4 below.

435 Howcroft and Leaver 2025 *Accounting Forum* 380. This is indeed how Uber operates.

436 Kolodny 2010 https://techcrunch.com/2010/10/24/ubercab-ordered-to-cease-and-desist/. See the expanded discussion under section 4 below.

437 Wallach *A Dangerous Master: How to Keep Technology from Slipping beyond Our Control* 60; Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

438 Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1009; Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

439 No. CV 16-573, 2024 WL 3584324, (E.D. Pa. July 30, 2024). This is the latest version of the case, whereupon Uber eventually won after two prior cases went against it. See also

In this case, it became evident that a legal theory to address ride hailing and the appropriate legal doctrine to address innovative commercial relationships were still in their infancy.

Essentially, the law lacked an established framework for services like Uber, which do not neatly correspond to the traditional categories of employee, contractor, common carrier, or merely as a software intermediary. The *Razak* case explored whether drivers for UberBLACK should be classified as employees entitled to wage protections or independent contractors. Commentators observe that various factors had to be determinative for the court in line with Pennsylvania's wage and labour laws, which involves analysing the following:

i. the degree of the alleged employer's right to control the manner in which the work is to be performed;

ii. the alleged employee's opportunity for profit or loss depending upon his managerial skill;

iii. the alleged employee's investment in equipment or materials required for his task, or his employment of helpers;

iv. whether the service rendered requires a special skill;

v. the degree of permanence of the working relationship; and

vi. whether the service rendered is an integral part of the alleged employer's business.[440]

Commentators note that the court, acknowledging the lack of a clear legal classification for the sharing economy, ultimately ruled in favour of Uber.[441] It

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discussion in Pardo 2024 https://www.hunton.com/insights/publications/ubers-rocky-journey-through-pa-trials-highlights-risks-and-strategies-for-managing-independent-contractors. The brief discussion of the case here relies on the commentary of secondary scholars.

[440] Fox and Clark 2018 https://www.laboremploymentlawblog.com/2018/04/articles/class-actions/uber-drivers-class-action-lawsuit/; Pardo 2024 https://www.hunton.com/insights/publications/ubers-rocky-journey-through-pa-trials-highlights-risks-and-strategies-for-managing-independent-contractors.

[441] Fox and Clark 2018 https://www.laboremploymentlawblog.com/2018/04/articles/class-actions/uber-drivers-class-action-lawsuit/; Pardo 2024

decided that drivers are independent contractors rather than employees based on four of the factors discussed, with only two factors subtly leaning towards classifying them as employees.[442] This absence of a clear legal framework, emphasised in the *Razak* ruling, highlights that it represents an innovative business model not yet embraced by existing legal doctrines, and this required the case to go for a full trial.[443]

This issue extends beyond labour law. Take, for instance, the case of *City of Toronto v. Uber Canada Inc.*;[444] the Ontario Superior Court needed to determine whether Uber's practices violated local taxi licensing regulations in ways that affected competition unfairly. In characterising the multifaceted nature of the problem, the Ontario Supreme Court had this to say when describing the quandary around Uber:

> The City finds itself caught between the Scylla of the existing regulatory system, with its numerous vested interests characterized by controlled supply and price, and the Charybdis of thousands of consumer/voters who do not wish to see the competition genie forced back into the bottle now that they have acquired a taste for it.[445]

The city argued that Uber operated as an unlicenced taxi broker without proper authorisation.[446] However, Justice Dunphy concluded that Uber's operations did not satisfy the legal criteria for a taxi brokerage or limousine service as defined by

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https://www.hunton.com/insights/publications/ubers-rocky-journey-through-pa-trials-highlights-risks-and-strategies-for-managing-independent-contractors.

442 Fox and Clark 2018 https://www.laboremploymentlawblog.com/2018/04/articles/class-actions/uber-drivers-class-action-lawsuit/ This is somewhat similar to what the court in *City of Toronto v. Uber Canada Inc. et al*., para 73, stated. In giving meaning to the word 'accept' for the purposes of an Uber transaction and its eventual implications, the court stated as follows: "While arguably somewhat self-serving and not necessarily definitive of the actual activity undertaken by any of the respondents, these contractual terms are consistent with the evidence that Uber adopts a passive, purely mechanical (if sophisticated) role in enabling the two protagonists (driver and passenger) ultimately to connect with each other and form an agreement and is not a party to the underlying agreement when formed."

443 Pardo 2024 https://www.hunton.com/insights/publications/ubers-rocky-journey-through-pa-trials-highlights-risks-and-strategies-for-managing-independent-contractors.

444 *City of Toronto v. Uber Canada Inc. et al*.

445 *City of Toronto v. Uber Canada Inc. et al.* para 10.

446 *City of Toronto v. Uber Canada Inc. et al.* para 11.

the City's municipal code, meaning Uber could not be prohibited under those laws.[447]

Toronto's existing regulations had simply failed to anticipate a technology-driven service that connects riders with private drivers. As a result, Uber was able to continue operating effectively because innovation had outpaced the law. Uber positively found itself in a regulatory gap. This meant that if the city intended to regulate such services, it needed to update its laws. Thierer puts it best:

> The traditional regulatory stance toward many existing sectors and technologies will be challenged by these realities. That's because most of those traditional regulatory systems are highly precautionary, pre-emptive, and prophylactic in character. They generally opt for policy solutions that are top-down, overly rigid, and bureaucratic.[448]

Consequently, cases like *Razak* and *Toronto v. Uber* highlight a crucial point: disruptive technology often exploits the discrepancy between old rules and new models, at least until legislation catches up.

In the interim, technology itself can serve as a form of regulation. Legal scholars have discussed concepts like *lex informatica,*[449] which suggests that software and hardware configurations impose rules and norms on users, similar to legal regulations.[450] For instance, a platform's architecture can dictate specific behaviours. Uber's app, intentionally designed, establishes fares, mandates cashless payment, tracks all trips with GPS, and incorporates rating systems for both passengers and drivers.[451] These design decisions guide the actions of drivers and riders similarly to how laws typically do or occasionally fall short. In the case of Uber, one could even argue that the app's rating system and automated matching play a regulatory role in that they encourage courteous conduct and dependability (drivers face deactivation if their ratings drop too low), fulfilling a

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447 *City of Toronto v. Uber Canada Inc. et al.* para 61-64.

448 Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

449 It is described as "the branch of the law that developed in the Middle Ages and propelled by the practices associated with the Feudal System". See Njontini 2021 *De Jure Law Journal* 181.

450 Njontini 2021 *De Jure Law Journal* 182.

451 Edelman and Geradin 2016 *Harvard Business Review* 5; *City of Toronto v. Uber Canada Inc. et al*, paras 44- 45.

function that licensing and oversight partially provided in the taxi industry.[452] Another example is how the platform enforces certain safety measures (such as background checks for drivers, which are often self-imposed rather than mandated by the government in some areas).[453] Consequently, the technological framework results in a form of private ordering. As Njontini observes, "the technological architecture imposes regulations on the users of technologies", effectively transferring some governance from traditional legal systems to the digital platform itself.[454]

Regulatory responses

Command-and-control versus adaptive regulation

Historically, the default approach to the regulation of new technologies has been 'command and control'; i.e., laws that detail what is permitted or prohibited.[455] In the context of disruptive innovation, this approach often struggles. Detailed regulations assume that the regulator understands the activity in question well enough to stipulate rules. However, with rapidly evolving technology, that assumption falters. Early on, many regulators attempted to apply existing rules to new technologies (for example, treating Uber like a taxi company or Airbnb like a hotel).[456] When that failed, some authorities resorted to bans or cease-and-desist orders to halt unregulated activity.[457] This was evident in numerous instances: Uber received cease-and-desist letters, famously in San Francisco in 2010, when the Public Utilities Commission declared it an illegal 'passenger carrier' and

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452 *City of Toronto v. Uber Canada Inc. et al*, para 44; Katz 2015 *Berkeley Tech LJ* 1117; Edelman and Geradin 2016 *Harvard Business Review* 5.

453 *City of Toronto v. Uber Canada Inc. et al*, para 44, comments that background checks, for example, are part of Uber's own self-regulation model. Also see Katz 2015 *Berkeley Tech LJ* 1118; Crespo 2016 *U Miami Bus L Rev* 102.

454 Njontini 2021 *De Jure Law Journal* 182.

455 Njontini 2021 *De Jure Law Journal* 176; Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1012.

456 Katz 2015 *Berkeley Tech LJ* 1086. The idea is that law routinely future-proofs potential future changes in society. However, this future-proofing gets to a point where innovation outpaces law. See Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 24.

457 Kolodny 2010 https://techcrunch.com/2010/10/24/ubercab-ordered-to-cease-and-desist/; Gillepsie 2010 https://reason.com/2010/10/25/the-ghost-of-harry-chapin-haun/; Katz 2015 *Berkeley Tech LJ* 1086.

ordered it to stop.[458] This kind of heavy-handed tactic had mixed success, often provoking legal battles or undermined by the service's popularity.[459] Over time, regulators began shifting towards more adaptive strategies, such as creating new categories (e.g., "transportation network company" [TNC] licences separate from taxi licences) or launching pilot programmes to integrate ride hailing into transit plans.[460]

Notably, legal uncertainty persisted about fundamental questions: Are ride hailing drivers employees or independent contractors? Is Uber merely a technology provider (an 'information society service,' as the company asserted in Europe) or a transportation service subject to the same obligations as taxi firms? The Court of Justice of the European Union in *Asociación profesional ÉliteTaxi v UberSystems Spain*[461] ruled that Uber is a transportation service (not merely a digital intermediary) and is subject to regulation by member states.[462] In contrast, U.S. regulators in several states implemented laws classifying ride hailing as separate from taxi services, typically with less stringent requirements.[463] These problems illustrate a period of legal uncertainty as society endeavoured to fit the square peg of digital platforms into the round holes of existing law.[464]

The lag in theory

It should be evident, at this point, that at the heart of these practical legal disputes lies a lag in legal theory. The common law develops on a per-case basis, and legislative processes are slow. Consequently, creating a unified doctrinal framework for something as innovative as the sharing economy is challenging. As one scholar observed, the sharing economy presents complex legal dilemmas precisely because its services do not neatly fit into traditional legal categories or

458 Kolodny 2010 https://techcrunch.com/2010/10/24/ubercab-ordered-to-cease-and-desist/.
459 Katz 2015 *Berkeley Tech LJ* 1087.
460 Katz 2015 *Berkeley Tech LJ* 1088; International Association of Transportation Regulators 2023 *Modernizing Taxi Regulations: An Innovative Governance Framework for the Future* 37.
461 C-434/15, [2017] ECLI: EU: C: 2017: 981.
462 *Asociación profesional ÉliteTaxi v UberSystems Spain*, para 40.
463 Crespo 2016 *U Miami Bus L Rev* 98.
464 South Africa has its own struggles. See discussion under section 4.2.1 below.

existing regulatory frameworks.[465] With ride sharing, for example, elements of tort/delict law, contract law, employment law, and regulatory law all intersect in complicated ways.[466] Globally, courts have grappled with fundamental questions:[467] What exactly is Uber? Is it an employer, a travel agency, or simply a software platform? The answer can be frustratingly ambiguous when it comes to legal classification. This theoretical void was specifically highlighted in *Razak*, as previously noted, pushing courts to rely on analogies, sometimes likening Uber drivers to taxi drivers and other times to independent owner-operators.

Until legislatures intervene to provide clarity, such questions remain contentious, and solutions should never be rushed. As Twigg-Flesner puts it:

> The pace of technological development creates a serious risk of an overly hasty legal response. However, even in the face of rapidly changing circumstances, care needs to be taken in working out what an appropriate legal response might be. There is a danger that the fear of a legal vacuum will prompt a rush towards putting into place legal rules which might seem to tackle new issues created by technological development but which soon turn out to be unsuitable or entirely unworkable.[468]

This is why, for example, only in 2021 did the United Kingdom Supreme Court in *Uber BV and others v Aslam and others*[469] rule on the employment status of ride-hail drivers, determining that such drivers are 'workers' entitled to some labour protections.[470] Such decisions begin to form a legal doctrine around a new model of thinking aligned with disruptive technology. However, during the early

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465 Katz 2015 *Berkeley Tech LJ* 1076. Also see Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 24, where the following is stated: "whilst a degree of future-proofing in designing legal rules is possible, there will come a point when developments have got to the stage where existing legal rules reach the limits of their adaptability to new circumstances, and at that stage, it will become necessary to consider changes to existing legal rules. At this juncture, disruptive technology therefore not only disrupts established business models, but also existing legal rules."

466 Wadhwa 2014 https://www.technologyreview.com/2014/04/15/172377/laws-and-ethics-cant-keep-pace-with-technology/; Crespo 2016 *U Miami Bus L Rev* 110.

467 Examples below are from Canada and the UK. South African examples include *Uber South Africa Technology Services (Pty) Ltd v NUPSAW & Others* (C449/17) [2018] ZALCCT 1; [2018] 4 BLLR 399 (LC); (2018) 39 ILJ 903 (LC) (12 January 2018) (C449/17) [2018] ZALCCT 1; [2018] 4 BLLR 399 (LC); (2018) 39 ILJ 903 (LC) (12 January 2018).

468 Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 24.

469 *Uber BV and others v Aslam and others* [2021] UKSC 5.

470 *Uber BV and others v Aslam and others*, para 101.

disruptive period, the law often operates in a grey zone.[471] This is precisely why soft governance becomes crucial because it represents "systems for emerging technologies, which might include multistakeholder process, developer codes of conduct, sectoral self-regulation, sensible liability rules, and so on."[472] Soft governance, in a way, serves as a form of adaptive governance as opposed to command-and-control forms of governance that assume a top-down approach to governance.

Overall, the legal dimension of technological disruption is characterised by uncertainty and adaptation. Traditional legal tools and categories are under strain, and new approaches, whether they are new statutes or the *de facto* regulation by technology itself, are emerging to fill the void. The next section examines this era of uncertainty and the strategies used by both innovators and regulators amid the regulatory limbo created by disruptive technologies.

Regulatory uncertainty in the digital era

As mentioned above, the tension between rapid innovation and slow regulation often leads to a legal lag, or, more vividly, a phase of regulatory ambiguity. In this phase, businesses may find themselves in a legal grey zone, neither distinctly legal nor illegal, while regulators and the courts consider their course of action.[473] Innovators may intentionally create this uncertainty. A common saying in Silicon Valley's entrepreneurial culture is, "it's easier to ask for forgiveness than to seek permission."[474] Many disruptive start-ups introduce their services first and address regulatory compliance afterward, effectively compelling authorities to deal with a

471 See section 3.4.2 below.

472 Thierer 2016 https://techliberation.com/2016/04/20/wendell-wallach-on-the-challenge-of-engineering-better-technology-ethics/.

473 Katz 2015 *Berkeley Tech LJ* 1092.

474 Edelman and Geradin 2016 *Harvard Business Review* 4; Voices 2016 https://www.forbes.com/sites/valleyvoices/2016/02/25/asking-for-permission-vs-begging-for-forgiveness-which-makes-sense-when-for-founders/; Yglesias 2017 https://www.vox.com/new-money/2017/3/21/14980502/uber-toxic-culture-rule-breaking-explained.

done deal.[475] In fact, many times, authorities and even citizens do not necessarily know when or how to regulate. Consider the questions posed by Wallach:

> Determining when to bow to the judgment of experts and whether to intervene in the deployment of a new technology is certainly not easy. How can government leaders or informed citizens effectively discern which fields of research are truly promising and which pose serious risks? Do we have the intelligence and means to mitigate the serious risks that can be anticipated? How should we prepare for unanticipated risks?[476]

These questions are clearly problematic, and Uber's strategy during its early expansion exemplifies this quandary. Rather than seeking approval from every city's taxi commission (which likely would have been denied), Uber began operating and quickly gained a loyal user base, which it then mobilised to support the service whenever regulators threatened to intervene.[477] As a result, regulators found themselves in a reactive position, chasing a phenomenon already popular with the public, which made outright prohibition more politically difficult.[478]

Scholars Edelman and Geradin have termed this phenomenon "spontaneous private deregulation."[479] They observe that "many successful platform businesses—think Airbnb, Uber, and YouTube—ignore laws and regulations that appear to preclude their approach."[480] These companies, "caught up by enthusiasm for their model and a belief in its utility for customers," often view existing rules as outdated relics of a bygone era "not yet ready for their

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475 Edelman and Geradin 2016 *Harvard Business Review* 4; McPeak 2018 *U Tol L Rev* 459; Voices 2016 https://www.forbes.com/sites/valleyvoices/2016/02/25/asking-for-permission-vs-begging-for-forgiveness-which-makes-sense-when-for-founders/.

476 Wallach *A Dangerous Master: How to Keep Technology from Slipping beyond Our Control* 6.

477 Edelman and Geradin 2016 *Harvard Business Review* 4; Voices 2016 https://www.forbes.com/sites/valleyvoices/2016/02/25/asking-for-permission-vs-begging-for-forgiveness-which-makes-sense-when-for-founders/; Yglesias 2017 https://www.vox.com/new-money/2017/3/21/14980502/uber-toxic-culture-rule-breaking-explained.

478 This is not necessarily a bad thing. It is known, for example, that regulation could at times stifle beneficial technological changes: "precautionary measures in the form of regulations and governmental oversight can slow the development of research whose overall society impact will be beneficial," Wallach *A Dangerous Master: How to Keep Technology from Slipping beyond Our Control* 29.

479 Edelman and Geradin 2016 *Harvard Business Review* 4.

480 Edelman and Geradin 2016 *Harvard Business Review* 3; Voices 2016 https://www.forbes.com/sites/valleyvoices/2016/02/25/asking-for-permission-vs-begging-for-forgiveness-which-makes-sense-when-for-founders/; Yglesias 2017 https://www.vox.com/new-money/2017/3/21/14980502/uber-toxic-culture-rule-breaking-explained.

innovations".[481] In effect, the start-ups proceed as if the regulations do not apply to them, thereby unilaterally *deregulating* the industry for themselves. Edelman and Geradin note that this rule-flouting strategy is not entirely new: "the rule-flouting phenomenon is something we call 'spontaneous private deregulation,' and it is not new".[482]

History offers examples, such as file-sharing platforms like Napster and early YouTube, which circumvented copyright laws in the 2000s and prompted a re-evaluation of media regulation, especially from a copyright perspective.[483] What is new is the speed and scale: "spontaneous deregulation is happening increasingly rapidly and in ever more industries."[484] Technological connectivity enables these platforms to proliferate and function across jurisdictions before regulators can organise a unified reaction.

From the viewpoint of disruptors, regulatory ambiguity can be seen as a competitive edge rather than a setback. If a start-up can function without the compliance costs that hinder traditional competitors, it secures a substantial cost advantage. For instance, in its early days, Uber sidestepped several regulations that were mandatory for taxis, such as requirements for commercial insurance, fixed fare schedules, and wheelchair accessibility standards.[485] In particular, Uber benefited from significant cost advantages over established taxi companies by eliminating expenses that regulated firms were required to incur, such as buying medallion licences, paying higher commercial insurance premiums, and covering driver vetting and training expenses.[486] Taxi operators could not compete with this, even when they tried to shift to app-based bookings. The reason was simple: they were never designed for online activity. For example, when Hailo attempted to link New York taxis with online bookings, their pricing was consistently higher than the

481 Edelman and Geradin 2016 *Harvard Business Review* 4.
482 Edelman and Geradin 2016 *Harvard Business Review* 4.
483 Edelman and Geradin 2016 *Harvard Business Review* 4.
484 Edelman and Geradin 2016 *Harvard Business Review* 4.
485 Edelman and Geradin 2016 *Harvard Business Review* 9; Voices 2016 https://www.forbes.com/sites/valleyvoices/2016/02/25/asking-for-permission-vs-begging-for-forgiveness-which-makes-sense-when-for-founders/; Yglesias 2017 https://www.vox.com/new-money/2017/3/21/14980502/uber-toxic-culture-rule-breaking-explained.
486 Edelman and Geradin 2016 *Harvard Business Review* 9.

prices offered by Uber, which, predictably, resulted in customers continuing with Uber.[487]

Hailo was a start-up that collaborated with licenced taxis to provide them with an Uber-like dispatch application.[488] However, since they had to adhere to the existing cost structure and regulations, they could not offer fares as low as Uber's.[489] This situation illustrates how operating in a regulatory grey area enabled Uber to grow rapidly and undercut its regulated competitors. Naturally, the conundrum for Uber was that this legal uncertainty could turn against it at any moment, as cities could have implemented successful bans or enforced the very regulations it was avoiding.

For their part, regulators faced a genuine dilemma. They needed to balance the enforcement of current laws, along with the underlying policy values, against the consumer demand for new services and the innovation narrative of progress and modernisation. While some regulators took a strict approach, issuing fines, impounding vehicles, or seeking injunctions, others favoured a wait-and-see strategy, temporarily allowing legal violations as they collected information.[490] The term "regulatory sandbox" is now commonly used in certain sectors, such as fintech, to refer to a framework where regulators permit innovative services to operate in a controlled setting without immediately enforcing all legal obligations for the purposes of observing outcomes before formalising rules.[491] This, however,

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487 Griffith 2014 https://fortune.com/2014/10/14/hailo-taxi-app-funding-failure/; Edelman and Geradin 2016 *Harvard Business Review* 9; Sharma 2020 https://www.apptunix.com/blog/on-demand-taxi-app/.

488 Cook 2016 https://www.businessinsider.com/hailo-tried-take-on-uber-now-merger-with-mytaxi-daimler-2016-7#:~:text=Uber%20dominated%20the%20more%20expensive,Jay%20Bregman%20leaving%20the%20company.; Sharma 2020 https://www.apptunix.com/blog/on-demand-taxi-app/; Edelman and Geradin 2016 *Harvard Business Review* 9.

489 Edelman and Geradin 2016 *Harvard Business Review* 9; Sharma 2020 https://www.apptunix.com/blog/on-demand-taxi-app/; Cook 2016 https://www.businessinsider.com/hailo-tried-take-on-uber-now-merger-with-mytaxi-daimler-2016-7#:~:text=Uber%20dominated%20the%20more%20expensive,Jay%20Bregman%20leaving%20the%20company.

490 Zetzsche *et al* 2017 *Fordham J Corp & Fin L* 45.

491 Zetzsche *et al* 2017 *Fordham J Corp & Fin L* 45. Sometimes governments just do not know how to address the regulatory challenges; see Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1011.

has often produced mixed results. Cities like San Francisco[492] and London[493] initially oscillated between crackdowns and leniency as they decided how to handle ride sharing. This created confusion: arguably, drivers and companies were uncertain if they would be shut down, and investors needed to gauge regulatory risk when deciding to fund these start-ups.

One observable pattern in the face of such uncertainty is regulatory arbitrage.[494] Companies like Uber and Airbnb, operating internationally, could leverage the fact that regulations differ by jurisdiction.[495] If one city or country imposed heavy restrictions, the companies can limit operations there and focus on more permissive environments. Within countries, they sometimes lobby state or national governments to pre-empt local regulations (for instance, Uber successfully pushed for statewide ride hailing laws in places like Texas and Florida to override patchwork local rules).[496] This is akin to the concept of "innovation arbitrage" described by Adam Thierer: innovators moving (or threatening to move) to jurisdictions more hospitable to their business model.[497] Such strategies increased the pressure on regulators: a city that took too stringent an approach risked accusations of stifling innovation and could face political heat if residents wanted the service.[498]

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492 Dewey and Rayle *How ride sourcing went from 'rogue' to mainstream in San Francisco* 22.

493 Thomson and Fortune 2019 https://www.urbanismnext.org/resources/ubers-london-ban-may-just-be-the-beginning-of-a-global-ride-hailing-backlash.

494 Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

495 Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time; Valdez 2023 *Regulation & Governance* 178.

496 Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

497 Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

498 Wallach *A Dangerous Master: How to Keep Technology from Slipping beyond Our Control* 26; Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

During this uncertain period, public discourse played a significant role. The debate was often framed as innovation vs. regulation,[499] implying that one must yield to the other. Some argued that outdated regulations should not be allowed to hold back progress and consumer choice, echoing Uber's own rhetoric.[500] In an early statement to regulators, Uber famously asserted that "regulations…have not been written with these innovations in mind" and that it was willing to "educate the regulatory bodies" about the new technology while working to ensure some form of compliance.[501] Indeed, even the Ontario Supreme Court echoed this sentiment, asking, rather rhetorically:

> Have the City's regulations, crafted in a different era, with different technologies in mind, created a flexible regulatory firewall around the taxi industry sufficient to resist the Uber challenge, or have they instead created the equivalent of a regulatory Maginot Line behind which it has retreated, neither confronting nor embracing the challenges of the new world of Internet-enabled mobile communications?[502]

This almost pedagogical stance toward regulators (teaching them about the new model) exemplified the confidence of disruptors. They sought to convey that they recognised the laws but believed those laws needed to change. As Uber's statement put it, "we will work closely with both agencies to ensure compliance and keep our service available".[503] This was a somewhat cooperative tone, even as the company continued to operate outside the established rules.

Yet, it is arguable that this was a brazen tactic to get ahead of the law. By the time regulators acts, the disruptor may have altered the market irrevocably. Indeed, "the scope of activity subject to regulation tends to decrease"[504] as these platforms reshape markets, meaning that various forms of public protection can erode before our eyes. For example, if most consumers shift to ride hailing

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499 Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

500 Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 25; Gillepsie 2010 https://reason.com/2010/10/25/the-ghost-of-harry-chapin-haun/.

501 Kolodny 2010 https://techcrunch.com/2010/10/24/ubercab-ordered-to-cease-and-desist/; Gillepsie 2010 https://reason.com/2010/10/25/the-ghost-of-harry-chapin-haun/.

502 *City of Toronto v. Uber Canada Inc. et al*, para 12.

503 Kolodny 2010 https://techcrunch.com/2010/10/24/ubercab-ordered-to-cease-and-desist/.

504 Edelman and Geradin 2016 *Harvard Business Review* 4.

platforms that are lightly regulated, the consumer protections, labour standards, and taxicab (as known in the U.S.) availability mandates that were enforced via the old licensing scheme may effectively evaporate ('deregulation by default').[505] This was a concern not just in transport but across the sharing economy. Consider how Airbnb led to short-term rentals operating outside hotel fire safety or zoning rules, or how early e-commerce evaded sales taxes.[506] Society has had to reckon with whether the gains of innovation are worth the loss of regulatory oversight that originally served public interests.

This notwithstanding, Edelman and Geradin's study suggests that ignoring the law can sometimes force beneficial change.[507] For example, they acknowledge that "benign or otherwise, spontaneous deregulation" can spotlight which regulations are truly outdated or overly burdensome.[508] In the taxi context, the entry of Uber led many to question about whether some taxi regulations (like strict numerical limits on cabs, or regulations against dynamic pricing) were still necessary or were artificially constraining supply.[509] In some cities, the result was a liberalisation of transport rules; effectively a modernised regulatory framework more in line with technological possibilities and consumer expectations.[510]

Overall, the regulatory uncertainty of the digital era resembles a turbulent dance between innovators pushing boundaries and regulators striving to uphold public policy goals. This phase is characterised by rule-breaking, negotiation, and gradual convergence toward new regulations. Not every disruptive company survives this

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505 Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 25. This is not necessarily a terrible outcome, but regulatory authorities should seek a balance.

506 Edelman and Geradin 2016 *Harvard Business Review* 4

507 Edelman and Geradin 2016 *Harvard Business Review* 3.

508 Edelman and Geradin 2016 *Harvard Business Review* 4; McPeak 2018 *U Tol L Rev* 459; Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

509 Edelman and Geradin 2016 *Harvard Business Review* 4; Thierer 2016 https://medium.com/tech-liberation/innovation-arbitrage-technological-civil-disobedience-spontaneous-deregulation-eb90da50f1e2#:~:text=,find%20them%20offensive%2C%20confusing%2C%20time.

510 Deonarain *Technological change and sustainable mobility: An overview of global trends and South African developments* 11.

period; some are litigated or legislated out of existence, but those that do often emerge in an environment with clearer (albeit still evolving) rules.

Next, the discussion shifts to a broader examination of the sharing economy as a disruptive force, recognising that ride hailing is a prominent component of this trend considering how it has challenged legal frameworks across various domains.

The sharing economy as a disruptive force

The rise of the sharing economy in the 2010s is a hallmark of disruptive innovation. Companies like Uber (ride sharing), Airbnb (home-sharing), and many others, have built platforms that enable individuals to transact directly with each other in ways that leverage underutilised assets.[511] The sharing economy is characterised by 'peer-to-peer' (P2P) services and transactions facilitated by a digital platform.[512] In a typical sharing economy model, an online marketplace connects people who have a resource (a car, a spare room, their labour/time) with people who need that resource, usually through a smartphone app.[513]

Importantly, these transactions often bypass traditional intermediaries and established businesses. For example, Airbnb allows individuals to rent out homes without going through hotel companies or, in many cases, without abiding by hotel regulations or taxes.[514] Likewise, Uber allows anyone with a suitable car and driver's licence to perform rides for hire without owning a taxi medallion or operating through a dispatch company.[515] Consequently, new demand is generated even as traditional providers (taxis, hotels) encounter fresh competition.

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511 This study adopts the framing sharing economy, as opposed to platform economy. The latter is more restrictive as it speaks to the commercial mediation performed by companies like Uber and Bolt. The former is more inclusive when viewed within the broader context of disruptive technologies. For more on platform economies, see Stopforth *Decent Work for On-Demand Workers in The Modern-Day Gig Economy* 57-60.

512 Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 29; Katz 2015 *Berkeley Tech LJ* 1068; *City of Toronto v. Uber Canada Inc. et al* 8; *Uber BV and others v Aslam and others*, para 6-7.

513 Katz 2015 *Berkeley Tech LJ* 1068; Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 29.

514 American Hotel & Lodging Association 2018 https://www.ahla.com/news/tax-day-hoteliers-call-more-transparency-and-oversight-taxing-airbnb.

515 Katz 2015 *Berkeley Tech LJ* 1073; Dewey and Rayle *How ride sourcing went from 'rogue' to mainstream in San Francisco* 22.

Illustrative examples of regulatory challenges brought by the sharing economy

The sharing economy, by operating in the interstices of existing categories, has generated substantial legal confusion. As noted by Vanessa Katz, these platforms "do not fall neatly into traditional legal categories", creating uncertainty for participants and third parties.[516] Businesses in the sharing economy have strained regulatory definitions in multiple areas, causing what Katz calls "confusion under insurance, tax, employment, and civil rights statutes."[517]

The following illustrates some challenges as they manifest in the sharing economy.

Insurance

Traditional insurance policies, such as auto and homeowner's insurance, were not designed for commercial P2P use. This leads to interesting questions. For instance, if a personal vehicle is used for paid rides with Uber, does a personal auto insurance policy provide coverage in case of an accident?[518] Often, it does not, resulting in gaps in liability coverage that should be addressed by regulators and companies. As a response, Uber introduced umbrella liability insurance for drivers during rides, a new hybrid solution.[519] Likewise, someone renting their home on Airbnb might be breaching their home insurance terms or discover that their policy does not cover commercial activities.[520] This ambiguity creates risks for both service providers and consumers.

Taxation

Sharing economy transactions often slipped through the cracks of tax enforcement. For instance, hotel occupancy taxes were initially not collected on Airbnb rentals in many cities, depriving municipalities of revenue and giving Airbnb hosts an advantage over hotels.[521] Also, the income earned by individuals (drivers,

516 Katz 2015 *Berkeley Tech LJ* 1068.
517 Katz 2015 *Berkeley Tech LJ* 1068.
518 Katz 2015 *Berkeley Tech LJ* 1093
519 Crespo 2016 *U Miami Bus L Rev* 100.
520 Kandri 2016 https://www.lease-advice.org/article/airbnb-leaseholders-be-aware-4/.
521 Tuttle 2013 https://business.time.com/2013/06/15/the-other-complication-for-airbnb-and-the-sharing-economy-taxes/.

hosts) might go unreported if platforms do not issue proper tax documents.[522] Tax authorities had to play catch-up, issuing guidelines and sometimes subpoenaing platform records to ensure compliance.[523] In some cases, platforms proactively began to collect and remit certain taxes (Airbnb now does so in many cities for occupancy taxes).[524]

Labour

Perhaps the most challenging issue has been whether service providers in the sharing economy are employees of the platform or independent contractors.[525] This carries significant implications for labour rights, minimum wage, overtime, benefits, and collective bargaining.[526] The fact that they enter into particular contracts, the terms (labour or otherwise) of which are negotiated, does not make it easy for drivers.[527] Uber, Lyft, and similar companies have consistently asserted that drivers are independent contractors who use the platform, not employees; a classification that exempts these companies from offering typical employer-provided benefits and protections.[528] However, as shown above, drivers and government agencies in some jurisdictions have contested this, arguing that the companies exercise considerable control (through algorithms, rules, deactivations, etc.) so that drivers are effectively employees. Different tests (common law agency tests, "economic reality" tests, etc.) could be employed in various contexts, but no result can be guaranteed.[529] As such, the question of employment classification remains a pressing issue and exemplifies how disruptive models necessitate a re-evaluation of legal definitions designed for an earlier economy.

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522 Tuttle 2013 https://business.time.com/2013/06/15/the-other-complication-for-airbnb-and-the-sharing-economy-taxes/.

523 Tuttle 2013 https://business.time.com/2013/06/15/the-other-complication-for-airbnb-and-the-sharing-economy-taxes/.

524 Tuttle 2013 https://business.time.com/2013/06/15/the-other-complication-for-airbnb-and-the-sharing-economy-taxes/.

525 Du Toit, Fredman and Graham 2020 *Industrial Law Journal* 1502; Smit and Stopforth 2023 *Law Democracy Development* 152.

526 Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1011; Gillepsie 2010 https://reason.com/2010/10/25/the-ghost-of-harry-chapin-haun/.

527 Stopforth *Decent Work for On-Demand Workers in The Modern-Day Gig Economy* 90.

528 Taeihagh, Ramesh and Howlett 2021 *Regulation & Governance* 1011.

529 Sowers 2019 *Law & Contemp Probs* 211.

A brief case study: Ride hailing's regulatory path

Focusing specifically on ride hailing (Uber and its peers), one could observe a microcosm of the sharing economy's disruptive and regulatory cycle. Initially, Uber sought to distinguish itself from the taxi industry by claiming it was not a transportation company but a technology company.[530] The idea was to position Uber as an app that helps customers book a ride and connects licenced drivers with clients,[531] rather than as a provider of rides. By doing so, Uber hoped to evade the extensive regulations that apply to taxi operators.

In the early phase, this argument had some resonance: for example, in the Toronto case mentioned, Uber's activities did not match the defined regulated entity ("taxicab broker"),[532] in part because Uber did not own vehicles or employ drivers, it merely facilitated a service.[533] However, as ride hailing grew, regulators became less convinced by the pure tech-company narrative. Many jurisdictions created a new classification, for example, a TNC, explicitly recognising app-based ride services and imposing tailored regulations.[534] These often included driver background checks, vehicle inspections, insurance requirements above personal policy levels, fare transparency, data reporting, and sometimes per-trip fees to fund transit or accessibility programmes.[535] In essence, a parallel regulatory regime was built from scratch for the ride hailing sector.

During that evolution, incumbent taxi interests did not remain passive. Traditional taxi drivers staged protests worldwide, from London to Delhi to New York, arguing

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530 Perhaps one must look no further than the name to glean into Uber's approach: they name themselves Uber Technologies Inc. See generally, Alonso 2023 https://www.cascade.app/studies/uber-strategy-study; Pardo 2024 https://www.hunton.com/insights/publications/ubers-rocky-journey-through-pa-trials-highlights-risks-and-strategies-for-managing-independent-contractors; Katz 2015 *Berkeley Tech LJ* 1103.

531 Alonso 2023 https://www.cascade.app/studies/uber-strategy-study.

532 *City of Toronto v. Uber Canada Inc. et al*, para 61-64.

533 See Pardo 2024 https://www.hunton.com/insights/publications/ubers-rocky-journey-through-pa-trials-highlights-risks-and-strategies-for-managing-independent-contractors, where Uber is believed to have run under the following understanding: "the drivers' owning their vehicles, setting their hours, providing transportation services outside of Uber, and choosing their assignments should win the day", all in favour of Uber not being an employer or transport company.

534 Katz 2015 *Berkeley Tech LJ* 1067.

535 Katz 2015 *Berkeley Tech LJ* 1081; *City of Toronto v. Uber Canada Inc. et al*, para 44.

that it was unfair for them to abide by costly regulations while Uber did not.[536] They lobbied city councils and pursued legal action.[537] In some locations, they achieved short-term victories. For example, a court in Spain in late 2014 ordered Uber to cease operations, which helped eliminate UberPOP from that market until a licensing scheme was established.[538] Similarly, in 2019 the London transport regulator briefly revoked Uber's licence, citing safety and governance concerns,[539] though Uber was later allowed to continue with modifications. These confrontations pressured authorities to level the playing field.

Over time, many of the taxi industry's concerns about Uber, including the lack of proper licensing, insurance disparities, the undermining of dispatchers' livelihoods, and violations of pre-booking rules, were addressed either by bringing ride hailing services into regulatory compliance or by deregulating some taxi rules for greater equity.[540] For instance, cities increased insurance requirements for TNC drivers to align more closely with taxi standards, while some jurisdictions relaxed taxi regulations, such as allowing street hail apps or experimenting with dynamic pricing for taxis.[541]

From the perspective of regulatory theory, the clashes in the sharing economy have prompted calls for more flexible, principles-based regulation. Instead of rigid, sector-specific rules, some advocated for regulations that prioritise outcomes (competition, consumer protection, fair labour standards) regardless of whether a service is 'traditional' or platform-based.[542] This would entail, for instance, ensuring that any ride for hire, be it a taxi or Uber, meets certain safety and insurance

536 Dewey and Rayle *How ride sourcing went from 'rogue' to mainstream in San Francisco* 22.
537 Katz 2015 *Berkeley Tech LJ* 1091.
538 BBC 2014 https://www.bbc.co.uk/news/business-30395093#:~:text=A%20judge%20has%20ordered%20taxi,service%20of%20%22unfair%20competition%22.
539 Thomson and Fortune 2019 https://www.urbanismnext.org/resources/ubers-london-ban-may-just-be-the-beginning-of-a-global-ride-hailing-backlash.
540 Kolodny 2010 https://techcrunch.com/2010/10/24/ubercab-ordered-to-cease-and-desist/; Gillepsie 2010 https://reason.com/2010/10/25/the-ghost-of-harry-chapin-haun/.
541 Katz 2015 *Berkeley Tech LJ* 1088.
542 International Association of Transportation Regulators *Modernizing Taxi Regulations: An Innovative Governance Framework for the Future* 37.

minima without mandating a specific business model.[543] This approach poses challenges, as it often necessitates legislative changes and consensus (i.e., transport justice) on which principles are most important.

At a societal level, the sharing economy has enabled individuals to monetise their skills and assets in innovative ways, fostering a more adaptable labour market often referred to as the 'gig economy'.[544] This shift has enhanced convenience for consumers while prompting established businesses to innovate and gig workers to function within their own informal setups.[545] Nevertheless, it raises concerns regarding job stability for gig workers without benefits, accountability in P2P transactions, and competitive pressures that threaten traditional sectors, such as the reduction of unionised taxi services and hotel jobs due to freelance competition.[546] These issues reflect broader socio-economic challenges that go beyond simple legal concerns.

As the sharing economy matures, we are seeing a trend toward re-regulation: initial disruption led to partial deregulation (*de facto*), which is now leading to re-regulation, either by integrating the new models into law or by updating laws to cover them.[547] For example, many cities now require ride-hail drivers to have special licences or permits.[548] This suggests that while the sharing economy has been a disruptive force, over time a 'new equilibrium' is emerging where the most salient regulatory concerns are addressed, albeit through frameworks that differ from the old ones.

To conclude, the sharing economy exemplifies the cycle of disruption: innovate first, regulate later. In the interim, significant economic activity can flourish, creating pressure not to stifle it completely but to identify ways to harness it. This

543 International Association of Transportation Regulators *Modernizing Taxi Regulations: An Innovative Governance Framework for the Future* 18-33.

544 Crespo 2016 *U Miami Bus L Rev* 110.

545 On how gig workers find ways to adapt and survive in a world where labour laws are not adapted to the changed environment, see Anwar and Graham EPA: Economy and Space 1269–1291.

