

REGULATORY CAPTURE, PROPERTY RIGHTS AND TAXI DEREGULATION: A CASE STUDY

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The deregulation of the taxi sector in Ireland by the High Court in 2000 brought a three-fold increase in taxi numbers and much reduced passenger waiting times for taxis. The deregulation decision by the High Court was based on the rights of persons to enter a sector for which they had the training and skills and the right of the public to purchase the services of such persons. The decision was upheld in judicial review. The case study indicates the superiority of deregulation over proposals for more gradual liberalisation.

The deregulation decision

This paper examines the economic and legal aspects of the deregulation of taxi services in Ireland by a decision of the High Court in 2000 and affirmed by judicial review in 2001. Market entry had been restricted from 1978 to 2000. A ministerial proposal to increase the number of taxis by just adding vehicles to existing taxi licences was challenged in the High Court by hackney drivers of private hire vehicles. In Irish transport law taxis are public hire vehicles which may be hailed on the street or at taxi ranks while hackneys are private hire vehicles which have to be hired by phone. The legal challenge was successful. Entry to the taxi sector was deregulated by the High Court and not just restricted to those with existing taxi licences. The High Court judgement stated that the restriction affected the right of people to work in the industry for which they were qualified and the right of the public to the services of taxis. The judgement also referred to the EU dimension of the case. It suggested that the proposed reform may discriminate against non-Irish residents as the great majority of current licence holders would be Irish.

Following the deregulation judgement there was a dramatic increase in taxi numbers. Data published by the Department of Transport in November 2002 showed large increases nationally and in the five main cities. The data are shown in Table 1.

Regulatory capture and restriction of new market entry

Pressure from incumbent licence holders, including street blockades, brought a government decision in 1978 to limit the number of licences by statutory instrument. This led to the licences acquiring a scarcity value. As the Irish economy grew rapidly after 1987, the value of taxi licences rose rapidly to a high level by international standards. Dublin taxi numbers remained unchanged at 1,800 between 1978 and 1991/92 when there was an increase of 150. In 1997 there were 1,974 licences and on the eve of deregulation in late 2000 there were 2,724 licences. Had taxi numbers increased in line with real GDP there would have been a fleet of 4,200 in 1997 compared with the actual licensed fleet of 1,974 (Fingleton *et al.*, 1997, p. 6).

Restricting entry to the taxi business became policy in an era of rapid economic growth. Between 1978 and 2000 the number of persons employed in Ireland increased by 63% from 1.1 million to 1.8 million. Unemployment fell from almost 18% in 1986 to 3.7% in 2001. The number of overseas visitors increased from 2 million to over 6 million in 2000, stimulated by the deregulation of access transport in 1986 through the licensing of Ryanair. Thus the abolition of economic rent in one area of transport increased it in another because of an inconsistency in the approach to deregulation across the transport sector.

The failure to increase taxi numbers in the fastest growing economy in the OECD caused widespread dissatisfaction because of the shortage of taxis in Dublin and elsewhere. Research by Oscar Faber (1998) found that 75% of those interviewed in street surveys disagreed or strongly disagreed with the statement that taxi and hackney services 'can be hired easily at peak times' (p. 29). A total of 72.6% of businesses experienced difficulties in obtaining a taxi, in particular between 4 and 6 p.m. (p. 27). The report found that in Dublin city centre some 9% of hourly observations resulted in average waiting times in excess of 15 minutes (p. 21). During the period 11 p.m. to 4.00 a.m. waiting times in excess of 90 minutes were 'frequently observed' (p. 29).

Taxi licence prices and property rights

The price of a taxi licence in Dublin rose from £3,500 in 1980 to £90,000 in 2000. Taxi licence prices in Dublin were far above those in other European cities before deregulation in Ireland. Table 2 shows the rise in taxi licence prices in Dublin from 1980 to 2000, the period of restriction of new entrants. The licence price rose from £3,500 to £90,000, indicating a rapid increase in the rent earned by incumbents because of the restrictions on new market entrants.

