

## Lagos commences regulation of E-Hailing Taxi Platforms: What's under the Hood (or "Bonnet" for Commonwealth English Speakers)?

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Since the launch of e-hailing taxi platforms ("EHTP") like Uber and Bolt in Nigeria (indigenous e-hailing platforms like Oga-Taxi and GoMyWay go as far back as 2015), there has been the expectation that the regulation of digital taxi platforms in Nigeria (and worldwide) is inevitable for various reasons including; eliminating monopoly, security concerns, consumer protection and (possibly the most important for the regulators), tax/revenue generation.

The Lagos State Government ("LASG") through the Lagos State Ministry of Transportation (the "LSMT") recently issued the Guidelines for Online Hailing Business Operation of Taxi in Lagos State, 2020 (the "Guidelines"). Similar to the ban on motorbikes ([See our previous newsLetter on this topic HERE](#)), the LASG cited safety concerns and the need for a clear-cut policy on the transportation sector as the basis for the introduction of the Guidelines which is set to commence on the 27<sup>th</sup> of August 2020.

### **What do the Guidelines seek to achieve?**

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The Guidelines primarily seek to enhance the safety standards of EHTP through the introduction of various safety protocols. Specifically, it aims to enhance compliance of all types of taxi hailing services with existing road traffic rules and regulations in line with the Lagos State Transport Sector Reform Law, 2018 (the "TSRL").

The objectives of the Guidelines are to eliminate the operation of illegal taxis in

Lagos, create a data base of operators, drivers, app developers and establish an effective traffic management system.

### **How do the Guidelines affect e-taxi platforms?**

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EHTP have always argued they should not be subject to the same regulatory standards as traditional taxi service providers. Reason? They only provide a platform for users and drivers to connect. Therefore, an attempt to put them in the same category as traditional taxi service providers apart from stifling innovation would be a complete misconception of their business model.

EHTP operate a platform business model that rely primarily on technology to provide their services with little or no interest in the actual ownership of the vehicles or engagement in activities that establish physical presence. Nonetheless, the **LASG** may just have found a way to bring them under their regulatory radar.

The Guidelines draw a distinction between a **‘service entity’** and a **“taxi and app operator”**. Under the Guidelines, **services entities** are identified as entities like Uber and Bolt that only provide the platform for users and drivers to connect while **taxi and app operators** are service providers who own and operate both the vehicle and the hailing platform.

In spite of this distinction, EHTPs are essentially subject to similar standards as traditional taxi service providers, if not higher. Therefore, the proposed Guidelines will have a significant impact on the operators like Uber, Bolt and other similar platforms.

### **Do operators of e-taxi platforms like Uber and Bolt now require a license to operate?**

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Section 4 of the Guidelines provide for a Service Entity Permit Provisional Licence, without which a EHTP will not be allowed to operate within Lagos State.

Under the Guidelines, Service Entities with less than 1,000 drivers are expected to pay a **₦10 million** (approx. US\$27,341) licence fee, while those with more than 1,000 drivers are to pay **₦25 million** (approx. US\$54,682).

Subsequent renewals are pegged at **₦10 million** for those with more than 1,000 drivers and **₦5 million** (approx. \$13,670) for those with less.

Taxi and App Operators with 50 cabs or less are expected to pay a **₦5 million** licence fee, while those with more than 50 cabs are to pay **₦10 million**. The former will pay an annual renewal of **₦1.5 million** (approx. US\$3,870), while the latter will renew at **₦3 million** (approx. US\$7,700).

Further, all operators of EHTP were also required to pay the LASG a 10% service tax on each transaction paid by the passengers to the operators. However, following a very public backlash and engagement between the LASG and the EHTPs, reports have emerged that the proposed 10% service charge per ride/trip will now be charged at a flat fee of **₦20** (approx. US\$0.058) deemed to be attributable to the Road Improvement Fund. Additionally, the LASG has also agreed to reduce the operational licensing fees by 20%.<sup>1</sup>

Whilst this reduction is laudable, the implication remains that in addition to the licensing fees, the LASG will be entitled to a percentage, albeit minute, from every trip.

### **Data Protection and Privacy concerns?**

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Paragraph 4.1(A)(x) of the Guidelines provide that all operators of EHTP must give the LSMT and its agencies access to their database.