546 Katz 2015 *Berkeley Tech LJ* 1073.

547 International Association of Transportation Regulators *Modernizing Taxi Regulations: An Innovative Governance Framework for the Future* 37-38.

548 International Association of Transportation Regulators *Modernizing Taxi Regulations: An Innovative Governance Framework for the Future* 38.

has been true of ride hailing, which is now an entrenched part of urban transport in much of the world, and the same pattern continues as new sharing economy ideas emerge.

Next, the discussion shifts to the chapter's penultimate section, tackling the overall approach that should underpin innovation and change in the public transport sector.

Innovation and change in the public transport sector

The public transport sector is undergoing significant innovation and change, largely driven by disruptive forces. For decades, city buses, metro systems, and regulated taxis have operated with a relatively slow evolution. However, these systems now face pressure and opportunities to modernise in response to technological advancements and changing passenger expectations. Societal changes, such as urbanisation and the need for sustainable mobility, are also catalysts for adopting new technologies. A policy review succinctly noted that "technological and societal change underpins the transition towards sustainable transport systems" and that embracing technology is key to achieving goals like lower emissions and integrated, accessible transport for all.[549]

Considering this, it must be clearly stated that there is no definitive answer or universal solution to this situation:

> Many of these things can only be worked out through ongoing trial and error, the constant reformulation of the various norms that govern the process of innovation, and the development of sensible ex post solutions to some of the most difficult problems posed by turbulent technological change.[550]

This is the approach advocated for in this discussion.

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549 Deonarain *Technological change and sustainable mobility: An overview of global trends and South African developments* 6.

550 Thierer 2016 https://techliberation.com/2016/04/20/wendell-wallach-on-the-challenge-of-engineering-better-technology-ethics/.

Integration with technology

It appears that some public transport agencies are increasingly integrating smartphone apps for trip planning, mobile ticketing, and real-time updates to improve user experience. Many have launched their own apps or partnered with platforms (for example, cities integrating transit options into Google Maps or similar apps).[551] Some transit agencies are even partnering with ride hailing companies for first-mile/last-mile solutions.[552] For instance, a city might subsidise Uber rides to or from transit stations at off-peak hours, effectively using ride hailing to extend the reach of public transit rather than compete with it. This kind of synergy is a marked change from the early narrative of Uber vs. public transport; it is now recognised that they can complement each other if properly coordinated. Consequently,

> [t]he disruptive effect of a particular development can be gauged by considering whether a specific issue can be dealt with by applying existing legal rules to the particular questions which have been identified in respect of that issue. Thus, if it is possible to maintain existing rules but to clarify how these should be applied in the context of a new development, then the disruptive effect to the law is minimal - indeed, such an approach might reflect the robust design of existing legal rules and their potential for extending these to new circumstances.[553]

To this end, it is essential for regulatory authorities to thoroughly evaluate the impact of potentially disruptive technologies. This enables these authorities to determine how laws and regulations can be integrated with technology. Therefore, the primary requirement for regulating the sharing economy is to achieve a balance of interests.[554]

Regulatory modernisation

On the regulatory side, some governments are revising outdated transport regulations to account for innovation. One example is the overhaul of taxi and private hire car regulations in some jurisdictions. Recognising that services like Uber are here to stay, regulators have shifted away from outright bans and are

551 Katz 2015 *Berkeley Tech LJ* 1071.
552 See general discussion in Bian, Li and Lee 2023 *Journal of Public Transportation* 1-8.
553 Twigg-Flesner "Disruptive Technology – Disrupted Law? How the Digital Revolution Affects (Contract) Law" 25-26.
554 Katz 2015 *Berkeley Tech LJ* 1084.

now establishing standards for all providers. These standards include driver requirements (background checks, medical exams), vehicle requirements (age, safety inspections, possibly emissions standards), minimum insurance coverage, and data reporting mandates for trip data (which assist cities with planning and congestion management).[555] This represents a convergence: ride hailing is becoming somewhat more regulated, while taxis in some regions are experiencing some deregulation (e.g., easing fare controls to permit dynamic pricing, or removing caps on the number of licences).[556] The goal is to create a fairer competitive environment and protect public interests, regardless of the service model.

Changing innovators' approaches

The companies at the forefront of disruption have also adjusted their tactics over time. Uber initially had a reputation for aggressively flouting rules, even using controversial methods like the "Greyball" software to evade enforcement.[557] However, after years of battles, Uber and similar companies have shifted to a more conciliatory approach in many regions: engaging with policymakers, proposing model regulations, and spending heavily on lobbying to shape new laws in their favour.[558] Uber has campaigned for rideshare-specific regulations and often succeeded in getting laws passed that solidify its legality (sometimes called "Uber laws").[559] This more tempered approach, i.e., seeking to change the law proactively rather than ignore it, indicates a maturing of the industry. Nonetheless, Uber and others are still known to push boundaries (for example, testing self-driving cars without clear legal approval in their early pilot programmes, or launching new services like UberEats that fall into grey areas).[560]

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555 *City of Toronto v. Uber Canada Inc. et al*, para 44.

556 See general discussion in International Association of Transportation Regulators *Modernizing Taxi Regulations: An Innovative Governance Framework for the Future* 1-44.

557 This is software that "allowed Uber to show that no cars were available for pickups in specified locations", in an attempt to evade authorities. Larcker and Tayan 2017 *Governance gone wild: Epic misbehavior at Uber technologies* 3; Katz 2015 *Berkeley Tech LJ* 1072.

558 Valdez 2023 *Regulation & Governance* 178; Crespo 2016 *U Miami Bus L Rev* 98-104.

559 Crespo 2016 *U Miami Bus L Rev* 98-104.

560 Katz 2015 *Berkeley Tech LJ* 1092.

From the vantage of incumbents in public transport (like taxi companies), the recognition has sunk in that disruptive technologies are here to stay. As noted earlier,[561] incumbent firms have four options, including embracing some aspects of the new entrant's model. Some have chosen to embrace and innovate. For example, as further noted earlier, some taxi cooperatives in some cities developed their own apps or formed alliances (e.g., the "Free Now" app in Europe, which combines taxis and private hire vehicles).[562] This suggests that the stark lines between modes are blurring.

Outcomes and ongoing challenges

Not everything has improved during this chaotic time. Certain traditional service providers have been forced out of the market.[563] In cities where ride hailing operates without restrictions, the worth of taxi licences has drastically declined (for instance, in New York City, licence values dropped from over $1 million in 2013 to below $200 000 in recent years),[564] leading some licence holders to face financial devastation. Additionally, there are social implications: drivers in both the taxi and ride hailing industries frequently endure long hours for decreasing rewards, raising alarm about the viability of these jobs.[565] These challenges are fuelling demands for tighter regulations, such as limits on ride hailing vehicles in busy cities or minimum pay standards for drivers (New York has introduced a minimum pay threshold for ride hailing drivers, for instance).[566] Consequently, the regulatory framework is still evolving, requiring adjustments to find a balance between the advantages of innovation and concerns related to labour and congestion.

561 Para 3.2 above.

562 Muñoz *When the Journey Becomes the Destination: Proposing a mindset-based vision to rethink and create multi-modal mobility solutions* 8.

563 Levine 2017 https://www.axios.com/2017/12/15/ny-taxi-medallions-are-worth-as-little-as-8-of-their-peak-price-1513305464.

564 Berger 2018 https://www.wsj.com/articles/is-the-market-for-new-york-taxi-medallions-showing-signs-of-life-1516228199.

565 Katz 2018 https://www.nytimes.com/2018/12/02/nyregion/taxi-drivers-suicide-nyc.html.

566 Global Payroll Association 2022 https://gpa.net/blogs/americas/us-new-york-city-will-raise-minimum-pay-for-uber-and-lyft-drivers.

Another persistent challenge involves ensuring consumer protection and safety in the face of innovation. Traditional transportation has been subject to strict safety regulations (e.g., vehicle standards, driver training).[567] However, with emerging technologies like autonomous vehicles, regulators are struggling to apply existing safety protocols to new scenarios. Incidents have already occurred, such as the 2018 fatal accident involving an Uber self-driving test vehicle in Arizona, highlighting concerns about the regulatory oversight of experimental technologies on public roads.[568] If safety seems at risk, public trust in innovation could diminish rapidly.

Competitive landscape

Innovation in mobility has also attracted tech giants into the public transport space. For example, car manufacturers are investing in mobility services too. For example, BMW and Daimler combined to form FREENOW, which owns one of the largest hailing apps in Europe.[569] This means the public transport 'sector' now includes a broad array of actors beyond traditional transit agencies. Competition and partnerships are both possible: cities might contract tech firms to upgrade their systems, or tech firms might try to replace the functions of public agencies. As such, ensuring the public interest is served in this new landscape is an important regulatory task.

The overall trajectory suggests that technology-driven innovation has injected much-needed dynamism into the public transport sector, and it has, overall, improved consumer choice.[570] It has necessitated a re-evaluation of how best to deliver mobility. In many areas, there seems to be a shift toward multimodal integration, on-demand flexibility, and user-centric planning, all positive developments from a traveller's perspective.[571] For regulators and lawmakers, the challenge is to encourage beneficial innovation while updating rules to prevent

567 Crespo 2016 *U Miami Bus L Rev* 104.
568 Smiley 2023 https://www.wired.com/story/ubers-fatal-self-driving-car-crash-saga-over-operator-avoids-prison/
569 Muñoz *When the Journey Becomes the Destination: Proposing a mindset-based vision to rethink and create multi-modal mobility solutions* 8.
570 Katz 2015 *Berkeley Tech LJ* 1125.
571 Katz 2015 *Berkeley Tech LJ* 1125.

negative outcomes. This includes creative approaches such as competition laws (to enable fair participation between players in the public transport market), data privacy laws (to protect users of mobility apps), and labour laws that adapt to the realities of gig work.

Conclusion

The title of Edgerton's *Shock of the Old* reminds us that the adoption of technology matters as much as innovation itself. In public transport, the diffusion of even decades-old tech (like digital timetables and smartcard payments) is still ongoing in many parts of the world and could be transformative for users. So, 'innovation' in this sector includes both the integration of cutting-edge tech and catching up on older innovations not yet fully utilised.

What this discussion has shown is that ride hailing services like Uber emerged as emblematic disruptors, leveraging mobile technology to provide a service in high demand, all while existing outside, or in defiance of, established regulatory frameworks. This created immediate benefits for consumers (greater convenience, lower prices in many cases, more choices) and significant challenges for regulators and incumbent industries (loss of regulatory control, unfair competition concerns, safety and labour issues). Over the past decade, society's (in different parts of the word) response to this disruption has evolved from confrontation to negotiation to gradual integration. The (general) regulatory landscape today for ride hailing is far more developed than it was at Uber's launch. Many jurisdictions have found at least a tentative equilibrium: ride hailing is legal but regulated, taxis and new mobility services coexist (not always easily), and public transit agencies are finding ways to incorporate these options into a more holistic mobility strategy.

In summary, the public transport sector is undergoing significant change, straddling the line between traditional public services and disruptive private technology. If well regulated, the likely result is a hybrid model: a network that is more interconnected and data-driven, where different modes and providers collaborate seamlessly. The future of this sector will depend on our ability to harness innovation for developing transport systems that are sustainable, fair, and

resilient. Overall, the clash of disruptive technologies with law and public transport regulation highlights a broader theme of the digital age: legal systems must adapt or face obsolescence due to rapid innovation.

The next chapter translates these functional problems into South African law: Where do current statutes and institutions place authority over fares, access, safety and work, and what changed with the 2024 amendments?

4 The South African Regulatory Framework for E-Hailing

Introduction

The regulation of e-hailing in South Africa is best understood as a contest between the law's pace and technology's speed. Over the last decade, app-based platforms such as Uber, Bolt, and others have recast the everyday experience of mobility in cities like Johannesburg, Cape Town, and Durban.[572] For passengers, these services promised convenience, reliability, and transparency in a sector long associated with informality, opacity, and at times violence.[573] For drivers, they opened new income opportunities, albeit under conditions increasingly criticised as precarious and exploitative. For regulators, however, e-hailing posed an acute legal puzzle: how to situate a technologically novel and rapidly scaling business model within a statutory framework designed for the era of metered taxis, minibus associations, and contracted bus fleets.

As noted earlier,[574] the *National Land Transport Act*, 2009 was the legislative foundation of democratic South Africa's passenger transport system. Its purpose was to rationalise the fragmented licensing regime inherited from apartheid and to establish a coherent institutional structure across national, provincial, and municipal spheres. Yet its text predated the rise of app-mediated services. As a result, the entry of e-hailing exposed its limitations: There was no statutory recognition of electronic hailing, no rules addressing platform-mediated pricing, and no clear allocation of responsibility between drivers and global corporations claiming to be

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572 Ismail *'Roadblocks, speedbumps and potholes': An investigation into the working conditions of e-hailing drivers in Cape Town, with reference to the city's registration system* 25.

573 There are various reported incidents of violence related to the clashes between e-hailing drivers on the one hand, and tradition and metered taxis on the other hand. See for example Jordaan 2020 https://www.timeslive.co.za/news/south-africa/2020-02-19-nearly-80-of-e-hailing-services-operating-without-licences-competition-commission/#:~:text="At%20the%20heart%20of%20conflict,the%20report%20states; Nkadimeng 31 October 2024 https://www.timeslive.co.za/news/south-africa/2024-10-31-taxi-patrollers-cannot-stop-motorists-giving-people-lifts-top-cop-masemola/#:~:text=National%20police%20commissioner%20Gen%20Fannie%20Masemola%20says%20taxi%20patrollers%20have,for%20allegedly%20picking%20up%20passengers.; Nkadimeng 01 November 2024 https://www.timeslive.co.za/news/south-africa/2024-11-01-we-cant-be-held-hostage-by-taxi-drivers-public-frustrated-by-patrollers/.

574 See discussion in Chapter 2, section 2.5.6 above.

mere technology companies.[575] This mismatch produced a regulatory vacuum, a liminal space where drivers operated with uncertain legal status, passengers bore the risks of weak oversight, and regulators oscillated between tolerance and punitive enforcement.[576]

The vacuum was not benign. It fuelled violent clashes with traditional taxi operators who argued that e-hailing enjoyed unfair advantages, operating without the numerical restrictions, route allocations, and association obligations imposed on incumbents.[577] It also enabled platforms to externalise risks onto drivers: commissions were unilaterally set, deactivations occurred without due process, and safety responsibilities were delegated to individuals. The 2021 *Competition Commission's Market Inquiry into Land-Based Passenger Public Transport*[578] crystallised these concerns by documenting licensing moratoria that entrenched incumbents, commission structures that squeezed drivers to unsustainable margins, and platform dominance that threatened long-term competition. Likewise, disputes before the CCMA (Commission for Conciliation, Mediation and Arbitration) revealed the depth of ambiguity over employment status,[579] while the *Mokhutswane* litigation[580] illustrated how courts were increasingly being asked to adjudicate the boundaries of contractual fairness in the absence of statutory guidance.

The *National Land Transport Amendment Act*, 2023 (assented to in 2024) and the *Second National Land Transport Regulations*, 2025 were meant to break this

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575 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34; Alonso 2023 https://www.cascade.app/studies/uber-strategy-study; Pardo 2024 https://www.hunton.com/insights/publications/ubers-rocky-journey-through-pa-trials-highlights-risks-and-strategies-for-managing-independent-contractors; Katz 2015 *Berkeley Tech LJ* 1103.

576 See discussion below under section 4.2.

577 Ismail *'Roadblocks, speedbumps and potholes': An investigation into the working conditions of e-hailing drivers in Cape Town, with reference to the city's registration system* 22.

578 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)*. This chapter discusses and refers to this report.

579 See for example *Uber South Africa Technological Services (Pty) Ltd v NUPSAW & Others* (WECT12537-16, WECT10875-16, WECT14948-16, WECT875-17, WECT1503-17, WECT12614-16) [2017] ZACCMA 1 (7 July 2017) and *Uber South Africa Technology Services (Pty) Ltd v NUPSAW & Others* (C449/17) [2018] ZALCCT 1; [2018] 4 BLLR 399 (LC); (2018) 39 ILJ 903 (LC) (12 January 2018). These cases are also referred to in this chapter.

580 *Mokhutswane v Uber South Africa (Pty) Ltd* (NCT/133158/2019/148(1)) [2019] ZANCT 137 (12 August 2019). The chapter refers to this case.

impasse. For the first time, the law expressly defines e-hailing, introduces a statutory basis for platform regulation through section 66A, and imposes detailed obligations on licensing, app functionalities, safety measures, and platform conduct. On paper, this represents a decisive shift from ambiguity to recognition, from piecemeal enforcement to systemic regulation. Yet, as the discussion will show, recognition alone does not guarantee justice. As the discussion in this chapter will show, the Amendment Act and the 2025 Regulations remain overwhelmingly procedural: they require operating licences, conversions, surveys, registers, and branding, but they are strikingly silent on the substantive issues that motivated the calls for reform: fair competition, sustainable livelihoods, and equitable access.

Against this background, the chapter has three objectives. First, to map the statutory baseline: tracing the evolution from the NLTA's silence, through the conflicts of the vacuum period, to the Amendment Act's recognition and the 2025 Regulations' operational detail. Second, to situate the discussion within the broader constitutional and institutional framework, highlighting how cooperative governance, ministerial discretion, and weak enforcement capacity shape outcomes in practice. Third, to analyse the core regulatory tensions that persist even after these reforms. These tensions are organised under three levers: competition and market structure, labour and worker protection, and transport justice. Each lever is examined with close reference to the text of the Amendment Act and Regulations, but also tested against the empirical realities documented by the Market Inquiry, the CCMA, and case law such as *Mokhutswane*.

Before proceeding, a brief note on the method is necessary. In examining the regulatory framework, certain statutory and regulatory provisions, for example those governing service agreements, will appear in more than one context. This repetition is deliberate: the same provisions are involved in different aspects of the analysis, such as whether commissions and fees are competitively structured, and whether service agreements provide labour protections for drivers. Their reiteration ensures that the discussion remains properly contextualised within each thematic area.

Statutory baseline: the legal status of e-hailing

The pre-Amendment vacuum

When Uber first entered Johannesburg and Cape Town in 2013, the NLTA was already in force, yet it offered no reference to 'electronic hailing' or digitally mediated transport services.[581] The Act recognised only traditional categories: "metered taxi services",[582] "charter services",[583] and "minibus taxi-type services".[584] The absence of a bespoke statutory category meant that e-hailing did not fit comfortably anywhere.[585] Regulators responded by attempting to shoehorn app-based drivers into the metered taxi framework, but this created a disjuncture: e-hailing cars had no physical meters, no rank-based operations, and no adherence to traditional route allocations.[586] The result was a legal grey area in which drivers were compelled to obtain operating licences, but the administrative machinery lacked both the will and the capacity to issue them consistently.

The consequences of this vacuum were profound. While some provinces were permissive, tolerating widespread operation without proper licences, others, particularly Gauteng and the Western Cape, took a hard-line enforcement stance: impounding vehicles, issuing fines, and insisting that e-hailing fell under the metered taxi regime.[587] This unevenness created a patchwork of enforcement, where legality depended less on statutory clarity than on provincial discretion. For drivers, this translated into precarity: one week they could operate unimpeded, the next they

581 The *National Land Transport Act* was promulgated in 2009.
582 Under section 66.
583 Under section 67.
584 Under section 49.
585 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 22.
586 Ismail *'Roadblocks, speedbumps and potholes': An investigation into the working conditions of e-hailing drivers in Cape Town, with reference to the city's registration system* 22.
587 Ismail *'Roadblocks, speedbumps and potholes': An investigation into the working conditions of e-hailing drivers in Cape Town, with reference to the city's registration system* 25; Kgosana 2025 https://www.timeslive.co.za/news/south-africa/2025-02-14-city-of-tshwane-meets-e-hailing-operators-over-permit-backlog/.

could see their vehicles impounded for lack of a licence they had no realistic prospect of obtaining.[588]

The vacuum also had distributive consequences. Traditional taxi operators argued that they were forced to comply with licensing moratoria, route restrictions, and association rules, while e-hailing drivers operated in relative freedom. This perception of unequal treatment fuelled violent clashes, blockades, and intimidation.[589] The state's failure to provide clarity effectively outsourced regulation to the street, where taxi associations sought to defend market share through coercion rather than law.[590] Violence was not incidental; it was the predictable outcome of legal ambiguity in a sector already characterised by contested territoriality and fragile livelihoods.[591]

Platforms themselves exploited this ambiguity. Uber, Bolt, and others positioned themselves strategically as technology companies, disclaiming responsibility for compliance with the NLTA.[592] By insisting that drivers, not platforms, bore the obligation to obtain operating licences, they externalised both regulatory and employment risks.[593] This posture was central in early labour disputes before the CCMA, where drivers argued for recognition as employees while platforms argued

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588 Ismail *'Roadblocks, speedbumps and potholes': An investigation into the working conditions of e-hailing drivers in Cape Town, with reference to the city's registration system* 52.

589 Ismail *'Roadblocks, speedbumps and potholes': An investigation into the working conditions of e-hailing drivers in Cape Town, with reference to the city's registration system* 25.

590 Ismail *'Roadblocks, speedbumps and potholes': An investigation into the working conditions of e-hailing drivers in Cape Town, with reference to the city's registration system* 25.

591 There are various reported incidents of violence related to the clashes between e-hailing drivers on the one hand, and tradition and metered taxis on the other hand. See for example Jordaan 2020 https://www.timeslive.co.za/news/south-africa/2020-02-19-nearly-80-of-e-hailing-services-operating-without-licences-competition-commission/#:~:text="At%20the%20heart%20of%20conflict,the%20report%20states; Nkadimeng 31 October 2024 https://www.timeslive.co.za/news/south-africa/2024-10-31-taxi-patrollers-cannot-stop-motorists-giving-people-lifts-top-cop-masemola/#:~:text=National%20police%20commissioner%20Gen%20Fannie%20Masemola%20says%20taxi%20patrollers%20have,for%20allegedly%20picking%20up%20passengers.; Nkadimeng 01 November 2024 https://www.timeslive.co.za/news/south-africa/2024-11-01-we-cant-be-held-hostage-by-taxi-drivers-public-frustrated-by-patrollers/.

592 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 20.

593 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 22.

they were merely intermediaries.[594] In effect, the vacuum allowed platforms to scale rapidly while disclaiming accountability, leaving drivers as the legally exposed party.

Judicial and quasi-judicial institutions struggled to fill the void. The 2021 *Competition Commission's Market Inquiry into Land-Based Passenger Public Transport* highlighted the dysfunctions of licensing moratoria, backlogs, and discretionary enforcement.[595] It concluded that the absence of an express e-hailing category had created artificial scarcity that advantaged incumbents while exposing drivers to criminalisation.[596] The CCMA's rulings in Uber driver disputes underscored the ambiguity of platform responsibility, as tribunals vacillated between recognising the degree of control exercised by Uber and accepting its claim of technological neutrality.[597] Meanwhile, courts such as in *Mokhutswane* were increasingly asked to interpret contractual fairness in a vacuum, with no statutory guidance on platform-driver relations.[598]

The institutional architecture compounded these difficulties. The NLTA divided responsibilities among national, provincial, and municipal entities, but cooperative governance often failed in practice.[599] Provincial regulatory entities imposed moratoria to manage supply, municipalities delayed or failed to update integrated transport plans, and the National Public Transport Regulator offered little guidance.[600] The overlapping competences created spaces for forum shopping, inconsistent practices, and bureaucratic inertia. In this environment, platforms thrived precisely because the state could not act cohesively.

In retrospect, the pre-amendment vacuum demonstrates how the absence of law can be as consequential as its presence. Arguably, the silence in the NLTA did not mean neutrality; it produced inequity, precarity, and conflict. Drivers bore the risks of enforcement and compliance costs, incumbents bore the resentment of unequal

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594 See discussion under section 4.3.2 below.

595 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 42.

596 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 41.

597 See discussion under section 4.3.2 below.

598 See discussion under section 4.3.3 below.

599 See Chapter 2 of the NLTA, covering sections 11 to 26.

600 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 13.

treatment, and platforms reaped the benefits of rapid growth with limited accountability. The decade from 2013 to 2023 thus illustrates the costs of regulatory inaction: a fragmented, violent, and exploitative environment in which legal uncertainty was itself a driver of instability.

The National Land Transport Amendment Act, 2023

The promulgation of the *National Land Transport Amendment Act*, 2023 (the Amendment Act) marks the decisive legislative shift from uncertainty to recognition in South Africa's governance of e-hailing. Signed into law in June 2024 but only brought into force by Proclamation 289 of 12 September 2025,[601] the Act represents the state's first comprehensive statutory attempt to address the regulatory vacuum exposed over the preceding decade. It amends the NLTA in multiple respects, introducing both technical clarifications and substantive reforms. The central theme is explicit statutory recognition of e-hailing, coupled with a significant expansion of ministerial powers to regulate platforms, operators, and drivers.

The discussion that follows highlights several significant aspects of the Amendment Act.

Statutory recognition of e-hailing

The most consequential reform lies in the creation of a standalone category for "electronic hailing services." Section 1 of the amended Act now provides that:

> 'electronic hailing service' or 'e-hailing service' means a public transport service operated by means of a motor vehicle, which —
>
> a. is available for hire by hailing while roaming;
>
> b. may stand for hire at a rank; and
>
> c. is equipped with an electronic e-hailing technology-enabled application, as contemplated in section 66A.[602]

[601] *Proclamation 289 of 2025: National Land Transport Amendment Act: Commencement* Government Gazette 53335 (12 September 2025).

[602] Section 1(c) of the *National Land Transport Amendment Act* 2023.

This definition performs two essential functions. First, it ends the statutory ambiguity that had previously forced regulators to classify e-hailing under 'metered taxi services'. By recognising app-mediated mobility as a legitimate mode in its own right, the Act displaces the fiction that drivers were simply another class of metered taxis. Second, the definition links e-hailing directly to the newly inserted section 66A, thereby creating a legislative bridge to tailored regulation. Platforms can no longer plausibly argue that they are outside the ambit of the NLTA; their services are explicitly recognised as regulated public transport.

A new regulatory fulcrum in section 66A

Section 66A is the linchpin of the Amendment Act. It empowers the Minister of Transport to prescribe:

- licensing and operational conditions for e-hailing;
- minimum technical requirements for mobile applications;
- codes of conduct for operators and drivers; and
- safety and consumer protection standards specific to e-hailing.

This provision marks a significant change in regulatory stance. For over ten years, platforms argued that they were technology companies offering digital intermediation, not transport operators.[603] Section 66A dispels that notion by placing e-hailing within the NLTA's regulatory framework and explicitly subjecting it to state oversight. It also permits differentiated regulation, recognising that app-based services face distinct challenges that require targeted rules, such as algorithmic pricing, data asymmetries, and opaque deactivation practices.

[603] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34.

Expansion of ministerial powers

The Amendment Act does not stop with section 66A. It amends section 8(1) of the NLTA to broaden ministerial discretion significantly. Among the new powers are:[604]

- section 8(1)(fA), authorising the Minister to determine fees for any application, decal, or licence-related document;
- section 8(1)(fB), empowering the Minister to prescribe codes of conduct for operators and drivers, which may differ across categories;
- section 8(1)(h), authorising national colour coding and branding of vehicles used for public transport; and
- section 8(1)(y), mandating guidelines and outcomes for vehicles and facilities to meet the needs of targeted categories of passengers, such as persons with disabilities, the elderly, and children.

Together, these amendments move the Act beyond procedural licensing into the terrain of substantive market regulation. The Minister is now empowered to intervene not only in technical matters but also in questions of market structure, professional conduct, and equity.

Institutional reforms

The 2025 Act also strengthens institutional mechanisms. Municipalities with sufficient capacity may establish municipal regulatory entities with direct licensing powers, creating a decentralised model intended to align licensing with local integrated transport plans.[605] The new category, a Municipal Regulatory Entity, is defined as "a municipality to which the operating licensing function contemplated in section 11(1)(a)(viii) has been assigned".[606] In turn, section 11(1)(a)(viii) addresses powers related to the performance of the functions specified in the Act concerning applications for operating licences. Essentially, municipalities now have explicit

604 See generally section 3 of the *National Land Transport Amendment Act* 2023.
605 See section 1 of the *National Land Transport Amendment Act* 2023.
606 See section 1 of the *National Land Transport Amendment Act* 2023.

powers that were almost exclusively the preserve of provincial regulatory authorities. This is likely to address the challenge of licensing backlogs, which were flagged by the Competition Commission in its report, concluding that:

> [t]he current operating licensing regime is characterised by inefficiencies at the PRE's [provincial regulatory authorities] with backlogs in the issuing of operating licences and at planning authorities who are unresponsive in terms of providing directives to the PREs. Planning authorities are unable to provide directives to the PREs because of lack of capacity to develop and implement integrated transport plans to inform the directives.[607]

Additionally, section 93A is inserted, permitting the Minister to delay or exempt the application of any provision of the Act for up to five years. While framed as transitional flexibility, this sweeping discretion risks entrenching uneven application across provinces and municipalities.

Affected operators and negotiated equity

Another significant reform concerns the treatment of affected operators. Section 41 of the NLTA has long required contracting authorities to consider incumbents when negotiating new services. The 2025 Act strengthens this by obliging authorities under section 8(1)(d) to design formal processes for identifying and involving affected operators.[608] Furthermore, through negotiated contracts, affected operators on certain routes must be included in discussions.[609] This reflects an effort to balance innovation with fairness, ensuring that incumbents displaced by e-hailing or other reforms are not simply excluded but are offered alternative opportunities, compensation, or equity participation.

Overall, despite its landmark status, the 2025 Act is best seen as a framework statute. In other words, it defines categories, grants broad ministerial powers, and mandates equity processes, but it leaves most substantive matters to regulations. This flexibility enables the executive to respond swiftly to technological developments. However, it also introduces risks of uncertainty, over-centralisation,

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607 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 42.

608 The added provisions to section 8(1)(d) empower authorities to identify "operators contemplated in section 41(2) and involving them in the negotiation process contemplated in that section."

609 See section 21 of the *National Land Transport Amendment Act* 2023.

and inconsistent enforcement. The exemption power in section 93A is particularly problematic, as it may allow indefinite delays in implementing essential safeguards. As a result, the 2025 Act signifies both a breakthrough and a limitation. It decisively moves away from the vacuum of the past by recognising e-hailing as a legitimate public transport service and placing it under the NLTA. However, by delegating substantive protections to executive discretion, it risks recreating the same issues of delay, inconsistency, and procedural formalism that characterised the pre-amendment period.

The Second National Land Transport Regulations, 2025

If the Amendment Act supplies the scaffolding for e-hailing regulation, the *Second National Land Transport Regulations*, 2025 (hereafter "the Regulations"), promulgated simultaneously on 12 September 2025, are the bricks and mortar. They operationalise section 66A of the NLTA by prescribing detailed procedures and obligations for licensing, platform conduct, vehicle compliance, and enforcement. Their entry into force marked the moment when e-hailing ceased to be governed by ambiguity or broad statutory language and became subject to a codified regulatory regime.

While the specific details of the Regulations are discussed in later sections, the following overview offers a general introduction to some of the key features of the Regulations.

Licensing and conversion

The centrepiece of the Regulations is their unequivocal statement on licensing. The Regulation provide that "[e]-hailing services may only be provided where there is an e-hailing platform provider registered with the National Public Transport Regulator and an operating licence issued for the vehicle being used for the e-hailing service."[610] This provision ends a decade of uncertainty during which platforms disclaimed responsibility and drivers were caught between informal operation and unattainable licences. Yet the clarity is double-edged: while it establishes legality, it

[610] Regulation 13 of the *Second National Land Transport Regulations* 2025.

also threatens exclusion for those unable to comply with administrative requirements.

Regulation 14 imposes a strict transition requirement:

> All operators providing e-hailing services in terms of operating licences issued before the coming into operation of these regulations, regardless of how those services are described in such licences, must apply for the conversion of their operating licences within 180 days of coming into effect of these regulations, to the regulatory entity that issued the licence.[611]

This 180-day window is ambitious to the point of implausibility. South Africa's licensing authorities, particularly the provincial regulatory entities, are notorious for backlogs, moratoria, and institutional paralysis.[612] The Competition Commission's Market Inquiry had already condemned these inefficiencies as producing artificial scarcity.[613] To expect mass conversion in half a year risks replicating past failures: compliant drivers may fall into illegality through no fault of their own, while platforms can continue to externalise responsibility.

The Regulations also address older permits. Regulation 31 requires that indefinite or long-term permits issued under previous statutes be converted into definite-period licences within 24 months, subject to proof of 180 days' continuous service.[614] While this promotes regularisation, it risks excluding operators who, because of enforcement hostility or conflict with incumbents, were unable to maintain uninterrupted service. In practice, the conversion rules may penalise the very drivers whom the reforms were meant to protect.

Moratoria and entry management

Chapter 4 introduces a moratorium mechanism. Regulation 33 allows the planning authority to impose a moratorium on the consideration of applications for operating licences for non-contracted services in a specified area, subject to certain conditions. These include, among others:

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611 Regulation 14(1) of the *Second National Land Transport Regulations* 2025.

612 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 13.

613 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 42.

614 Regulations 31(1) and 31(3) of the *Second National Land Transport Regulations* 2025.

- surveying the route/area targeted for the moratorium, then listing all operators and vehicles providing non-contracted services in the area (including details of valid operating licences, unlicenced vehicles, and associations they belong to);[615]

- drawing up a list of all operators who are lawfully operating in that area/route.[616]

- consulting with those lawful operators, their associations/representatives, the Member of the Executive Council, and the licensing authority that issues operating licences;[617]

- following all local government rules for public consultation before deciding on a moratorium;[618] and

- after consultations, making the decision on the moratorium and informing stakeholders in writing or by publishing a notice in the Government Gazette.[619]

One such moratorium is in place, Regulation 35 provides narrow exceptions by means of public invitations in 'special circumstances.' Arguably, the rationale for moratoriums and the requirement for consultations is planning: to prevent oversupply and duplication, particularly in congested markets, with the input of players in the market. Yet, as the Market Inquiry warned, moratoria have historically entrenched incumbents and blocked new entrants, often for years without review.[620] As such, by preserving this tool, the Regulations risk perpetuating artificial scarcity under a veneer of formal legality. Far from levelling the playing field, moratoria may cement the very inequities that fuelled violent clashes between metered taxi operators and e-hailing drivers.

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615 Regulations 33(1)(a) of the *Second National Land Transport Regulations* 2025.
616 Regulations 33(1)(b) of the *Second National Land Transport Regulations* 2025.
617 Regulations 33(1)(c) of the *Second National Land Transport Regulations* 2025.
618 Regulations 33(1)(d) of the *Second National Land Transport Regulations* 2025.
619 Regulations 33(1)(f) of the *Second National Land Transport Regulations* 2025.
620 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 14.

Platform obligations

Under the 2025 Regulations, platforms are directly subject to several obligations—a significant shift from the previous approach, which focused solely on regulating drivers. For example, Regulation 16 requires applications to clearly display fares before accepting a ride[621] and to include a panic button.[622] Furthermore, Regulation 25 requires electronic receipts to display fare, distance, time, and locations.[623] These measures aim to increase transparency and safety for passengers.

Regulation 18 requires platforms to conclude written agreements with each operator, formalising relationships that were previously governed by opaque terms of service. Regulation 20 compels platforms to grant regulators access to their infrastructure and services, while Regulation 21 authorises platforms to suspend or cancel access to operators who contravene the Act or Regulations. Regulation 24 requires that all communication devices used in e-hailing be type-approved under the *Regulation of Interception of Communications and Provision of Communication-Related Information Act*.[624]

These provisions collectively mark the first time platforms are formally recognised as regulated actors under South African transport law. Yet they are limited in scope. As the discussion shows below, they regulate formalities (receipts, panic buttons, type-approved devices) but leave untouched the core issues of commission levels, algorithmic pricing, and deactivation fairness. The result is a regime that enforces visibility without disciplining power.

Enforcement and penalties

Regulation 37 provides for offences and penalties, and states that contraventions of specific provisions may attract fines of up to R100 000 or imprisonment. Offences include operating without a licence, failing to issue receipts, or using non-compliant devices. It is submitted that while these penalties appear robust on paper, they are

621 Regulations 16(1)(d) of the *Second National Land Transport Regulations* 2025.
622 Regulations 16(1)(m) of the *Second National Land Transport Regulations* 2025.
623 See generally regulations 25(2) of the *Second National Land Transport Regulations* 2025.
624 *Regulation of Interception of Communications and Provision of Communication-Related Information Act* 2002.

trivial in scale for global platforms generating millions in monthly revenue. For drivers, however, they may be crippling. This asymmetry underscores a central weakness: enforcement is directed at the most vulnerable actors while leaving the systemic power of platforms largely untouched.

Overall, the 2025 Regulations mark a watershed by codifying the operational rules of e-hailing. They establish licensing clarity, impose technical and contractual obligations on platforms, and create offences for non-compliance. Yet their emphasis remains procedural rather than substantive. Conversion deadlines are unrealistic; moratoria perpetuate scarcity; platform obligations address form but not fairness; and penalties are potentially misaligned with economic realities.[625] This notwithstanding, the durability and fairness of this regulatory framework depend on how it is embedded within South Africa's broader constitutional and institutional arrangements.

Constitutional and institutional context

The regulation of e-hailing cannot be assessed only based on the text of the NLTA and the 2025 Regulations. It must be situated within South Africa's constitutional allocation of powers and the institutional architecture that implements those powers. The *Constitution* entrenches a model of cooperative governance in which national, provincial, and local governments share overlapping responsibilities for public transport. This design, while normatively appealing, has in practice produced a fragmented and sometimes paralysed regulatory environment, an outcome that shaped the pre-amendment vacuum and will likely continue to undermine the effectiveness of the 2025 reforms.

Constitutional distribution of competences

Section 156(1) of the *Constitution* provides that municipalities have "executive authority in respect of, and the right to administer" local government matters listed in Part B of Schedules 4 and 5.[626] Schedule 4B includes "municipal public transport"

625 These aspects are further addressed below.
626 Section 156(1)(a) of the *Constitution*.

while Schedule 5B lists "municipal roads." These provisions confer on municipalities constitutional competence over local transport planning, including the integration of new modes such as e-hailing into urban mobility networks. At the same time, public transport more generally is a functional area of concurrent national and provincial competence under Schedule 4A. This multi-tier allocation reflects the principle that while municipalities are closest to service delivery, the national government retains the responsibility to ensure uniformity, and provinces serve as the implementing bridge.

Generally, operating public transportation services requires a licence.[627] The National Public Transport Regulator is responsible for issuing interprovincial and tourist transport licences.[628] Provincial authorities are responsible for issuing operating licences for e-hailing services.[629] Municipalities, on the other hand, maintain the authority to enact by-laws, designate pick-up zones, and integrate e-hailing services into integrated transport plans.[630] This is in addition to the expanded powers through the newly established municipal regulatory entities[631] that will have powers to issue operating licences as contemplated in section 11(1)(a)(viii) of the NLTA.[632]

Consequently, the implementation of the NLTA largely relies on provincial and local authorities. Arguably, by delegating specific licensing decisions and local operational conditions to provincial boards and municipalities while adhering to the national framework, the NLTA effectively balances the needs and authority of all government

627 Section 50 of the NLTA. The Western Cape Provincial Minister of Mobility confirmed as much recently when responding to complaints of unfair and unilateral deactivation of drivers by e-hailing companies, stating the following: "The relationship between operator/driver and the app providers (Uber, Bolt, In-Drive etc.) is governed by an agreement between the parties to the exclusion of the Provincial Regulatory Entity which is mandated in terms of the National Land Transport Act to provide an operating licence in terms of Section 50." Sileku 2024 *Memorandum to the Provincial Minister of Mobility: Addressing Grievances of E-Hailing Drivers and the Need for Immediate Government Intervention*.

628 Section 53(1) of the NLTA. It reads as follows: "(1) A person wishing to undertake an interprovincial service or a tourist transport service must apply to the National Public Transport Regulator for the necessary operating licence."

629 Section 54(3) of the NLTA. The provision reads as follows: "(3) A person wishing to undertake a service other than one contemplated in subsection (1) or (2), must apply to the Provincial Regulatory Entity of the relevant province for the necessary operating licence."

630 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 9.