The development of a secondary market in taxi licences also leads to the separation of taxi licences from taxi driving. Kenny and McNutt (1998) found in Dublin, 'a vibrant market for individuals who rent plates and then act as an intermediary between the owner and the driver' (p. 9). The drivers were likened by Kenny and McNutt to urban sharecroppers. They estimated that one individual controlled 45 plates and that there were 1,500 drivers without licences in Dublin, known as 'cosies,' who rented licences from licence holders. Based on the cost data in the Oscar Faber Report (1998), Kenny and McNutt state that, 'it is hard to see why the established plate owner does not hire out the plate completely, rather than drive the car themselves (unless they have a very low opportunity cost of their time)' (p. 9).

The Oscar Faber Report estimates that half the average fare revenue from taxi operation in Dublin in 1997 was required to rent a vehicle and taxi licence plate from a licence holder (p. 59). The average taxi licence cost £80,000. By contrast the price of a Toyota Carina, the most popular model purchased for taxi use, was just under £18,000 (Appendix H of the Oscar Faber Report). The taxi licence, whether purchased outright at market entry or rented over the period of operation, was therefore a significant cost of operating in the regulated market. Since deregulation the local authority administration fee for the issue of a taxi licence is £5,000. Market entry costs of £98,000 for a vehicle and licence before deregulation have fallen to £25,000 since deregulation, a fall of 74%. The Oscar Faber Report estimated that under

	2000	2002	% increase
Ireland	3,913	11,630	297
Dublin	2,722	8,609	316
Cork	216	590	273
Galway	148	410	279
Limerick	207	434	210
Waterford	41	147	358

Source: Department of Transport statement of 20 November 2002.

1980	3,500
1985	7,200
1990	43,000
1995	70,000
2000	90,000

Source: Barrett (1991) and affidavits, op. cit.

Table 1: Taxi numbers immediately before and two years after deregulation (Ireland, 2000–02)

Table 2: Taxi licence prices in Dublin, 1980–2000 (£)

regulation the annual capital cost to a cosy of a taxi vehicle and licence was £14,400, compared with the £1,176 capital cost for the vehicle only. The abolition of the licence scarcity value has thus reduced the cost base of the industry and this should in time result in lower fares.

Investment or gambling?

Financial institutions did not accept taxi licences as collateral for loans. Licence purchases were typically financed by mortgaging other assets such as houses. The owners of licences described themselves as having invested in the industry through the purchase of licences and claimed to have thus acquired property rights. Economists who supported deregulation contended that the taxi licence purchasers were more correctly categorised as gamblers who had taken a bet that governments would never deregulate the sector.

In Irish law there are three judgements that taxi licences do not confer property rights and that the terms under which they are held may therefore be altered without compensation. The judgements may be summarised as follows.

Case A

In 1992 taxi licence holders opposed the issue of extra hackney licences because these would reduce the value of existing licences. The judgement of Costello J. in *Hempenstall v. The Minister for the Environment* (1992) stated that

'property rights arising in licences created by law (enacted or delegated) are subject to the conditions created by law and an implied condition that the law may change those conditions. Changes brought about by law may enhance the value of those property rights (as the Regulations of 1978 enhanced the value of taxi plates by limiting the numbers to be issued and permitting their transfer), or they may diminish them ... But an amendment of the law which by changing the conditions under which a licence is held, reduces the

commercial value of the licence cannot be regarded as an attack on the property right in the licence – it is the consequence of the implied condition which is an inherent part of the property right in the licence.’

(Cited in Kenny and McNutt, op. cit.)

Case B

In 1998 hackney owners attempted to create a secondary market in hackney plates as applied in 1991/92 when a temporary moratorium on hackney licences created a licence value of £20,000. The hackney licence holders sought to apply the taxi licence precedent of restricting entry to their sector. The High Court judgement of Geoghegan J. in *O'Dwyer v. The Minister for the Environment* (1998) stated that

‘hackney licences are regulated quite differently and the mere fact that the regulation of hackneys does not produce a similar side effect produced by the regulation of taxis, does not in any way render the regulatory scheme discriminatory . . . Because of the long established policy of restricting the number of taxi licences in taximeter areas, there has been for many years a saleable market in taxi licences but there never was such a market in hackney licences except during that very short period in 1991/1992. There could be no obligation on the Minister to create such a market.’

(Cited in Kenny and McNutt, op. cit.)