Therefore, the personal data held by EHTP including customer names, credit and debit card details, phone numbers, visited destinations (which could reveal both home

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<sup>1</sup> <https://www.premiumtimesng.com/news/headlines/408920-lagos-govt-e-taxi-hailing-operators-agree-on-new-regulations.html> accessed 25 August 2020

and work addresses), details of drivers and other personal data will now be shared with the LASG.

This provision undeniably raises data protection and privacy concerns as the extent or reason for processing is not expressly defined. It also raises the question of whether the LSMT has a legal basis to be granted such access and whether the grant of such access would qualify as a breach under the Nigeria Data Protection Regulation (the “NDPR”) which specifies that personal data can only be collected and processed in accordance with the specific, legitimate and lawful purpose consented to by the Data Subject.<sup>2</sup>

Whilst it is conceivable that users of such platforms will be reluctant to grant consent to the sharing of their personal data held by EHTPs with regulators given the lack of clarity on the kind or extent of processing to be undertaken, it should be noted that the NDPR does provide clear exceptions to the requirement of consent.

Under the NDPR, consent could be dispensed with in certain instances where processing is either necessary for compliance with a legal obligation to which the Data Controller<sup>3</sup> is subject or processing is necessary for the performance of a task carried out in the public interest or in exercise of official public mandate vested in the controller.<sup>4</sup> Bringing this home, the LASG could easily rely on any of the exceptions to consent such as legal obligation to which the controller is subject or public policy in pushing its agenda to lawfully process the personal data of users.

Moving forward, in order to avoid conflict and safeguard personal data of users, service providers may need to consider updating their data privacy policies by bringing the proposed data access to be granted to the LASG to the attention of data subjects in

<sup>2</sup> Section 2.1(1)a of the Nigeria Data Protection Regulation 2019

<sup>3</sup> Data Controller means a person who either alone, jointly with other persons or in common with other persons or a statutory body determines the purposes for and the manner in which Personal Data is processed or is to be processed.

<sup>4</sup> Section 2.2 of the Nigeria Data Protection Regulation 2019

order to procure their informed consent in line with lawful processing requirements under the NDPR.

## **New Taxi Standards and Taxicab Requirements**

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Under the Guidelines, all taxies operating under the new regime will now be subject to certain safety and operational standards. Although this does not necessarily affect EHTPs, there is a risk that their partners (drivers) may be affected by some of these new requirements.

For example, drivers are now subject to maintaining certain minimum standards of cleanliness including but not limited to sanitary standards on the interior and exterior of the vehicle.

The operative effect of the safety and operational standards in the Guidelines is that it strips EHTPs of their power to set standards for taxi operators who are users of the platform as both service entities and taxi/app operators are now required to comply with the standards set by the regulator.

## **Implementation Strategies and Penalties for Non-Compliance**

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Penalties are also provided for in the Guidelines for non-compliance. The penalties range from being queried for non-compliance with the Guidelines, suspension, to a fine of up to ₦100,000.00 (One Hundred Thousand Naira only) (approx. US\$250) and in extreme cases a revocation of the licensee’s operating license.

Further, non-compliance will be treated as a breach to the provision of Lagos State Transport Sector Reform Law, 2018.

## **Innovation vs Regulation?**

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While the licensing fee may not be a huge financial burden on established global EHTPs like Uber, it may heighten the market barriers for businesses seeking to make new

advances within the digital e-hailing taxi space. In view of this and other reasons too numerous to mention, LASG must go back to the drawing board and find a way to strike a well-structured balance between protecting consumer interest and regulating technological advancements which in turn, stifles innovation to the detriment of the same consumers.

## Conclusion

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Although the Guidelines are aimed at protecting users by introducing higher safety standards for the use of e-hailing taxi services, there is a risk that the EHTPs would simply pass on the licensing cost to users by factoring these into their fares. In view of this and other issues, calls have been made for a review and even cancellation of the Guidelines. At the forefronts of these calls are EHTPs, consumers, drivers, investors and other stakeholders within the mobility value chain. For consumers, a hike in taxi fares is almost inevitable.

For investors and new market entrants, the licensing and compliance obligations may negatively impact on their businesses. Given that the proposed effective date of the

Guidelines was pushed from 20 August 2020 to 27 August 2020, it is hoped that the LASG will continue to engage relevant stakeholders and improve on the quality of the Guidelines.

## Key Contacts

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