631 See section 1 of the *National Land Transport Amendment Act* 2023.

632 See section 1 of the *National Land Transport Amendment Act* 2023.

levels. This allocation of responsibilities illustrates both the strengths and weaknesses of the NLTA framework: while it promotes cooperative governance, it also risks fragmentation and uneven enforcement. It is against this backdrop that the *Economic Regulation of Transport Act,* 2024 assumes importance, offering the potential to harmonise oversight and embed principles of access, inclusion, transparency, and accountability into the regulation of e-hailing and other transport modes.

The potential of *the Economic Regulation of Transport Act* 6 of 2024

The design of transport regulation, including oversight of e-hailing platforms, must promote access, inclusion, transparency, and accountability.[633] South Africa's multilevel state structure, involving national, provincial, and municipal spheres of government, complicates this picture. Each level contributes to transport planning, licensing, service delivery, and enforcement, yet coordination failures and legislative fragmentation often undermine effective governance.[634]

This has given rise to legal ambiguity, particularly in the treatment of platform-based transport services that cut across territorial and functional lines. While the 2024 NLTA Amendment introduced section 66A to directly regulate e-hailing, the effectiveness of this regime depends on the broader regulatory and institutional environment in which it operates. One of the most promising legal developments in this regard is the recently enacted *Economic Regulation of Transport Act*.[635] Although not yet in full force, and awaiting regulations,[636] this statute introduces a system-wide, principle-based framework to address entrenched inefficiencies, anti-competitive behaviour, and regulatory inconsistencies across the transport sector.

633 See broader discussion under section 4.4.3 below.

634 For example, the Competition Commission has been scathing of the licensing process, concluding that: "[t]he current operating licensing regime is characterised by inefficiencies at the PRE's [provincial regulatory authorities] with backlogs in the issuing of operating licences and at planning authorities who are unresponsive in terms of providing directives to the PREs. Planning authorities are unable to provide directives to the PREs because of lack of capacity to develop and implement integrated transport plans to inform the directives." See Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 42.

635 *Economic Regulation of Transport Act*.

636 Sileku *Memorandum to the Provincial Minister of Mobility: Addressing Grievances of E-Hailing Drivers and the Need for Immediate Government Intervention* 2.

Importantly, its provisions are designed to assert constitutional oversight and economic rationality over all transport modalities, including road-based passenger transport.

As previously discussed,[637] the *Economic Regulation of Transport Act* introduces a holistic regime for economic regulation across transport markets. It has the potential to address many of the structural imbalances that affect the e-hailing sector. The Act asserts its supremacy in cases of inconsistency with any other legislation, stating that "[i]n respect of any matter arising under this Act, the provisions of this Act prevail in the case of an inconsistency between any provision of this Act, and a provision of any other transport legislation."[638] This pre-eminence strengthens the *Economic Regulation of Transport Act*'s position as a constitutional statute that establishes norms, ensuring fair competition, transparent pricing, and clear regulations.

Section 3 of the *Economic Regulation of Transport Act* defines its central objectives, some of which include:

- to develop a competitive, efficient, and viable transport sector;[639]
- to promote integrated and transparent regulation of passenger and freight services across air, rail, road, and port domains;[640]
- to enhance investment, reliability, and climate responsiveness in service delivery;[641] and
- to establish clear institutional arrangements, including a Transport Economic Regulator.[642]

In other words, the Act seeks to directly address many of the core failures observed in the regulation of e-hailing platforms, including opacity in pricing, a lack of

637 Discussion in section 2.5.2.3 above.
638 Section 2(4) of the *Economic Regulation of Transport Act* 2024
639 Section 3(1)(a) of the *Economic Regulation of Transport Act* 2024.
640 Section 3(1)(b) of the *Economic Regulation of Transport Act* 2024.
641 Section 3(1)(c) of the *Economic Regulation of Transport Act* 2024.
642 Section 3(1)(d)-(e) of the *Economic Regulation of Transport Act* 2024.

coordination between tiers of government, weak enforcement capacity, and an absence of clear accountability standards.[643]

Section 4 of the Act defines its scope, emphasising its application to any transport market or entity affected by dominance or inefficiency. The Minister, in consultation with the Regulator, *may declare* any market, including the e-hailing sector, as subject to the Act's oversight when:

- a single operator controls more than 70% of the market;[644] or
- the market lacks the conditions necessary for efficiency and cost-effectiveness.[645]

The significant factor (which must be borne in mind throughout the discussion) is that the various obligations (for example, those relating to price controls or investigations, etc.) would not apply to e-hailing unless the Minister specifically declares e-hailing as a "regulated entity". A reading of the Act confirms this: section 1 defines a 'regulated entity' as "an entity to which this Act applies in terms of— (a) section 4(1); or (b) a declaration contemplated in section 4(2)". In turn, section 4(1) and (2) state as follows:

> 4. (1) Subject to any exemptions contemplated in subsections (7) to (9), this Act applies to any market, entity or facility in the transport sector that was, immediately before the effective date, subject to economic regulation by the Minister.
>
> (2) The Minister, in consultation with the Regulator, by notice in the Gazette, *may declare that this Act applies to any market, or any entity or facility, irrespective whether privately or state owned, within the transport sector*, if the Minister has determined that either of the following circumstances apply—
>
> a) a single operator controls more than 70% of the market concerned; or
>
> b) the preconditions for efficiency and cost-effectiveness do not exist in the market concerned.[646]

643 Some of these challenges are broadly canvassed under section 4.4 below.
644 Section 4(2)(a) of the *Economic Regulation of Transport Act* 2024.
645 Section 4(2)(b) of the *Economic Regulation of Transport Act* 2024.
646 Own emphasis.

In other words, e-hailing, because it was not subject to economic regulation by the Minister before the Act, is not automatically a regulated entity. However, the Minister may declare e-hailing operators as regulated entities if market dominance or inefficiency conditions are found. Any subsequent discussion linking reforms or potential obligations to e-hailing under the *Economic Regulation of Transport Act* must be understood within the context of section 4(2)'s discretionary powers. For this reason, the thesis accepts that any suggestions or propositions tied to the Act will not be definitive.

This notwithstanding, the provisions on market dominance are especially relevant to e-hailing. Platforms like Uber and Bolt operate with significant market power, which the Act defines as: "the power of an entity to control prices, or to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers."[647] In such cases, the Regulator must ensure that the regulatory response is proportionate to the competition problem.[648]

This framework positions the *Economic Regulation of Transport Act* as a key instrument to address platform concentration, predatory pricing, and network effects that undermine fair competition, issues extensively documented in the Competition Commission's 2021 inquiry into e-hailing services.[649]

Additionally, section 11 outlines detailed mechanisms for regulating pricing, service conditions, and profitability in transport markets. All regulated entities, including potentially dominant e-hailing platforms, must submit pricing proposals to the Regulator for approval.[650] In turn, the Regulator must, among other obligations:

- consult stakeholders and the public;[651]
- assess efficiency, capital return, employment impact, and pricing fairness;[652] and

647 Section 1 of the *Economic Regulation of Transport Act*. Own emphasis.
648 Section 4(3) of the *Economic Regulation of Transport Act* 2024.
649 See discussion under 4.4.1 below.
650 Section 11(3) of the *Economic Regulation of Transport Act* 2024.
651 Section 11(4)(a) of the *Economic Regulation of Transport Act* 2024.

- publish any approved tariff structure.[653]

Importantly, under section 11(13)(b), no entity may charge more than the approved maximum tariff, effectively allowing the Regulator to prevent exploitative fare surges and enforce transparent, predictable pricing models. Any violation of this and other provisions under the Act constitute "prohibited conduct", which includes:

- exceeding approved price caps;
- charging higher prices than those permitted under a deviation; and
- violating any condition attached to price controls.[654]

This language paves the way for civil, administrative, and possibly criminal action against platforms that abuse their dominance or breach approved conditions, thereby allowing the state to curb rent-seeking behaviour.

Lastly, the institutional reforms embedded in the *Economic Regulation of Transport Act* are vital in addressing the fragmented governance that currently characterises e-hailing oversight. Section 29 establishes the Transport Economic Regulator, while the Act's definitions clearly distinguish between:[655]

- "regulatory authorities" (provincial or municipal bodies), and
- "regulated entities" (service providers).

By doing so, the Act encourages clarity of roles and hierarchy in enforcement. In this sense, the Act potentially provides a model for unifying local licensing functions (as set out under the NLTA) with national economic oversight, creating a single, accountable framework to regulate e-hailing platforms as both mobility providers and market actors.

If fully implemented and linked to the NLTA's licensing regime, the *Economic Regulation of Transport Act* could help correct many of the power asymmetries and

652 Section 11(4)(b) of the *Economic Regulation of Transport Act* 2024.
653 Section 11(12)(a) of the *Economic Regulation of Transport Act* 2024.
654 Section 1 of the *Economic Regulation of Transport Act* 2024.
655 Section 1 of the *Economic Regulation of Transport Act* 2024.

regulatory voids that currently define South Africa's e-hailing environment.[656] This would not only promote competition in a meaningful sense but also restore public trust and constitutional legitimacy to transport governance itself. The challenge that remains is that there is no indication of what the operational framework and the regulations would look like. Given this absence, the analysis that follows considers the public transport framework as it currently stands with the NLTA in its amended form and the 2025 Regulations.

Key regulatory tensions in the e-hailing sector

Competition and market structure

Market entry and legalisation

The first and most visible competition tension in South Africa's e-hailing sector lies in the conditions of lawful entry. For more than a decade, the absence of a statutory category left drivers operating in a twilight zone: they were told to obtain metered taxi licences capped by moratoria, or they operated without licences at the risk of impoundment and violence. The Competition Commission's Market Inquiry highlighted this as a systemic distortion, producing scarcity by regulation rather than by demand.[657]

The Amendment Act addressed this vacuum by inserting section 66A into the NLTA through the Amendment Act. For the first time, "electronic hailing services" are explicitly recognised as a form of public transport.[658] Section 66A(1)(3) defines the service by its use of a software application and requires passengers to receive a fare

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656 When responding to e-hailing driver complaints against excessive commission charges, the Western Cape Provincial Minister of Mobility stated blandly as follows: "[t]he President has signed into law the National Economic Transport Act which amongst other would provide for the establishment of a regulatory body to govern tariffs in terms of public transport. Unfortunately, this Act is not yet effective as we await the regulations which provide for an indication as to how this ought to be done. As for now, the department is unable to intervene as to the commission being charged." Sileku *Memorandum to the Provincial Minister of Mobility: Addressing Grievances of E-Hailing Drivers and the Need for Immediate Government Intervention* 2. See discussion under section 4.4 below.

657 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 13-14.

658 In section 1 of the *National Land Transport Amendment Act* 2023.

estimate before a trip and a final fare at its conclusion.[659] Section 66A(4) empowers the Minister or Member of the Executive Council to regulate app standards, information duties, and vehicle markings, while section 66A(5) allows an operating licence to cover multiple service types. Most importantly, section 66A(6) prohibits platform providers from enabling vehicles that lack a valid operating licence. Arguably, these provisions close the loophole under which platforms had previously claimed to be mere technology companies beyond the reach of transport law.

The rules governing who may issue licences and grounds for operating remain anchored in sections 50–52 and 62 of the NLTA. Section 50(1) makes clear that no person may operate a public transport service without an operating licence,[660] though subsection (2) permits a licence to cover more than one service type. Section 51 confirms that the National Public Transport Regulator, provincial regulatory entities, or municipal regulatory entities may issue operating licences. Section 62 lists the conditions applicants must satisfy: proof of tax compliance,[661] a roadworthy certificate,[662] valid vehicle licensing,[663] prescribed insurance,[664] and evidence of compliance with labour legislation.[665] Together, these provisions are expected to extend the general licensing architecture to e-hailing and bring drivers squarely within the compliance net.

The 2025 Regulations translate this framework into practical steps. For example, they stipulate that e-hailing operating licences may be granted to applicants who file a proper application with the appropriate regulatory entity, using Form 1B and the prescribed fee.[666] Regulation 23 goes further by requiring the applicant to submit the written agreement or accepted terms and conditions with the platform provider,

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659 Section 40 of the *National Land Transport Amendment Act* 2023.

660 The provision reads as follows: "[n]o person may operate a road-based public transport service, unless he or she is the holder of an operating licence or a permit, subject to sections 47,48 and 49, issued for the vehicle concerned in terms of this Act."

661 Section 62(1)(b) of the NLTA.

662 Section 62(1)(d) of the NLTA.

663 Section 62(1)(e) of the NLTA.

664 Section 62(1)(f) of the NLTA.

665 Section 62(1)(c) of the NLTA. The provision reads as follows: "(1) An operating licence may only be issued if the applicant— has signed a statement to the effect that he or she or it will comply with labour laws in respect of drivers and other staff, as well as sectoral determinations of the Department of Labour".

666 Regulation 12(2)–(3) of the *Second National Land Transport Regulations* 2025.

which must, in turn, comply with Regulation 18.[667] This places the driver–platform relationship on the public record and links it directly to the legality of operations.

Entry is not confined to drivers. Platforms themselves are now subject to registration. Regulation 15 requires every platform provider to register with the National Public Transport Regulator,[668] with a physical presence in South Africa: "[a]n e-hailing platform provider must be a natural or juristic person with valid South African citizenship or permanent residence or be incorporated in terms of South African laws."[669] The platform must also have a physical address and online presence so that operators may engage with it.[670]

Through Regulation 16, platforms must also demonstrate that their technology satisfies specified functionality standards, including pre-trip fare display,[671] live billing,[672] route tracking,[673] panic buttons,[674] and driver profiles,[675] as well as administrative capabilities such as driver and user management, booking, payment, and customer service.[676] In addition, Regulation 18 requires that every operator–platform contract be in writing, governed by South African law, and conditional on the driver holding a valid operating licence. It says the following in particular:

> 18. The arrangement between the prospective operator and the e-hailing platform provider must be reduced to writing and include at least the following:
>
> a) The legal names of the parties as reflected in the identity card or other identity document acceptable to the regulatory entity in the event of natural persons and names as reflected at the institution where the entity is registered in the event of a juristic person.

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667 Regulation 23(2) reads as follows: "In addition to any other documents that may be required in terms of the National Land Transport Regulations, 2009, the applicant must also submit a copy of the agreement signed or terms and conditions accepted by the applicant with the e-hailing platform provider, which complies with the requirements listed in regulation 18."

668 Regulation 15(1) of the *Second National Land Transport Regulations* 2025.

669 Regulation 15(2) of the *Second National Land Transport Regulations* 2025.

670 Regulation 15(6) of the *Second National Land Transport Regulations* 2025.

671 Regulation 15(1)(d) of the *Second National Land Transport Regulations* 2025.

672 Regulation 15(1)(e) of the *Second National Land Transport Regulations* 2025.

673 Regulation 15(1)(g) of the *Second National Land Transport Regulations* 2025.

674 Regulation 15(1)(m) of the *Second National Land Transport Regulations* 2025.

675 Regulation 15(2)(a) of the *Second National Land Transport Regulations* 2025.

676 See generally regulation 17 of the *Second National Land Transport Regulations* 2025.

b) The authorised representatives with their full details must be reflected in the event of juristic persons.

c) The jurisdiction of the agreement must be the Republic of South Africa.

d) The agreement must be conditional upon the prospective operator obtaining the necessary operating licence for the e-hailing services.

e) The agreement must provide that all of the electronic equipment including a mobile phone to be used by the driver must be compliant with the requirements of RICA and ECA.

f) Where the prospective operator will not be driving the vehicle personally, the agreement must provide that the prospective operator will introduce the driver to the platform and that the driver must meet all of the requirements meant to be met in terms of these regulations for a driver to provide e-hailing services.

g) The e-hailing service agreement may be in the form of terms and conditions provided by the platform provider to the prospective operator in the form of data as defined in the ECTA.

Together, these contractual requirements ensure that the relationship between operators and platforms is formalised, transparent, and legally enforceable. By setting out minimum terms and compliance obligations, the Regulations aim to standardise the operation of e-hailing services and reduce the risks associated with informal or unregulated practices.

In order to address informality, the Regulations establish conversion and legalisation mechanisms. Regulation 14 requires operators who held licences before the insertion of section 66A to apply for conversion within 180 days, failing which their licences must be cancelled.[677] Regulation 31 extends this to indefinite permits under older legislation, requiring their conversion into definite-period operating licences within 24 months.[678] Regulation 32 goes further by opening a 90-day window for operators who had been providing services unlawfully to apply for legalisation, provided they

[677] Regulation 14(1) of the *Second National Land Transport Regulations* 2025.
[678] Regulation 31(1) of the *Second National Land Transport Regulations* 2025.

can prove at least 180 days of prior operation.[679] Regulation 28 confirms that operating licences issued before the commencement of the Regulations remain valid, subject to these conversion requirements.[680] These measures are designed to migrate both formal and informal operators into a common legal framework.

Additional compliance conditions are layered onto lawful entry. For example, the Regulations require all electronic equipment used in e-hailing services to be type-approved and RICA-compliant.[681] Regulation 25 obliges operators to issue passengers with an electronic receipt showing detailed trip and operator information, and failure to do so is an offence.[682] Regulation 26 imposes branding requirements, including the display of operator details and contact information on the vehicle. Regulation 20 forbids platforms from providing driver access unless devices meet compliance standards,[683] passengers are registered,[684] and operators possess valid licences.[685] These requirements link legality not only to the operating licence but also to the entire compliance system, including apps, devices, contracts, and receipts.

The Act and Regulations also include transitional and capacity safeguards. Section 93A, introduced by the Amendment Act, enables the Minister to postpone the implementation of provisions for up to five years or to grant targeted exemptions where immediate enforcement proves impractical.[686] This acknowledges the administrative bottlenecks that have historically hindered licensing. Simultaneously, Regulations 33–36 empower authorities to impose moratoria on new applications and to rationalise services, including consultation with existing operators and enforcement against illegal ones. Although designed to manage supply, these

679 Regulation 32(2)-(4) of the *Second National Land Transport Regulations* 2025.
680 Regulation 28(1) of the *Second National Land Transport Regulations* 2025.
681 Regulation 24 of the *Second National Land Transport Regulations* 2025. In terms of section 1 of the *Type Approval Regulations* 2013, type approval is defined "a process by which Equipment or a device or system is authorized by the Authority to be used in South Africa or imported into South Africa and involves verification of the Equipment's compliance with the applicable standards and other regulatory requirements".
682 Regulations 25(2)-(4) of the *Second National Land Transport Regulations* 2025.
683 Regulation 20(a) of the *Second National Land Transport Regulations* 2025.
684 Regulation 20(c) of the *Second National Land Transport Regulations* 2025.
685 Regulation 20(d) of the *Second National Land Transport Regulations* 2025.
686 Section 93A(1)(a)-(b) of the *National Land Transport Amendment Act* 2023.

powers mirror the very tools of exclusion that the Competition Commission identified as structural distortions.[687]

In short, South Africa now has an elaborate legal pathway for entry into the e-hailing market. Yet the very design of this system reveals a paradox. By criminalising unlicenced operation, mandating conversion within tight deadlines, and allowing moratoria, the framework may reproduce scarcity rather than resolve it. The paradox is striking: the state has moved from a vacuum to a licensing-heavy regime, but one that may again lock out new entrants, fuel resentment, and incentivise unlawful operation. This is because while drivers are offered legality on paper, the state's limited administrative capacity risks producing cycles of unlawful operation. Consequently, even as platforms are recognised as transport actors, the real test will be whether registration and compliance duties translate into genuine accountability.

Commission regulation and revenue sharing

If licensing determines who may participate in the market, commission structures decide whether participation is sustainable. The Competition Commission's Market Inquiry found that the largest grievance of e-hailing drivers was commission levels, typically around 25% of gross fares once safety fees and other deductions were included.[688] Drivers consistently reported that this left them with less than half of the fare, insufficient to cover fuel, finance, and insurance.[689] The Inquiry thus indicates that exploitative practices around pricing were not just a labour problem but a structural competition concern.

The legislative response has been limited. The Amendment Act does not include any provision that directly regulates commissions or revenue splits. The only potential authority is section 8(1)(fB), which allows the Minister to prescribe "codes of conduct

687 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* ix and 13-14.

688 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 36. See also *Mokhutswane* case paras 11-12.

689 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 36. See also *Mokhutswane* case paras 11-12.

for operators or drivers".[690] In theory, such codes could set minimum contractual standards, ensure the transparency of deductions, or even limit commissions. However, this power is discretionary and has not been used so far. The Act also introduced section 66A(2), giving the Minister the power to regulate app functionalities, and section 66A(3)(a)–(b), requiring e-hailing apps to display an estimated fare before the trip and a final fare afterwards.[691] These measures focus on passenger transparency, rather than protecting drivers from commission exploitation.

The 2025 Regulations expand on this approach further. Regulation 16 requires every platform to display the fare to the passenger before a trip is accepted.[692] Furthermore, Regulation 25(1)–(3) requires operators to provide passengers with electronic receipts that detail the fare paid, along with information on the origin, destination, operator, vehicle, and platform utilised. While these rules enhance transparency for consumers, they do not ensure a fair revenue split for drivers. They show passengers what they pay, but not how that fare is divided.

The Regulations also formalise the contractual relationship between drivers and platforms. Regulation 18 mandates that the operator–platform agreement be in writing, governed by South African law,[693] and it is reliant on a valid operating licence.[694] The contract must include RICA and ECA-compliant (*Electronic Communications Act*)[695] equipment and define the driver qualification process.[696] However, these content requirements are limited: they do not require specifying commissions, ban unilateral changes, or establish dispute-resolution procedures for unfair deductions. Consequently, the most critical term, the commission rate, remains outside the regulation's scope.

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690 Section 3(b) of the *National Land Transport Amendment Act* 2023.

691 The provisions read as follows: "(3) The e-hailing or technology-enabled application must— (a) have the facility to estimate fares and distances, taking into account distance and time, and must communicate the estimate to passengers in advance electronically; (b) communicate the final fare to the passenger or passengers at the conclusion of the trip electronically".

692 Regulation 16(1)(d) of the *Second National Land Transport Regulations* 2025.

693 Regulation 18(c) of the of the *Second National Land Transport Regulations* 2025.

694 Regulation 18(d) of the of the *Second National Land Transport Regulations* 2025.

695 36 of 2005.

696 Regulation 18(e)-(f) of the of the *Second National Land Transport Regulations* 2025.

Other provisions indirectly affect revenue. For example, Regulation 20 makes access to a platform conditional on the operator holding a valid operating licence, meaning the ability to earn income depends on licensing compliance.[697] Regulation 21 allows platforms to suspend or cancel operator access but requires reasons and notification to regulators.[698] This protects against arbitrary exclusion but still leaves the platform in control of drivers' income streams. Regulation 22 authorises drivers to affiliate with multiple platforms simultaneously, provided they notify regulators within 48 hours.[699] By permitting multi-homing, the law reduces lock-in and offers drivers at least some leverage against excessive commissions, or lack thereof.

Enforcement mechanisms, however, are weak. Regulation 37 sets maximum penalties of R100 000 or imprisonment for offences such as failing to issue receipts or contravening platform registration rules.[700] These sanctions may be crippling for individual drivers but are negligible for multinational companies generating millions in monthly revenue.[701] As a result, platforms face little economic incentive to reform exploitative practices.[702]

The strongest potential instrument lies in provisions of legislation that is not yet in force.[703] The *Economic Regulation of Transport Act*, 2024 establishes a dedicated regulator with broad powers over prices and market conduct. Section 11 subjects all regulated entities to price controls determined by the Regulator:

> (1) Every regulated entity is subject to price regulation in accordance with a price control determined by the Regulator.
>
> (2) The price control for a regulated entity may comprise—

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697 Regulation 20(d) of the of the *Second National Land Transport Regulations* 2025.
698 Regulation 21(1) of the of the *Second National Land Transport Regulations* 2025.
699 Regulation 21(1)-(2)of the of the *Second National Land Transport Regulations* 2025.
700 Regulation 37(4) of the of the *Second National Land Transport Regulations* 2025.
701 The industry is expected to reach over R8 billion by 2029, see Thorne 2024 https://businesstech.co.za/news/business/782196/the-booming-r7-billion-industry-in-south-africa/.
702 Edelman and Geradin 2016 *Harvard Business Review* 4; Voices 2016 https://www.forbes.com/sites/valleyvoices/2016/02/25/asking-for-permission-vs-begging-for-forgiveness-which-makes-sense-when-for-founders/; Yglesias 2017 https://www.vox.com/new-money/2017/3/21/14980502/uber-toxic-culture-rule-breaking-explained.
703 See details of which parts have commenced at SAGOV 2024 https://www.gov.za/documents/acts/economic-regulation-transport-act-6-2024-english-isizulu-11-jun-2024.

a) a schedule of tariffs, charges, fees, tolls or other amounts that may be imposed by the regulated entity for the use of, or access to, any transport service or facility offered by that regulated entity;

b) a limit on the total amount of revenue it may raise from the facilities and services offered by it;

c) a limit on the return it may derive from the assets utilised by it to provide its facilities and services; or

d) any other appropriate pricing method, including any combination of the methods contemplated in paragraphs (a) to (c).[704]

Section 14 further directs the Regulator to set, develop, publish, and oversee standards for how regulated entities prepare and present financial and other relevant information used in price control decisions, including criteria for asset valuation and allocation.[705] Furthermore, sections 20–21 authorise compliance notices and even forced reductions of tariffs or fees, capped at 10% of annual turnover. Most significantly, section 4(2)(a) allows the Minister to trigger the Act where a single operator controls more than 70% of a market, backed by the Competition Commission's input. Read together, these provisions would empower the economic regulator to cap commissions, enforce minimum driver shares, and investigate exploitative practices. But until the Act commences, these tools remain aspirational rather than real. Even then, the provisions would only be applicable if the Minister makes a section 4(2) declaration that e-hailing is a regulated entity or market.

The overall outcome is a striking asymmetry. The law has established a regime that requires consumer transparency, including pre-trip fares, final fares, and receipts, while leaving the division of revenue that determines drivers' livelihoods opaque. The Commission had already warned that unchecked price issues, including dynamic pricing,[706] fuel dominance by making it impossible for smaller or local platforms to

[704] Section 11(1)-(2) of the *Economic Regulation of Transport Act* 2024.
[705] Section 14(1) of the *Economic Regulation of Transport Act* 2024.
[706] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* vi.

compete unless they too extract unsustainable margins from drivers. The economic consequences are thus severe. To be sure, the Competition Commission accepted that metered taxi operators have consistently alleged that e-hailing services, such as Uber and Bolt, employ predatory pricing strategies, setting artificially low fares to gain market dominance.[707] Although the Commission acknowledged these issues, it chose not to act on the initial complaint against Uber, citing its limited period of operation and the challenge of demonstrating anti-competitive effects at that stage.[708] However, the Commission emphasised that features intended to benefit digital platforms should not exempt them from scrutiny, especially when their market behaviour undermines fair competition.[709] Consequently, even with this information being publicly available, the silence of the regulatory framework is deafening.

It is contended that, by squeezing margins, dominant platforms externalise costs/risk onto drivers and raise entry barriers for potential competitors. Smaller or local platforms will unlikely compete on passenger fares if they are unwilling or unable to impose the same exploitative commissions on drivers. Available data already showed a significant decline in market share and revenue for older operators, with long-standing companies such as Mozzie Cabs, Zippy Cabs, and Hurter Cabs shutting down after Uber entered the market.[710] These firms struggled to compete with the technological innovation and pricing strategies of e-hailing services, and licensing restrictions further limited their options. Some exited the market entirely, while others adopted the platforms to stay financially afloat.[711] Driver exploitation, therefore, became a tool of competitive entrenchment.

Yet the NLTA, the Amendment Act, and the 2025 Regulations leave commissions with private contracts. Only the dormant ERT Act offers systemic regulatory oversight of fares and commissions, but until it takes effect, South Africa remains

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707 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 22.

708 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 22.

709 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 22.

710 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 27.

711 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 27.

reliant on platforms' self-regulation. In summary, entry has been legalised and consumer transparency mandated, but drivers' economic sustainability remains unprotected. Commission exploitation remains unaddressed by enforceable law. This gap entrenches the dominance of global platforms and risks perpetuating the cycle of driver exploitation that the reforms aimed to resolve.

Quantitative restrictions

A third axis of competition tension lies in the state's reliance on quantitative restrictions to govern the supply of operators. The Competition Commission's Market Inquiry noted that moratoria on new licences had in some provinces persisted for more than a decade, rarely reviewed, and often used to shield incumbents from competition.[712] The effect was structural exclusion: incumbents retained their positions while aspirant entrants, including e-hailing drivers, were locked out, unless they operated illegally.

The NLTA embeds these tools deeply. Section 39 allows a planning authority, if its Integrated Transport Plan reveals a surplus of services, to impose a moratorium on new operating licences.[713] Section 55 reinforces this by obliging regulatory entities to align licensing of non-contracted services with Integrated Transport Plan directions; if the plan shows that existing contracted or licenced services already meet demand, new applications must be refused. In particular, the provision states as follows:

> (2) The planning authority must in the prescribed format—
>
> a) indicate whether there is a need for the service on the route or routes or in the area or areas in terms of its integrated transport plan or not, and, if there is a need for such service, direct the National Public Transport Regulator or a Provincial Regulatory Entity to grant the operating licence and make any recommendations it considers fit regarding conditions to be attached to the operating licence, having due regard to its integrated transport plan, and if its integrated transport plan is not yet finalised or is inadequate, it must take the decision based on due inquiries and investigations carried out by it; and

712 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* ix.

713 See section 39(1) of the NLTA.

b) submit such response to the National Public Transport Regulator or a Provincial Regulatory Entity, as the case may be, within the prescribed period or the period stipulated in the notice.

(3) Where the public transport requirements for the particular route or routes are adequately served by an existing public transport service of a similar nature, standard or quality provided in terms of a commercial service contract or subsidised service contract or in terms of operating licences as shown by its integrated transport plan, the planning authority must direct the National Public Transport Regulator or a Provincial Regulatory Entity to refuse the application.[714]

These statutory powers were initially conceived as planning tools, but in practice, they may entrench scarcity, insulating existing operators and exacerbating rivalry on the ground. These provisions were not changed by the amendments.

The 2024 Amendment Act goes further by hard-wiring incumbency protections. The amended section 8 now obliges contracting authorities to identify "affected operators" and negotiate with them when introducing new services.[715] While framed as a measure to protect livelihoods, it effectively embeds incumbents in the licensing process, potentially making them gatekeepers of new entry. At the same time, the amended section 47 obliges the conversion of indefinite licences into definite-period operating licences within seven years, linking legal continuity to rationalisation objectives. This aims to modernise the licence register but in practice forces smaller operators into a system still dominated by incumbent consultation and discretionary moratoria.

The 2025 Regulations operationalise these restrictions with granular detail. Regulation 3 requires municipalities to conduct surveys of existing operators before concluding new contracts, giving incumbents an institutionalised role in shaping supply.[716] Regulation 33 empowers planning authorities to impose moratoria on applications for non-contracted service licences,[717] echoing section 39 of the NLTA. Regulation 35 allows exceptions (to the issuance of licences during the moratoria)

[714] Section 55(2)-(3) of the NLTA.
[715] Section 8(1)(d) of the *National Land Transport Amendment Act* 2023.
[716] Regulations 3(1)(d), 3(2) and 3(4) of the of the *Second National Land Transport Regulations* 2025.
[717] Regulations 33(1) of the of the *Second National Land Transport Regulations* 2025.

only in narrowly defined "special circumstances"[718] while Regulation 36 integrates rationalisation with law enforcement, authorising crackdowns on operators without valid licences.[719] In parallel, compliance measures such as Regulation 24 (type-approved, RICA-compliant equipment)[720] and Regulation 26 (vehicle branding requirements)[721] add fixed costs that established fleets can absorb more easily than newcomers.

These instruments facilitate the shift from informality. Regulation 31 mandates converting all indefinite permits from older laws into fixed-term licences within 24 months.[722] Regulation 32 provides a 90-day period for operators who have offered services unlawfully to seek legalisation if they can prove 180 days of prior activity.[723] While these measures aim to regularise the sector, they depend on an administrative capacity capable of handling numerous applications; a capacity that history shows to be inadequate.[724] Without efficient administration, the windows for conversion and legalisation may inadvertently push compliant drivers back into illegality.

On paper, the regime appears to promise rational supply management. However, in practice, it may entrench exclusion. Moratoria remain at the discretion of authorities and are open-ended; conversion deadlines are strict, and while incumbents are consulted, new entrants face significant obstacles.

The dormant *Economic Regulation of Transport Act*, 2024 points to an alternative model. Section 4(2)(a) would allow the Minister to trigger regulatory oversight where an operator controls more than 70% of a market, with the Regulator empowered

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718 The provision reads as follows: "[d]espite the existence of a moratorium, the planning authority may invite applications for operating licences where new developments or other changed circumstances require public transport services during the course of the moratorium."

719 See Regulation 36(d) of the *Second National Land Transport Regulations* 2025.

720 Regulation 24 reads as follows: "[n]o equipment may be used in providing the e-hailing service by the e- hailing platform provider, operator, driver or user unless— (a) it is type approved in terms of the Type Approval Regulations, 2013, where required; (b) it is used in compliance with RICA, and (c) it is registered to the e-hailing platform provider, operator, driver and user, and (d) the registration for RICA is compliant with section 39 of RICA."

721 Regulation 26(1) reads as follows: "A motor vehicle used for e-hailing services must be marked with full details of the operator, including name and business address on both sides of the front doors at all times while providing the services."

722 Regulation 31(1) of the *Second National Land Transport Regulations* 2025.

723 Regulation 32(2)-(3) of the *Second National Land Transport Regulations* 2025.

724 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 13.

under sections 38[725] and 43[726] to investigate market structures and supply distortions (section 43 even requires the Regulator to liaise with the Competition Commission). While not yet in force, these provisions could enable systemic scrutiny of moratoria and quantitative restrictions, shifting oversight from discretionary planning authorities to an independent economic regulator. Until then (and a ministerial section 4(2) declaration that e-hailing is a regulated entity or market), however, South Africa remains locked in a planning-heavy model that reproduces the very scarcity the Market Inquiry condemned.

In summary, quantitative restrictions are portrayed as rationalisation tools but serve mainly as barriers to competition. Moratoria, surveys, and consultations with affected operators safeguard incumbents; conversion deadlines overburden administrative resources; and compliance regulations increase entry barriers. Without the enhanced oversight powers outlined in the *Economic Regulation of Transport Act*, there is a risk that scarcity will stay embedded, continuing to exclude certain parties instead of encouraging fair competition.

Addressing dominance and anti-competitive conduct

The fourth and most enduring competition tension in South Africa's e-hailing sector lies in the dominance of global platforms. The Competition Commission's Market Inquiry found that Uber and Bolt together controlled the overwhelming majority of trips, a position entrenched by network effects, brand loyalty, and algorithmic pricing.[727] Traditional metered taxi operators, confined by spatial restrictions in section 66(1) of the NLTA, could not replicate these efficiencies.[728] For example, e-hailing operators could pick up passengers across multiple municipalities, such as Johannesburg, Tshwane, and Ekurhuleni, violating the spatial restrictions imposed

[725] The Regulator may conduct market inquiries under section 38(g) and investigate complaints under section 38(j) of the *Economic Regulation of Transport Act* 2024.

[726] See section 42(3) and (4) of the *Economic Regulation of Transport Act* 2024.

[727] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 4 and 24.

[728] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* vi and 27.

on metered taxis.[729] At the same time, e-hailing platforms, despite operating under the same framework, bypassed these restrictions with technological dispatch and pre-booking methods.[730]

The resulting operational asymmetry had clear consequences. Metered taxi operators often had to return empty from drop-off points outside their designated areas unless strict pre-booking conditions were met.[731] This inefficiency increased operating costs and caused an estimated 50% of kilometres travelled by metered taxis to be unpaid, reducing their economic viability and making them less competitive.[732] In contrast, e-hailing services maximised vehicle utilisation by decreasing the distance between drop-offs and subsequent pick-ups through their algorithmic platforms, thereby lowering costs and boosting service availability.[733] The consequence was structural imbalance and, in many instances, violent confrontation, as incumbents resisted the expansion of digitally enabled rivals.[734]

The statutory framework before the amendment offered only marginal safeguards. Section 41 of the NLTA allowed negotiated contracts to be used to, among other things, discourage monopolies,[735] but this tool was limited to restructuring public operators and was ill-suited to the realities of private-sector platform concentration. No general duty was imposed on platforms to prevent exclusionary conduct, leaving disputes to be fought through piecemeal litigation or competition-law proceedings.

The Amendment Act broadened this architecture. Section 66A now explicitly defines "electronic hailing services" and empowers the Minister to regulate app functionalities, passenger information duties, and to prescribe differentiated

729 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 28.
730 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 28.
731 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 28.
732 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 32.
733 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 32.
734 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 27.
735 Section 41(1)(c) of the NLTA.

standards across services, including e-hailing.[736] Section 8(1)(fB) supplements this power by authorising the Minister to issue binding codes of conduct for operators and drivers. Section 13 was also strengthened to prohibit regulators, tribunal members, and even members of the South African Police Service or municipal police from holding financial interests in transport undertakings. Collectively, these provisions create formal levers for disciplining dominant behaviour. Yet they remain discretionary: there is still no statutory obligation to cap commissions, require data sharing, or regulate algorithmic pricing.

The 2025 Regulations translate these powers into practical rules. For example, they require that access to a platform be granted only to operators who hold valid operating licences, use RICA- and ECA-compliant devices, and ensure passenger registration. The complete provision reads as follows:

> The e-hailing platform provider may only grant access to use of its infrastructure and services if the-
>
> a) mobile device owner is registered in the system as part of the agreement referred to in regulation 18;
>
> b) operator or driver declares in writing that the mobile device to be used is compliant with RICA [*Regulation of Interception of Communications and Provision of Communication-Related Information Act*, 2002] and ECA [*Electronic Communications Ac*t, 2005] and it belongs to the registered driver or operator contracted to the e-hailing platform provider;
>
> c) passenger is in possession of a mobile device that will be used by him or her to hail the service with the device that is compliant with RICA and ECA and such passenger has registered with the platform provider by including his or her identity number or passport number as well as residential address, and
>
> d) operator is the holder of an operating licence issued by the regulatory entity for the e-hailing service as required by the Act and these regulations.[737]

[736] Section 66A(4)(a) of the *National Land Transport Amendment Act* 2023.
[737] Regulation 20 of the *Second National Land Transport Regulations* 2025.

Furthermore, Regulation 21 obliges platforms to give reasons and notice before suspending or cancelling operator access and to notify the regulator,[738] curbing arbitrary deactivations. Regulation 22 prohibits exclusivity, expressly permitting operators to affiliate with multiple platforms, thereby limiting lock-in. Regulation 27 empowers the National Public Transport Regulator or a planning authority to demand operational records from platforms. In particular, Regulation 27(1) provides as follows:

> 27. (1) The National Public Transport Regulator, a regulatory entity or a planning authority may issue a notice to an e-hailing platform provider under the following circumstances:
>
> a) Requesting records pertaining to any operator licensed with that e-hailing platform provider and using the e-hailing platform provider concerned;
>
> b) Requesting any information necessary for transport planning purposes;
>
> c) Requesting any other information or a response arising out of any inquiry where the e-hailing platform provider is involved;
>
> d) In the event of any contravention of the Act or these regulations or licensing conditions pertaining to an operator licensed using the e-hailing platform provider, or
>
> e) Any other matter that the National Public Transport Regulator, a regulatory entity or a planning authority considers relevant for the purposes of its powers and functions in terms of the Act.

Together, these provisions address foreclosure and retaliatory practices. Yet platform regulation is only one side of the competition equation. The framework also reaches upstream into the domain of public contracting, where rules governing how authorities award operating rights serve as an additional bulwark against concentration and dominance. As such, contracting rules (under negotiated contracts) also carry anti-monopoly safeguards. For example, Regulation 6 requires contracting authorities to consider "the need to promote the economic empowerment of small business and persons previously disadvantaged by unfair

738 Regulation 21(1)-(2) of the *Second National Land Transport Regulations* 2025.

discrimination and to prevent the rise or continued existence of monopolies created by previous unfair legislation or practices".[739] However, the strength of these safeguards is undermined by a misalignment in the sanctions regime and by significant gaps in transparency obligations.