Case C

In the judicial review (2001) of the taxi deregulation judgement of Murphy J. in 2000, Carney J. dealt with the property rights issue as follows:

1. ‘As the only interference with their rights has been one implemented by means of an implied condition of which the Applicants were fully aware and one which is envisaged by the very terms and conditions under which a licence is held, then it would seem incongruous if the State were obliged to introduce a concomitant scheme of compensation.’
2. ‘The interference with property rights is not only justified but is minimal in that the applicants are still free to dispose of their licence and also to use it as they see fit. There has been no expropriation of their licences.’
3. ‘The payments made in the secondary market achieved the objective for which they were made at the time, namely the purchase of a job when jobs were otherwise unobtainable.’
4. ‘The applicants are mistaken if they believe that there is an automatic right to compensation in all circumstances.’

With three High Court judgements against compensation for the holders of taxi licences upon

deregulation of the sector the licence holders sought, as an alternative, payments for solacium. This term is defined as relief in sorrow or misfortune, . . . something that makes up for a disadvantage and compensation or indemnification (*Oxford Latin Dictionary*, 1990, p. 171).

The solacium case was endorsed in late 2002 by the report of the Taxi Hardship Panel notwithstanding the above High Court verdicts. In economic terms the solacium case is compensation under a new name and the compensation proposals are at odds with the court verdicts and economic logic. A further problem is that the payment of compensation in the face of both the court judgements and economic logic will make any further deregulation in the Irish economy more difficult to achieve. The attempts by the pre-deregulation licence holders to roll back the High Court deregulation decision by political pressure since 2000 are analysed below.

The licence holders’ case against deregulation

The arguments made against taxi deregulation may be divided into two categories: those made successfully during the period 1977–2000 against deregulation, and those made unsuccessfully in the High Court cases in 2000 and 2001.

In making the case against deregulation in the 1970s taxi licence holders ‘complained that the absence of control over the numbers entering the trade had resulted in a greater number of vehicles operating than the demand justified, with the result that incomes were depressed’ (Interdepartmental Committee, 1992, p. 28). A report for the National Prices Commission (1977) concluded that too many taxis were licensed to operate and that there should be a controlling agency to deal with such matters as the number of licensed operators, the establishment of service standards etc. In 1978 the government decided to give local authorities the power to limit taxi numbers.

The Interdepartmental Committee (1992) recommended gradual liberalisation rather than deregulation. In 1998 the Oscar Faber Report stated that, ultimately entry deregulation of the taxi market is the best policy but also recommended gradual liberalisation. Faber believed that, ‘full and immediate entry deregulation might lead to excessive entry into the market, which would then take some time to reach equilibrium’ and that, ‘entry deregulation would impact very severely on a minority of individuals who have recently bought licence plates on the open market’ (p. 46). New licences would be issued by the local authority for £15,000. ‘The number of licences issued must be kept small in the transitional period to ensure that above normal incomes can be earned by existing plate owners, thus ensuring that they are

compensated for the reductions in licence plate values' (p. 51). Appendix 1 of the Oscar Faber Report estimated that a fleet of 5,901 taxis would be needed after ten years to serve the Dublin market. In a little over two years, the deregulated Dublin market, in the spring of 2003 had over 9,000 taxis.

The Irish case study indicates several difficulties inherent in gradual entry liberalisation as opposed to entry deregulation. Both the Oscar Faber Report and the Dublin Taxi Forum Report significantly underestimated the additional number of licences required compared with actual market entry in a deregulated market. To increase the number of taxis by a number short of the number that would be achieved with free entry ensures the retention of a scarcity value for taxi licences and increases the number of persons holding such licences. A policy of slow but eventual deregulation will therefore have more opponents at the end of a proposed transition period than a policy of immediate deregulation. Nonetheless, the government proposed to confine the issue of more licences to existing licence holders and some of their drivers. The Minister for the Environment and Local Government proposed in November 1999 to issue an additional licence in Dublin to all holders of an existing taxi licence. In addition, 500 extra licences would be issued to those without a licence. Preference in the issue of the extra 500 licences would be given to those who drove taxis but did not own them, the aforementioned 'cosies.'