Yet the sanctions remain misaligned. Regulation 37 fixes the maximum penalty for contraventions at R100 000.[740] As noted earlier, this may be crippling for individual operators, but it is likely negligible for multinational platforms, which can treat such fines as routine costs of business. At the same time, the Regulations impose no duty on platforms to disclose commission levels, revenue shares, or trip data, and no obligation to reveal algorithmic pricing structures. These omissions leave intact the core levers of market dominance.

It is the *Economic Regulation of Transport Act* 2024 that promises a systemic corrective. As noted earlier, section 11 empowers the Transport Economic Regulator to determine price controls for regulated entities. In setting such controls, section 21 authorises the Regulator to direct reductions of tariffs or fees, capped at 10% of a firm's annual turnover;[741] a sanction of real consequence for multinational platforms. As further noted earlier, the *Economic Regulation of Transport Act* empowers the Minister to trigger regulatory oversight where an operator controls more than 70% of a market,[742] with the Regulator then empowered to investigate structure and conduct.[743] Complaint mechanisms provide for investigations,[744] consent orders[745] and compliance notices,[746] which could ensure that exploitative practices can be addressed through a dedicated economic regulator.

Until the *Economic Regulation of Transport Act* commences, however, South Africa's framework remains partial. The NLTA, its amendments, and the 2025 Regulations have disciplined procedural abuses by curbing arbitrary suspensions, prohibiting

739 See regulation 6(1)(h) of the *Second National Land Transport Regulations* 2025.
740 See regulation 37(4) of the *Second National Land Transport Regulations* 2025.
741 See sections 21(2)-(4) of the *Economic Regulation of Transport Act* 2024.
742 Sections 4(2)(a) of the *Economic Regulation of Transport Act* 2024.
743 See sections 38(g) and (h) of the *Economic Regulation of Transport Act* 2024.
744 Section 15 of the *Economic Regulation of Transport Act* 2024.
745 Section 19 of the *Economic Regulation of Transport Act* 2024.
746 Section 20 of the *Economic Regulation of Transport Act* 2024.

exclusivity, and embedding anti-monopoly considerations in contracting. Yet they leave unregulated the structural drivers of dominance: opaque commissions, algorithmic pricing, and data concentration. The paradox persists: small operators potentially face intense compliance burdens and real penalties, while the systemic market power of global platforms remains largely untouched. Only the operationalisation of the *Economic Regulation of Transport Act* could equip regulators with the mandate to intervene decisively, moving beyond procedural fairness to substantive competition in the e-hailing market.

Labour and worker protection

If competition rules determine who can enter the market and under what conditions, labour rules decide how those entrants will work. Here, too, a paradox remains. The law has established strict compliance duties for drivers and formalised their contracts with platforms, but it has not addressed the core issues of classification, income security, and protection against arbitrary exclusion. The Market Inquiry's observation that platform relationships are not governed by labour laws remains unchanged,[747] even after the reforms. Drivers are regulated as operators but remain insecure as workers. This section explores how this tension develops in relation to employment status, income protections, and deactivation; the three key areas of labour vulnerability that continue to shape the South African e-hailing economy.

Employment classification and legal status

The most fundamental labour question in South Africa's e-hailing sector is whether drivers are to be treated as employees, entitled to the rights and protections of labour law, or as independent contractors, bearing the entire risk of operation.[748] This model, otherwise known as the digital labour platform,[749] enables flexibility, cost-saving, and market responsiveness, but also externalises risks onto drivers.

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747 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34.

748 Mutengwe, Mazenda and Simawu 2024 *Development Policy Review* 2.

749 Digital labour platforms are described as "a type of labour market in which workers are identified as independent contractors or gig workers and are facilitated through digital technology and marketed on demand, have increasingly transformed how work is structured and performed", Mutengwe, Mazenda and Simawu 2024 *Development Policy Review* 2.

Lacking benefits such as unemployment insurance, sick leave, or formal dispute resolution mechanisms, drivers are often left vulnerable to arbitrary deactivation, fare manipulation, and opaque disciplinary processes.[750]

Thus, driver classification is not merely technical: it determines whether they may claim protections under the *Labour Relations Act*,[751] the *Basic Conditions of Employment Act*,[752] and the *Compensation for Occupational Injuries and Diseases Act*,[753] among others. These statutory frameworks are designed to protect employees, yet platform workers fall outside their scope by design.[754] Worse still, platforms such as Uber consistently maintain that drivers are partners or independent contractors.[755] The Competition Commission's Market Inquiry identified this as a structural distortion, observing that while platforms publicly disclaim responsibility, they exercise a high degree of control over fares, trip allocation, and access to work, leaving drivers economically dependent and vulnerable.[756]

In reviewing the regulatory framework as it pertains to labour, the NLTA establishes the starting point. Section 62 requires that any applicant for an operating licence must furnish evidence of compliance with labour laws:

> (1) An operating licence may only be issued if the applicant— …
>
> > (c) has signed a statement to the effect that he or she or it will comply with labour laws in respect of drivers and other staff, as well as sectoral determinations of the Department of Labour;[757]

This is significant: the Act links lawful participation in the market to adherence with the labour regulatory framework. Yet, without making any reference to any labour law principles, section 79 of the NLTA holds that an operating licence may be withdrawn, suspended or amended on account of a violation of labour laws:

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750 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34.

751 *Labour Relations Act* 1995.

752 *Basic Conditions of Employment Act* 1997.

753 *Compensation for Occupational Injuries and Diseases Act* 1993.

754 See general discussion in Du Toit, Fredman and Graham 2020 *Industrial Law Journal* 1498; Smit and Stopforth 2023 *Law Democracy Development* 152-156.

755 See the discussion of the CCMA cases below.

756 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* ix.

757 Section 62(1)(c) of the NLTA.

> (2) Subject to subsection (3), in the case of an operating licence or permit that has not been granted on the basis of a contract, the relevant entity may, at any time, withdraw, amend or suspend the operating licence for such a period as it may deem fit, if the holder or employee of the holder—
>
> > (a) has been convicted of an offence under this Act or under a law relating to motor vehicles or the regulation of traffic or occupational safety or *labour relations*, or an offence due to fraud or dishonesty.[758]

The provisions fall short of resolving the core issue: whether the driver is an employee of a platform or merely a self-employed operator who must adhere to labour standards concerning others he may engage. Even more concerning, in practice, section 62(1)(c) has been applied administratively: as a licensing obstacle, not a substantive grant of rights, while section 79 is simply never used.

Although the Amendment Act brought e-hailing into the statutory definition of public transport through section 66A, it preserved this ambiguity. The closest provision to labour issues would be section 8(1)(fB), which authorises the Minister to issue "codes of conduct for operators or drivers". These powers could, in theory, be used to impose minimum standards of fairness in platform contracts. But critically, neither section 66A nor section 8(1)(fB) creates a statutory presumption of employment, nor do they extend LRA protections to drivers.

The 2025 Regulations entrench this contractual model. Regulation 17 obliges platforms to maintain driver-management systems capable of producing reports on trips, routes, and earnings.[759] Regulation 18 requires that every driver–platform relationship be reduced to writing, governed by South African law, and conditional on the driver holding a valid operating licence.[760] These provisions ensure that contracts are transparent to regulators and that data is available for oversight. Yet they define the relationship as one between an operator and a platform, not an employer and an employee. In substance, the Regulations harden the fiction that drivers are independent entrepreneurs, despite their economic dependence and limited autonomy.

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758 Section 79(2(a) of the NLTA.
759 Regulation 17(a)-(f) of the *Second National Land Transport Regulations* 2025.
760 Regulation 18(a)-(e) of the *Second National Land Transport Regulations* 2025.

This tension is vividly illustrated in the litigation over Uber drivers' status. In *Uber South Africa Technological Services (Pty) Ltd v NUPSAW & Others* (*Uber CCMA*),[761] the Commission for Conciliation, Mediation and Arbitration heard claims from drivers who had been "deactivated" from the platform and argued that this amounted to unfair dismissal. Uber South Africa contended that the drivers were not its employees but independent contractors of Uber BV, the Netherlands-based parent company.[762] The Commissioner rejected this view. Applying the *Code of Good Practice: Who is an Employee?*,[763] the Commissioner held that the drivers were employees for purposes of the *Labour Relations Act*. Her reasoning emphasised that Uber controlled the key aspects of the working relationship: fares were set by the platform; drivers were monitored using performance metrics; those who fell below thresholds were deactivated; and the ability to earn depended entirely on Uber's algorithmic allocation of rides.[764] Drivers could not substitute others to perform the work, and they were economically dependent on the platform.[765] In her words, drivers were not peripheral but "the essential part of Uber's service."[766] On this basis, the Commissioner found an employment relationship.

On review to the Labour Court, this decision was overturned in *Uber South Africa Technology Services (Pty) Ltd v NUPSAW & Others* (*Uber Labour Court*).[767] The Labour Court held that because drivers had no contractual relationship with Uber South Africa, they could not be considered its employees. Central to the court's reasoning was the principle that a finding of an employment relationship requires either a contract of employment[768] or at least a contractual working arrangement[769] between the worker and the alleged employer. The Court emphasised that there was

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761 *Uber South Africa Technological Services (Pty) Ltd v NUPSAW & Others* (WECT12537-16, WECT10875-16, WECT14948-16, WECT875-17, WECT1503-17, WECT12614-16) [2017] ZACCMA 1 (7 July 2017).

762 *Uber CCMA*, paras 9-10.

763 *Labour Relations Act: Code of Good Practice: Who is an employee?* GN 1774, GG 29445 of 1 December 2006.

764 *Uber CCMA*, para 43.

765 *Uber CCMA*, para 43.

766 *Uber CCMA*, para 49.

767 *Uber South Africa Technology Services (Pty) Ltd v NUPSAW & Others* (C449/17) [2018] ZALCCT 1; [2018] 4 BLLR 399 (LC); (2018) 39 ILJ 903 (LC) (12 January 2018).

768 As defined under section 213(a) of the *Labour Relations Act* 1995.

769 As defined by section 213(b) of the *Labour Relations Act* 1995.

no such contract between Uber SA and the drivers. Such a finding, for the court, was grounded in a simple fact:

> …the absence of any contractual arrangement between the drivers and Uber SA was fatal to the drivers' claim to be employees of Uber SA…[with the result that] [t]he commissioner thus committed a material error of law, which in itself warrants the setting aside of her ruling.[770]

The Court rejected the CCMA's use of the so-called "reality test," holding that while courts may look beyond form to substance in cases of disguised employment, the complete absence of a local contract could not be overcome.[771] In consequence, the Court reinstated a rigid formalism: no matter the reality of control, economic dependence, and integration, without a written employment contract with Uber SA, drivers cannot be considered employees.

At a structural level, the court's insistence on a legally enforceable contract as a *sine qua non* potentially significantly weakens protections for platform workers. Even provincial governments seem to leave the nature of this relationship to e-hailing companies. For example, after e-hailing drivers had complained that e-hailing companies unilaterally deactivated them from the systems, the Western Cape Provincial Minister of Mobility responded as follows:

> The relationship between operator/driver and the app providers (Uber, Bolt, In-Drive etc.) is governed by an agreement between the parties to the exclusion of the Provincial Regulatory Entity which is mandated in terms of the National Land Transport Act to provide an operating licence in terms of Section 50. *This agreement is depicted as a partnership between the app providers and the operators/drivers. Hence the app provider does not see the relationship as an employee/employer relationship governed by the Labour Relations Act*.[772]

This sentiment, which translates to practice in reality, essentially permits multinational gig companies to circumvent local labour laws through corporate structuring and strategic use of foreign entities, even where the local operation (Uber SA) visibly supports, organises, and manages aspects of the driver interface.

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770 *CCMA Labour Court*, para 72.

771 *CCMA Labour Court*, paras 77-79.

772 Sileku *Memorandum to the Provincial Minister of Mobility: Addressing Grievances of E-Hailing Drivers and the Need for Immediate Government Intervention* 1. Own emphasis.

Overall, these statutory and judicial developments create a paradox. On paper, section 62(1)(c) NLTA requires compliance with labour law as a precondition for licensing. Section 8(1)(fB) allows the Minister to set codes of conduct. Section 66A defines e-hailing services and embeds their contractual framework. Regulation 18 requires written agreements governed by South African law, and Regulation 17 mandates detailed reporting. These provisions make the driver–platform relationship transparent and enforceable in regulatory terms. Yet none of them resolves the employee/contractor dilemma.

The result is that drivers are visible as licenced operators, subject to heavy compliance burdens and reporting obligations, but invisible as workers in the protective scope of labour law. The CCMA's purposive attempt to read substance over form was rolled back by the Labour Court's insistence on contractual formalism. The Market Inquiry had already flagged the dangers of this arrangement: platforms exercise unilateral power over fares, trip allocation, and incentives, yet disclaim responsibility by labelling drivers independent.[773] In effect, the statutory framework has codified this contradiction: it insists that drivers comply with labour law (s 62(1)(c)), but denies them the status that would allow them to claim its protections.

It may be argued that this omission is not academic. Without statutory recognition, working time, fatigue, and health risks fall outside the regulatory scope. There is no limit on the hours drivers may work, no rest-period requirements, and no statutory recognition of fatigue as a risk. Safety is thus framed in technological and compliance terms, not in human terms. Therefore, the legal framework, by insisting on compliance with labour laws without granting drivers employee recognition, creates a hollow core: drivers bear the burdens of regulation, but are denied the protections that regulation ought to secure.

Income protections and commission rules

If employment classification determines whether drivers are protected by law, income rules determine whether driving is sustainable in practice. The Competition

[773] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34.

Commission's Market Inquiry left no doubt about the scale of the problem. It recorded that drivers' gross earnings declined year on year until 2017/18, with only a marginal recovery thereafter.[774] It found that platforms had withdrawn incentive schemes that initially supplemented driver income and had unilaterally introduced a booking fee of around 4%, further reducing driver take-home pay.[775] The Inquiry concluded that these unilateral changes put drivers under economic strain, pushing many below subsistence levels once fuel, insurance, and vehicle finance were accounted for.[776]

Despite the clarity of these findings, the statutory framework remains strikingly silent on commissions and income fairness. The Amendment Act made no provision for revenue sharing. It empowered the Minister to issue codes of conduct (section 8(1)(fB)) and to regulate e-hailing apps (section 66A(2)–(4)), but these provisions are directed at consumer transparency and operational standards rather than driver remuneration.

The 2025 Regulations replicate this orientation. Regulation 16 requires platforms to display the estimated fare to the passenger before a trip is accepted and to show the actual fare and distance travelled at the end of the trip.[777] Regulation 25 obliges operators to issue passengers with an electronic receipt that sets out the operator and vehicle details,[778] the name of the platform,[779] the fare paid,[780] and the origin and destination points.[781] These measures ensure clarity for passengers, but they do nothing to compel disclosure of the commission deducted by the platform or to guarantee drivers a minimum share of the fare. The regulatory gaze is directed outward, to the passenger, rather than inward, to the driver's income security.

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774 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* ix and 36.

775 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* ix and 36.

776 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 36.

777 Regulation 16(1)(d) and (e) of the *Second National Land Transport Regulations* 2025.

778 Regulation 25(2)(b) of the *Second National Land Transport Regulations* 2025.

779 Regulation 25(2)(c) of the *Second National Land Transport Regulations* 2025.

780 Regulation 25(2)(d) of the *Second National Land Transport Regulations* 2025.

781 Regulation 25(2)(d) of the *Second National Land Transport Regulations* 2025.

At the same time, compliance costs imposed by the Regulations further erode earnings. Regulation 24(a) and (b) requires that all electronic equipment used in e-hailing be type-approved and compliant with the *Regulation of Interception of Communications and Provision of Communication-Related Information Act* (RICA).[782] Regulation 26 obliges operators to display visible branding on their vehicles, including operator details and contact numbers.[783] Regulation 19 adds further obligations, demanding that every operator provide proof of a driving licence and a professional driving permit,[784] in addition to panic buttons.[785] Each of these requirements imposes direct costs on drivers. By contrast, platforms bear only the minimal burden of registration (under Regulation 15) and compliance with app standards (under Regulations 16–17). The regulatory balance is skewed: drivers pay, platforms profit.

The *Economic Regulation of Transport Act* potentially creates the first systemic lever for correcting this imbalance. As already indicated, section 11(1) makes all regulated entities subject to price controls determined by the Transport Economic Regulator. Section 21 goes further, authorising the Regulator to direct reductions in tariffs or fees of up to 10% of annual turnover.[786] Applied to e-hailing, these provisions could cap the commission rates charged by platforms, mandate minimum driver shares of fares, or prohibit the unilateral imposition of booking fees. Read purposively, they could finally address the income vulnerabilities identified by the Market Inquiry. But as long as the Act remains dormant, or the provisions are never operationalised (since they are discretionary), these powers exist only on paper.

The absence of statutory income protections has broader consequences. Without limits on commissions or guaranteed revenue shares, drivers are potentially forced to extend their working hours to cover rising costs. Yet, as noted earlier, the regulatory framework is silent on working time and fatigue. Fatigue thus becomes the hidden cost of income insecurity: drivers extend their shifts to make up for

782 70 of 2002.
783 Regulation 26(1)-(3) of the *Second National Land Transport Regulations* 2025.
784 Regulation 19(c) of the *Second National Land Transport Regulations* 2025.
785 Regulation 19(d) of the *Second National Land Transport Regulations* 2025.
786 Section 21(4) of the *Economic Regulation of Transport Act* 2024.

commissions and fees, undermining both their health and passenger safety. As the Market Inquiry put it:

> E-hailing operators are often in a weaker bargaining position and have no pensions, sick leave, or decent work conditions. These operators allege that they can have their accounts deactivated from the platform without any recourse, *work long hours in order to secure decent earnings, and have no influence on fare setting – despite the fact that they own their vehicles and they are subjected to all operating costs*.[787]

Consequently, the current system creates an illusion of order with transparent fares, branded vehicles, and traceable trips, but it leaves the underlying causes of precarity unaddressed. Passengers are assured of clear pricing, regulators can verify licenced vehicles, and platforms can collect up to a quarter of each fare, along with booking fees, without statutory oversight. Meanwhile, drivers are caught between high compliance costs and unregulated commission structures. Their economic instability is not due to bad timing but is built into the current regulatory framework. By not directly regulating commissions and revenue sharing, the law permits the very practices criticised by the Competition Commission to continue unchecked.

Deactivation, due process and dispute resolution

It is submitted that if employment classification relates to drivers' formal status, and income regulations determine their financial security, then the issue of deactivation likely strikes at their vulnerability. Deactivation, the unilateral suspension or removal of a driver from a platform, is effectively the digital equivalent of dismissal. It immediately cuts off a driver's access to passengers and thus their livelihood. The Competition Commission's Market Inquiry clarified this when it identified arbitrary deactivation as the most urgent risk drivers face, noting that platforms possess unilateral power to suspend drivers without meaningful recourse, often in reaction to passenger complaints or algorithmic decisions.[788]

Before the wave of amendments and regulations, deactivation occurred entirely within the private contractual domain. Platforms suspended drivers without notice,

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[787] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 36. Own emphasis.

[788] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* ix and 34.

did not disclose reasons, and offered no internal or external appeal.[789] This was inconsistent with labour laws, at least according to the findings in the *Uber CCMA* case.[790] However, the Labour Court set aside this ruling on review.[791] Deactivation, in the Court's view, could not be equated with dismissal in the absence of a contractual employment relationship.[792] The irony in the judgment lies in its reference to the possible perception that the decision was made on a "technicality".[793] Although the Court admitted the decision may seem overly technical, it still chose not to exercise its discretion under section 158(1)(g) of the Labour Relations Act to achieve a fairer outcome, such as remitting the dispute or ensuring Uber BV is properly joined. This strict focus on corporate separateness and procedural rules sacrificed substantive justice in the gig economy.

The 2025 Regulations represent the first effort to address deactivation in transport law itself. They do not confer employee rights, but they impose procedural safeguards on platforms. Regulation 21 authorises platforms to suspend or cancel access only if a driver contravenes the Act or Regulations:

> (1) The e-hailing platform provider may suspend or cancel access to the e-hailing platform of the operator and the operator's driver as soon as it becomes aware of non-compliance with the access conditions, provided it first gives notice of its intention to suspend or cancel such access, giving reasons for the intended suspension or cancellation and calling the operator to show cause why access should not be suspended or cancelled within 48 hours of such notice.
>
> (2) Such platform provider must give notice of such suspension or cancellation and the reasons to the regulatory entity that issued the operating licence to the operator as soon as possible, but not later than 48 hours after such suspension or cancellation by data message.
>
> (3) Where the operator has been suspended or cancelled by all e-hailing platforms, that operator must notify the regulatory entity that issued the operating licence and cease to operate until access has been restored and must hand in the operating licence to the regulatory entity within 48 hours of the suspension or cancellation until access has been restored.[794]

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789 *Uber CCMA*, para 62.
790 *Uber CCMA*, para 62.
791 *CCMA Labour Court*, paras 77-79.
792 *CCMA Labour Court*, paras 77-79.
793 *CCMA Labour Court*, para 101
794 Regulation 21(1)-(3) of the *Second National Land Transport Regulations* 2025.

This marks a fundamental change from the pre-reform vacuum: for the first time, platforms are legally obliged to justify deactivation and to bring the regulator into the loop.

Regulation 22 further protects drivers by prohibiting exclusivity. It expressly allows operators to affiliate with multiple platforms simultaneously, provided they notify the regulator within 48 hours.[795] As noted earlier, this multi-homing provision reduces the lock-in that dominant platforms might otherwise impose, potentially ensuring that a driver suspended from one platform is not automatically excluded from all.

Despite these reforms, deactivation enforcement remains limited. The Regulations do not mandate platforms to disclose evidence against a driver, offer an oral hearing, or permit independent review of the decision. The 48-hour show-cause period provided for in Regulation 22 is crucial but might be insufficient when allegations are complex or rely on unclear algorithmic data. Additionally, although platforms are required to inform regulators of suspensions, there is no legal obligation for regulators to conduct investigations or to reinstate drivers who are unfairly excluded.

The broader legal framework compounds these limits. Appeals under section 92 of the NLTA lie against decisions of regulatory entities, not against private platform suspensions. This means that while a driver can challenge a refusal of an operating licence, they cannot appeal a platform's decision to deactivate them, even though the economic consequences are identical to dismissal.

Transport justice

Any credible regime for e-hailing must be judged not only by whether it legalises entry or disciplines market power but by whether it expands fair access to mobility. In South Africa, that inquiry has a constitutional texture: the duty to respect, protect, promote and fulfil rights,[796] coupled with equality[797] and freedom of

[795] Regulation 22(1)-(2) of the *Second National Land Transport Regulations* 2025.
[796] Section 7(2) of the *Constitution*.
[797] Section 9 of the *Constitution*.

movement,[798] loses force if transport remains expensive, unsafe, or geographically exclusive. The current statutes make significant progress: apps are required to disclose fares, vehicles must have licences and branding, and platforms are required to register.

However, justice is ultimately judged by the results seen in practice or viewed historically. It bears repeating that the legacy of apartheid endures in present-day South Africa, evident in the geographic displacement of black communities to the outskirts, known as dormitory townships, like Khayelitsha in Cape Town and Soshanguve in Pretoria.[799] These areas were intentionally separated from economic centres by the *Group Areas Act* and related planning laws. Residents still face lengthy, costly commutes to work.[800] Informal settlements and rural outskirts are even more isolated.[801] Consequently, the framework introduced by the Amendment Act, the 2025 Regulations, and the latent powers in the *Economic Regulation of Transport Act* must therefore be read through the justice lenses of affordability, safety, service quality, ownership, inclusion, and value distribution. What this could reveal is the extent to which much of the promise remains either latent or unrealised.

Affordability and pricing

The reforms have undeniably made prices more visible. The 2025 Regulations oblige platforms to display the estimated fare before a trip and the actual fare upon completion, with the obligation hard-wired into the app itself.[802] They also require that every journey generate an electronic receipt, recording the fare paid, route, and operator and vehicle details.[803] These measures ensure that the numbers are surfaced up-front and memorialised afterwards in a durable record. Parliament's

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798 Section 21 of the *Constitution*.

799 See section 2.3.3 above. Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 4; Giddy 2019 *African Geographical Review* 231.

800 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 765; Akin and Kona 2021 https://www.southafricanlabourbulletin.org.za/unsafe-and-inefficient-public-transport-endangers-our-lives/.

801 Akin and Kona 2021 https://www.southafricanlabourbulletin.org.za/unsafe-and-inefficient-public-transport-endangers-our-lives/.

802 See generally regulation 16 of the *Second National Land Transport Regulations* 2025.

803 See generally regulation 25(2) of the *Second National Land Transport Regulations* 2025.

insertion of section 66A of the NLTA reinforces this logic by expressly empowering the Minister to regulate app standards,[804] thus embedding transparency duties at the statutory level.

But visibility is not fairness. The Market Inquiry documented how dynamic pricing routinely stranded passengers during storms, concerts, and peak demand, with fares leaping fivefold:

> Dynamic pricing normally kicks in at the worst possible time for passengers, for example, when it is raining, or at night after a major event. There are also concerns that dynamic pricing may lead to overcharging passengers. According to Bolt, the passengers may end up paying ten times more. The Commission has observed that, on 2 December 2018, after the Global Music Festival, passengers were left stranded because of dynamic pricing. Some concert goers were charged over R1000, compared to a normal cost of around R200. However, Uber committed to refunding affected passengers, and attributed the problem to network coverage challenges and traffic flow mismanagement at the event.[805]

This shows that affordability volatility was not incidental but structural: platforms' reliance on surge pricing and opaque algorithms undermined predictability for low-income commuters. This is particularly true when considering that e-hailing's highest usage remains in wealthy urban centres, where digital infrastructure, consumer buying power, and safety conditions support viable operations.[806] Conversely, townships and peri-urban areas are underserved due to infrastructure issues, security risks, and lower profit margins.[807] Consequently, without proactive and intentional regulation, e-hailing risks perpetuating exclusion with a digital façade. These concerns remain untouched by the NLTA and its amendments.

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804 See generally section 66A(4)(a) of the *National Land Transport Amendment Act* 2024.

805 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 21.

806 Commenting on the distribution of Bolt e-hailing services in 2021, the Competition Commission observed that "Bolt currently operates in Johannesburg, Pretoria, Cape Town, East London, Port Elizabeth, Emalahleni, Ermelo, George, Mossel Bay, Kimberley, Knysna, Plettenberg Bay, Ladysmith, Mahikeng, Mbombela, Mthatha, Pietermaritzburg, Polokwane, Potchefstroom, Klerksdorp, Queenstown, Thohoyandou and Worcester. inDriver entered the South African market in February 2019 and offers services in Cape Town and Johannesburg." Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* v.

807 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 6.

It is the *Economic Regulation of Transport Act* that carries the latent affordability lever.[808] Section 11(1) subjects regulated entities to tariff determinations by the Transport Economic Regulator. Sections 20–21 authorise the issuance of compliance notices or even mandates to reduce tariffs or fees, with a cap of 10% of annual turnover. Interpreted deliberately, these provisions enable the government to limit extractive commissions, curb predatory fares, and ensure a minimum income share for drivers. They are not merely gentle suggestions, but legally binding commands aimed at regulating markets. However, until these provisions are enacted and enforced, affordability is only marked by disclosure. Consumers can see the fare but cannot assess its fairness during critical moments, such as in the rain, at night, or after events, when mobility is most vital.

Safety, service quality, and regulatory capacity

Justice also requires that rides be safe, reliable, and dignified.[809] The NLTA makes that a direct state duty: section 5 obliges the Minister to promote passenger safety[810] and to ensure public transport is of an acceptable standard and readily accessible.[811] That obligation now runs through to platform design. By recognising e-hailing in section 66A as a regulated mode,[812] Parliament created a statutory hook to embed safety features in the software layer.

The Regulations operationalise that design. Regulation 20 prohibits platforms from granting access to drivers unless their devices are RICA/ECA-compliant,[813] passengers are properly registered[814] and the driver holds a valid operating licence.[815] Regulation 21 requires reasons and notice before suspending access[816] and obliges platforms to notify regulators within 48 hours,[817] shifting deactivation from a purely

808 Subject to the usual disclaimer, its applicability to e-hailing is dependent on a ministerial section 4(2) declaration.
809 Jennings "Public transport interventions and transport justice in South Africa: a literature and policy review" 766.
810 See section 5(4)(g)(ii) of the NLTA.
811 See section 5(4)(h)(iii) of the NLTA.
812 See section 66A(4)(a)(iv) of the NLTA.
813 Regulation 20(b) of the *Second National Land Transport Regulations* 2025.
814 Regulation 20(c) of the *Second National Land Transport Regulations* 2025.
815 Regulation 20(d) of the *Second National Land Transport Regulations* 2025.
816 Regulation 21(1) and (2) of the *Second National Land Transport Regulations* 2025.
817 Regulation 21(3) of the *Second National Land Transport Regulations* 2025.

private act to a supervised event. Regulation 24 insists on type-approved electronic devices,[818] while Regulation 25's receipt requirement ensures every trip can be audited, investigated, or traced in the event of complaints or crime. Regulation 26 demands visible branding of vehicles with operator details and contact numbers.[819] Together these measures make safety not an aspirational norm but a statutory condition of operation.

Safety is also integrated into the licensing process. Section 62(1)(c) of the NLTA requires licence applicants to sign a statement of compliance with labour laws and sectoral determinations, a bridge that ties fair working conditions to the legality of service. Further, section 79 authorises regulators to suspend or withdraw an operating licence if the holder or its employee is convicted under occupational-safety or labour-relations laws.[820] These provisions mean that violations of safety and labour standards are not merely external to transport law but can directly cost an operator its licence.

Yet, as the Market Inquiry warned, legal text cannot substitute for institutional capacity. The Inquiry found that Provincial Regulatory Entities and municipalities faced severe licensing backlogs, fragmentation of enforcement and weak enforcement, producing widespread illegality and eroding safety culture.[821] In particular,

> It appears that government is struggling to deal with challenges at PREs and planning authorities, and that these problems continue to exist in major provinces – with Gauteng, KwaZulu-Natal and Western Cape affected the most. While some municipalities (such as Tshwane) do not have backlogs in issuing directives to the PRE, backlogs are nevertheless encountered at the PREs. Limited enforcement capability results in illegal operations, and this is not sustainable where 79% of e-hailing operators do not have valid licences. Given the significant proportion of illegal operators, this raises a question of whether licences should be granted to all e-hailing operators that meet specific requirements – such as vehicle fitness – and whether the

818 Regulation 24(a) of the *Second National Land Transport Regulations* 2025.
819 Regulation 26(1)-(3) of the *Second National Land Transport Regulations* 2025.
820 See section 79(2) of the NLTA.
821 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 11.

> government should be less concerned about limiting the number of e-hailing operators in the industry using quantity restrictions.[822]

Elsewhere, the Commission also observed that,

> Illegal operations continue despite the moratoria, *and it seems there is no credible plan by government to address illegal operations*. Submissions received indicate that public transport law enforcement is very limited and not prioritised by municipalities and provincial governments.[823]

It is for this, and many other reasons, that the Commission recommended "that a specialised division within SAPS be created to deal with all public transport related matters."[824] Consequently, it is evident that while the new regulatory framework embeds safety requirements, it relies on regulatory arms too frail to carry them out.

Another gap lies in working time and fatigue. Neither the NLTA nor the 2025 Regulations impose limits on hours of service. This is striking given the amended section 5(4)(k)'s express safety mandate[825] and the lived reality that drivers, squeezed by high commissions and compliance costs, often work extended shifts.[826] The Market Inquiry recorded that drivers reported working "long hours in order to secure decent earnings"[827] with predictable risks to health and passenger security. In other sectors, statutory limits on service hours are standard. For example, the Market Inquiry observed that,

> The Department of Labour publishes a sectorial determination for the taxi industry, in terms of the Basic Conditions of Employment Act. The sectorial determination outlines minimum wages, maximum hours of work and minimum rest periods, and (paid)

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822 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* x.

823 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 8. Own emphasis.

824 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 214.

825 Section 5(4)(k) of the *National Land Transport Amendment Act* 2024, reads as follows: "(k) promote measures to ensure the safety of pedestrians and all forms of passengers using public transport by means of regulations or the publication of guidelines or standards or through other appropriate measures."

826 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34.

827 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34.

annual, sick and paternity/maternity leave. Since its publication in 2005, the determination has been regularly updated, to change the minimum wage.[828]

Arguably, without similar arrangements in the e-hailing sector, fatigue management is left to the discretion of private platforms. The omission reflects a justice deficit: the law regulates the device and the receipt but not the human being behind the wheel.

Platform ownership, inclusion, and value distribution

Transport justice is not only about affordability or safety; it is also about the deeper questions of who may legally participate in the system, who is accountable for compliance, and who ultimately captures the value of mobility services. South Africa's legal framework now attempts, for the first time, to anchor these issues in statutory and regulatory form, but the tension between visibility and equity still persists.

The NLTA created the initial framework for market entry. Section 50 requires that no-one may operate public transport services, including e-hailing, without an operating licence,[829] and section 62 requires every applicant to sign a statement undertaking to comply with labour laws and sectoral determinations.[830] Read purposively, this connects labour rights, safety, and accountability to the very issuance of licences. Additionally, sections 39 and 55 extend this logic to planning: moratoria may be imposed if there is a surplus of supply[831] and licences must be granted or withheld in line with integrated transport plans.[832] In theory, this ties

828 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 158.

829 Section 50(1) of the NLTA.

830 Section 62(1)(c) of the NLTA.

831 Section 39(1) of the NLTA.

832 Section 55(1)-(2) reads as follows: "55. (1) Before the National Public Transport Regulator or a Provincial Regulatory Entity considers any application for the granting, renewal, amendment or transfer of an operating licence, other than a tourist transport service or charter service, and other than a contracted service contemplated in section 56, it must by notice in the prescribed manner inform all planning authorities in whose areas the services will be operated of the application with the request to give directions with regard to the application based on its integrated transport plan within the period stated in the notice. (2) The planning authority must in the prescribed format—(a) indicate whether there is a need for the service on the route or routes or in the area or areas in terms of its integrated transport plan or not, and, if there is a need for such service, direct the National Public Transport Regulator or a Provincial Regulatory Entity to grant the operating licence and make any recommendations it considers fit regarding

ownership and participation to spatial justice. In practice, however, as the Market Inquiry documented, the use of moratoria has brought mixed results, with moratoria persisting for more than a decade in some provinces,[833] shutting out new entrants in precisely those communities that most need access. It is submitted that instead of redistributing opportunities, licensing bottlenecks reinforced exclusion, particularly for townships and peri-urban areas that already struggle with access to public transport.

Section 41 of the NLTA adds another layer by permitting contracting authorities to enter into negotiated contracts with operators once only, specifically to integrate services into transport plans, promote the empowerment of small or historically disadvantaged businesses,[834] or restructure municipal operators to avoid monopolies.[835] These contracts serve as targeted instruments of inclusion, capable of reshaping ownership and correcting historic inequities. Yet their scope does not extend to e-hailing. The very design of section 41 assumes traditional, scheduled services operating in defined networks, not decentralised, app-based platforms. Arguably, the result is that e-hailing drivers and operators are excluded from one of the most direct statutory levers of redistribution. They must compete in the open market without access to negotiated entry routes that other modes can rely on for empowerment and transformation. This exclusion deepens the structural inequity: just as moratoria and backlogs shut out new entrants, the negotiated-contract route bypasses e-hailing altogether, leaving its workers doubly exposed to market forces without countervailing redistributive measures.

Local alternatives like Teksi Ride,[836] supported by the South African National Taxi Council (SANTACO), aim to regain value through local ownership.[837] Launched in

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conditions to be attached to the operating licence, having due regard to its integrated transport plan, and if its integrated transport plan is not yet finalised or is inadequate, it must take the decision based on due inquiries and investigations carried out by it; and (b) submit such response to the National Public Transport Regulator or a Provincial Regulatory Entity, as the case may be, within the prescribed period or the period stipulated in the notice."

833 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Main Report (Non-confidential)* 170-171.

834 Section 41(1)(b) of the NLTA.

835 Section 41(1)(c) of the NLTA.

836 The service even has a cell phone application and website: https://teksiride.com

2023, Teksi Ride is believed to offer a viable competitive edge against international companies,[838] offering services such as the following:[839]

- Prioritising safety with features like SOS panic buttons, real-time tracking, and strict driver vetting. A live call centre for emergency assistance and trip monitoring is available in each province.
- The Teksi Ride app is zero-rated for data, allowing users to book rides without needing airtime. This ensures access even in low-income or rural communities.
- The app offers interfaces and support in various South African languages like isiZulu, Sesotho, and Xitsonga. This makes the service inclusive and culturally accessible.
- Riders benefit from consistent, affordable fares with no surge pricing. Vehicles are kept clean and regularly inspected for quality and comfort.
- Teksi Ride is tailored to South African needs, integrating global e-hailing standards in safety, technology, and support. It blends local insight with international innovation.

Yet, caution has been raised:

> SANTACO too is not without blemish. It has been accused of operating like a mafia by using its position as a representative of the country's major public transport operators to bully competitors. As it enters the ride-hailing market and into direct competition

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837 TopAuto 2023 https://topauto.co.za/news/87708/south-african-taxi-council-launching-new-e-hailing-app-in-october-details/. The app was described as follows: "The app will open its doors to all vehicles with operator's licences in South Africa and through this it will ensure vehicle compliance and safety for riders, as well as avoid oversaturation of drivers. Additionally, all drivers and operators on the platform will be required to be registered under Santaco and undergo training."

838 It is described as follows: "Teksi Ride is proud to be at the forefront of South Africa's e-hailing revolution – boldly local, fiercely reliable and committed to real change on the ground. Born from South African innovation and shaped by the needs of South African commuters and drivers, Teksi Ride is not just another app – it's a movement". See ITWeb 2025 https://www.itweb.co.za/article/teksi-ride-sas-most-disruptive-homegrown-e-hailing-solution-shifts-into-high-gear/8OKdWMDX5ykMbznQ.

839 ITWeb 2025 https://www.itweb.co.za/article/teksi-ride-sas-most-disruptive-homegrown-e-hailing-solution-shifts-into-high-gear/8OKdWMDX5ykMbznQ.

with platforms it once wanted banned, it will be interesting to see how the ride-hailing competitive landscape evolves in South Africa.[840]

As noted earlier, one of the options for incumbents is to adapt and operate as the competitors.[841] After years of fighting, SANTACO is now a player in the ride hailing field. However, the extent to which this service will allay competition fears or advance transport justice remains to be seen. Consequently, this gap in statutory redistribution underscores why localised initiatives take on outsized significance. In the absence of negotiated-contract opportunities, e-hailing's prospects for empowerment and transformation depend heavily on how alternative models are conceived and implemented in practice.

The Amendment Act partially addressed this by inserting section 66A, which explicitly defines e-hailing as a mode of public transport and subjects platforms to regulation. Crucially, section 66A(6) prohibits platforms from enabling trips by unlicenced vehicles, ensuring that participation is tethered to lawful operation. Section 8(1)(fB) goes further, empowering the Minister to issue "codes of conduct for operators or drivers of public transport services, *which may differ in respect of different types of services or different categories of operators or drivers*".[842] This is a tool that, in principle, could be used to regulate how value and responsibility are shared. Yet the Act stopped short of compelling platforms to embed inclusionary practices or equitable distribution into their business models.

The 2025 Regulations mark a decisive step toward accountability, most notably through Regulation 15. This provision requires that every e-hailing platform provider be a natural or juristic person incorporated under South African law; or a person with citizenship or permanent residence in South Africa; and have permanent business premises in the country.[843] This is more than an administrative detail. It marks a structural shift in ownership and accountability. In the pre-reform vacuum,

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840 Modise 2023 https://techcabal.com/2023/10/04/santaco-ride-hailing/#:~:text="With%20that%20in%20mind%20and,decided%20to%20enter%20that%20market."&text=One%20of%20the%20ride%2Dhailing,of%20its%20ride%2Dhailing%20service.

841 See discussion under section 3.3.2 above.

842 Own emphasis.

843 See regulation 15(2) of the *Second National Land Transport Regulations* 2025.

platforms such as Uber operated through complex offshore arrangements,[844] insisting that contracts were concluded with Uber BV in the Netherlands rather than Uber South Africa. This corporate opacity was exposed in the *Mokhutswane* litigation,[845] where the National Consumer Tribunal dismissed a driver's complaint partly because he could not identify the correct legal entity against which to proceed.[846] This would explain why, perhaps, the Department of Transport had suggested that for e-hailing platforms to operate in South Africa, one of the requirements would have been to mandate:

> ...that e-hailing companies should only participate in the South African market if they operate through a South African registered company; secondly that e-hailing companies financial transactions must be through a South African registered bank and lastly that; … *the South African company through which the e-hailing company will be trading will ensure that at least 25% equity is held by the corporate entity chosen as empowerment vehicle of choice at all times*.[847]

While the latter recommendation did not make it to the Amendment Act or the 2025 Regulations, one could argue that by compelling local incorporation, residence, and premises, Regulation 15 in its current form could potentially ensure that there is now always a legally recognisable and domestically accountable counterparty. It creates a physical locus for regulation, tax, and enforcement, and it ties platform governance back into South Africa's legal system. This closes the gap that once allowed global corporations to externalise risk locally while extracting profits abroad.[848]

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844 Today, major e-hailing platforms like Uber, Bolt, and DiDi are owned by foreign entities, operate through offshore holding companies, and they repatriate profits to their countries of origin. Howson 2022 https://researchictafrica.net/2022/04/01/digital-facade-shields-e-hailing-companies-from-accountability-to-drivers-or-passengers/#:~:text=They%20aren%27t%20subject%20to,algorithm%20and%20not%20a%20human.

845 *Mokhutswane v Uber South Africa (Pty) Ltd* (NCT/133158/2019/148(1)) [2019] ZANCT 137 (12 August 2019).

846 *Mokhutswane*, paras 30-31.

847 Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 38. Emphasis added.

848 In one scathing account of how e-hailing companies operate, one can clearly see the stakes: "[m]eanwhile, despite the high commissions the platform companies take from each transaction, their operating costs are miniscule. They tend to own very little, if any, physical assets in the places they operate, such as cars, buildings, and mobile connectivity infrastructure. They aren't subject to many taxi and transport regulations – claiming to be technology companies rather than transport companies – and they also don't contribute directly to road maintenance. If they decided to exit the South African market, they could do so with very little cost or difficulty – and regulators know it. Moreover, they are set up as legal entities in far away places, making it more difficult for them to be accountable in the South African courts. For instance Uber B.V., a

Regulation 18 complements this by requiring that all driver–platform contracts be reduced to writing and governed by South African law.[849] Furthermore, Regulation 23 ties these agreements into the licensing process itself, giving regulators visibility over contractual terms.[850] Read in conjunction with Regulation 21, which requires platforms to provide reasons for suspensions and notify regulators, and Regulation 22, which prohibits exclusivity, these rules collectively potentially curtail the unilateral power of platforms to foreclose drivers' access to work. They are not merely compliance mechanisms; they are redistributive tools aimed at levelling an asymmetrical relationship.

Still, the deeper equity question is unresolved: who captures the value of each trip? The *Mokhutswane* case illustrates the stakes. The driver challenged Uber's unilateral increase in commission from 20% to 25%, arguing that it rendered his work economically unviable.[851] The case illustrates digital contract opacity: the agreement between the driver and Uber was made via an app, unsigned, and not available in either physical or electronic form.[852] The Tribunal recognised that these modern contracting methods put consumers like drivers at a structural disadvantage,[853] yet it ultimately failed to provide redress. The Tribunal declined jurisdiction, stating that,

> The correct citation of the Respondent presents a substantial difficulty to the Tribunal; and from the submissions made by the Appellant, also for the Appellant. On the

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subsidiary of Uber, contracts with South African drivers, and is a limited liability company incorporated in the Netherlands. They are also very adept at avoiding regulatory costs, including those associated with employing people, such as minimum wage, unemployment insurance, statutory sick pay, and maternity leave. They do this by classifying their workers as independent contractors rather than employees. Most platforms claim this gives workers flexibility to be their own boss, with some referring to their workers as 'partners'. But this is where our labour law just isn't equipped to deal with the nuances of digital governance and algorithmic power – when a boss looks like an algorithm and not a human." Howson 2022 https://researchictafrica.net/2022/04/01/digital-facade-shields-e-hailing-companies-from-accountability-to-drivers-or-passengers/#:~:text=They%20aren%27t%20subject%20to,algorithm%20and%20not%20a%20human.

849 Regulation 18(c) of the *Second National Land Transport Regulations* 2025.

850 Regulation 23(2) reads as follows: "[i]n addition to any other documents that may be required in terms of the National Land Transport Regulations, 2009, the applicant must also submit a copy of the agreement signed or terms and conditions accepted by the applicant with the e-hailing platform provider, which complies with the requirements listed in regulation 18."

851 *Mokhutswane*, paras 11-12.

852 *Mokhutswane*, para 10.

853 *Mokhutswane*, para 38. In its own words, the Tribunal said as follows: "The Tribunal acknowledges the difficulties faced by the Appellant in seeking and obtaining relief based on an agreement concluded with the Respondent whilst using an electronic application process."

> evidence before the Tribunal, the Tribunal is unable to confirm that Uber South Africa (Pty) Ltd exists; that the correct party is before the Tribunal; and that the correct party was served with notice of the application in accordance with Regulation 6 of the Rules for the conduct of matters before the Tribunal.
>
> … Accordingly, the Member was correct in finding that the Appellant did not prove that the Respondent was correctly cited by the Appellant; and that the Respondent, as cited by the Appellant, factually exists.[854]

Substantively, the Tribunal held that the dispute was contractual in nature and thus fell outside its statutory jurisdiction under the CPA.[855] While the appellant framed his claim in terms of unfair contract terms under section 41 of the CPA, the Tribunal ruled that his primary grievance, the unilateral increase in commission, amounted to a private commercial dispute, not a contravention of the CPA's consumer protections.[856]

The Tribunal recognised the challenge of assessing contracts formed through app-based platforms without tangible documentation and stressed that this form of digital contracting warrants more thorough regulatory review by the NCC.[857] Nonetheless, it did not refer the matter or instruct the Commission to take action.

The decision left the driver without remedy, stranded in a grey zone between labour law (which excludes contractors), consumer law (which declined jurisdiction), and transport law (which had not yet activated economic regulation). It exemplifies the danger of treating platform governance as a private contract rather than public regulation, with value ultimately lying with platforms.

The *Economic Regulation of Transport Act* could address this imbalance directly with its provisions on price regulation and market investigation, designed to prevent unilateral contractual changes at their source and to restore a measure of bargaining parity between platforms and drivers. Under sections 38[858] and 43,[859] the Regulator is empowered to examine market structures and supply distortions, with section 43

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854 *Mokhutswane*, paras 30-31.
855 *Mokhutswane*, paras 36.
856 *Mokhutswane*, paras 36-37.
857 *Mokhutswane*, paras 38-39.
858 The Regulator may conduct market inquiries under section 38(g) and investigate complaints under section 38(j) of the *Economic Regulation of Transport Act* 2024.
859 See section 42(3) and (4) of the *Economic Regulation of Transport Act* 2024.

specifically requiring coordination with the Competition Commission. Yet this all depends on whether the Minister acts to make section 4(2) declarations pertaining the e-hailing sector.

In summary, South Africa's current framework mandates that platforms operate as local legal entities, have physical premises, contract under South African law, and comply with regulatory oversight. These steps establish accountability and enable redistribution. However, the exclusion of e-hailing from negotiated contracts under section 41, along with ongoing licensing bans and unused economic regulation powers, prevents the fulfilment of fairness. Justice demands not just visible platforms but also the use of redistributive tools, such as negotiated access, price regulation, and inclusive planning, to ensure that the benefits of mobility return to the communities and workers who provide it.

Synthesis of the regulatory framework for competition, labour, and transport justice

South Africa's 2025 reforms have moved e-hailing out of the legal shadows and into the statutory mainstream. Platforms are now registered, drivers are licenced, trips are receipted, and compliance duties are made explicit. Yet across the three axes of competition, labour, and transport justice, the framework displays the same paradox: it creates visibility but fails to resolve the substantive distortions already diagnosed by the Competition Commission's Market Inquiry and confirmed in litigation.

On the competition axis, the law has disciplined form but left substance untouched. Section 66A of the NLTA and the 2025 Regulations impose licensing and platform duties, but they do not curb the market dominance of Uber and Bolt that the Market Inquiry found to be entrenched in the form of network effects, moratoria, and exploitative commissions. The *Economic Regulation of Transport Act* contains some tools for systemic price and commission regulation, but until it is brought into force, fares remain governed by platform algorithms. The result is procedural order without structural balance: entrants are tightly regulated, while dominant incumbents retain freedom over pricing, data, and commissions.

On the labour axis, statutory provisions often create contradiction rather than protection. Section 62(1)(c) NLTA links licensing to labour law compliance, and section 79(2) allows withdrawal for breaches of labour law, but these clauses function more as licensing obstacles than real safeguards. The Amendment Act grants the ministerial codes of conduct (section 8(1)(fB)), and Regulations 17–18 require written contracts and data transparency, yet they reinforce drivers as "operators" instead of employees. The CCMA in *Uber CCMA* attempted to challenge this fiction by recognising drivers as employees, but the Labour Court upheld strict contractual formalism, stating that no employment existed without a direct contract between Uber SA and the driver. The Market Inquiry's conclusion that platforms exercise substantial control while denying responsibility remains unchallenged. In practice, drivers face compliance costs and algorithmic discipline but lack statutory recognition of their employment rights, leaving them vulnerable even within the formal regulatory framework.

On the transport justice axis, the framework gestures towards inclusion but fails to institutionalise it. Fares must now be displayed and receipted, devices approved, and platforms locally incorporated with premises in South Africa. However, affordability remains subject to dynamic pricing until the *Economic Regulation of Transport Act* is activated (and the Minister makes a section 4(2) declaration for it to apply to e-hailing), and working-time limits are still absent despite clear safety mandates in section 5(4)(k) of the Amendment Act. Licensing moratoria and area restrictions continue to institutionalise scarcity, while section 41's negotiated contracts, a key empowerment lever in public transport, exclude e-hailing altogether. Meanwhile, the *Mokhutswane* case illustrates how digital opacity and offshore structuring prevent drivers from contesting unilateral commission changes under consumer law, exposing how value extraction is shielded from meaningful oversight.

Across these three axes, the same pattern emerges. The law requires drivers and platforms to be visible to the state, but it does not yet deliver equity in outcomes. Competition is shaped but not levelled, labour is formalised but not protected, and justice is acknowledged but not realised. The core charges against the framework are therefore clear:

- It disciplines weak actors, individual drivers and small operators, while sparing dominant platforms from structural oversight.
- It imposes compliance costs without corresponding protections, leaving drivers in a state of visible precarity.
- It entrenches exclusion through moratoria, area restrictions, and administrative backlogs, undermining the constitutional imperative of equitable mobility.
- It leaves affordability and value distribution to platform discretion, despite statutory tools that could redress extractive models.

These shortcomings supply the impetus for comparative analysis. Only by contrasting South Africa's framework with international approaches that have tackled commissions, worker status, safety rules, and universal access can the limitations exposed here be translated into reform pathways.

Conclusion

The trajectory traced in this chapter is unmistakable: South Africa has travelled from silence to recognition, from vacuum to regulation. The 2025 reforms have ended the statutory twilight zone in which drivers and platforms once operated. Section 66A of the NLTA, the 2025 Regulations, and the (potential) scaffolding of the *Economic Regulation of Transport Act* together build the most comprehensive e-hailing regime the country has ever seen. For the first time, platforms must register, drivers must be licenced, apps must disclose fares, and compliance must be auditable. The law has moved from ambiguity to density.

Yet this density masks persistent deficits. Across the three levers of competition, labour, and transport justice, the reforms show a consistent pattern: they discipline form but leave substance largely untouched. Competition law has curbed arbitrary suspensions and prohibited exclusivity, but it has not curtailed exploitative commissions or algorithmic pricing. Labour law has folded drivers into the licensing net while denying them recognition as workers, leaving them visible as operators but

invisible as employees. Transport justice is evoked in rhetoric but delivered procedurally: fares are disclosed but not stabilised; safety is tied to devices and receipts rather than human fatigue; moratoria and negotiated contracts redistribute opportunities to incumbents but exclude e-hailing from the empowerment levers that matter most.

What becomes apparent is a paradox: legality exists without justice. The framework imposes strict rules on the most vulnerable actors, including drivers, small operators, and new entrants, while the powerful platforms remain largely exempt from systemic oversight. It provides transparency without fairness, recognition without redistribution, and order without justice.

These shortcomings are not incidental. They strike at the heart of South Africa's constitutional imperatives for equality, dignity, freedom of trade, and fair labour practices. They also implicate section 195's demand for accountable and equitable administration. The reforms close the vacuum but perpetuate structural exclusions and power asymmetries.

This is the charge that now frames the comparative inquiry. Chapter 5 tests whether alternative jurisdictions have succeeded where South Africa still falters: disciplining platform dominance, embedding worker protections, stabilising fares, and institutionalising transport justice. The comparison is not decorative but diagnostic. It exposes both the contingent choices of South Africa's framework and the possible pathways for reform. Only through that comparative lens can legality be converted into justice, and procedure into substance.

5 Comparative Dimensions of E-Hailing Regulation in Kenya, Tanzania and India

Introduction

South Africa now stands at a pivotal juncture. Chapters 2 through 4 have shown how deeply historical legacies, institutional fragmentation, and platform disruption have destabilised the public transport order. The Draft Regulations of 2024 mark progress by recognising e-hailing, but recognition alone is insufficient: without enforceable design, law becomes declaratory rather than directive. What is needed are practical, statutory instruments that can translate the legal promises of equality, dignity, and accountability into the daily realities of rides, fares, and work.

This chapter widens the scope to jurisdictions that have attempted this translation. It does so not to romanticise 'success stories' nor to claim that South Africa can simply import foreign models, but to identify legal levers that have been enacted elsewhere and can potentially address the same functional problems. Kenya, Tanzania, and India each illustrate distinct philosophies of regulation, reflected in statutory detail. In particular, it will become evident from the ensuing discussion that Kenya focuses on disciplining platform margins, using commission caps, receipts, and due-process rules.[860] Tanzania emphasises fare stability and auditability, using state tariff-setting, meters, and tickets.[861] India seeks a hybrid balance, combining pricing corridors, statutory driver shares, and telematics-based safety and inclusion mandates.[862]

These models show that law can move beyond recognition into enforceability. They provide families of tools, including commission ceilings, pricing corridors, tariffs, receipts, deactivation rules, safety devices, and inclusion quotas, which can be evaluated for constitutional fit and institutional feasibility in South Africa.

860 See broad discussion under section 4.3 below.
861 See broad discussion under section 4.4 below.
862 See broad discussion under section 4.5 below.

The introduction of comparative law at this stage is therefore not a digression but a necessity. It establishes the evidentiary and conceptual foundation for recomposing these tools into a South African blueprint. Accordingly, this chapter aims to craft a bridge between diagnosis and prescription: it equips the discussion with a repertoire of tested instruments to close the gap between the Draft Regulations' promise and the Constitution's demands.

Structurally, the chapter examines the e-hailing legal frameworks of three countries: Kenya, Tanzania, and India. The chapter then highlights some common and differing elements from the discussion, before concluding with a synthesis.

Kenya

Kenya regulates e-hailing primarily through the *National Transport and Safety Authority Act* and the *National Transport Network Companies (Owners, Drivers and Passengers) Regulations*, 2022[863] (2022 Regulations). The *National Transport and Safety Authority Act* establishes the National Transport and Safety Authority as the central regulator of road transport, while the 2022 Regulations provide a dedicated licensing and compliance framework for digital platforms that connect drivers and passengers. These regulations formally recognise transport network companies (TNCs), which are defined as:

> ... a person, entity or company who or that connects transport network passengers with transport network drivers for transport network services exclusively through the offering, use or operation of a transport network platform but does not include a person, entity or company that provides street-hailing taxicab services, limousine or other transportation service arranged by a method other than through a transport network platform.[864]

With this definition, the Kenyan framework makes a clear conceptual distinction between traditional taxi services and app-based e-hailing. For example, traditional taxi operators rely on street hailing, dispatch calls, or pre-arranged bookings through physical intermediaries, whereas e-hailing operators act purely as digital intermediaries, connecting passengers and drivers exclusively on an online

863 *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* 2022.

864 Regulation 2 of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* 2022.

platform or mobile application. This distinction establishes that regulatory obligations, licensing, and liability for e-hailing operators arise not from direct vehicle operation but from their role as technology facilitators within a digital transport ecosystem.

As becomes evident in the discussion to follow below, the 2022 Regulations also mark a decisive shift: they move e-hailing out of the grey zone of contractual arrangements and into a system of legal recognition and statutory oversight. For the first time, platforms are not simply treated as intermediaries but as regulated actors with defined responsibilities toward drivers, passengers, and the state. This regulatory turn positions e-hailing as an integrated, though distinct, component of Kenya's wider public transport system.

In what follows, Kenya's framework is analysed under the exact three dimensions used for South Africa: competition and market structure, labour and worker protection, and transport justice. This allows for a consistent comparison of patterns and differences.

Competition and market structure

Market entry and legalisation

Kenya deliberately legalises e-hailing with a sector-specific licence, so the activity is not a grey zone but a regulated branch of public transport. The regulations open the gate succinctly: "[a] person, entity or company that wishes to offer transport network services in Kenya shall apply… for a transport network licence."[865] This makes platform operation a licenced activity rather than a mere software service.

Regulation 6 then outlines the eligibility criteria, stating that an applicant must be "a body corporate that is legally recognized in Kenya",[866] must be "tax

[865] Regulation 5 of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

[866] Regulation 6(a) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

compliant",[867] must be "duly registered by the Data Commissioner as a data controller or data processor",[868] and must "have a registered office in Kenya".[869] This package establishes accountability in the country: the local corporate structure and registered office link the platform to Kenyan jurisdiction, and the required registration with the Data Commissioner ensures privacy compliance is integrated from the start, not after entry.

Regulation 7 outlines the application dossier, and it is remarkably transparent compared to typical licensing regimes focused on digital platforms. A TNC must submit details such as the 'revenue sharing agreement' between the company, owners, and drivers[870] as well as the pricing mechanism it employs between itself and subscribers.[871] Additionally, it must provide complete fleet lists,[872] the "procedure for handling complaints from drivers, owners or passengers",[873] the platform's activation and deactivation policy (for subscriptions),[874] a tax compliance certificate from the Kenyan Revenue Authority[875] and a registration certificate from the office of the Data Commissioner indicating that the company is a data processor or data controller.[876] Arguably, the requirement of information about the pricing mechanism and take-rate structure upfront is essential because it allows the Authority to understand the most sensitive aspects of a platform's competitive strategy, such as dynamic pricing, commission models, and deactivation policies, before the platform can establish significant market power. Furthermore, this

867 Regulation 6(b) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

868 Regulation 6(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

869 Regulation 6(d) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

870 Regulation 7(b) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

871 Regulation 7(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

872 Regulation 7(e) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

873 Regulation 7(e) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

874 Regulation 7(h) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

875 Regulation 7(j) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

876 Regulation 7(k) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

approach suggests an entry feature with a compliance-focused approach, rather than a laissez-faire attitude: the Authority reviews the actual business model, including pricing and take rates, before issuing the licence. The consequence is that the approach anticipates fewer instances of 'move fast and litigate later' behaviours.

Regulation 8 establishes the decision-making standard and timeline, requiring the Authority to consider "whether the applicant has complied with the requirements… and public interest,"[877] and to decide "within fourteen days."[878] It mandates the issuance of a licence if the applicant is compliant and provides written reasons if refused. The attached Schedule to the Regulations sets the application and renewal fee at KSh 100 000 (around $770) per annum, an amount that indicates seriousness without being a barrier for capable entrants.

The overall sectoral framework is primarily provided by Part IV of the *National Transport and Safety Authority Act,* beyond the TNC-specific rules. Section 29 instructs the Authority to consider the public interest, including the interests of riders and operators, when exercising its licensing discretion.[879] Section 27 permits different licence classes and sets maximum numbers per class,[880] while section 28 allows for exclusive licences with prior public notice.[881] This means that market

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877 Regulation 8(1)(a)-(b) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022. Arguably, the public-interest test and the powers to modify licence conditions under the Regulations and Act can be employed to adjust supply, particularly when congestion or safety concerns increase. This is particularly important in cities where each additional ride has significant external effects.

878 Regulation 8(3) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

879 The provision reads as follows: "The Authority may grant or decline to grant any application for a licence, or grant a licence subject to such conditions as it may consider fit to impose, and, in exercising its discretion, the Authority shall have regard to the public interest, including the interest of persons requiring and those of persons providing facilities for transport, and to such other matters as may be prescribed: Provided that the Authority shall, before granting any road service licence in respect of any vehicle for the carriage of passengers from, through or into, the area of jurisdiction of any County, consult and have regard to the laws of the County relating to the place in the area of such County at which the vehicle may stop or start and the route to be taken by such vehicle."

880 Examples include road service licences, tourist service licences, etc.

881 Section 28(1) reads as follows: "[n]otwithstanding any other provisions of this Act, the Authority may, with the approval of the Cabinet Secretary, and subject to such conditions as it may consider fit to impose, grant to any person an exclusive licence authorizing such person to operate a motor vehicle as the case may be, for the carriage of passengers or goods in

entry is open but regulated: the regulator can admit new players swiftly, using the 14-day timeline outlined in Regulation 8, while also managing route, area, and licence types to prevent congestion or unsafe competition.

Finally, Regulation 10 localises contract law and forum, providing that "the governing law… shall be laws of Kenya"[882] and that disputes from TNC agreements "shall be adjudicated before Kenyan courts or tribunals."[883] For platforms with global holding structures, this single clause reduces enforcement friction for drivers, owners and the regulator. Arguably, the explicit inclusion of the governing-law/fora clause safeguards drivers and owners by ensuring that disputes are settled in Kenyan courts, rather than in distant jurisdictions, thereby protecting against offshore contracting schemes, or the identification of the actual employer where that may be in dispute.

Commission regulation and revenue sharing

Regulation 9 requires moving directly to the extraction point. The TNC must enter into agreements with the vehicle owner[884] and the licensed driver.[885] Furthermore, the agreement must specify that "the commission... shall not exceed 18% of the total earnings of the trip,"[886] and the regulation explicitly prohibits "terms or conditions designed to increase the commission... such that it exceeds 18%."[887] This is a strict limit embedded in every qualifying contract, not just guidance. Arguably, the anti-avoidance clause in Regulation 9(3) closes loopholes (e.g., "safety fees" that function like commissions). If a platform invents a new label to

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such areas, over such routes or between such places and for such period as the Authority may determine, and the provisions of this Act regarding applications for the grant of a licence shall apply to the applications for and grant of any exclusive licence."

882 Regulation 10(1) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

883 Regulation 10(2) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

884 Regulation 9(1)(a) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

885 Regulation 9(1)(b) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

886 Regulation 9(2)(g) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

887 Regulation 9(3) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

circumvent its effective commission rate exceeding 18%, the paper trail lodged under Regulation 7 enhances the Authority's ability to intervene.

Two additional filing requirements solidify the enforceability of the 18% cap, rather than it being merely aspirational. Firstly, Regulation 7 mandates that the "revenue-sharing agreement"[888] and "pricing mechanism"[889] must be submitted during the application process. This provides the Authority with an upfront view of how the 18% is implemented, allowing for the detection of any indirect take-rate channels, such as opaque fees, that could be used to bypass the cap. Secondly, Regulation 16 prevents predatory promotions by requiring that "a transport network company shall ensure that an owner is not negatively affected in cases of promotional price offerings to passengers." Thus, while promotions are allowed, Regulation 16 places the marketing risk back on the platform due to the cap. That deters deep discount and recoup tactics that could bleed owner earnings, particularly during growth phases.

The statutory backstop for all this is outlined in section 30 of the *National Transport and Safety Authority Act*, which allows the Authority to attach licence conditions "for the purposes of ensuring that the fares… are reasonable and ensure fair competition within the transport industry,"[890] and to specify "the charges or the maximum or minimum charges."[891] Read together, Regulation 9's 18% cap disciplines platform-worker value splits, while section 30 allows macro-level interventions on fares to keep consumer prices reasonable and prevent system-wide price squeezes. The implication is that one expects less volatility in driver/owner net earnings, as the cap sets a predictable ceiling on the platform take.

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888 Regulation 7(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

889 Regulation 7(d) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

890 Section 30(3)(a) of the *National Transport and Safety Authority Act* 33 of 2012.

891 Section 30(2)(c) of the *National Transport and Safety Authority Act* 33 of 2012.

Quantitative restrictions

Kenya's framework uses narrow quantitative levers to safeguard safety and delineate markets without stifling innovation. Regulation 19 mandates that prior to vehicle use, there must be valid vehicle insurance,[892] a current certificate of roadworthiness,[893] and the vehicle must not be older than 16 years from its date of manufacture.[894] Additionally, the vehicle should have a hands-free accessory installed.[895] These requirements are not arbitrary; they ensure safety and quality standards are maintained, preventing lower-quality vehicles from competing with safer fleets. Further, safety-centred quantitative limits constrain business models that depend on excessively long shifts or very old vehicles.

At the driver level, Regulation 21 prohibits behaviours that create externalities (intoxication, vaping/smoking while carrying a passenger, abusive conduct),[896] demands route integrity, and draws some boundary or route lines: "[a] transport network driver shall not pick up passengers at cabstands, or solicit rides, or respond to street-hails."[897] This street-hail ban preserves a boundary with rank-based taxis, limiting conflict and regulatory arbitrage.

At the platform level, Regulation 7 requires complete fleet lists and owners,[898] providing the Authority with a picture of scale and ownership concentration. Meanwhile, section 27(3) of the *National Transport and Safety Authority Act* allows licence classes to distinguish types and specify maximum numbers; and section

892 Regulation 19(1)(a) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

893 Regulation 19(1)(b) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

894 Regulation 19(1)(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

895 Regulation 19(2) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022, which states as follows: "(2) Each transport network vehicle used to offer transport network services shall— (a) at all times, be maintained in such condition as to ensure its safe operation and the safety of transport network passengers; and (b) be equipped with a hands-free accessory for mobile devices."

896 Regulation 11(2)(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

897 Regulation 21(6) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

898 See generally regulation 7 of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

30(4)–(5) permits the Authority to vary or cancel conditions 'from time to time.' If necessary, section 34(3) even allows a tailored remedy, expunging vehicles from a licence or reducing the maximum number of vehicles under a licence, in place of suspension.[899] These powers of the National Transport and Safety Authority give it the tools to manage supply surges, local congestion, or quality slippage without shutting down market participation altogether.

Addressing dominance and anti-competitive conduct

Although the TNC Regulations are not a competition statute, they embed competition-conscious controls.

First, transparency obligations help decrease information asymmetry: regulation 14(1) requires the pre-trip disclosure of the vehicle, the driver's identity and photo, and the "estimated fare... in a clear and transparent manner prior to a passenger accepting a ride."[900] Additionally, Regulation 14(4) mandates detailed post-trip receipts that include rates/fees, time, endpoints, and duration/distance. As such, platforms cannot succeed just by hiding price information. In this way, the regime favours contestable but disciplined competition: rivals can enter, but the tools that typically generate platform dominance (opaque pricing, shifting take-rates, exploitative promotions) are constrained.

Secondly, Regulation 17 requires the platform to maintain three years of trip, identity, and pricing data, making it available to the National Transport and Safety Authority,[901] police, or courts upon request.[902] This ensures that pricing and matching practices are constructible, which is essential if the Authority needs to investigate suspected abuses such as discriminatory pricing or systematic circumvention of commissions. Consequently, because Regulation 17 preserves

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899 The provision reads as follows: "The Authority may, in lieu of revoking or suspending a carrier's licence, direct that any one or more of the motor vehicles specified in the licence be expunged from the licence, or that the maximum number of motor vehicles or of trailers specified in the licence be reduced."

900 Regulation 14(1)(e) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

901 Regulation 17(2) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

902 Regulation 17(2) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

the evidence base, investigating anti-competitive harms is easier than under general competition law, which often struggles to compel granular data from platforms.

Third, Regulation 9's 18% cap and Regulation 16's promotion rule address the usual rents that a dominant platform earns from its two-sided market power. At the same time, section 30 of the *National Transport and Safety Authority Act* provides broad powers over tariff conditions to ensure "reasonable" fares and "fair competition."

Fourth, enforcement based on due process in Regulation 13 strengthens the regulator's authority without making it arbitrary: before suspending or cancelling, the Authority must "notify... in writing",[903] provide an "adequate opportunity" to be heard,[904] "give... written reasons"[905] and inform those concerned about the "right of appeal".[906] Arguably, lawful and proportionate enforcement is more likely to withstand appeals and remain sustainable in the face of powerful companies.

Labour and worker protection

Employment classification and legal status

The TNC Regulations do not clarify whether someone is an employee or a contractor. Instead, they outline the ecosystem by defining key roles: a "transport network driver" as "a person authorized by a transport network company to offer transport network services to transport network passengers through a transport network platform";[907] a "transport network owner" as the registered owner, hirer, or lessee of the vehicle;[908] and a "transport network platform" as the digital system

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903 Regulation 13(2)(a) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

904 Regulation 13(2)(b) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

905 Regulation 13(2)(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

906 Regulation 13(2)(d) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

907 Regulation 2 of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

908 Regulation 2 of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

enabling paid passenger services.[909] This definitional approach is fundamental to the legislation; it recognises these roles and categorises the service as similar to public transport, while leaving questions about employment status to be addressed by labour law and the courts.

That said, the regime layers labour-adjacent protections by way of the e-hailing regulations. For example, Regulation 21 imposes a working-time limit: "[a] transport network driver shall not offer or provide transport network services for more than eight continuous hours in a twenty-four-hour period."[910] The platform side is matched by Regulation 14(10), which obliges the company to force log-out after eight consecutive hours for at least four hours.[911]

What this indicates is that disputes over status will persist in labour forums, but key levers for working conditions are already available in transport law (time limits, due process, pricing/commission discipline). Additionally, because Regulation 10 localises governing law or forums, drivers can bring legal action concerning contract-related issues (e.g., improper deactivation or unlawful deductions) against a local TNC entity.

Income protections and commission rules

This regime protects pay through a structured approach rather than a wage floor. Regulation 9 caps the platform's take; Regulation 16 ensures promotions cannot be offloaded onto owners; and section 30 of the *National Transport and Safety Authority Act* allows the Authority to police the fares system-wide. The application must also lodge the revenue-sharing agreement and pricing mechanism, exposing back-end algorithms to ex-ante regulatory scrutiny. Consequently, it is argued that the take-rate cap serves as a predictability tool: owners can underwrite loans and drivers can plan shifts knowing the platform's share cannot increase.

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909 Regulation 2 of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

910 Regulation 21(7) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

911 The provision reads as follows: "[a] transport network company shall configure its transport network platform to ensure that after eight hours of continuous services in a twenty-four-hour period, the driver shall log out of the platform for at least four consecutive hours."

Since caps can be undermined by relabelling, the anti-avoidance language in regulation 9(3) is crucial. It blocks "terms or conditions designed to increase the commission… such that it exceeds 18%." In practice, this translates to "platform fees" that fluctuate with the price or earnings of a trip. The receipts required by Regulation 14(4) with "rates, fees or surcharges" itemised, create an evidentiary trail for drivers who suspect off-contract deductions. One could then expect bargaining to shift from "percentage fights" to service-quality/bonus design, where caps do not bite directly, and Regulation 17's data duties (maintenance and retention of records) will be essential to audit such schemes.

Deactivation, due process, and dispute resolution

Kenya builds procedural justice into platform discipline. Regulation 15(1) requires that before deactivation/suspension/revocation, the TNC must comply with its own policies,[912] "give adequate notice… in writing… and the reasons thereof",[913] "afford… adequate opportunity to challenge" the decision[914] and "give… written reasons" for its decision.[915] The company must then notify the National Transport and Safety Authority within seven days, and,

> ... the Authority shall publish on its website and in any other appropriate medium the details of transport network drivers or transport network owners who have been deactivated, suspended or removed from a transport network platform, and the reasons for the deactivation, suspension or removal.[916]

The deactivation policy itself must specify conditions, the duration of suspension, and the procedures for reactivation.[917] As such, for drivers, the due-process steps along with itemised receipts (Regulation 14(4)) and three-year records (regulation

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912 Regulation 15(1)(a) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

913 Regulation 15(1)(b) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

914 Regulation 15(1)(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

915 Regulation 15(1)(d) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

916 Regulation 15(3) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

917 Regulation 15(4) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

17) provide the paper trail to contest a decision or to demonstrate pattern-based unfairness.

Where conduct raises public-safety concerns, Regulation 18 tightens the timeline: the TNC "shall deactivate" and must notify the Authority "within forty-eight hours," specifying the driver's name, licence number, vehicle registration, and the public safety concern for which action has been taken against the transport network driver.[918]

In effect, these provisions transform deactivation from a private contractual choice into a reviewable, evidence-based administrative process: platforms must provide reasons, the regulator is promptly informed and publishes the outcome, and a verifiable record, including itemised receipts and three-year logs, supports any challenge on facts rather than assertions.

Transport Justice

Affordability and pricing

Transport justice depends on clear pricing. Regulation 14 mandates that before a trip, the vehicle details, driver identity, photo, and the "estimated fare... in a clear and transparent manner" must be disclosed.[919] The regulations then require a printed or electronic receipt at the end of the trip, showing the "rates, fees or surcharges," date and time, pick-up and drop-off locations, driver's name, vehicle details, and trip duration and distance.[920] Price fairness is not left to the goodwill of the platform. Section 30(3) of the *National Transport and Safety Authority* Act authorises the Authority to attach licence conditions "ensuring that the fares… are reasonable and ensure fair competition". These levers complement Regulation 16's rule that owners must not be "negatively affected" by promotions.

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[918] Regulation 18(1)-(2) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

[919] Regulation 14(1) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

[920] Regulation 14(3)-(4) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

The implications of this are quite evident: consumers get ex-ante fare transparency and ex-post itemisation; drivers/owners get a documentary trail to match gross earnings to the 18% cap. Furthermore, the Authority can tamp down both exploitative surge spikes and predatory undercutting by conditioning fares at the licence level where market dynamics warrant it.

Safety, service quality, and regulatory capacity

Safety is dispersed across vehicle, driver, and platform obligations and backed by the Act's inspection powers. As far as vehicle safety is concerned, and as noted above, Regulation 19 requires insurance, roadworthiness, and an age ceiling of "not more than sixteen years from the date of manufacture",[921] while also demanding hands-free accessories.

Regarding driver safety and conduct, Regulation 20 requires an endorsed licence and a Public Service Vehicle badge. Regulation 21 sets conduct of service rules (including courtesy, route integrity, and no tinted windscreens)[922] and hard limits: no street hails[923] and no more than eight continuous hours per 24-hour period.[924] Then, regarding platform safety and services, Regulation 11 requires TNCs to remove suspended or revoked drivers and vehicles from the platform following notifications from the National Transport and Safety Authority, to ensure the fleet has valid insurance coverage,[925] to provide a panic button "connected to a response centre… manned at all times," and to respond to customer messages "within twenty-four hours."[926] Regulation 14 also mandates a system for lost-property retrieval and bans disability-based discrimination, requiring that wheelchairs and service animals be "adequately accommodated" with "no

921 Regulation 19(1)(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

922 For example, see regulation 21(h) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

923 Regulation 21(6) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

924 Regulation 21(7) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

925 Regulation 11(c) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

926 Regulation 11(h) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

additional charges."[927] These non-discrimination obligations for passengers with disabilities push inclusion beyond rhetoric by prohibiting any additional charges and requiring accommodations during service, not as a future ideal.

Regarding regulatory capacity, Regulation 17 requires a three-year record-keeping and reporting to the National Transport and Safety Authority, police, or courts, enabling investigators to reconstruct trips, match flows, and verify compliance. The Act also provides enforcement powers through section 42, which allows for stopping and inspecting vehicles; section 34, concerning the revocation or suspension of licences; and section 30, regarding the setting of fares and conditions.

Ownership, inclusion, and value distribution

Insofar as ownership and accountability are concerned, Regulation 6 ties eligibility to a Kenya-recognised body corporate with a registered office and Data Commissioner registration,[928] while Regulation 7 requires filing the "list of owners of the vehicles in the… fleet."[929] This combination localises responsibility (who ultimately benefits and controls) and gives regulators a map of asset owners, a foundation for taxation, liability, and safety campaigns. This filing of ownership lists and local corporate presence can potentially facilitate tax compliance and access to justice, thereby curbing the stateless platform problem.

Kenya mandates inclusion at the point of use, as Regulation 14(9) prohibits discrimination against passengers with special needs or disabilities. It also specifies that there should be no extra charges or higher fares and requires provisions for wheelchairs and service animals. As such, inclusion is an immediate obligation, not a future goal, supported by the offences clause in Regulation 25.[930]

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927 Regulation 14(9) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

928 Regulation 6(a)-(b) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

929 Regulation 7(i) of the *National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations* Legal Notice No. 120 of 2022.

930 The provision reads as follows: "A person who contravenes any provision of these Regulations commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or both."

In other words, disability inclusion is actionable today (no surcharges, accommodation on the ride), which allows civil society and regulators to test and, if necessary, prosecute compliance.

One could also deduce the value distribution from Regulation 9's 18% cap and Regulation 16's promotion rule, which are structural devices to channel value to drivers/owners and prevent subsidised expansion strategies that tax the upstream supply side. Filing the revenue-sharing agreement under Regulation 7(c) and itemising receipts under Regulation 14(4) makes value flows traceable for both enforcement and bargaining.

By mandating corporate presence, beneficial-ownership disclosures, and anti-discrimination measures (with penalties for violations), the regime removes the illusion of a stateless platform. This makes those who benefit legally identifiable, and obligates inclusion duties to be enforceable, not just aspirational. With a capped take-rate and detailed receipts tied to a filed revenue-sharing agreement, extraction and cross-subsidies become transparent, creating a clear value chain. Regulators and driver collectives can then audit, tax, and negotiate based on records, rather than relying on vague promises.

Overall, one could arguably state that the result of the Kenyan regulatory framework for e-hailing is a scheme that is:

- economically disciplined (cap on platform extraction; promotions cannot offload harm),
- procedurally fair (notice, reasons, opportunity to challenge; publication; appeals), and
- operationally safe and inclusive (driver/vehicle standards; panic button; non-discrimination with no surcharges).

Kenya's 2022 regime clearly does not aim to address every labour-platform dispute with a single law. Instead, it offers protections such as due process, safety measures, and enforceability based on data for workers. Riders benefit from clear

pre-trip fare transparency, itemised receipts after trips, access to a panic button, 24/7 support, and non-discrimination policies that include no surcharges for persons with disabilities. Additionally, the regime provides the regulator with necessary records, explanations, and appeal options, forming a balanced and modern enforcement system.

The primary risks include compliance slippage, such as ongoing long hours despite auto-logouts, and creative workarounds of the take-rate cap via "fees." Both issues can be addressed within the existing framework: the first through platform engineering and focused audits of Regulation 17 data, and the second through anti-avoidance provisions in Regulation 9(3) and licence-condition modifications under section 30.

Tanzania

Tanzania situates e-hailing within its broader statutory transport regime with the *Land Transport Regulatory Authority Act*, 2019.[931] The Act establishes the Land Transport Regulatory Authority (Authority hereunder) as the sole regulator of road, rail, and marine transport, and empowers it to license operators, set fares, and enforce compliance across the passenger transport sector. E-hailing is therefore not treated as a separate or exceptional digital service but as an integrated part of the regulated transport chain.

Subsequent regulations have extended the Authority's powers to cover private-hire and app-based services under the *Land Transport Regulatory Authority (Private Hire Services) Regulations*, 2020 (Private Hire Services Regulations hereunder).[932] These rules require e-hailing operators to register with the Authority, integrate their systems with state-approved platforms, and comply with tariff and safety obligations under the Authority's supervision. In doing so, they bring digital platforms into a centralised regulatory framework that relies heavily on state oversight and tariff setting.

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931 Section 4 of the *Land Transport Regulatory Authority Act,* 2019.

932 *Land Transport Regulatory Authority (Private Hire Services) Regulations,* 2020.

In what follows, Tanzania's approach is analysed with reference to the exact three dimensions: competition and market structure, labour and worker protection, and transport justice. This allows for a consistent comparison with South Africa, Kenya, and later India.