The Minister's proposals were opposed by four hackney operators: operators of private hire vehicles. Taxis ply for hire in public and may stand for hire at designated ranks and use bus lanes while hackneys cannot. Taxis are regulated in their prices while hackneys are not. The four hackney operators were granted a judicial review by the High Court in February 2000 of the November 1999 proposals of the Minister for the Environment and Local Government in February 2000.

In defence of the scheme to issue new licences overwhelmingly to incumbents rather than new market entrants, at the judicial review the Minister denied that, 'any local authority has taken account of extraneous or irrelevant considerations. Neither have the local authorities had regard to the preservation or fostering of the economic interests of one section of the community as alleged.' The allegations referred to were that licence holders had achieved regulatory capture over the regulatory authorities at the expense of aspiring new entrants, consumers and the public at large. The State also pleaded that the provisions of Article 40.1 of the Constitution, providing for equality before the law, are not applicable to the holding of taxi licences.

In opposing unsuccessfully the deregulation of the taxi sector achieved by the legal action of the hackney licence holders, the taxi licence holders cited The University of Leeds and Dempsey. The affidavit of Mr Gorman for the taxi sector cited the Leeds study

to the effect that, 'market entry should be regulated somehow and the level of fares also needs to be controlled. In addition, more stringent regulations are necessary in order to ensure high quality and improved safety in taxi services' (affidavit of T. Gorman, 19 December 2000, paras 21–23). Dempsey (1996) concludes that, 'given the failure of deregulation to produce consumer pricing and service benefits, coupled with its propensity to injure carrier productivity and profitability, most communities which have experimented with deregulation have rejected it, and re-regulated in whole or in part their taxi industry' (p. 115). Dempsey proposed that, 'new entry should be modest, measured and monitored.' Dempsey proposed strict regulation of who should receive licences.

In the Irish case the consumer argument for extra taxis, combined with the rights of those outside the taxi sector to enter that sector, succeeded in the High Court over the case made by the licence holders relying, *inter alia*, on the above studies. The increase in new entrants has been dramatic and the consumer response has been overwhelmingly positive.

Barriers to entry such as minimum fleet size and a seasoned and experienced managerial team, as proposed by Dempsey, deny both a career choice to new entrants and the consumer benefits of new entry. If there are economies of scale in taxi operation an open market will itself lead to increased fleet sizes without regulator intervention. If there are no economies of scale a regulator-imposed minimum fleet size both increases costs to users and deters new investors. A study of the deregulated shared taxis sector in Northern Ireland by Barrett and McLaughlin (1984) found that the administration requirements were minimal. A regulatory requirement for 'a seasoned and experienced managerial team' is thus both a barrier to new entry and a cost-increasing measure.

The results of deregulation

The evaluation of taxi deregulation in Dublin by Goodbody Economic Consultants (2002) found that, 'over two-thirds of people believe that deregulation was a good idea with 14% disagreeing.' The impact of the large increase in market entry was shown in the declines in waiting times for taxis, with the proportion of people waiting more than five minutes decreasing from 75% in 1997 to 52% in 2001. Just under half of all taxi users considered that the service had improved with only 5% indicating that the service had got worse. After midnight the average waiting time was in excess of 30 minutes for 43% of the hours surveyed in 1997 and for only 6.2% in 2001; 20.3% of hours surveyed had waiting times of less than five minutes in 1997, but under deregulation this increased to 60.2% in 2001 (p. ii). On vehicle quality Goodbody found that 'most cab users find the quality of the vehicles acceptable' and that 'it would be

difficult to argue that there is demand for radical change in this area' (p. iv).

Around the second anniversary of taxi deregulation in November 2002 the licence holders made claims that criminals had entered the deregulated taxi sector and that vehicle standards had deteriorated. During 2002, 11 Dublin taxi licences were revoked by the Carriage Office on police recommendation. Separate data are not published for pre- and post-deregulation licence holder offences. The taxi licence revocation rate of 1.2 per 1,000 compares with a general crime rate of 58 per 1,000 in the Dublin Metropolitan Area. Two heavily publicised cases in late 2002 of incidents involving taxi drivers referred to the pre-deregulation period. The complaints were largely generated by the industry itself and reflect attempted regulatory recapture.