Competition and market structure

Market entry and legalisation

Tanzania has officially legalised e-hailing services, not just as a software platform but as a regulated private-hire public service under the jurisdiction of the Land Transport Regulatory Authority, as conferred by the primary legislation, the *Land Transport Regulatory Authority Act*.[933] The Land Transport Regulatory Authority has various responsibilities, such as to "regulate rates and charges"[934] and "coordinate land transport safety activities".[935] Its goals include enhancing the welfare of Tanzanian society, promoting effective competition,[936] and protecting consumers' interests.[937] That statutory base is implemented by the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.[938] The Regulations clearly specify their application, which is the public hire of vehicles with a carrying capacity of fewer than 15 passengers, and explicitly includes motorcycles and motor tricycles.[939]

The entry step is a licence. Regulation 4 states, "A person who intends to operate a private hire vehicle shall, upon payment of specified fees, apply to the Authority for a licence",[940] while Regulation 5 details the required documents. Typically, corporate applicants submit "a copy of a certificate of incorporation or registration under Tanzanian laws,"[941] individual applicants provide "proof of Tanzanian

933 Section 4 of the *Land Transport Regulatory Authority Act* No. 3 of 2019.
934 Section 5(1)(c)(iii) of the *Land Transport Regulatory Authority Act*.
935 Section 5(1)(d) of the *Land Transport Regulatory Authority Act*.
936 Section 6(a) of the *Land Transport Regulatory Authority Act*.
937 Section 6(c) of the *Land Transport Regulatory Authority Act*.
938 *Land Transport Regulatory Authority (Private Hire Services) Regulations* 2020 (GN No. 78).
939 Regulation 2 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
940 Regulation 4 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*
941 Regulation 5(1)(a) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

citizenship,"[942] and all must include the vehicle registration card[943] and "a valid certificate of motor vehicle roadworthiness."[944] For ride hailing operators,[945] the requirements are more extensive: they must also submit a "business plan",[946] a "safety and rescue management plan",[947] an "emergency response plan",[948] the "most recent audited financial statements",[949] and a "ride hailing system design to be integrated with the Authority's licensing system".[950] The breadth of the entry requirements highlights the regulator's focus on safety, accountability, and system integration in the emerging ride hailing sector.

These extensive obligations not only distinguish ride hailing from traditional private hire services but also set the stage for examining how such regulations shape market entry and competition. For example, the macro powers of the *Land Transport Regulatory Authority Act* under section 5, specifically licensing, price control, safety, and competition, are operationalised through the micro-requirements outlined in the *Land Transport Regulatory Authority (Private Hire Services) Regulations* under Regulation 5. This integration is not merely conceptual; the Regulations explicitly require that the operator's system be interconnected with the Authority's licensing framework.[951]

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942 Regulation 5(1)(b) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

943 Regulation 5(1)(c) of *the Land Transport Regulatory Authority (Private Hire Services) Regulations.*

944 Regulation 5(1)(d) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

945 A ride hailing operator is defined as "a person who owns and manage a ride hailing platform." See Regulation 3 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations.*

946 Regulation 5(2)(a) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

947 Regulation 5(2)(b) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

948 Regulation 5(2)(c) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

949 Regulation 5(2)(d) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

950 Regulation 5(2)(e) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

951 For example, regulation 5(2)(e) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations* is directly aligned with section 5(1)(b)-(e) of the of the *Land Transport Regulatory Authority Act*.

Regulation 6 requires the Land Transport Regulatory Authority to "consider" an application and, if satisfied, issue a service provider licence,[952] a registration certificate for a body corporate,[953] or an operator licence. For ride sharing, the regulations establish a minimum fleet size of at least ten vehicles.[954] Licences are issued by category according to the Fourth Schedule, which includes 'ride-hailing service provider', categorised as "D4",[955] 'ride sharing' service provider,[956] classified as "D5" and a certificate of registration for a 'ride-hailing operator'.[957] For the avoidance of confusion, these separate categories are defined in the Regulations. For example, a 'ride-hailing service provider' is defined as "a person subscribing to the ride hailing platform for the purpose of providing private hire service and include [sic] a specific vehicle licensed for provision of private hire service." [958] In turn, a 'ride sharing' service provider is defined as "a person subscribing to the ride sharing platform for the purpose of providing private hire service".[959]

The Land Transport Regulatory Authority also retains flexibility in that it may "vary the requirements… in respect of the areas of operation, carrying capacity… and number of vehicles."[960] Accordingly, the regulatory scheme is framed in mandatory terms with respect to the issuing of licences once the prescribed criteria are satisfied, but it simultaneously preserves a discretionary element that enables the Authority to adjust operational requirements in light of prevailing circumstances.

Overall, these provisions show that although the statutory framework clearly allows lawful market entry, it also imposes a particularly strict licensing regime on

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952 Regulation 6(1)(a) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

953 Regulation 6(1)(b) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

954 Regulation 6(3) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

955 Fourth Schedule made under regulation 9 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

956 Regulation 3 defines a ride sharing service provider as "a person subscribing to the ride sharing platform for the purpose of providing private hire service".

957 Fourth Schedule made under regulation 9 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations.* Regulation 3 defines a ride hailing operator as "a person who owns and manage a ride hailing platform".

958 Regulation 3 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

959 Regulation 3 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

960 Regulation 9 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

ride hailing operators. This regime aims to maintain systemic accountability. The focus on integrating with the Authority's systems indicates a regulatory approach that prioritises oversight and control. This approach lays the groundwork for future regulations, especially concerning commission rates and how revenue is shared.

Commission regulation and revenue sharing

Unlike Kenya's bright-line 18% commission cap, Tanzania does not set a platform take-rate cap in the Regulations. Instead, the framework relies on the Authority's pricing powers, fare transparency, and metering to keep price formation and value flows within the Authority's control.

On the statutory side, the *Land Transport Regulatory Authority Act* grants the Authority powers to set and regularly review rates and charges.[961] It requires the Authority to consider "costs of making, producing and supplying the goods or services",[962] the goal of promoting competitive rates and attracting the market.[963] The Authority should set relevant benchmark for pricing costs as informed by "comparable markets"[964] and should consider the interests of "consumers and investors".[965] All these considerations are to be underpinned by a transparent process, as the Authority is mandated to publish all rates and charges in the Gazette.[966] Arguably, this provides the Authority with a tariff toolkit, allowing it to set ceilings, floors or bands, and to review or revise them as needed.

On the regulatory side, the private-hire licence is subject to basic conditions to ensure pricing is clear and auditable. The licensee must ensure that "a vehicle is fitted with [a] fare meter or connected to a similar system capable of… computing fare as may be determined by the Authority",[967] that fares are "charged in a

961 Section 19(1) of the *Land Transport Regulatory Authority Act*.
962 Section 19(2)(a) of the *Land Transport Regulatory Authority Act*.
963 Section 19(2)(b) of the *Land Transport Regulatory Authority Act*.
964 Section 19(2)(c) of the *Land Transport Regulatory Authority Act*.
965 Section 19(2)(e) of the *Land Transport Regulatory Authority Act*.
966 Section 19(3) of the *Land Transport Regulatory Authority Act*.
967 Regulation 15(d) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

manner prescribed by the Authority",[968] and that "a ticket or receipt is issued to a passenger upon payment of fare."[969] These provisions highlight the Authority's intention to embed transparency and accountability into fare-setting practices, thereby establishing a regulatory foundation in which broader rules on commission regulation and revenue sharing could subsequently be anchored.

This framework indicates that the Land Transport Regulatory Authority Act's overall pricing authority is exercised through the Regulation's clauses on metering, ticketing, and any other prescribed manner. These provisions allow the Authority to enforce the established fares, monitor the charged fares, and determine the fare operators should have charged. The implications are twofold. First, the Land Transport Regulatory Authority is positioned to standardise or cap fares, including through dynamic parameters, thereby constraining predatory under-pricing and limiting surge pricing during periods of crisis. Secondly, the absence of a numerical commission cap places greater weight on the definitional scope of "fare" and the evidentiary mechanisms embedded in the regulations. The Regulations' insistence on meter connectivity and ticket issuance is thus not incidental; it establishes the evidentiary backbone on which disputes concerning deductions, effective take-rates, and compliance with pricing rules will ultimately turn.

Quantitative restrictions

Tanzania utilises category limits, vehicle standards, and scope-of-activity boundaries to regulate supply and quality. For starters, the Regulations apply to "public hire vehicles with a carrying capacity of below fifteen passengers",[970] which, without further detail, excludes larger buses from the ride hailing scheme. Furthermore, as noted earlier, for ride sharing, the licence requires a minimum of ten vehicles,[971] and the Authority may "vary the requirements" concerning "areas

968 Regulation 15(f) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
969 Regulation 15(k) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
970 Regulation 2 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
971 Regulation 6(3) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

of operation, carrying capacity",[972] and vehicle numbers. This clearly offers a quantitative adjustment mechanism.

Regarding vehicle-level restrictions, the basic requirements include roadworthiness and adherence to the Tanzania Bureau of Standards;[973] taxi cabs[974] must comply with colour-marking regulations[975] and park in designated areas.[976] Motorcycles and tricycles are subject to area restrictions, helmet mandates (with two helmets "marked with special code number"), and uniform standards.[977] For ride hailing, a 'ride-hailing operator', must

> [E]ensure that-
>
> a) a vehicle is connected with ride-hailing system;
>
> b) a ride hailing service provider is licensed by the Authority;
>
> c) a ride hailing system is integrated with Authority's licensing system;
>
> d) the ride hailing system is available all the time;
>
> e) information provided is accurate and reliable; and
>
> f) no service is provided to a ride hailing service provider who hasn't renewed the licence.[978]

On the other hand, a 'ride sharing' operator must

> [E]ensure that:
>
> a) a vehicle is connected with ride sharing system;
>
> b) payment is done electronically;

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[972] Regulation 8 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[973] Regulation 15(l) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[974] Regulation 3 defines a taxicab as "a motor vehicle licensed to transport passengers not exceeding eight persons including the driver in return for payment of a fare".

[975] Regulation 17(b) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[976] Regulation 17(a) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[977] See generally regulation 16 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[978] Regulation 18 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

c) ride sharing system is integrated with Authority's licensing system;

d) he has online booking application facility;

e) a vehicle bears a special identification mark as may be prescribed by the Authority;

f) a vehicle is fixed with a functioning air condition;

g) a vehicle is equipped with free Wi-Fi facility; and

h) the ride sharing system is available all the time;[979]

These provisions indicate a deliberate policy choice to differentiate ride sharing from other private-hire services by imposing higher operational and service standards, thereby positioning it as a premium offering within the transport demand hierarchy. The distinction between ride hailing and ride sharing shows the regulator's attempt to stratify the market through layered obligations, linking consumer experience to regulatory compliance. In turn, this stratification provides the context within which broader questions of commission regulation and revenue allocation must be assessed, since the economic viability of each category is directly conditioned by the cost structures embedded in these regulatory requirements.

The Second Schedule sets the prices for market entry: local ride hailing operators (certificate of registration) pay TZS 1 000 000 annually, while foreign operators pay US$500.[980] Local ride hailing service providers (D4) pay TZS 25 000, while foreign ones pay US$40. Also, local ride sharing service providers pay TZS 100 000, while foreign ones pay US$80. These fees help evaluate organisational capacity at the operator level (IT, safety plans, integration) while keeping per-vehicle licensing affordable.

Overall, the Tanzanian framework implements quantitative restrictions not just as simple numerical limits but as layered regulatory tools that define the scope and

979 Regulation 19 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
980 Second Schedule made under regulation 10 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*, page 23.

quality of service. These restrictions span three main areas. First, service-definition constraints set the sector boundaries for private hire, excluding larger passenger vehicles and distinguishing between ride hailing and ride sharing through different operational features. Second, territorial and operational constraints manage supply conditions, including requirements such as colour-marking, designated parking, and area-based limits for motorcycles and tricycles. Lastly, system-based constraints, like integration with the Authority's licensing platform and mandates for ongoing service availability, embed regulatory oversight in the technological infrastructure. Together, these measures establish a minimum service quality threshold, aim to prevent oversupply, and maintain an orderly market, while also enabling the regulator to adjust market entry and operational levels as needed.

Addressing dominance and anti-competitive conduct

Tanzania incorporates competition control into the Act and process, rather than relying on per-contract economic caps.

At the statutory level, the *Land Transport Regulatory Authority Act* singles out "competition matters" within the Authority's Part V powers.[981] This aligns with section 19's provisions on rates and charges, section 20's compelled information provisions, and section 21's powers of inquiry.[982] In particular, section 20 provides as follows:

> 20. Where the Authority has reason to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, a member of the Authority may, by summons signed by the Director General served on that person, require that person-
>
> (a) to furnish the information in writing signed by him, or in the case of a body corporate, signed by a competent officer of the body corporate;
>
> (b) to produce the document to the Authority; or
>
> (c) to appear before the Authority to give evidence orally.

[981] Section 22 of the *Land Transport Regulatory Authority Act*.

[982] Section 21(1) states as follows: "[w]here it considers it necessary or desirable for the purpose of carrying out its functions, the Authority shall conduct an inquiry."

Furthermore, explicit powers are granted to the Authority to handle competition matters, through inquiries, either at the Minister's direction or on its own initiative. To this end, section 21 states the following:

> 21.-(1) Where it considers it necessary or desirable for the purpose of carrying out its functions, the Authority shall conduct an inquiry.
>
> (2) *Subject to subsection (1) the Authority shall, before exercising a power to-*
>
> (a) grant, renew, suspend or cancel exclusive or class licence; and
>
> *(b) make a decision on issues of competition in nature in the regulated sector, conduct an inquiry in accordance with this section.*
>
> (3) Where the Minister directs by notice in writing that an inquiry be conducted, and specifies the subject matter of the inquiry, the Authority shall conduct the inquiry.[983]

The Act then provides the Authority with a standard regulatory toolkit to address public transport-related competition matters:

> 22.-(1) In carrying out its functions and exercising its powers under this Act and under sector legislation in relation to particular markets for regulated services, the Authority shall take into account-
>
> (a) whether the conditions for effective competition exist in the market;
>
> (b) whether any exercise by the Authority is likely to cause any lessening of competition or additional costs in the market and is likely to be detrimental to the public; and
>
> (c) whether any such detriments to the public is likely to outweigh any benefit to the public resulting from the exercise of the powers.
>
> (2) The Authority shall deal with all competition issues which may arise in the course of the discharge of its functions, and may investigate and report on those issues and make appropriate recommendations to the Commission or any other relevant authority in relation to-
>
> (a) any contravention of the Fair Competition Act, or any other written law;
>
> (b) actual or potential competition in any market for regulated services; and
>
> (c) any detriments likely to result to the members of the public.

This statutory framework integrates competition oversight into the core functions of the Land Transport Regulatory Authority, ensuring proactive management of dominance and anti-competitive behaviour. By combining extensive investigative

983 Own emphasis.

powers under sections 20 and 21 with the assessment criteria in section 22, the Authority can intervene when market activities risk distorting competition, causing excessive costs, or harming consumer welfare. This structure reflects a clear policy decision: rather than relying solely on after-the-fact enforcement under general competition law, Tanzania incorporates sector-specific competition regulation directly into the Authority's licensing and supervision roles, allowing for timely and situation-aware regulation of the ride hailing and ride sharing industries.

Insofar as dispute settlement is concerned, section 27 allows any person aggrieved by a decision of the Authority's Board to seek review within 14 days,[984] and section 28 provides for escalation to the Fair Competition Tribunal (constituted under the Tanzanian Competition Act),[985] with grounds that include "error in law" and non-compliance with statutory procedures.[986] These routes ensure that competition-related determinations are not only enforceable but also subject to independent scrutiny. At the regulatory level, the Regulations further entrench competitive balance by requiring that ride hailing services not interfere with commuter and intercity bus operations,[987] thereby delineating spheres of activity and reducing the risk of substitutional conflict.

Overall, these measures suggest that the Authority's strategy for maintaining dominance is proactive rather than reactive. By maintaining the ability to adjust tariffs, enforce conduct-based regulations, and restrict unlicensed supply, the Authority avoids strict commission limits while maintaining the discretion to change terms as market conditions evolve. This setup offers policy flexibility but also relies heavily on the Authority's institutional ability to effectively monitor rates and enforce rules. Ultimately, this will likely determine how well Tanzania's competition governance functions in the mobility sector.

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984 Section 27(1) of the *Land Transport Regulatory Authority Act* provides that "[a]ny person aggrieved by any decision made by the Authority may, within fourteen days after receipt of the decision, apply to the Authority for it to review the decision."

985 Section 28(1) of the *Land Transport Regulatory Authority Act* provides that "[a]ny person aggrieved by the decision of the Board may appeal to the Fair Competition Tribunal in accordance with the Fair Competition Act."

986 See generally section 2 of the *Land Transport Regulatory Authority Act*.

987 Regulation 15(h) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations.* Stats that the holder of a ride hailing licence must ensure that "[t]he service does not interfere with commuter and intercity bus service operations".

Labour and worker protection

Employment classification and legal status

Like Kenya, Tanzania's e-hailing instruments do not declare drivers to be employees or contractors. Instead, they set a licensing architecture that recognises roles and imposes public law obligations around safety, pricing, and process.

The Regulations define a licensee as "a person who is issued with a private hire licence"[988] and establish a hierarchy of authorisation involving vehicles, operators, and service providers. Drivers are required to hold "a valid certificate of authorisation issued by the Authority"[989] as part of the basic conditions under regulation 15. The operator's IT system must be fully integrated and operational at all times,[990] and only licensed service providers are permitted to take rides. In essence, status disputes in relation to employee status are not addressed, and priority is given to service safety, legality, and pricing. This is why a priority of the Authority's duties is the promotion of safety,[991] the protection of the interests of consumers,[992] and "the financial viability of efficient suppliers."[993] These duties align with the Regulations' driver authorisation, meter/ticket requirements, and operator integration rules, with the result that the status of the driver is less relevant than whether the system protects consumers and suppliers.

In practice, this means that disputes over employment status are outside transport regulation and fall under labour law. However, the focus on licensing, authorisation, and integration by regulatory bodies ensures that fundamental work terms, such as fares, safety, and system access, are primarily governed by the Authority. This structure lessens the significance of classification conflicts within the ride hailing industry. This regulatory emphasis on operational conditions rather

988 Regulation 3 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
989 Regulation 15(g) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
990 Regulation 18(a) and (d) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
991 Section 6(b) of the *Land Transport Regulatory Authority Act*.
992 Section 6(c) of the *Land Transport Regulatory Authority Act*.
993 Section 6(d) of the *Land Transport Regulatory Authority Act*.

than employment status naturally leads to the question of how income protections and commission structures are addressed.

Income protections and commission rules

Since Tanzania does not fix a commission cap, the income protections are indirect but potent: tariff control, metering, and mandatory receipts. Regulation 15 requires metering or a similar system that can record movement and compute fare.[994] This system must ensure that fares are "charged in a manner prescribed by the Authority",[995] while also being "visible by the passenger on board and accessible by the Authority".[996] Furthermore, a ticket or receipt must be issued "upon payment of fare."[997] Meanwhile, section 19 of the Act empowers the Authority to set and review rates, considering costs as well as investor or consumer interests, and to publish the approved rates. This provides the Authority and drivers with a clear record of what the passenger paid and what the legal fare should have been, and when a service fails, Regulation 21 requires refunds in prepaid cases: "refund the full fare to the passenger",[998] unless the passenger was at fault.[999]

Tanzania's model shifts the centre of income protection away from headline commission caps towards procedural transparency and tariff enforcement. By embedding rate-setting, metering, and ticketing obligations in both statute and regulation, the Authority ensures that drivers and operators have an evidentiary foundation to contest deductions and underpayments, while retaining the authority to treat platform fees or other charges as rate elements subject to review.

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994 Regulation 15(d) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

995 Regulation 15(f) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

996 Regulation 15(i) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

997 Regulation 15(k) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

998 Regulation 21(1) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

999 Regulation 21(2) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

Deactivation, due process, and dispute resolution

Tanzania ensures due process is followed in suspension and revocation procedures, but only for the licensees,[1000] not drivers themselves; however, licences can also be held by both the owner of the vehicle and the driver of the vehicle for ride hailing services.

At the licence level, Regulation 22 authorises the Authority to suspend licences in cases of serious faults, such as the absence or tampering of fare meters,[1001] modifications to ride hailing systems,[1002] or failure to provide accurate and reliable information.[1003] Suspension can also occur in the interest of public security or safety.[1004] Regulation 24 then outlines the procedure for revocation or suspension, which involves issuing a notice to "show cause", allowing seven days for responses, and making a reasoned decision. In emergencies, suspension without notice is allowed with immediate service cessation and licence surrender. Revocation is designated for habitual offenders or those risking safety, as specified in Regulation 25.

As noted earlier, review and appeals are formalised. Section 27 states, "[a]ny person aggrieved by any decision made by the Authority may, within fourteen days… apply… to review," and section 28 escalates to the Fair Competition Tribunal, with grounds including "error in law" and procedural non-compliance that "materially affected the determination."[1005] For drivers and owners, the presence of tickets, receipts, and meters provides documentary evidence for deactivation disputes (e.g., to demonstrate lawful fare compliance).

[1000] Under Regulation 3, a licensee would be "a person who is issued with a private hire licence" and typically includes the owner of a car.

[1001] Regulation 22(1)(b) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1002] Regulation 22(1)(g) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1003] Regulation 22(1)(h) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1004] Regulation 22(2) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1005] Section 28(2)(c) of the of the *Land Transport Regulatory Authority Act*.

Overall, the Tanzanian approach to regulating ride hailing and ride sharing distinctly moves away from employment-based protections. It does not classify drivers as employees, nor does it regulate the contractual details between platforms and drivers directly. Instead, its safety measures focus on the status of drivers and operators as licensed participants in a regulated service market. By requiring authorisation, metering, ticketing, tariff-setting, and ensuring due process in suspensions and disputes, the regulatory framework offers safeguards that promote transparency, steady income, and fairness in procedures. These safeguards function more as regulatory assurances of market participation rather than labour rights, helping drivers, especially owner-operators, maintain legal standing, gather evidence, and access appeals. Consequently, the Tanzanian system emphasises drivers as regulated service providers rather than employees, with protections rooted in licensing and oversight laws rather than private employment law.

Transport Justice

Affordability and pricing

Tanzania's affordability framework dictates how prices are set, calculated in real time, and evidenced after the ride. Regarding *ex ante* price formation, section 19 allows the Authority to "set and carry out regular review of rates and charges," requiring attention to costs, benchmarks, and the interests of consumers and investors; the results of which must be published in the Gazette.[1006] Concerning in-ride calculation and transparency, regulation 15, as noted earlier, mandates metering or an equivalent system "capable of recording movement and computing fare… as may be determined by the Authority",[1007] and stipulates that the meter be "visible by the passenger… and accessible by the Authority."[1008]

[1006] Regulation 19(1)-(3) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1007] Regulation 15(d) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1008] Regulation 15(i) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

Regarding *ex post* proof and redress, the Regulations mandate that a ticket or receipt must be provided for every journey,[1009] and a full fare refund is due if a prepaid service is not delivered, unless the passenger is at fault.[1010] The offences schedule (Schedule 3) classifies failing to issue a ticket as a compoundable offence,[1011] which would support the rationale behind the evidence collection process. This creates some consistency between the Act and the Regulations in that the Act designates the tariff authority and publication responsibilities. In contrast, the Regulations establish the technical rules that enforce tariffs on a per-trip basis.

Taken together, these provisions create a layered framework in which affordability is safeguarded with a combination of tariff-setting authority, transparent in-ride metering, and enforceable evidentiary obligations. The Authority's ability to publish rates and audit tickets ensures that platforms cannot obscure effective charges, while passengers benefit from clear and legible pricing. At the same time, drivers and owner-operators gain predictability and protection for their earnings through a transparent paper trail. In this way, the framework secures an affordability floor for consumers without banning dynamic pricing outright, while simultaneously embedding rules and documentation that preserve income certainty for providers.

Safety, service quality, and regulatory capacity

In Tanzania, safety and quality are embedded at three distinct levels: vehicles, operators, and the Authority's regulatory powers. At the vehicle and driver level, Regulations 15 to 17 establish basic conditions of operation. Vehicles must be roadworthy[1012] and fitted with seat belts,[1013] while drivers must hold valid

[1009] Regulation 26 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1010] Regulation 21 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1011] Regulation 29 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations,* which provides that "[t]he Authority may compound offences specified in the Third Schedule to these Regulations."
[1012] Regulation 15(a) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1013] Regulation 15(j) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

certificates of authorisation issued by the Authority.[1014] Additional rules apply by vehicle type: taxi cabs must comply with colour-marking requirements and park only in designated areas,[1015] while motorcycles and tricycles face more stringent controls, including area restrictions, the mandatory provision of two coded helmets, and the use of uniforms for drivers or riders.[1016] These requirements reflect the regulator's attempt to mitigate safety risks in a sector often dominated by smaller, more vulnerable vehicles.

At the operator and systems level, Regulations 18 to 20 impose obligations on the platforms themselves. Ride hailing operators must ensure their systems are fully integrated with the Authority's licensing infrastructure,[1017] remain available at all times,[1018] and limit services to licensed providers.[1019] Ride sharing operators face an even stricter service standard, with additional requirements such as working air-conditioning and free Wi-Fi.[1020] These provisions demonstrate that the regulatory framework goes beyond minimum safety conditions to cover service quality and customer experience.

Finally, the Authority's regulatory powers are codified in the Act and reinforced by the Regulations. As noted earlier, Part V of the Act authorises the Authority to require information[1021] and carry out inquiries.[1022] The Authority is further mandated to maintain a Public Register and organise stakeholder consultations with stakeholders that include persons, organisations and institutions.[1023] The Act also permits the Authority to issue compliance orders that are enforceable as

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[1014] Regulation 15(g) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1015] See generally regulation 17 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1016] See generally regulation 16 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1017] Regulation 18(c) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1018] Regulation 18(d) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1019] Regulation 18(f) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1020] Regulations 19(f)-(g) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1021] Section 20 of the of the *Land Transport Regulatory Authority Act*.
[1022] Section 21 of the of the *Land Transport Regulatory Authority Act*.
[1023] See generally sections 24–25 of the *Land Transport Regulatory Authority Act*.

injunctions of the High Court.[1024] The Regulations supplement these statutory powers with enforcement mechanisms at the field level, including the authority to stop and inspect vehicles,[1025] and obligations on a licensee to submit information and submit driver information.[1026] Collectively, these provisions ensure that the Authority's oversight spans from regulatory planning to direct enforcement on the road.

Consequently, the alignment between the Act and the Regulations is evident. The Act's broad duty to promote safety and protect consumers is translated into concrete requirements under the Regulations' requirement for helmets, seat belts, meters, tickets, and tracking systems. Similarly, the Act's powers of inquiry and information compulsion are operationalised through on-the-ground inspection and compounding procedures in the Regulations. Together, these instruments potentially close the regulatory loop from high-level policy to everyday practice, thereby embedding safety and quality into both system design and street-level enforcement.

In effect, Tanzania's framework embeds safety controls directly into the design of services, rather than relying solely on post-hoc sanctions. Features such as helmets, seat belts, and Wi-Fi requirements make safety and quality inseparable from service provision itself. At the same time, the integration of operator systems with the Authority's licensing infrastructure provides the Authority with a stream of operational data, potentially enabling it to move beyond reactive complaint handling towards proactive, targeted inspections. This model is likely to ensure that safety oversight is both systemic and continuous, thereby reinforcing consumer protection while enhancing regulatory efficiency.

[1024] See section 40(4) of the of the *Land Transport Regulatory Authority Act*, which provides that "[a] compliance order shall be made in writing specifying the grounds for its making and shall be enforceable as an injunction of the High Court."

[1025] See generally regulation 36 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1026] See generally regulation 38 of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

Ownership, inclusion, and value distribution

The Regulations tightly control ownership and presence by screening who may hold licences. Corporate applicants must submit a certificate of incorporation or registration under Tanzanian law,[1027] ensuring a local legal footing. Ride hailing operators face even stricter requirements, including safety and rescue plans,[1028] audited financial statements,[1029] and a system design that is ready for integration.[1030] These obligations ensure that only entities with both financial capacity and technical competence, as well as a local footprint, can connect to the Authority's regulatory data network.

On the passenger side, while the Regulations do not impose specific obligations for people with disabilities, they establish a baseline of universal service protections. These include the above-mentioned mandatory ticketing, refunds in cases of non-delivery, and the use of colour-coded or marked vehicles for better visibility. At the statutory level, the Act's Consumer Consultative Council[1031] goes further to promote inclusivity in the appointment of members of the Council by giving a voice to disadvantaged groups, including those on low incomes, in rural areas, and from marginalised communities, and incorporating their concerns into policy development.[1032] This complements the Authority's powers to promote "the

[1027] Regulation 5(1)(a) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1028] Regulation 5(2)(b) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1029] Regulation 5(2)(d) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1030] Regulation 5(2)(e) of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.

[1031] The Council has various obligations, including representing consumers, consulting with government on behalf of consumers and even conducting research on matters that affect consumers within the public transport sector. See generally section 31 of the *Land Transport Regulatory Authority Act*.

[1032] See section 29(4) of the *Land Transport Regulatory Authority Act*, which provides as follows: "In nominating and appointing persons for the Council, the Minister shall have regard to the desirability of the Council as a group having knowledge and understanding of the interests of consumers and that of the regulated services, including the interests of- (a) low income, rural and disadvantaged persons".

availability of regulated services to all consumers including low income, rural and disadvantaged consumers".[1033]

The regulatory framework also addresses value distribution. In the absence of a commission cap, the balance of returns is managed through tariff-setting and enforceable metering and ticketing rules. The Authority retains the obligation to define what constitutes a lawful fare component under section 19, thereby drawing boundaries between legitimate charges and impermissible deductions. The offence of providing ride hailing without approval,[1034] coupled with operators' duty to contract only with licensed providers, protects drivers and owners from unfair competition by unregulated actors.

Overall, the Tanzanian framework advances transport justice by embedding distributive safeguards into the public-law regulation of mobility services. Affordability is maintained through tariff-setting and evidentiary transparency. Safety is hardwired into vehicle standards, operator systems, and regulatory capacity, and value distribution is shaped by licensing thresholds and metering rules that protect lawful drivers and owner-operators from unfair competition. In this way, Tanzania's regulatory regime seeks to reconcile consumer protection, supplier viability, and inclusive access within a single system of transport governance, offering a distinctive model of transport justice in the platform economy.

India

India embeds e-hailing within the national transport framework by amending the 1988 *Motor Vehicles Act*[1035] (through the 2019 *Motor Vehicles (Amendment) Act*) [1036] to recognise 'aggregators' and by issuing the 2020 *Motor Vehicle Aggregator Guidelines* (revised in 2025).[1037] An aggregator is defined as "a digital intermediary or market place for a passenger to connect with a driver for the purpose of

[1033] See section 6(e) of the *Land Transport Regulatory Authority Act*.
[1034] See Schedule Three of the *Land Transport Regulatory Authority (Private Hire Services) Regulations*.
[1035] *Motor Vehicles Act* 1988.
[1036] *Motor Vehicles (Amendment) Act* 2019.
[1037] *Motor Vehicles Aggregator Guidelines* 2025.

transportation."[1038] Section 93 of the *Motor Vehicles Act* makes it unlawful to operate as an aggregator without a State-issued licence, while the Guidelines supply detailed conditions for obtaining and maintaining such a licence. These conditions address entry requirements, pricing structures, driver protections, safety obligations, and data-sharing rules. By combining statutory authority with detailed national guidance, India integrates digital platforms into the mainstream of transport law while leaving implementation to state transport authorities.

Competition and market structure

Market entry and legalisation

India makes e-hailing lawful only through a system of statutory licensing. Section 93 of the *Motor Vehicles Act* 1988 provides that:

> No person shall engage himself (iii) as an aggregator, provided that while issuing the licence to an aggregator the State Government may follow such guidelines as may be issued by the Central Government:
>
> Provided further that every aggregator shall comply with the provisions of the Information Technology Act, 2000 and the rules and regulations made thereunder.

The 2025 *Motor Vehicle Aggregator Guidelines* translate section 93 into practice. The Guidelines direct the central government to develop a single-window online portal for receiving applications for aggregator licences.[1039] Pending its creation, state governments must process applications themselves in accordance with the Guidelines.[1040] The application must be made in Form I, and one licence can cover multiple vehicle classes.[1041] Importantly, the Guidelines require the competent authority to decide on an application within 90 days of submission.[1042] If the application is to be refused, the Guidelines make clear that refusal must follow a hearing and be supported by written reasons.[1043] Once satisfied, the authority

[1038] Section 2 of the *Motor Vehicles (Amendment) Act* 2019.
[1039] Clause 3 of the *Motor Vehicles Aggregator Guidelines*.
[1040] Clause 3 of the *Motor Vehicles Aggregator Guidelines*.
[1041] Clauses 4.1-4.3 of the *Motor Vehicles Aggregator Guidelines*.
[1042] Clause 4.4 of the *Motor Vehicles Aggregator Guidelines*.
[1043] Clause 4.5 of the *Motor Vehicles Aggregator Guidelines*.

must order payment of the prescribed fee and security deposit and grant the licence within 15 days.[1044]

The cost of entry is structured but not prohibitive. For example, it fixes the licence fee at ₹500 000 (just over US$5 500), with a renewal fee of ₹25 000 (just over US$284).[1045] Clause 6 requires a security deposit that scales with fleet size: ₹1 000 000 (just over US$11 300) for small fleets (up to 100 buses or 1 000 other vehicles), ₹2 500 000 (just over US$28 400) for medium fleets, and ₹5 000 000 (just over US$56 000) for very large ones. The Guidelines further provide that a licence remains valid for five years,[1046] while also allowing renewal for a further five years, subject to a positive compliance record.[1047]

Eligibility rules emphasise domestic accountability. For example, the Guidelines restrict licences to companies and limit liability partnerships or co-operative societies of drivers or owners.[1048] Clause 8.2 also requires compliance with the *Motor Vehicles Act* and any rules under it, as well as India's information technology, consumer protection, and digital personal data laws.[1049] This ensures that aggregators entering the market are already bound by India's consumer and data protection frameworks.

The broader statutory framework supports this approach. Under Section 74 of the *Motor Vehicles Act*, State authorities issuing contract carriage permits may set conditions related to hiring rates and the use of taximeters.[1050] This aligns with the later provisions in the Guidelines on fare corridors, an arrangement that ensures that digital platforms remain connected to the same tariff-setting traditions that govern conventional taxis.

1044 Clause 4.6-4.7 of the *Motor Vehicles Aggregator Guidelines*.
1045 Clause 5 of the *Motor Vehicles Aggregator Guidelines*.
1046 Clause 7.1 of the *Motor Vehicles Aggregator Guidelines*.
1047 Clause 7.2 of the *Motor Vehicles Aggregator Guidelines*.
1048 Clause 8.1 of the *Motor Vehicles Aggregator Guidelines*.
1049 The provision states the following: "The applicant shall comply with the applicable law, including but not limited to, the Act or rules and regulations made under the Act, the Digital Personal Data Protection Act, 2023, the Consumer Protection Act, 2019 and the Information Technology Act, 2000 and intermediary guidelines issued thereunder."
1050 See section 74(2)(viii) of the *Motor Vehicles Act* 1988.

On the whole, it seems that the Indian model does not support permissionless innovation. Section 93 makes licensing a legal requirement; clauses 3–8 of the Guidelines implement this through deadlines, hearings, fees, and deposits; and Section 74 provides the tariff framework. The outcome is a system where entry is contestable, time-bound, but also regulated and rooted in public law.

Commission regulation and revenue sharing

India embeds the division of value directly in transport law rather than leaving it to labour courts or competition authorities. The 2025 Guidelines stipulate that "the driver shall receive at least 80% of the fare",[1051] and if the aggregator owns the vehicle, the driver's minimum share falls to 60%.[1052] These bright-line rules make the driver's portion measurable and enforceable, with receipts and payout ledgers serving as evidence.

Price formation is governed by a statutory framework that is set at the national level. In particular, clause 17 states that "[t]he fare notified by the State Government for the respective category or class of motor vehicles, shall be the base fare chargeable to passengers availing services from the aggregator."[1053] Additionally, the Guidelines acknowledge the first three kilometres of a trip as "dead mileage" to prevent unremunerated pick-ups.[1054] Within this framework, dynamic pricing is permitted but only within fixed limits: "[t]he aggregator shall be permitted to charge a minimum of 50% lower than the base fare and a maximum dynamic pricing of two times the base fare specified under sub-clause (17.1) above."[1055]

The Guidelines also address rent extraction through cancellation charges. Clause 18.1 limits cancellation fees to a maximum of 10% of the fare and prevents them

[1051] Clause 17.4 of the *Motor Vehicles Aggregator Guidelines*. The provision states as follows: "[t]he driver onboarded along-with the motor vehicle with the aggregator shall receive at least 80% of the fare applicable including all cost under driver's fare and the remaining charges may be retained as the Apportioned Fare by the aggregator. The payment may be settled daily, weekly or fortnightly but not later as per the agreement between the driver and the aggregator."

[1052] Clause 17.5 of the *Motor Vehicles Aggregator Guidelines*.

[1053] Clause 17.1 of the *Motor Vehicles Aggregator Guidelines*.

[1054] Clause 17.2 of the *Motor Vehicles Aggregator Guidelines*.

[1055] Clause 17.3 of the *Motor Vehicles Aggregator Guidelines*.

from exceeding ₹100, while clause 18.2, in conjunction with clause 19, mandates that these fees be split between the platform and driver in the same proportion as the fare itself. To promote transparency, the Guidelines obliges aggregators to publish the driver's share, the portion of the fare retained by the platform, and the incentive structure on their website or app.[1056] Additionally, clause 14.5 requires journey and fare data to be generated and archived, thereby ensuring regulators have an audit trail.

Finally, clause 9 prohibits exclusivity, providing that no aggregator may impose conditions preventing drivers from working with multiple platforms.[1057] This provision curbs foreclosure and preserves competition.

On the whole, by requiring both a minimum share for the driver and a capped price range, the Guidelines make value distribution a legal matter rather than a negotiated one. Breaches are licence violations, not just contractual disputes, and they can be proven with receipts and logs. The combination of a guaranteed minimum, a price range, capped cancellation fees, and transparency duties creates a regulatory framework of predictability for drivers, riders, and regulators alike.

Quantitative restrictions

India prefers to focus on regulating quality and safety as a way to control scale, as opposed to quantitative restrictions. The Guidelines state that only vehicles with valid transport permits can be onboarded.[1058] Furthermore, they specify that no vehicle older than eight years from its initial registration can be operated through an aggregator.[1059] Most significantly, the Guidelines require every onboarded vehicle to be fitted with a government-approved and specific type of tracking device: an AIS-140 (Automotive Industry Standard 140) compliant Vehicle

[1056] Clause 14.6 of the *Motor Vehicles Aggregator Guidelines*.
[1057] Clause 9.6 of the *Motor Vehicles Aggregator Guidelines*.
[1058] Clause 12 of the *Motor Vehicles Aggregator Guidelines*.
[1059] Clause 13.2 of the *Motor Vehicles Aggregator Guidelines*.

Location Tracking Device, along with an in-vehicle emergency button, linked to the State or Union Territory command and control centre.[1060]

Additional conditions further enhance safety and visibility, as well as conditions for offering ride hailing services. For instance, the Guidelines stipulate that passengers must be insured for at least ₹5 lakh (less than US$1).[1061] Furthermore, licence and permit details have to be displayed to passengers,[1062] while each vehicle must carry a first-aid kit and a fire extinguisher.[1063]

These Guidelines also create regulatory space for new modes of transportation. For example, clauses 23.2–23.3 allow States to regulate the aggregation of non-transport motorcycles, provided they meet safety and fare requirements. This provision enables micro-mobility services to be integrated under the same safety and tariff framework.

As a result, it seems that India's restrictions are less about numbers and more about standards. Vehicles have to be relatively new, permitted, insured, and connected to the State's control centre. This means the fleet can expand indefinitely, but only if it does so in a way that is safe, visible, and traceable. So, in essence, quantitative control is achieved through qualitative checks.

Addressing dominance and anti-competitive conduct

India does not rely on abstract tests of 'abuse of dominance' from competition law. Instead, it incorporates the standard levers of platform power directly into licensing conditions and specifies clear consequences for non-compliance. The Guidelines allow the competent authority to suspend an aggregator's licence for up to three months,[1064] but only after issuing a reasoned order and giving the aggregator a hearing within ten days.[1065] Clause 24.4 outlines the grounds for

[1060] Clause 13.1(xi) of the *Motor Vehicles Aggregator Guidelines*.
[1061] Clause 9.5 of the *Motor Vehicles Aggregator Guidelines*.
[1062] Clause 13.1(x) of the *Motor Vehicles Aggregator Guidelines*.
[1063] Clauses 13.1(xiv–xv) of the *Motor Vehicles Aggregator Guidelines*.
[1064] Clause 23.2 of the *Motor Vehicles Aggregator Guidelines*.
[1065] Clause 24.3 of the *Motor Vehicles Aggregator Guidelines*.

suspension, including "unjustified dynamic pricing",[1066] "non-compliance with the guidelines for proportionate division of fare between the drivers and aggregator",[1067] unjustified charges on drivers,[1068] safety breaches,[1069] and financial irregularities.[1070] If suspension is not feasible, the authority can impose a penalty.[1071]

The Guidelines also outline a probationary pathway. Under Clause 24.5(iii), after a suspension is lifted, the aggregator may be placed on probation for two to six months. Any further infractions during probation can lead directly to cancellation. Repeated suspensions over three financial years or serious violations that endanger safety or security trigger the cancellation process, which necessitates a show-cause notice and a reasoned cancellation order.[1072] If anyone is unhappy, the Guidelines provide for swift appeals. For example, an aggregator can appeal a suspension or cancellation within 30 days,[1073] and such an appeal must be decided within 60 days.[1074] State authorities may also request records and conduct investigations into aggregators. In particular,

> The State Government shall be empowered to call for such information documents or records from the aggregator, as it deems fit to ensure compliance by the aggregator with these guidelines, through a written notice. The information sought shall also include the power to conduct an inquiry into the aggregator.[1075]

This arrangement, however, cannot work without transparency, which is why the Guidelines require aggregators to publish ownership and contact details, fare structure, and compliance features on their application or website.[1076] Furthermore, there are also requirements for the applications to prioritise cybersecurity, with a demand that cybersecurity be certified by a CERT-In empanelled auditor (in this

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[1066] Clause 24.4(ii) of the *Motor Vehicles Aggregator Guidelines*.
[1067] Clause 24.4(ii) of the *Motor Vehicles Aggregator Guidelines*.
[1068] Clause 24.4(ii) of the *Motor Vehicles Aggregator Guidelines*.
[1069] Clause 24.4(v) of the *Motor Vehicles Aggregator Guidelines*.
[1070] Clause 24.4(vii) of the *Motor Vehicles Aggregator Guidelines*.
[1071] Clause 24.4 of the *Motor Vehicles Aggregator Guidelines*.
[1072] See clause 25.1-25.3 of the *Motor Vehicles Aggregator Guidelines*.
[1073] Clause 26.1 of the *Motor Vehicles Aggregator Guidelines*.
[1074] Clause 26.4 of the *Motor Vehicles Aggregator Guidelines*.
[1075] Clause 27.1 of the *Motor Vehicles Aggregator Guidelines*.
[1076] Clause 14.1 of the *Motor Vehicles Aggregator Guidelines* reads as follows: "[t]he aggregator shall develop and maintain a website disclosing details of its ownership, registered address, fare structure, contact information for customer services, e-mail address, services offered by it and other relevant details."

case, the Indian Computer Emergency Response Team),[1077] while journey and fare data are to be generated and stored in accordance with law.[1078] These measures are likely to ensure that breaches of fare corridors, take-rates, or safety obligations can be proven on contemporaneous records rather than speculation.

The statutory framework also matters here, as section 74 of the *Motor Vehicles Act* empowers State authorities to condition contract carriage permits, including fare and metering obligations.[1079] This dovetails with the Guidelines' fare corridor and ensures continuity between legacy competition concerns in taxi regulation and the digital era.

For all these reasons, India redefines dominance as a breach of licence. By turning surge pricing, underpayment, hidden deductions, or safety failures into clear licence violations, the Guidelines provide regulators with a range of sanctions: suspension, penalty, probation, cancellation, forfeiture, and appeal. Each step is justified and time-limited, and each breach can be proven through mandated logs and disclosures. In effect, competition is overseen not through abstract litigation but via enforceable administrative law.

Labour and worker protection

Employment classification and legal status

India does not seek to reclassify e-hailing drivers under transport law. Section 93 of the MVA merely requires aggregators to hold a licence; it does not attempt to alter the drivers' employment status. Instead, the 2025 Guidelines establish a minimum standard of protection within the aggregator's licensing obligations. For example, the Guidelines require the aggregator to verify the driver's identity, driving licence, and experience;[1080] conduct background checks and medical fitness assessments;[1081] and even ensure a psychological assessment before

[1077] Clause 14.4 of the *Motor Vehicles Aggregator Guidelines*.
[1078] Clause 14.5 of the *Motor Vehicles Aggregator Guidelines*.
[1079] Section 74(3)(a) of the *Motor Vehicles Act* 1988.
[1080] Clauses 11.1(i) and (ii) of the *Motor Vehicles Aggregator Guidelines*.
[1081] Clauses 11.1(v) and (vi) of the *Motor Vehicles Aggregator Guidelines*.

onboarding.[1082] The same clause stipulates that the aggregator enter into a written contract with each driver, with the contract available in the local language and standard terms published online for transparency.[1083] These requirements are not mere formalities; they create a paper trail that drivers can use to demonstrate their legal relationship with the aggregator and challenge unfair treatment.

In addition, training obligations support this professionalisation. For example, the Guidelines require aggregators to provide at least 40 hours of induction training before a driver can start work.[1084] The content covers a wide range of topics, including application use,[1085] relevant laws,[1086] first-responder skills (a minimum of six hours),[1087] the dynamics of the agreement between the aggregator and the driver,[1088] gender sensitivity, and inclusivity for individuals with disabilities.[1089] Additionally, Clause 11.2(iv) requires annual refresher training, while Clause 11.2(v) mandates quarterly retraining for drivers who rank in the bottom 5% of ratings. This means drivers cannot be seen as interchangeable 'gig' workers, but must undergo training, assessment, and re-training at the aggregator's expense as a condition of their licence.

India thus sidesteps the complex employee–contractor division by incorporating minimum work conditions into transport regulation. The aggregator's licence requires it to verify, contract with, and train its drivers, providing regulators with a way to oversee labour standards without altering the existing categories of labour law.

Income protections and commission rules

The most important income protection is the statutory minimum on revenue sharing. As noted earlier, the Guidelines state that the driver "shall receive at least

[1082] Clause 11.1(vii) of the *Motor Vehicles Aggregator Guidelines*.
[1083] Clause 11.1(ix) of the *Motor Vehicles Aggregator Guidelines*.
[1084] Clause 10.1 of the *Motor Vehicles Aggregator Guidelines*.
[1085] Clause 10.1(i) of the *Motor Vehicles Aggregator Guidelines*.
[1086] Clause 10.1(ii) of the *Motor Vehicles Aggregator Guidelines*.
[1087] Clause 10.1(iv) of the *Motor Vehicles Aggregator Guidelines*.
[1088] Clause 10.1(vii) of the *Motor Vehicles Aggregator Guidelines*.
[1089] Clause 10.1(viii) of the *Motor Vehicles Aggregator Guidelines*.

80% of the fare"[1090] and if the vehicle is owned by the aggregator itself, the driver still must receive no less than 60%.[1091] Since Clause 14.6 requires aggregators to publish the driver's share, the platform's retained amount, and the incentive scheme, the driver's entitlement is transparent and not hidden in vague terms of service, making it accessible to both regulators and drivers.

The pricing system also supports driver income stability. For example, the Guidelines state that fares must be linked to a State-notified base fare,[1092] and the Guidelines acknowledge the first three kilometres as 'dead mileage', ensuring drivers are compensated for pickup costs.[1093] Clause 17.3 sets a range where fares cannot fall below 50% of the base nor exceed twice the base. This range prevents predatory discounting and shields drivers from destabilising surges that do not benefit them.

Cancellation rules also safeguard drivers. Clause 18.1, for example, limits cancellation fees to 10% of the fare, up to ₹100 (just over US$1), while clause 18.2 mandates that the cancellation fee be divided between the platform and the driver in the same proportion as the fare. This prevents platforms from using cancellation fees as hidden revenue at the driver's expense. Finally, the Guidelines maintain driver autonomy as a safeguard against exploitation. They prohibit aggregators from limiting drivers to a single platform, allowing them to multi-home and discipline platforms through exit and competition.[1094]

As a result, India's income protections are strong because they are built into the transport licensing framework. Clause 17.4 guarantees the driver's share, while pricing limits prevent extremes, cancellation fees are capped and shared fairly, and multi-homing rules out lock-in. Together, these provisions ensure that drivers' earnings are safeguarded by public law obligations enforceable against the aggregator's licence.

[1090] Clause 17.4 of the *Motor Vehicles Aggregator Guidelines*.
[1091] Clause 17.5 of the *Motor Vehicles Aggregator Guidelines*.
[1092] Clause 17.1 of the *Motor Vehicles Aggregator Guidelines*.
[1093] Clause 17.2 of the *Motor Vehicles Aggregator Guidelines*.
[1094] Clause 9.6 of the *Motor Vehicles Aggregator Guidelines*.

Deactivation, due process, and dispute resolution

Deactivation, which can be an arbitrary and opaque process, is made a procedurally governed practice in India. The Guidelines stipulate that if a complaint is made against a driver for breaching the Act, rules, or Guidelines, the aggregator must carry out an inquiry within three days.[1095] No action can be taken until the inquiry is complete, and the outcome must be shared with the passenger. The only exception is intoxication, as the Guidelines establish a zero-tolerance rule, requiring drivers found under the influence of alcohol or drugs to be immediately offboarded, but even then, an inquiry is still required.[1096]

The aggregator must also maintain ongoing grievance mechanisms. The Guidelines require the appointment of a Grievance Officer;[1097] mandate a 24/7 call centre;[1098] and call for in-app support in English, Hindi, and the State language.[1099] These mechanisms ensure that passengers and drivers have accessible ways to lodge complaints and that records are kept of how those complaints are resolved.

At the platform level, licence sanctions reinforce fairness. As noted earlier, an aggregator's licence may be suspended for up to three months, but only after a hearing has been given within ten days,[1100] and only on a reasoned order.[1101] Repeated suspensions within three financial years or grievous violations of safety obligations may trigger cancellation,[1102] with the authority also empowered to forfeit the aggregator's security deposit.[1103]

Overall, India ensures discipline is neither arbitrary nor one-sided. Drivers cannot be deactivated without an inquiry, reasons, and a record. Aggregators themselves are subject to hearings, reasons, and appeals before sanctions such as suspension or cancellation are imposed. The overall effect is to transform deactivation from a

1095 Clause 11.2(vi) of the *Motor Vehicles Aggregator Guidelines*.
1096 Clause 14.10 of the *Motor Vehicles Aggregator Guidelines*.
1097 Clause 9.10 of the *Motor Vehicles Aggregator Guidelines*.
1098 Clause 14.12 of the *Motor Vehicles Aggregator Guidelines*.
1099 Clause 14.13 of the *Motor Vehicles Aggregator Guidelines*.
1100 Clauses 24.2-24.3 of the *Motor Vehicles Aggregator Guidelines*.
1101 Clause 24.4 of the *Motor Vehicles Aggregator Guidelines*.
1102 Clauses 25.1-25.3 of the *Motor Vehicles Aggregator Guidelines*.
1103 Clause 25.4 of the *Motor Vehicles Aggregator Guidelines*.

private decision into a process of administrative justice, with procedural safeguards protecting both drivers and the public.

Transport Justice

Affordability and pricing

Affordability in India is pursued not through hard price-fixing but through a carefully bounded corridor. The Guidelines require that every fare be anchored to a State-notified base fare.[1104] This preserves the authority of State governments under section 74 of the *Motor Vehicle Act*, which empowers permit authorities to impose conditions regarding the rates of hire for the contract carriage and the fitting of meters.[1105] By carrying this tariff-setting logic into the digital era, the Guidelines ensure continuity between traditional taxi regulation and platform pricing.

It bears repeating that to protect drivers from uncompensated pick-up journeys, the Guidelines recognise the first three kilometres of a trip as dead mileage.[1106] Within that framework, clause 17.3 allows algorithmic flexibility but constrains it within a statutory corridor: fares may not fall below 50% of the base fare, nor may they exceed twice the base fare. Where a State has not yet notified a base, clause 17.7 allows the aggregator to set an interim base until State determination, ensuring that pricing remains bounded even in regulatory gaps.

As noted earlier, passengers and drivers alike benefit from cancellation rules that prevent opportunistic charges. Clauses 18.1 and 18.2 cap cancellation fees at 10% of the fare or ₹100, whichever is lower, and require that the fee be split between platform and driver in the same proportion as the fare itself. Clause 19 reinforces that cancellations must be handled symmetrically, thereby eliminating the possibility of unilateral revenue from cancellations.

[1104] Clause 17.1 of the *Motor Vehicles Aggregator Guidelines*.
[1105] Section 74(2)(viii) of the *Motor Vehicle Act.*
[1106] Clause 17.2 of the *Motor Vehicles Aggregator Guidelines*.

It appears then that affordability is built around predictability. Riders understand fares will not exceed twice the base or fall below half of it; drivers know that at least 80% of that fare must go to them; and regulators are aware that receipts will reveal the split. By incorporating these rules into clauses 17–19 of the Guidelines and anchoring them in Section 74 of the *Motor Vehicle Act*, India has established a flexible yet disciplined pricing framework that maintains a balance between adaptability and fairness.

Safety, service quality, and regulatory capacity

Safety in India's framework is hardware-based, data-driven, and human-driven. The Guidelines require that every onboarded vehicle be fitted with tracking devices and an emergency panic button linked directly to the State or Union Territory command-and-control centre.[1107] The Guidelines further require that deviation from the planned route trigger alerts to the control room.[1108] Clause 15.1, for example, provides that: "…the Vehicle Location and Tracking Devices installed in motor vehicles, as applicable, functions properly and the feed is received by it as well as linked to the integrated Command and Control Centre of the State Government." Arguably, this ensures that real-time oversight is embedded in each trip.

The system relies on human infrastructure. For example, the Guidelines require aggregators to run a 24/7 call centre and control room capable of responding in English, Hindi, and the State language,[1109] while clause 14.13 emphasises that passengers and drivers must have access to in-app support. These provisions together ensure that telemetry is not solely handled by machines but is supported by human monitoring and responses.

Cybersecurity and data protection are equally central. As noted above, clause 14.4 requires that aggregator platforms be certified by a CERT-In empanelled auditor, while clause 14.5 mandates the generation and secure storage of journey and fare data in compliance with Indian data-protection law. Vehicles themselves must

[1107] Clause 13.1(xi) of the *Motor Vehicles Aggregator Guidelines*.
[1108] See clauses 15.1 and 15.2 of the *Motor Vehicles Aggregator Guidelines*.
[1109] Clause 14.12 of the *Motor Vehicles Aggregator Guidelines*.

meet quality standards, including child-lock overrides, first-aid kits, and fire extinguishers,[1110] while clauses 15.4 and 15.5 impose obligations of periodic inspection.

On the regulatory side, the discussion has indicated that clause 27.1 allows States to request information and carry out investigations, while clause 27.2 mandates the authentication of vehicles and drivers. These powers to gather information are not empty, as the aggregator is already required to produce the necessary records under clauses 14.5 and 14.6. As a result, enforcement becomes a forensic process rather than a showy one.

All this indicates that India's safety regime is unique because it is both wired and reviewable. Hardware (panic buttons), software (CERT-In certification), and human systems (24/7 call centres) work together with State inquiry powers to make sure that safety is practical, not just aspirational. Since breaches can be confirmed through logs and data, regulators can intervene confidently, and passengers are likely to receive real security rather than just symbolic reassurances.

Ownership, inclusion, and value distribution

India deliberately localises ownership and accountability. The Guidelines restrict licences to companies, limited liability partnerships, or co-operatives of drivers or owners.[1111] They further require that aggregators publish their ownership, registered address, fare structure, and service details on their website and app.[1112] These provisions ensure that platforms cannot hide behind offshore registration or anonymous entities: there is always a domestic legal body against which obligations can be enforced.

As far as inclusivity is concerned, aggregator apps must be accessible in English, Hindi, and the relevant state language.[1113] Additionally, aggregators are required to

[1110] See generally clauses 13.1(xii–xv) of the *Motor Vehicles Aggregator Guidelines*.
[1111] Clause 8.1 of the *Motor Vehicles Aggregator Guidelines*.
[1112] Clause 14.1 of the *Motor Vehicles Aggregator Guidelines*.
[1113] Clause 14.3 of the *Motor Vehicles Aggregator Guidelines*.

provide accessibility features for people with disabilities,[1114] while states are allowed to mandate a certain number of disability accessible vehicles in the fleet.[1115] The non-discrimination rules also apply to ownership structures, as aggregators are required to treat vehicles owned by drivers or third parties on the same footing as their own vehicles,[1116] preventing independent operators from being marginalised.

When it comes to value distribution, transparency is maintained. The driver's statutory share of 80% (or 60% for aggregator-owned vehicles) is supported by clauses 17.4–17.5. Symmetric cancellation fees under clauses 18–19 prevent hidden charges, while clause 14.6 mandates that the apportioned fare be disclosed to passengers and regulators.

Through various provisions, India guarantees that the aggregator's identity, the fairness of its value distribution, and the inclusivity of its fleet are transparent and legally binding. Ownership cannot be anonymous, accessibility cannot be optional, and sustainability must be a priority. The distributional effects of e-hailing are thus addressed explicitly in licensing terms.

Arguably, India's e-hailing regime functions as administrative law for platforms. The legal framework begins with section 93's licensing requirements and section 74's permit conditions, extending to the Guidelines' price band, driver-share minimums, telemetry, panic hardware, training and inquiry timelines, disclosure and data retention, and a due-process ladder for sanctions and appeals. The model is contestable but disciplined: entry is limited by time; operations are regulated; prices and shares are capped yet adaptable; and enforcement is swift because it prioritises evidence. In a market as large and diverse as India's, this approach is a constitutional strength. It enables innovation to expand while ensuring it occurs on terms that the State can oversee, courts can review, and riders and drivers can trust.

[1114] Clause 14.8 of the *Motor Vehicles Aggregator Guidelines*.
[1115] Clause 21 of the *Motor Vehicles Aggregator Guidelines*.
[1116] Clause 16 of the *Motor Vehicles Aggregator Guidelines*.

Summary of comparative trends

The comparative survey of Kenya, Tanzania, and India makes one fact clear: regulation is never absent; it is always a matter of degree and design. Each jurisdiction has chosen to intervene at different pressure points in the e-hailing value chain. Kenya disciplines platform margins by capping commissions and mandating receipts. Tanzania secures passenger predictability with state-set tariffs, meters, and tickets. India permits price fluctuation but binds it within a corridor, pairing that with minimum driver shares, telematics, and enforceable sanctions.

What unites these approaches is a rejection of platform opacity: in each system, regulators insist that fares, commissions, or safety standards become visible and auditable in public law. What divides them is their underlying philosophies: whether to regulate margins, fares, or corridors of fluctuation. These choices carry different consequences for affordability, safety, and inclusion.

In what follows, the discussion distils these comparative trends into thematic categories, beginning with affordability and pricing, then progressing to safety and service quality, followed by addressing ownership, inclusion, and the distribution of value, and ultimately distilling patterns and divergences.

Affordability and pricing: three philosophies, three consequences

The comparison of Kenya, Tanzania, and India demonstrates three distinct philosophies about how law should discipline fare-setting, each with tangible consequences for both drivers and passengers.

Kenya adopts the most direct approach. The *Transport Network Companies Regulations,* 2022 impose a statutory commission ceiling of 18% on the platform's take.[1117] This ensures that at least 82% of the gross fare flows to the driver or vehicle owner. The regulatory hand falls not on the fare itself, but on the platform's margin. Since the Regulations require disclosure of the pricing mechanism and revenue-sharing agreement at licensing, the cap is enforceable *ex*

[1117] See generally sections 4.3.1.2 and 4.3.3.1 of the discussion above.

ante. The statutory backstop in section 30 of the *National Transport and Safety Authority Act* also empowers the Authority to intervene on "charges or the maximum or minimum charges" where public interest so requires. Kenya therefore disciplines platform extraction, but it does not administratively fix the passenger fare: surge pricing remains lawful so long as the commission cap and transparency duties are honoured. The outcome is that drivers are protected against erosion of income, while affordability for passengers is mainly left to market competition, tempered by the transparency of receipts and the Authority's reserve power to condition fares.

Tanzania represents the opposite philosophy. Under the *Land Transport Regulatory Authority Act,* 2019 and the *Land Transport Regulatory Authority (Private Hire Services) Regulations*, the Land Transport Regulatory Authority assumes direct tariff-setting powers.[1118] The *Land Transport Regulatory Authority Act* requires the Authority to set and review fares, taking account of costs, comparable benchmarks, and consumer and investor interests, and to publish approved fares in the Gazette. The Regulations then oblige operators to use fare meters or integrated systems visible to the passenger and accessible to the Authority, and to issue tickets for every journey. Fares are therefore both bounded and reconstructible: the regulator fixes them *ex ante*, and the evidentiary devices (meters, tickets) enforce them *ex post*. The result is stability, as passengers face predictable charges and drivers are assured of lawful pay, but it comes at the expense of flexibility. Platforms lose the ability to experiment with dynamic fare structures, since price is a matter of statutory determination rather than algorithmic discretion or market competition.

India adopts a hybrid "corridor" model. The *Motor Vehicles Act*, 1988 requires aggregators to be licensed, and the *Motor Vehicle Aggregator Guidelines,* 2025 embed pricing within that licence.[1119] Some provisions tie every fare to a state-notified base fare, while some allow fluctuation only within a corridor: not less than 50% of the base and not more than double. In addition, the Indian

[1118] See generally sections 4.4.1.2 and 4.4.3.1 of the discussion above.
[1119] See generally sections 4.5.1.2 and 4.5.3.1 of the discussion above.

framework also requires that the driver receive at least 80% of the fare (60% if the aggregator owns the vehicle). Dynamic pricing is therefore permitted, but its extremes are legally bounded, while the driver's statutory share guarantees income protection. The Guidelines also treat the first three kilometres as 'dead mileage', embedding protections against unpaid pick-ups. Unlike Tanzania's rigid tariffs or Kenya's simple margin cap, India combines tariff anchoring with bounded flexibility, creating a corridor of fluctuation that is both transparent and enforceable.

Arguably, taken together, these models reflect different regulatory philosophies about where to place the controlling hand:

i. Kenya disciplines platform margins (protecting drivers, leaving fares to market play).

ii. Tanzania disciplines passenger fares (producing stability but curbing flexibility).

iii. India disciplines the corridor of fluctuation (seeking to reconcile predictability with adaptability).

The comparative lesson is not about which approach is best,[1120] but rather that each reflects an underlying judgment about the greater risk: driver exploitation through high commissions (Kenya's focus), passenger over-charging and opacity (Tanzania's concern), or the unpredictability of platform power (India's hybrid solution).

Safety, service quality, and regulatory capacity

The three jurisdictions converge on the recognition that platforms cannot be left to self-regulate safety, but they diverge on how to enforce obligations. The contrast is between statutory duties that risk being performative and systems that embed enforceability into infrastructure.

[1120] See further discussion in Chapter 6 below.

Kenya relies on statutory rules that appear sound on paper but depend heavily on the regulator's institutional capacity.[1121] The *Transport Network Companies Regulations,* 2022 require vehicle safety measures (insurance, roadworthiness, age limit of 16 years), driver standards (public service vehicle badges), and working-time limits (eight continuous hours). Platforms must provide panic buttons connected to response centres, maintain three-year records, issue itemised receipts, and ensure non-discrimination. Deactivation policies must include notice, reasons, and opportunity to challenge, with decisions reported to the Authority.[1122] Collectively, these provisions are conceptually robust and establish due-process obligations. Kenya's model is therefore one of rules on paper: enforceability depends less on statutory clarity than on whether the regulator can audit and police thousands of vehicles and transactions.

Tanzania adopts a markedly more intrusive framework. The *Land Transport Regulatory Authority Act,* 2019 empowers the Authority not only to set tariffs but also to impose and monitor safety and service standards across vehicles, drivers, and operators.[1123] The *Land Transport Regulatory Authority (Private Hire Services) Regulations* require vehicles to be fitted with fare meters visible to passengers and accessible by the Authority, drivers to obtain the Authority's authorisation certificates, and operators to integrate their systems directly with the Authority's licensing infrastructure. Safety is embedded in technical obligations: taxi colour-marking, two helmets coded for motorcycles and minimum service standards (air-conditioning, Wi-Fi) for ride sharing. The Authority wields enforcement powers, including inquiries, compliance orders enforceable as High Court injunctions, and suspension or revocation of licences with notice or in emergencies.[1124] The effect is a seemingly rules-with-teeth model: compliance is not aspirational but policed through statutory authority, technical integration, and immediate sanction.

[1121] See generally sections 4.3.1.3 and 4.3.3.2 of the discussion above.
[1122] See generally section 4.3.2.3 of the discussion above.
[1123] See generally section 4.4.3.2 of the discussion above.
[1124] See generally section 4.4.1.4 of the discussion above.

India goes further by embedding safety into the aggregator's licence conditions with precise technical detail.[1125] The *Motor Vehicle Aggregator Guidelines,* 2025 require every onboarded vehicle to have an AIS-140 compliant Vehicle Location Tracking Device and a panic button integrated with State or Union Territory control rooms. Some provisions demand that deviation from a prescribed route trigger automatic alerts to the control centre, while others require 24/7 call centres and in-application support; and yet others mandate certification of cybersecurity by a CERT-In auditor, and data retention in line with India's data protection law. Passenger insurance (₹5 lakh minimum), first-aid kits, fire extinguishers, and disclosure of licence/permit details reinforce the safety net. Non-compliance can result in suspension or cancellation of the aggregator licence. India's model is therefore wired and auditable: safety is enforced through hardware, software, human support, and statutory sanction, ensuring that every trip becomes a monitored data point.

Arguably, the above reveals that:

- Kenya potentially demonstrates the risk of statutory duties without corresponding enforcement capacity,
- Tanzania shows the potential of state-monitored systems with embedded devices, which could produce stability, but potentially rigidity; and
- India illustrates that real-time monitoring and technological integration could make safety enforceable and transparent, though it would likely be costly and administratively complex.

The comparative lesson is that safety cannot rest on promises alone. Each system reveals a different calibration of enforceability: Kenya's formal rules, Tanzania's state-centric enforcement, and India's technologically integrated oversight.

[1125] See generally sections 4.5.1.3 and 4.5.3.2 of the discussion above.

Ownership, inclusion, and value distribution

If affordability shows how fares are structured and safety shows how they are enforced, the third dimension reveals who ultimately captures value and how the law potentially redistributes benefits among platforms, drivers, and passengers. Kenya, Tanzania, and India again diverge sharply.

Kenya takes a transparency-focused approach.[1126] The 2022 Regulations require that applicants be locally incorporated and have a registered office and Data Commissioner registration, ensuring accountability to the Kenyan jurisdiction. The Regulations also compel disclosure of fleet ownership lists, ownership details, and revenue-sharing agreements. They further cap commissions at 18% of gross fares and prevent promotional pricing from eroding driver or owner earnings. Kenya also requires itemised receipts, showing gross fares, deductions, and net driver shares. The effect is to make value flows traceable and enforceable: receipts, ownership records, and filed agreements create a paper trail. Inclusion is bolstered by provisions that prohibit disability-based discrimination, forbid surcharges, and require the accommodation of wheelchairs and service animals, backed by penalties. Kenya therefore tilts the table with transparency and caps: ownership is open, including foreign firms, but margins are disciplined and distribution is legible.

Tanzania locates inclusion and distribution within a state-centric framework.[1127] Corporate applicants must register locally and meet demanding entry requirements (e.g., safety and rescue plans, audited financials, IT integration with the Authority's systems). Drivers and vehicle owners are licensed and authorised individually, making them visible participants within the Authority's architecture. Tariff-setting powers and mandatory tickets/meters ensure that lawful fares are both fixed and auditable, thereby shaping how income is distributed between passengers, drivers, and platforms. Unlike Kenya, Tanzania does not cap commissions numerically, but it embeds income protections by defining "fare" as the regulated unit and requiring evidentiary devices. On inclusion, the Act

[1126] See generally sections 4.3.1.1 and 4.3.3.3 of the discussion above.
[1127] See generally sections 4.4.1.1 and 4.4.3.3 of the discussion above.

establishes a Consumer Consultative Council to represent, among others, disadvantaged groups, ensuring their voices are incorporated in tariff reviews and regulatory policy. Thus, Tanzania tilts the table less with ownership rules than by the administrative mediation of value distribution, where fares, records, and integration prevent opaque extraction.

India asserts regulatory sovereignty most explicitly.[1128] The *Motor Vehicles Act* requires a licence, and the *Motor Vehicle Aggregator Guidelines* 2025 limit eligibility to companies, limited liability partnerships, or co-operatives of drivers/owners incorporated in India, excluding purely foreign entities. The Guidelines require publication of ownership and service details; prohibit discrimination between aggregator-owned vehicles and those of independent drivers; require multilingual application availability; and mandate accessibility features for disabled users. The Guidelines also empower States to stipulate quotas of disability-friendly vehicles. These obligations turn inclusion into enforceable licence conditions. Value distribution is legally hard-wired by the 80/20 driver-platform split, reinforced by transparency duties on fares, commissions, and incentives. The result is that ownership, inclusion, and sustainability become statutory requirements, not market by-products.

Arguably, the above reveals that:

- Kenya makes ownership open but insists on transparency and caps to discipline value distribution, protecting drivers and including persons with disabilities through non-discrimination rules;

- Tanzania leaves ownership flexible but secures regulatory mediation, including fares, tickets, and Authority integration, to structure how value flows, while consultative bodies give disadvantaged groups a voice; and

- India combines domestic ownership rules, accessibility mandates and statutory income shares into a sovereignty-and-inclusion model.

[1128] See generally sections 4.5.1.1 and 4.5.3.3 of the discussion above.

The comparative lesson is that platforms are never neutral conduits: the law decides who benefits. Kenya emphasises transparency and limits on extraction; Tanzania embeds distribution in regulatory tariff powers; and India re-engineers ownership and inclusion as legal obligations.

Patterns, divergences, and what they potentially suggest

Across Kenya, Tanzania, and India, a clear pattern emerges: no one leaves e-hailing in a regulatory vacuum. Each jurisdiction has moved to make platforms transparent to the state, whether through receipts, meters, or telemetry. The common thread is the rejection of opacity. Where platforms may have once claimed to be neutral 'technology providers', all three countries impose duties that make pricing, commissions, and safety measurable for regulators.

Yet the divergences are just as striking, and they track institutional capacity and political economy. First, Kenya adopts a light-touch but targeted model. It disciplines the platform's margin through an 18% commission cap and enforces transparency via receipts, ownership disclosures, and due-process requirements. Passenger fares themselves are left to market play, subject only to residual powers under section 30 of the *National Transport and Safety Authority Act*. Kenya's philosophy reflects a regulatory culture that seeks to protect drivers against over-extraction while trusting competition and disclosure to safeguard passengers.

Secondly, it appears that Tanzania embraces a state-centred, stability-oriented model. The *Land Transport Regulatory Authority Act* sets tariffs, mandates fare meters and tickets, licenses drivers and vehicles individually, and integrates operator systems into its own infrastructure. Safety and service quality are embedded into technical standards (helmets and Wi-Fi, for example), and enforcement powers are wide-ranging. The trade-off is predictability at the cost of flexibility: fares are stable, drivers are protected through regulated tariffs, but platforms lose space for innovation in pricing.

Thirdly, India develops a hybrid sovereignty-and-integration model. The 2025 Guidelines impose a corridor of fluctuation, a guaranteed driver share, and mandatory safety devices. Ownership is localised, and accessibility for disabled people is enforceable. Enforcement includes suspension and cancellation of licences for pricing or safety breaches. India, therefore, reconciles flexibility with bounded predictability by wiring enforcement into the licence itself, while ensuring platforms remain domestically accountable.

Overall, it appears that each model reveals a distinct choice about where the regulatory hand should fall: on the platform's margin (Kenya), on the passenger's fare (Tanzania), or on the corridor of fluctuation and systemic integration (India). Each choice reflects more than design preference: it embodies institutional capacity, regulatory tradition, and political economy. Kenya reflects a trust in disclosure and market forces, Tanzania reflects a statist tradition of tariff-based public transport regulation, and India reflects a federal system seeking to reconcile diversity with enforceable standards.

For South Africa, the key point is not to replicate a model exactly, but to consider the trade-offs. In essence, the following questions should be taken into account: is the greater danger driver exploitation through excessive commissions (Kenya's concern)? Is it passenger over-charging and safety opacity (Tanzania's concern)? Or is it unpredictability of platform power in a hybrid market (India's concern)?

The comparative exercise shows that regulatory design is never neutral. Each intervention tilts the field in a particular direction. What unites all three jurisdictions is the imperative to dismantle opacity, and what divides them is the institutional path chosen to do so.

Synthesis and conclusion

The comparative review of Kenya, Tanzania, and India demonstrates that regulating e-hailing is not a question of chasing applications (apps), but of deciding where and how to place the regulatory hand. Each jurisdiction does so differently. Kenya fixes its gaze on the platform's margin. By capping commissions

at 18%, requiring disclosure of ownership and revenue-sharing agreements, and mandating itemised receipts, it disciplines extraction while leaving passenger fares to market play. This is a model of targeted but light-touch regulation, premised on transparency and residual public-interest powers under section 30 of the *National Transport and Safety Authority Act*.

Tanzania emphasises the passenger's fare. The National Transport and Safety Authority sets tariffs, requires fare meters and tickets, licenses drivers and vehicles individually, and integrates operators' IT systems into its infrastructure. Safety and quality obligations are embedded in service standards, with violations policed through statutory sanctions. The effect is stability and predictability, but at the cost of flexibility for platforms.

India strikes a balance by regulating the corridor of fluctuation and systemic integration. Its Guidelines establish a fair corridor, a statutory driver share, and mandatory safety devices linked to control rooms. Ownership is localised, and accessibility and inclusion are enforceable. Enforcement powers allow suspension or cancellation of licences for non-compliance. This hybrid model blends flexibility with enforceable boundaries, while anchoring platforms in domestic law and policy goals.

What emerges from the discussion is that no single blueprint emerges. Instead, there are families of approaches. For example, Kenya's margin cap protects drivers but leaves fares to fluctuate. Tanzania's tariff orders protect both drivers and passengers but risk rigidity. India's hybrid corridor model reconciles flexibility with predictability, but at a potentially higher administrative cost. What unites all three is a shared antagonism to opacity. Platforms must reveal their hand, whether through receipts, tariffs, or telemetry. The divergence lies in the instruments: transparency rules in Kenya, tariff fiat in Tanzania, and technologically enforced licence conditions in India.

For South Africa, these comparative insights are suggestive rather than prescriptive. They show that a regulatory regime can be light, statist, or hybrid; that each choice tilts the playing field differently; and that the tools of receipts,

tariff orders, pricing corridors, and safety devices are all available to legislators. Yet the central issue remains normative: which trade-offs align with South Africa's constitutional commitments, institutional capacity, and political economy? This inquiry is conducted in Chapter 6.

6 Conclusion and Recommendations

Introduction

This concluding chapter synthesises the findings of the thesis and shifts from analysing issues in South Africa's e-hailing sector to proposing specific regulatory solutions. In the preceding chapters, the study explored how historical inequalities and regulatory gaps have shaped the current e-hailing landscape. Now, the focus moves to showing how law and policy can address these challenges in accordance with South Africa's constitutional principles. The stakes are high: e-hailing affects economic opportunity, labour rights, and access to mobility for millions of South Africans. The *Constitution* requires that any intervention promote fair competition, protect workers' rights to fair labour practices, and advance social justice in the transport sector. These principles, competition, labour protection, and mobility justice, underpin the ethical foundation for the recommendations presented.

This chapter begins by summarising the key insights from Chapters 2 to 5, showing how each layer of analysis contributed to the reforms now proposed. It then provides a synthesis of lessons learned from comparator countries (Kenya, Tanzania, and India) and translates them into tailored recommendations for South Africa's Amendment Act and the 2025 Regulations. Finally, it discusses the importance of governance and implementation beyond mere law reform, revisits the initial hypothesis and research questions to assess their coverage, and concludes with a reflection on what is at stake and what has been achieved.

Summary of chapters

Chapter 2: Public transport regulation in South Africa: A historical overview

Chapter 2 set the historical and doctrinal stage. It demonstrated that South African transport law was never neutral: from colonial ordinances to the apartheid-era *Road Transportation Act* 74 of 1977, regulatory frameworks were designed to manage scarcity and entrench racial segregation, rather than guarantee universal mobility. Quotas, permits, and the exclusion of black operators from formal taxi and bus routes created both an informal vacuum and a culture of distrust in public

regulation.[1129] The minibus taxi industry grew precisely in that space, first criminalised, then tolerated, then partially licensed, but always retaining an ambivalent relationship to the law.[1130]

Chapter 2 also traced the post-1994 reforms, particularly the NLTTA and its successor, the NLTA. These laws sought to bring taxis into the fold, but did so unevenly.[1131] Licensing backlogs, fragmented provincial and municipal responsibilities, and political patronage weakened enforcement. The result was a system in which the law often promised more than institutions could deliver.[1132]

Three legacies emerged clearly. First, transport regulation in South Africa has long been characterised by a protectionist logic: protecting incumbents, whether bus companies under apartheid or taxi associations after 1994, rather than designing for universal access. Second, the system has been characterised by fragmented authority, with overlapping mandates among national, provincial, and municipal regulators, and a lack of clarity regarding enforcement responsibility. Third, it has been marked by enforcement weakness, with limited inspection capacity and deep political entanglement in taxi violence and subsidy allocation.[1133]

These legacies are important for e-hailing because they shape the environment in which new regulations must function. Platforms have taken advantage of the gaps, operating across jurisdictions, exploiting weak enforcement, and positioning themselves as technology providers rather than transport operators. To create a practical framework today, South Africa would have to address these structural inheritances.

Chapter 3: Global perspectives on disruptive technology and the sharing economy

Chapter 3 began with Jefferson's reminder that institutions must keep pace with the human mind. Set against the backdrop of the 4IR, the chapter argued that platform innovations, including ride hailing, AI, IoT, and other data-driven

[1129] See sections 2.3-2.4 above.
[1130] See section 2.4 above.
[1131] See section 2.5 above.
[1132] See section 2.6 above.
[1133] See generally sections 2.6-2.7 above.

systems, have advanced more quickly than public law can adapt, creating a classic "pacing problem." Using ride hailing as a case study, it shows how disruption reshapes public transport governance and explains that, because events develop swiftly, the analysis necessarily relies on up-to-date internet sources to illustrate clashes between platforms and regulators.

The discussion clarified "disruption": not just novelty but impact—reshaping value networks and displacing players. Edgerton warned that change often appears evolutionary, moderating hype. Yet today feels different due to connectivity, affordable computing, and widespread smartphones enabling software-driven services that expand quickly across borders. This blurs producer and consumer roles, online and offline, turning mobility into a cyber-physical system with code controlling vehicles, prices, and payments. While offering efficiency, customisation, and access, it also raises privacy risks, job loss, and inequalities. Public transport now struggles with machine-readable data, real-time compliance, and enforcement challenges it never faced before.[1134]

From the business perspective, the chapter explained how platforms redefine value creation and capture. By managing idle assets rather than owning fleets, firms like Uber reduce incumbents' cost structures, compete through data and user experience, and gradually diminish legacy market share. Incumbents respond with predictable tactics: litigation and lobbying, imitation through their own apps, shifting focus to niches, or withdrawing. Society benefits from convenience and new markets, but negative externalities also emerge: driver insecurity, congestion, emissions, and the weakening of policy outcomes once established through taxi regulations (coverage obligations, insurance floors, accessibility standards).[1135]

Legally, the chapter showed that innovation outpaces traditional categories. Courts and cities have struggled to define whether platforms are transport operators or intermediaries, whether drivers are employees or independent contractors, and how licensing applies to algorithmic pricing and ratings. Cases like *Razak* and *Toronto v Uber* show that platforms initially fell into legal gaps. In

[1134] See discussion under section 3.2 above.
[1135] See discussion under section 3.3 above.

that void, *'lex informatica'* or software governance took over: apps set fares, assigned trips, controlled participation through ratings and deactivation, and enforced safety protocols. Public law gave way to private code. Regulators initially employed command-and-control measures, subsequently adopting adaptive strategies, including tailored categories, pilots, data reporting, and principles-based rules. Doctrine lagged; rushed laws risked being unworkable, so soft governance bridged gaps, including multi-stakeholder processes, codes of conduct, and sandboxing.[1136]

This period was characterised by regulatory uncertainty. Platforms launched first and legalised later, leveraging popularity and regulatory arbitrage to pressure authorities. Some rule-breaking prompted necessary reform, but in other cases it undermined protections, leading to "deregulation by default."