Licence holders' attempt at regulatory recapture

Pressures by the licence holders to reverse or reduce the impact of the deregulation of the sector included a series of strikes, poster campaigns in taxis against the outgoing government in the 2002 general election and lobbying through the country's largest trade union, SIPTU. The use of the trade union vehicle by a group of self-employed persons to pursue a campaign against deregulation secured the legal privileges of the trade union movement for the taxi drivers.

The taxi operators set out to reverse two major parts of the High Court decision deregulating the sector. These were the decisions against compensating taxi licence holders for the loss of the licence value and the freeing of market access to new entrants. The instruments used in pursuit of the goal of reversing the deregulation decisions were the Taxi Hardship Panel and the Office of National Taxi Regulator.

Although there were four High Court judgements against compensation for taxi licence holders, the government appointed, on 5 February 2002, a Taxi Hardship Panel, 'to examine . . . the nature and extent of extreme personal financial hardship experienced by individual taxi licence holders arising from loss of income as a direct result of the liberalisation of the taxi licensing regime on 21 November 2000.' The office of National Taxi Regulator was established on a non-statutory basis in February 2003.

The Taxi Hardship Panel

The Taxi Hardship Panel recommended the payment of €12.6 million to address, 'persistent claims that certain taxi licence holders have suffered extreme financial hardship' following taxi deregulation. The recommendation is made notwithstanding the report's acknowledgement that the panel, 'is aware that, since 1992, the Courts have clarified on a number

of occasions that there can be no legal duty on the State to compensate taxi licence holders in relation to open market values of licences' (p. 1). The preface to the report states that,

'we realise that our findings will provoke considerable debate, ranging from those who believe that no payment of any kind is justified to those who feel substantial compensation is warranted. It is our view that our recommendations provide for a fair and final settlement of all grievances that taxi licensees had as a result of liberalisation.'

The payments recommended were proposed to be outside both the tax and social welfare systems in that they would not be treated as taxable income or included in assessment of entitlements for social welfare payments. The proposed payments are additional to refunds of €6.35 million where local authorities had charged licence holders more than the subsequent deregulated access cost of a licence under limited market entry schemes before deregulation. In addition, taxi licence holders were allowed capital allowances over five years to cover the purchase price of a taxi licence before deregulation. The allowances could be offset against both trading income and rental income.

The panel reported that 'amongst the many and varied medical conditions cited as being directly attributable to, or intensified by, liberalisation, were strokes, hypertension, high cholesterol and heart problems, stress, anxiety and panic attacks, depression, asthma, back problems and fatigue' and that, 'this by no means purports to be an exhaustive list of ailments.'

The panel's report surprisingly contains no reference to the way in which a monopolistic rent came to be attached to taxi licences and the cost of such monopolistic rent to society as a whole over the period in which new market entrants were restricted. The economic absurdity of compensating people for the loss of their ability to ban new entrants to their sector is ignored. The legal judgements against the recommendations made by the panel are set aside without analysis. No examination is made of the role of the welfare state in dealing with hardship in this specific case, or in general, and the recommendations are made outside the context of the tax and social welfare systems. The report makes no reference to the gains to the Irish economy as a whole from deregulation and to the precedent which its recommendations created by adding to the potential costs of deregulating other sectors in the future.

The national taxi regulator

The role of the regulator is to apply a 'national focus' to taxi standards and licensing, to issue licences in consultation with the police, to set standards for drivers, their training, requirements for entry,

comprehensive local knowledge and other testing, promotion of disability awareness and an acceptable dress code for drivers, vehicle standards, an acceptable uniform colour for vehicles, overseeing taxi vehicle testing, and setting licence fees (Department of Transport statement, 20 November 2002). In the statement establishing the regulator the government stated that the High Court judgement, 'created the legal position that limiting of taxi licences in the interests of existing licence holders could not be sustained.' However, the statement added that 'it is now time to bring forward legislation that will bring stability to the industry, develop a proper and effective structure, establish lasting career opportunities for all those involved, and to offer the customer a service that is modern, efficient and operated to the highest standards.'