The sharing economy more broadly followed this pattern. Peer-to-peer platforms utilised existing technologies to enter new markets but caused legal issues in insurance, taxation, and labour classification. Ride hailing became the clearest example: initially exploiting gaps by claiming to be "tech, not transport," then gradually integrating into specialised regulatory regimes, while taxis faced either partial deregulation or adaptation. The trend pointed towards principle-based rules that focus on outcomes like safety and fairness rather than strict business categories.[1137]

Public transport systems began modernising by adopting apps, partnering with ride hailing services for last-mile solutions, and updating standards for drivers, vehicles, and data. Platforms shifted from defying regulations to lobbying for tailored rules, though boundary-pushing continued. The outcomes were mixed: medallion values collapsed, long hours persisted, and safety oversight struggled with new technologies. Simultaneously, automakers and tech giants entered mobility, making regulation of the public interest more complex.[1138]

[1136] See discussion under section 3.4 above.
[1137] See discussion under section 3.5 above.
[1138] See discussion under section 3.6 above.

Overall, Chapter 3 highlights the double-edged nature of disruption: platforms have increased choice and efficiency by exploiting legal loopholes and private code, but they have also shifted risks to workers, weakened legacy protections, and challenged the reach of public authority. The lesson is not "innovation or regulation," but adaptive, principle-based governance that re-establishes public oversight of a software-mediated market. This leads to Chapter 4's question: whether South Africa's post-amendment, 2025 regulatory baseline succeeds in giving e-hailing a clear legal identity, reclaiming public rule making from private algorithms, and translating constitutional values into enforceable, sector-wide obligations.

Chapter 4: The South African regulatory framework for e-hailing

Chapter 4 examined the regulatory journey from legal silence to recognition. The statutory baseline outlined the shift. Before the Amendment Act, e-hailing was categorised as metered taxis, resulting in a patchwork of enforcement where legality depended on provincial discretion. Platforms disclaimed responsibility, drivers faced legal risks, and courts tried to address the gaps. The 2023 Amendment Act (effective from September 2025) introduced an explicit definition of "electronic hailing services" and added section 66A, enabling the Minister to regulate licensing, app standards, codes of conduct, and safety obligations. It also expanded ministerial powers, decentralised licensing to local authorities, and mandated consultation with affected operators. However, while this clarified statutory ambiguity, the framework remained mainly procedural, leaving substantive protections to regulations and executive discretion.[1139]

The 2025 Regulations implemented these reforms with unprecedented detail. They required the registration of platforms, the conversion of existing licences, and the formalisation of driver–platform agreements under South African law. The regulations addressed moratoria, platform responsibilities, and penalties. For the first time, platforms were officially recognised as regulated entities, subject to transparency requirements such as displaying pre-trip fares, issuing electronic

[1139] See discussion under section 4.2.1-4.2.2 above.

receipts, and providing panic buttons. However, these obligations focused on appearance rather than substance: issues like commissions, algorithmic pricing, and fairness in deactivation were left unaddressed, while harsh penalties disproportionately affected drivers. Conversion deadlines and moratoria risked perpetuating the very scarcity and exclusion that the Market Inquiry had criticised.[1140]

Subsequently, the constitutional and institutional context was briefly outlined to explain why these reforms may be difficult in practice. South Africa's cooperative governance model distributes transport authority across national, provincial, and local levels, which can lead to possible fragmentation and delays. While the new municipal regulatory bodies could improve local coordination, substantial capacity gaps remain. Here, the *Economic Regulation of Transport Act* is particularly significant. Although not automatically applicable to e-hailing, section 4(2) empowers the Minister to designate it as a regulated market. If enacted, the Act's powers over price control and market investigation could regulate commissions, prevent predatory pricing, and consolidate oversight under the Transport Economic Regulator, thereby addressing many of the gaps left by the NLTA and 2025 Regulations.[1141]

The analysis of regulatory tensions revealed a consistent paradox. Regarding competition, entry has been liberalised and platforms registered, but commissions remain unregulated and moratoria entrench incumbency. Concerning labour, licensing provisions reference compliance with labour law, but drivers remain classified as contractors, visible as operators yet invisible as workers. In terms of transport justice, apps must now disclose fares, vehicles should be branded, and platforms must be incorporated locally; yet, affordability remains hostage to surge pricing, safety duties stop at the device level rather than addressing driver fatigue, and negotiated contracts under section 41 of the NLTA exclude e-hailing altogether.[1142]

[1140] See discussion under section 4.2.3 above.
[1141] See discussion under section 4.2.4 above.
[1142] See discussion under section 4.2.3 above.

The chapter concluded that South Africa has transitioned from a state of vacuum to one of density: platforms are registered, drivers are licensed, and apps are codified. Yet, legality has not led to justice. Transparency exists without fairness, recognition without redistribution, and order without equity. The reforms discipline weak actors, particularly drivers and small operators, while leaving the structural dominance of global platforms largely unchanged. The paradox of legality without justice set the scene for Chapter 5's comparative analysis, where the South African framework would be tested against Global South approaches that directly addressed commissions, worker status, safety rules, and universal access.

Chapter 5: Comparative dimensions of e-hailing regulation in Kenya, Tanzania and India

Chapter 5 shifted the focus outward, offering a detailed comparative analysis of Kenya, Tanzania, and India. The aim was not to suggest ready-made models but to explore how different jurisdictions have translated platform disruption into enforceable regulation, and to draw practical lessons for South Africa. The chapter sought to show that although contexts vary, there are evident families of regulatory approaches that can be adapted to South Africa's constitutional landscape.

The analysis began with Kenya, which has chosen a light-touch but targeted model. The *National Transport Network Companies (Owners, Drivers and Passengers) Regulations*, 2022 introduced a licensing regime under the National Transport and Safety Authority, requiring local incorporation, tax compliance, and Data Commissioner registration. Critically, Regulation 9 imposed a hard ceiling of 18% on the commission that platforms may deduct, supported by anti-avoidance provisions. Regulation 14 required itemised receipts, while Regulations 15–17 created due-process protections for deactivation and mandated record-keeping. Kenya thus disciplines the platform's margin and ensures transactional transparency, while leaving passenger fares largely to market dynamics. The

result is protection for drivers against over-extraction, but without strict price stability for passengers.[1143]

Tanzania adopted a different approach, implementing a statist and stability-focused model. The *Land Transport Regulatory Authority Act*, 2019, along with the *Land Transport Regulatory Authority (Private Hire Services) Regulations*, authorises the Land Transport Regulatory Authority to set tariffs, mandate the fitting of meters or ticketing systems in vehicles, and integrate operator IT systems into the Land Transport Regulatory Authority's infrastructure. Licences are issued to drivers, operators, and vehicles, creating a highly controlled ecosystem. The Land Transport Regulatory Authority also holds investigatory and enforcement powers, including conducting inquiries, issuing compliance orders enforceable as court injunctions, and suspending or revoking licences. This approach directly regulates end-user fares and ensures that both drivers and passengers operate within a predictable, state-verified framework. The trade-off is reduced flexibility: platforms cannot easily adjust prices dynamically, and innovation faces restrictions due to potentially high administrative oversight.[1144]

India developed a hybrid model of sovereignty and integration. The *Motor Vehicles Act*, 1988 (as amended in 2019), mandates aggregator licensing, implemented by the *Motor Vehicle Aggregator Guidelines*, 2025. These guidelines set a pricing corridor: fares must stay between 50% and 200% of a state-notified base fare, with the first three kilometres classified as "dead mileage." Clause 17.4 ensures drivers receive at least 80% of the fare (60% if the vehicle is aggregator-owned). Safety is ensured with the use of mandatory AIS-140 vehicle tracking devices, panic buttons, and route deviation alerts, all of which are connected to government control rooms. Accessibility requirements include multilingual apps and disability-friendly features, while states may set sustainability targets. India's model thus combines limited pricing flexibility, statutory driver protections, and

[1143] See discussion under section 5.2 above.
[1144] See discussion under section 5.3 above.

technological enforcement, although this may lead to higher compliance and administrative costs.[1145]

Despite differences, Chapter 5 identified a common theme: a dedication to clarity and avoidance of opacity. Each jurisdiction acknowledged that platforms cannot stay hidden; the law must reveal the flows of fares, commissions, safety data, and ownership. In Kenya, transparency is promoted with the use of receipts and limits on commissions. In Tanzania, it is with meters, tickets, and tariffs published in the Gazette. In India, it is with licensing conditions, telemetry, and public reporting.

The comparative lesson is not that one model is better, but that regulation must decide where the state's influence is strongest: on platform margins, passenger fares, or the range within which fluctuations occur. Each choice reflects institutional capacity and political economy. Kenya's light-touch rules suit a context of active competition among platforms; Tanzania's statist approach aligns with a tradition of tariff regulation in public transport; India's hybrid rules mirror its vast, diverse markets and stronger bureaucratic machinery.

For South Africa, the implications are addressed below.

Synthesis of comparative observations

The comparative exercise highlights not only the variety of regulatory strategies across Kenya, Tanzania, and India but also the emerging convergence on one principle: opacity as the common adversary. Each jurisdiction, in its own way, has aimed to reveal the true extent of platform power, whether by capping commissions, setting fares, or defining price corridors. South Africa, by contrast, delayed achieving statutory clarity but has not yet tackled opacity directly, leaving structural vulnerabilities unresolved.

Where the regulatory hand falls

As Chapter 5 demonstrated, the most significant axis of comparison is where each state exerts its regulatory influence. Kenya controls the *margin*, imposing an 18%

[1145] See discussion under section 5.4 above.

cap on platform commissions and ensuring that drivers receive no less than 82% of fares.[1146] Tanzania controls the *fare*, with the Land Transport Regulatory Authority using tariff-setting powers to stabilise passenger charges and establish a baseline for driver income.[1147] India controls the *corridor*, setting a floor and ceiling for prices while requiring aggregators to guarantee a minimum driver share and making their pricing strategies transparent.[1148]

These approaches differ in method, but they share a common aim: to diminish the informational asymmetries that allow platforms to exploit their dual dominance over drivers and passengers. Whether by limiting the platform's share, fixing the passenger's fare, or restricting the range within which fares can fluctuate, each jurisdiction has recognised that unchecked opacity encourages both economic exploitation and social mistrust.

South Africa's distinctive turn

The promulgation of the Amendment Act and the 2025 Regulations on 12 September 2025 marks South Africa's first decisive step towards integrating e-hailing within the NLTA. After a decade of regulatory uncertainty, section 66A now explicitly recognises e-hailing as a distinct mode, subject to licensing, safety, and compliance requirements. This is a significant achievement: legal clarity has replaced ambiguity, and safety standards now establish a new benchmark.

Yet the placement of South Africa's regulatory hand is strikingly different from its comparators. The gaze of the 2025 Regulations is turned outward, to the passenger, not inward to the driver. Regulation 16 obliges platforms to provide passengers with a fare estimate before a trip; Regulation 25 requires an e-receipt afterwards.[1149] These measures enhance consumer transparency but leave untouched the internal division of value between platform and driver. The e-receipt records the fare, but not how it is split; the estimate provides the charge, but not the commission.

[1146] See discussion under section 5.2.1.2 above.
[1147] See discussion under section 5.3.1.2 above.
[1148] See discussion under section 5.4.1.2 above.
[1149] See general discussion under section 4.3.1 above.

At the same time, the Regulations shift significant compliance costs onto drivers. Regulation 24 requires the use of type-approved devices; Regulation 26 mandates visible branding; Regulation 19 insists on professional driving permits and panic buttons.[1150] Each of these is justifiable on its own, but together they impose a burden on drivers, who must bear costs that are normally covered by employers or shared with platforms in other sectors. In short, the regulatory focus boosts passenger confidence while reducing driver margins.

Strengths and silences

South Africa's strengths should not be understated. By institutionalising e-hailing in the NLTA and creating Municipal Regulatory Entities, it has leapfrogged ahead of Kenya and Tanzania in terms of legal recognition and institutional design. By mandating safety features, it has arguably surpassed India in anticipating risks to vulnerable passengers. These are real achievements, and they deserve commendation.

However, the silences are just as significant. Unlike Kenya, there are no limits on platform commissions. Unlike Tanzania, there is no tariff-setting authority to regulate fares. In contrast to India, no fluctuation corridor is created. Platforms are not required to disclose their algorithms for fare management, trip assignment, or deactivation, nor are they obliged to share regulatory compliance costs. Consequently, South Africa has clarified the legality of e-hailing, addressing past uncertainties, but it still faces future issues: the concentration of economic power in opaque algorithms and the uneven transfer of risk to drivers.

What sharpens this picture is the paradox of South Africa's latent capacity. Unlike Kenya, Tanzania, or India, South Africa already has a statute, the *Economic Regulation of Transport Act*, that could, if invoked under section 4(2)(a), bring e-hailing within the ambit of price controls (section 11(1)) and tariff interventions

[1150] See general discussion under section 4.3.3 above.

(section 21).[1151] In theory, South Africa has the most powerful macro-economic lever of all. But in practice, that lever remains dormant.

The comparative synthesis, therefore, yields a paradoxical conclusion. South Africa has made the most progress in statutory clarity and safety, but it has not fully utilised its tools against the structural opacity that characterises platform capitalism. While others have focused on margins, fares, or corridors, South Africa has concentrated on safety and legality, leaving value and power untouched.

The comparative lesson is therefore twofold. South Africa deserves praise for legal recognition, leadership in safety, and institutional innovation. However, it still lags in tackling opacity, the real common adversary. Unless it broadens transparency internally to drivers and awakens the *Economic Regulation of Transport Act*'s hidden capabilities, it risks maintaining a framework that upholds legality but perpetuates the inequalities of the past decade. In the following section, the lessons for South Africa are highlighted more sharply: how to transform statutory clarity into structural fairness.

Lessons for South Africa

The comparative synthesis clarifies that although South Africa has achieved statutory clarity and improved safety, it still lags in addressing the fundamental dynamics of platform power. Three groups of lessons emerge, relating to competition, labour, and transport justice, each emphasising that governance, not law alone, is crucial.

6.1.1 Competition and market fairness

The first lesson is that competition in e-hailing does not self-regulate. Kenya's commission cap and India's mandated driver share both recognise that platforms will extract as much as the market will bear unless checked by law. Tanzania's tariff-setting powers achieve the same aim using a different method, fixing passenger fares to stabilise income streams. In each case, the state intervened to ensure market balance.

[1151] See general discussion under section 4.2.4.2 above.

South Africa has not addressed this. The 2025 Regulations offer fare estimates and receipts, but these are aimed at passengers rather than the platform–driver relationship. They do not reveal the platform's commission nor guarantee a minimum driver share. The Competition Commission's Market Inquiry confirmed the outcome: platforms in South Africa routinely retain 25 to 30% of fares, leaving drivers with reduced earnings and no leverage to negotiate. This is not just a transparency gap; it is a power imbalance that skews the competitive field.

The lesson is clear: unless South Africa regulates the margin with commission caps, earnings floors, or corridor pricing, it will keep the appearance of competition but not its real substance.

Labour dignity and protection

The second lesson is that labour dignity requires more than the rhetoric of opportunity. Kenya and India have embedded procedural fairness into their frameworks, obliging platforms to provide notice, reasons, and appeal mechanisms for deactivation.[1152] Tanzania ties driver exclusion to the licensing regime, ensuring that arbitrary exclusion is subject to administrative law.[1153]

South Africa, by contrast, leaves drivers precariously exposed. Regulation 21 addresses suspension and cancellation at the operator level but does not create enforceable rights for individual drivers. The Market Inquiry documented the result: drivers working long hours to secure minimal income, facing deactivation without recourse, and having no influence over fare-setting. This is not a marginal inconvenience but a fundamental dignity deficit.

The lesson is that recognising workers without protecting them entrenches insecurity. Unless South Africa guarantees fair process in deactivation and offers institutional avenues of appeal, the ideal of fair labour practice will remain empty for the very workers on whom the sector relies.

[1152] See general discussions under sections 5.2.2.3 and 5.4.2.3 above.
[1153] See general discussion under section 5.3.2.3 above.

Transport justice and social inclusion

The third lesson is that safety, while vital, is not sufficient to deliver justice. South Africa deserves credit for leading the way in safety, as evidenced by initiatives such as panic buttons, branding, professional driving permits, and type-approved devices, all of which represent anticipatory interventions. Yet justice demands more than securing passengers inside vehicles; it requires equitable access to mobility itself.

The comparative record here is revealing. Kenya prohibits discrimination and requires service providers to cater to all.[1154] India goes further, mandating multilingual apps and quotas for accessible vehicles.[1155] Tanzania empowers the Consumer Council to represent disadvantaged passengers.[1156] South Africa, by contrast, leaves equity to the Minister's discretion. No binding quotas exist for accessible vehicles, no obligations for township or peri-urban coverage, and no multilingual accessibility standard. The Market Inquiry identified the cost of this omission:[1157] e-hailing is concentrated in urban centres, leaving poorer communities and vulnerable passengers underserved, while surge pricing places disproportionate burdens on those least able to pay.

The lesson is simple: safety without equity is only partial justice. Unless equity obligations are put into practice, South Africa risks creating a system that protects passengers once they are inside the vehicle but keeps many from gaining access to it altogether.

Governance as the decisive factor

Threaded through these three lessons is a common refrain: governance is decisive. South Africa already has the tools: the 2025 Regulations provide statutory clarity; Municipal Regulatory Entities promise local oversight; and the

[1154] See discussion under section 5.2.3.3 above.
[1155] See discussion under section 5.4.3.3 above.
[1156] See discussion under section 5.3.3.3 above.
[1157] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* v.

Economic Regulation of Transport Act offers dormant economic regulatory powers that could match or exceed the comparator regimes. What is missing is activation.

Unless the Minister designates e-hailing under the *Economic Regulation of Transport Act*, commission caps remain aspirational. Unless Municipal Regulatory Entities are resourced and insulated from capture, enforcement will remain inconsistent. Unless political leaders are willing to confront both platform lobbying and taxi resistance, equity obligations will remain rhetorical.

The lesson, then, is not one of dismissal but of balance. South Africa deserves recognition for breaking the statutory silence, embedding e-hailing into law, and leading on safety with requirements such as panic buttons, branding, professional driving permits, and type-approved devices. Yet, the very density of the 2025 reforms conceals persistent gaps: margins remain unregulated, drivers remain exposed, and access to mobility remains uneven. The reforms provide a scaffold, but without substantive tools to discipline platform dominance, redistribute value, and expand inclusion, they risk becoming merely procedural. The challenge ahead, therefore, is to turn legal recognition into material justice. It is in this spirit that the recommendations that follow are framed: not as abstract ideals, but as concrete amendments that could be logically and persuasively integrated into the existing Regulations.

Recommendations

Introduce commission cap and minimum driver share

Rationale

The comparative record is clear: platforms in Kenya are required to charge no more than an 18% commission, ensuring drivers retain 82% of fares, while in India, drivers must receive at least 80%. These measures stabilise income, address bargaining inequalities, and reduce the extractive nature of global platforms. Tanzania aims for the same outcome by setting fares through the Land Transport Regulatory Authority's tariff-setting powers. In contrast, South Africa's 2025 Regulations do not address commissions. They only require that passengers

receive a fare estimate and electronic receipt, leaving the division of revenue entirely up to the platform. This lack of guidance is not neutral. It reinforces drivers' vulnerability and enables platforms to unilaterally raise take-rates, undermining livelihoods.

Yet South Africa already possesses the legislative means. Section 66A of the NLTA grants the Minister power to regulate any matter concerning e-hailing.[1158] Embedding a commission cap within the regulations would therefore be a straightforward legal matter. The *Economic Regulation of Transport Act*, if designated, could also provide economic oversight, but it remains dormant. The lesson from comparators is clear: fairness in platform markets requires intentional intervention. A statutory commission cap and a guaranteed driver share are no longer optional but are now essential.

Since Regulation 18 governs e-hailing service agreements, the most logical insertion point is immediately after it, as a new regulation 18A. This would unify all contractual and financial obligations in a single section.

Draft provision

18A. Commission cap and driver share

(1) No operator of an electronic hailing application may retain, whether by commission, service fee, or other deduction, more than 20% of the fare charged for any trip.

(2) A driver shall be entitled to not less than 80% of the fare charged for each trip undertaken.

(3) The Minister may, by notice in the Gazette after consultation with affected stakeholders, prescribe a lower maximum permissible commission if necessary to protect driver livelihoods.

[1158] Section 66A(a)(a)(iv) of the *National Land Transport Amendment Act* 2023. The provision reads as follows: "(4)*(a)* The Minister or the MEC may make regulations prescribing— … (iv) any other matter affecting the standard or quality of operation of e-hailing services."

Mandate minimum earnings floor

Rationale

Commission limits alone cannot guarantee sustainable earnings. Platforms could still manipulate fares downward, limit trips through opaque algorithms, or flood the market with drivers, thereby reducing income. India addresses this risk by setting a minimum hourly rate and a per-kilometre minimum, ensuring that logged-in time results in fair income. Tanzania achieves a similar effect by tying driver payments to tariffs set by regulators.

South Africa provides no such stabilisation mechanism. Drivers may spend hours logged in with little return, undermining both livelihoods and fair labour practices. This is not merely a regulatory omission; it is a dignity deficit. Once more, section 66A grants substantial regulatory authority. Embedding the floor within the regulations would be a simple, implementable step. To maintain coherence, the provision should immediately follow the commission cap, establishing a new regulation 18B.

Draft provision

18B. Minimum earnings floor

(1) An operator of an electronic hailing application must ensure that every driver earns no less than the prescribed minimum earnings for time spent logged in and available for trips.

(2) The minimum earnings shall be calculated with reference to—

a. a minimum hourly rate for logged-in time; and

b. a minimum per-kilometre rate for trips completed.

(3) The Minister, after consultation with organised labour, industry stakeholders, and the Competition Commission, must prescribe the applicable minimum earnings by notice in the Gazette and review them at least once every two years.

Require algorithmic transparency and data disclosure

Rationale

The heart of platform power lies not only in fare levels but in the algorithms that allocate rides, determine visibility, and govern deactivation. In Kenya, platforms are required to file their pricing mechanisms with regulators. In India, aggregators are required to disclose the factors that shape fares and driver allocations. Tanzania has taken it a step further, requiring real-time system integration with the Land Transport Regulatory Authority's servers, ensuring regulators can continuously monitor operations.

South Africa's 2025 Regulations modernise licensing and establish Municipal Regulatory Entities, but they remain silent on algorithmic accountability. No rule requires platforms to explain how fares are calculated, how trips are allocated, or the criteria for deactivating drivers. As Chapter 5 highlighted, this opacity leads to both labour precarity and consumer vulnerability: drivers may lose work without explanation, and passengers encounter dynamic fares with no insight into the underlying logic.

This is a structural blind spot. Without algorithmic transparency, regulation risks being superficial: it can address surface behaviour but not the code that underpins it. Comparative experience demonstrates that genuine accountability demands disclosure obligations, regular audits, and regulator access to data. South Africa's framework must adapt to this reality.

Since Regulations 15–17 already cover e-hailing app and platform requirements, the most logical position is immediately after Regulation 17, as a new Regulation 17A. This would group algorithmic obligations with the existing technical and operational requirements.

Draft provision

17A. Algorithmic transparency and data disclosure

(1) An operator of an electronic hailing application must, upon registration and annually thereafter, file with the relevant Regulatory Entity a statement describing—

(a) the factors used in fare calculation, including the role of dynamic pricing;

(b) the criteria used in allocating trips to drivers; and

(c) the grounds and processes by which drivers may be suspended or deactivated.

(2) An operator must provide to a driver, upon request and without undue delay, the reasons for any deactivation, suspension, or restriction of access to the platform.

(3) An operator must ensure that passengers are informed, before a trip is confirmed, of the fare factors that may affect the price, including distance, time, demand multipliers, and any surcharges.

(4) The Minister may, by notice in the Gazette, prescribe additional data disclosure or algorithmic audit requirements to safeguard transparency and accountability.

(5) Failure to comply with this regulation constitutes grounds for suspension or withdrawal of the operator's registration.

Guarantee procedural fairness in driver deactivations

Rationale

In platform economies, exclusion is often more damaging than a wage reduction: a driver who is deactivated loses not only income but also access to the entire market. Kenya and India have recognised this by requiring that drivers receive written notice, reasons for deactivation, and a right to appeal. India takes it a step further by mandating a brief inquiry period before termination takes effect. Tanzania offers weaker protections but still links driver exclusion to the Land

Transport Regulatory Authority's licensing regime, thereby subjecting decisions to administrative law review.

South Africa's 2025 Regulations address the suspension and cancellation of e-hailing services in Regulation 21, but these rules mainly apply to operators,[1159] not individual drivers. The framework does not ensure that drivers receive notice, reasons, or avenues for recourse if a platform deactivates them. Consequently, drivers face a precarious workforce, vulnerable to arbitrary exclusion without remedy, an issue that Chapter 5 identified as a key labour tension in the sector.

This silence erodes the principles of fair labour practices and dignity. Essentially, it allows disputes to fester outside the regulatory framework, managed through private agreements and opaque platform processes. Comparative experience demonstrates that procedural safeguards are both achievable and essential. South Africa must therefore explicitly recognise driver rights by incorporating them directly into the Regulations.

Since Regulation 21 already covers suspension and cancellation of e-hailing services, the most logical placement is immediately after Regulation 21, establishing a new Regulation 21A. This approach keeps deactivation and procedural safeguards grouped under a single heading.

Draft provision

21A. Procedural fairness in driver deactivation

(1) An operator of an electronic hailing application may not suspend, deactivate, or otherwise restrict a driver's access to the platform except in accordance with this regulation.

(2) An operator must provide the driver with—

a. written notice of the proposed deactivation or suspension;

[1159] It should be recalled that the section 1 of the NLTA defines an operator as "means a person carrying on the business of operating a public transport service".

b. the reasons for the decision, including reference to the evidence relied upon; and

c. a reasonable opportunity to respond before the decision takes effect, except in cases of serious and immediate risk to passenger safety.

(3) A driver who has been deactivated or suspended has the right to lodge an appeal with the Regulatory Entity within 14 days of notice.

(4) The Regulatory Entity must decide the appeal within 30 days, and may confirm, vary, or set aside the decision of the operator.

(5) Failure by an operator to comply with this regulation constitutes a ground for suspension or withdrawal of the operator's registration.

Operationalise equity and accessibility

Rationale

Transport justice extends beyond safety; it demands equity, accessibility, and inclusion. Kenya's TNC regulations specify clear duties of non-discrimination and accommodation for passengers with disabilities. India goes further by requiring aggregators to offer multilingual apps and reserve quotas for accessible vehicles. Tanzania's framework authorises the Consumer Council to represent disadvantaged passengers.

South Africa's 2025 Regulations empower the Minister to issue guidelines for outcome-based service obligations, but these remain entirely discretionary. Without binding duties, equity is treated as a rhetorical promise rather than a tangible entitlement. This gap undermines equality and continues to reinforce structural exclusions, especially for passengers with disabilities, the elderly, and children.

Since Regulation 19 already details safety requirements such as panic buttons and branding, the most logical location for accessibility and equity provisions is right after Regulation 19, forming a new Regulation 19A. This arrangement ensures

that both passenger safety and inclusion are treated as fundamental service obligations.

Draft Provision

19A. Equity and accessibility obligations

(1) An operator of an electronic hailing application must ensure that its services are provided on a non-discriminatory basis and are accessible to all passengers, including persons with disabilities, the elderly, and children.

(2) Without limiting the generality of sub-regulation (1), an operator must—

a. make its mobile application available in at least the two most widely spoken official languages in the area of operation;

b. ensure that a minimum of 5% of vehicles affiliated with its platform in each municipality are accessible to persons with physical disabilities, subject to adjustment by the Minister by notice in the Gazette; and

c. provide passengers with the ability to indicate accessibility needs at the time of booking.

(3) The Minister may, by notice in the Gazette, prescribe additional equity or accessibility standards, including quotas for accessible vehicles, multilingual requirements, and service coverage obligations for disadvantaged communities.

(4) Failure to comply with this regulation constitutes grounds for suspension or withdrawal of the operator’s registration.

Close the Economic Regulation of Transport Act's discretionary gap

Rationale

South Africa is distinctive among its comparators for already having a comprehensive statute, the *Economic Regulation of Transport Act*, which can regulate fares, commissions, and anti-competitive conduct across transport modes. However, Section 4(2)(a) makes the application of ERTA to e-hailing optional: the Minister may declare e-hailing a regulated sector but is not obliged to do so.

This discretionary gap undermines South Africa's regulatory ability. While Kenya and India have acted decisively by implementing specific commission caps, South Africa possesses a more potent tool but leaves it unused. The contradiction is clear: South Africa has the legislative ingenuity but fails to activate it. Unless designation becomes compulsory, ERTA's economic oversight will remain an illusion, and platforms will persist in setting terms unilaterally.

To resolve this, ERTA must be amended to require, not merely permit, the inclusion of e-hailing in its scope. This reform would give South Africa an institutional advantage over competitors by embedding economic fairness into its transport system as a legal obligation rather than a matter of political choice.

This reform requires a statutory amendment to section 4 of ERTA. A new subsection should be added to mandate designation of e-hailing as a regulated sector.

Draft provision

4(2A) Notwithstanding subsection (2)(a), the Minister must, within six months of the commencement of this subsection, designate electronic hailing services as a regulated transport service for the purposes of this Act.

(2B) Upon such designation, the Regulator shall exercise its powers in respect of fares, commissions, and market conduct in the electronic hailing sector, subject to any conditions prescribed by the Minister by notice in the Gazette.

Codify safety benchmarks in the NLTA

Rationale

South Africa's 2025 Regulations have established some of the strongest passenger safety requirements in the region. Panic buttons, visible branding, type-approved devices, and professional driving permits collectively set a clear standard that anticipates risks and prioritises passenger security. These measures are a real achievement and positions South Africa ahead of its competitors.

However, since these measures are only at the regulatory level, they remain susceptible to dilution or repeal by ministerial discretion. In contrast, Kenya and India have incorporated many of their safety obligations directly into legislation: Kenya's TNC regulations are part of the statutory licensing framework, and India's Motor Vehicles Act links aggregator safety rules to statutory duties. To ensure durability and demonstrate commitment, South Africa should adopt the same approach: elevating key safety standards into the National Land Transport Act itself.

This is more than just a symbolic gesture. Codifying this in the Act would grant passenger safety obligations the power of law, making them difficult to repeal; align South Africa with international standards, where safety requirements are legislated rather than delegated; and provide passengers with enforceable rights instead of discretionary protections. Arguably, this would reinforce the 2025 reforms with a structural guarantee, ensuring that any future government must uphold, rather than diminish, passenger protections.

The most appropriate location is in section 66A of the NLTA, which already governs e-hailing. A new subsection should be inserted to codify the safety obligations currently outlined in regulation 19.

Draft Provision

66A(8) Every operator of an electronic hailing service must ensure that—

a. each vehicle is fitted with an operational emergency panic button accessible to the passenger during the trip;

b. each vehicle displays visible external branding identifying the service as an electronic hailing vehicle;

c. each driver holds a valid professional driving permit in terms of the National Road Traffic Act; and

d. each device used for booking or dispatch is type-approved in accordance with applicable electronic communications standards.

Beyond legislation: Institutions, enforcement, and political will

The comparative lessons and recommendations confirm that South Africa's legal framework has progressed significantly with the 2025 Regulations and the potential scope of the *Economic Regulation of Transport Act*. However, the Market Inquiry into Land-Based Public Passenger Transport revealed a harsher truth: regulation alone cannot transform a sector where dominance, precarity, and exclusion are deeply rooted. Platform power endures not because the law remains silent, but because institutions are weak, enforcement is inconsistent, and political will is fragile.[1160] If e-hailing is to fulfil its promise of affordable, safe, and inclusive mobility, South Africa must go beyond legislation to address the deeper issues of institutional design, enforcement, political economy, and legitimacy.

Institutional capacity and regulatory design

The Amendment Act introduced Municipal Regulatory Entities to licence and oversee e-hailing, alongside the provisional authorities. This is a significant innovation, promising to reduce the delays and opacity that have undermined the previous system. However, the Market Inquiry revealed how weak institutions allowed anti-competitive conduct to flourish, and backlogs to intensify.[1161] Unless

[1160] See general discussions in sections 2.6 and Chapter 4 above.

[1161] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 13.

Municipal Regulatory Entities are adequately funded, staffed, and shielded from capture, the same fate awaits e-hailing.

At the national level, the *Economic Regulation of Transport Act* offers latent capacity: once e-hailing is designated, the Transport Regulator could oversee fares, commissions, and market conduct. Yet as long as designation remains discretionary, the statute's promise is unrealised. In competition, South Africa holds the most powerful tool of all comparators. Still, unless it is activated and backed with institutional muscle, the imbalance of power between platforms and drivers will persist.

Enforcement and compliance culture

The Market Inquiry revealed how platform practices, excessive commissions, arbitrary deactivation, and surge pricing without transparency thrived under weak enforcement.[1162] South Africa's 2025 Regulations set clear obligations (fare estimates, receipts, safety features), but without monitoring and sanctions, the rules remain advisory.

Consequently, enforcement is not merely technical; it is the mechanism by which labour dignity is upheld. Commission caps, minimum earnings floors, and procedural fairness provisions mean little unless breaches result in real penalties. The Competition Commission, labour tribunals, and courts must be integrated into enforcement to ensure remedies are practical, not just theoretical. In labour terms, this distinguishes between paper rights and genuine dignity.

Political will and contested interests

The political economy of transport has always been volatile. As Chapter 2 demonstrated, regulatory interventions have historically faced resistance, sometimes violently.[1163] E-hailing is no exception: global platforms have already challenged regulations with lobbying and litigation, while local taxi associations

[1162] Competition Commission *Market Inquiry into Land Based Passenger Public Transport: Metered Taxis and E-hailing Services Report (Non-confidential)* 34-35.

[1163] See discussion under section 2.4 above.

oppose its expansion. Here, the stakes are justice itself. Unless the Minister exercises the powers already conferred, such as equity guidelines, the *Economic Regulation of Transport Act* designation, and enforcement mandates, the framework risks becoming a façade. It is submitted that political courage is essential to insist that rules protecting passengers and drivers are enforced, even against powerful incumbents. Without this, transport justice will remain merely rhetorical, not actual.

Ultimately, the long-term success of reform depends on social legitimacy. If regulation does not offer clear fairness, such as affordable fares, accessible vehicles, and transparent pricing, its legitimacy will weaken.

The Constitution provides the ethos: dignity, equality, and freedom of movement. These values cannot remain background principles but must animate enforcement and institutional practice. Comparative evidence shows that even well-drafted laws, like India's aggregator guidelines or Kenya's commission cap, face ongoing contestation unless grounded in social acceptance. South Africa must avoid tokenism and ensure that equity quotas, safety rules, and labour protections are not technocratic impositions but lived entitlements.

Revisiting the research question

This thesis asked:

To what extent does South Africa's e-hailing regulatory framework restore order, safeguard workers, and expand mobility access, and how does it compare to the approaches adopted in Kenya, Tanzania, and India in avoiding over-regulation and regulatory capture?

The evidence indicates that South Africa has taken decisive measures to restore order. The Amendment Act and the 2025 Regulations ended a decade of statutory silence by explicitly recognising e-hailing, mandating platform registration, requiring driver permits and branding, and incorporating safety devices. What was once a grey area of fragmented enforcement and violent dispute has been replaced by a clear legal framework that is recognisable within institutions. In this

regard, South Africa has achieved what Kenya and Tanzania had done earlier; providing platforms with a formal legal identity, but it has gone further by integrating safety and local institutional oversight.

However, safeguarding workers remains the weakest pillar. Drivers are now officially licensed, but they still are legally considered contractors, without guaranteed fare shares, minimum earnings, or protection against arbitrary deactivation. South Africa's record in this area lags behind its peers: Kenya's commission cap, India's mandated driver share and deactivation safeguards, and Tanzania's tariff-setting powers all better balance platform–driver relationships.

On mobility access, South Africa has boosted confidence in the vehicle by introducing panic buttons, professional driver permits, and type-approved devices, but has largely left matters of equity to ministerial discretion. Coverage of townships, peri-urban areas, and passengers with disabilities remains unmandated. In comparison, India mandates multilingual apps and quotas for accessible vehicles, Kenya enforces non-discrimination policies, and Tanzania empowers a consumer council to safeguard disadvantaged groups. South Africa's framework therefore ensures passenger safety once inside the vehicle but does not guarantee that those most in need can reliably hail one.

In the comparative context, South Africa has refrained from the harsh over-regulation seen in Tanzania's statist tariff model and the laissez-faire tendencies of its own pre-2025 void. However, by prioritising regulatory focus on passenger transparency rather than on platform margins or driver livelihoods, it risks subtle forms of regulatory capture: entrenched incumbency *via* moratoria, and opaque extraction through unchecked algorithmic pricing. Unlike its counterparts, South Africa has yet to firmly exercise its regulatory authority over fares, commissions, or corridors, despite having, in the *Economic Regulation of Transport Act*, the most (potentially) potent instrument of all.

The research question can therefore be answered in these terms: South Africa's framework restores order and advances safety, but it only partially safeguards workers and unevenly expands mobility access. Compared to Kenya, Tanzania,

and India, it remains procedural where others are substantive, strong where safety is concerned but silent on value distribution, and institutionally innovative but economically dormant.

Reappraising the hypothesis

The working hypothesis of this study was that:

South Africa can only achieve an inclusive, safe, and sustainable e-hailing regime through a hybrid regulatory model combining competition rules, labour protections, and transport-justice measures. Neither market self-governance nor rigid licensing procedures would suffice; the most promising approach would be a calibrated framework, informed by comparative lessons, that limits exploitative practices, protects workers, and embeds equity obligations.

Arguably, the findings support this hypothesis. The 2025 reforms have provided legal clarity and robust safety standards, but without competition rules to regulate margins, without labour protections to ensure fair earnings and procedural rights, and without binding equity measures, it remains legality without justice. The comparative record illustrates the viability of hybrid interventions: Kenya's commission cap, India's price corridor and 80% driver share, and Tanzania's tariff authority all demonstrate that market fairness can be achieved without stifling innovation. South Africa has the legislative framework to do the same, the NLTA's section 66A for regulation-making, and the *Economic Regulation of Transport Act*'s latent economic powers, but is yet to activate them.

The hypothesis also predicted that doctrinal, functional, comparative, and normative testing would demonstrate that a balanced model is both feasible and desirable. This has arguably been confirmed. Doctrinally, the NLTA and the *Economic Regulation of Transport Act* already provide the legal basis for hybrid reform. Comparatively, the Global South models offer concrete examples of targeted rules that redistribute value, protect dignity, and increase access. Normatively, a hybrid approach aligns with commitments to fair competition, fair labour practices, equality and dignity, as well as freedom of movement.

In conclusion, the hypothesis stands confirmed. South Africa's 2025 reforms offer a necessary framework, but they are not enough on their own. A hybrid approach, combining competition measures like commission caps or corridors, labour protections such as minimum earnings and deactivation fairness, and transport justice obligations like accessibility and coverage, could turn legal provisions into equitable outcomes. This model is both logically sound and practically feasible. The future of e-hailing regulation in South Africa depends on whether political will and institutional capacity can utilise existing tools, thus fulfilling the goal of affordable, safe, and inclusive mobility.

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