There are obvious dangers to deregulation contained in the sentiments in the government statement above, such as seeking to 'bring stability' to a rapidly expanding industry over two years following over 20 years of stagnation, and in seeking, 'lasting career opportunities for all those involved' when the government was well aware of the wish of the sector to ban new entrants and its success in doing so in the very recent past. These dangers are combined with the prospect that even bona fide quality controls become barriers to contestability as frequently happened in Irish transport policy in the past. The designation of the new office as a national one precluded a situation in which even a single local authority might license taxis on a more liberal interpretation of the High Court decision of October 2000.

A further cause for concern that the government might wish to water down the High Court deregulation decision, is the announcement of a Taxi Advisory Council to consist of representatives of 'the industry, other stakeholders, Gardai [police], consumer interests, disability interests, tourism interests, business, public transport and other relevant sectors.' Such bodies opposed deregulation in the 1990s and were cited in evidence by the taxi interests during the High Court hearings. Potentially this problem could recur given the natural weakness of consumer representation due to its dispersed nature, the tradition of regulatory capture due to the existence of concentrated producer interests and the less than ringing endorsement of the court deregulation decision in the government statement of 20 November.

An interim non-statutory regulator was appointed in February 2003. His first public intervention, in March 2003, was to investigate the purchase of a taxi licence by the chief executive of Ryanair, Mr Michael O'Leary. Since the sector had been deregulated by the High Court some two years earlier market entry was open to any new entrant. The regulator investigated the licence concerned notwithstanding that the notice of the establishment

of the National Taxi Regulator stated that in, 'October 2000 a High Court judgement created the legal position that limiting of taxi licences in the interests of existing licence holders could not be sustained.' It appears likely that there will be producer pressures on the regulator to revisit the High Court decision permitting new entrants.

From the perspective of contestability the appointment of the regulator has a number of disadvantages. The emphasis throughout the announcement is on new market entry as a problem. The gains from deregulation are overlooked as are the problems caused by the previous success of licence holders in achieving regulatory capture for over two decades. In addition to the cost of an extra bureaucratic layer there is a reduction in local government autonomy. The statement that, 'it is now time to bring forward legislation that will bring stability to the industry' implies that the increase from 4,000 to 12,000 in taxi numbers is now seen by the government as a problem rather than a solution to the previous problem of the supply of taxis not meeting demand.

Conclusion

The Irish taxi deregulation resulted from a High Court decision in favour of potential new entrants and against those who wished to retain a scarcity value for taxi licences. There was a dramatic increase in new market entry unprecedented by international standards. This was predictable since the monopolistic value of Irish taxi licences was also unprecedented by international standards. Large reductions in passenger waiting times have made deregulation popular among the public. There has not been a reduction in either driver or vehicle standards. Taxi deregulation in Ireland followed a restriction of new entrants for 22 years, the second half of which was a period of rapid economic growth.

Taxi deregulation in Ireland was achieved by a High Court decision. The licence holders retain some elements of the regulatory capture which previously implemented the ban on new entrants and has latterly brought compensation proposals and a national taxi regulator. Neither of these recent developments is supported by the analysis of the benefits of taxi deregulation.

The Irish taxi deregulation decision resulted from a striking down by the High Court of a scheme to control the expansion of taxi numbers and to confine these largely to incumbents. Schemes of gradual liberalisation rather than deregulation of market entry would all have been much less radical in terms of new market entry. Taxi licences would thus have retained a scarcity value based on monopolistic rent which could not be bid away by a sufficient number of new entrants. The Irish experience is that there should be full and immediate deregulation rather than mere liberalisation of taxi markets.

The implications of the Irish High Court judgements concerning the rights of new market entrants to work in an industry for which they may be qualified and the rights of the public to services are significant in an economy with many cases of regulatory capture. If extended to other sectors the judgements would revolutionise the economy. For example, in a report on the Bus and Rail Passenger Transport Sector, the Competition Authority (2001) noted the wider significance of the taxi verdict and stated that, 'in the light of a recent High Court decision, it may actually be questionable whether quantitative restrictions on licensing such as those provided for by the practice of the Minister under the 1932 Act are constitutional or compatible with EC Treaty rules' (p. 6). Current legal opinion is that the taxi deregulation decision is indeed a turning point in Irish law dealing with property rights and market access. However, it is clear that concentrated producer interests are trying to use other aspects of the legal and regulatory framework to try to recapture monopoly rents.

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