

Administration, vol. 67, no. 2 (2019), pp. 113–135
doi: 10.2478/admin-2019-0016

The liberalisation of taxi policy: Capture and recapture?

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Abstract

This paper analyses the decision-making processes behind the reform of a policy that had caused significant controversy for over a decade. At 8 p.m. on 21 November 2000 the Minister of State for the Environment, Bobby Molloy, TD, signed S.I. No. 367/2000 – Road Traffic (Public Service Vehicles) (Amendment) (No. 3) into law. This statutory instrument provided ‘for the full resumption of taxi licensing’ and ‘the revocation of regulatory provisions involving quantitative restrictions on the licensing of taxis and hackneys’. With the stroke of a pen, Molloy had effectively ended the taxi licensees’ de facto 21-year control of public service vehicle licensing policy. The paper finds Molloy’s decision to have been a significant policy improvement as it brought about a substantially better taxi service. In addition, the paper shows that even with strong evidence of policy failure, its reform can take a considerable time. With regard to the four-factor framework of institutions, ideology, interests and irrationality, I find that the institutions of the state, while initially facilitating the regulatory capture of the policy by the taxi sector, eventually ensured that this was broken down due to the electoral system and the separation of powers. Up until the reform decision, the interests of the taxi licensees and their political supporters eclipsed the common good. Ideology played a significant role as a backdrop to the policy but ideology was not the primary reason the minister deregulated. Finally, I find that the collective irrationality of the taxi sector leads to an overestimation of their power due to an inability to process the relevant information and collectively agree a reasonable compromise. The key recommendations of the paper are that the

means of policy setting should be radically and innovatively overhauled, and that it is imperative that regulators harness the vast information that taxi apps gather in order to improve regulatory outcomes.

Keywords: Taxi apps, taxi regulation, public policy, Irish government, transport regulation

Introduction

At 8 p.m. on 21 November 2000 the Minister of State for the Environment, Bobby Molloy, TD, signed S.I. No. 367/2000 – Road Traffic (Public Service Vehicles) (Amendment) (No. 3) into law. This statutory instrument provided ‘for the full resumption of taxi licensing’ and ‘the revocation of regulatory provisions involving quantitative restrictions on the licensing of taxis and hackneys’. With the stroke of a pen, Molloy had effectively ended the taxi licensees’ *de facto* 21-year control of public service vehicle licensing policy. The decision stunned the taxi lobby. They had campaigned for the restriction of licences since the early 1960s and effectively achieved that goal in 1979. They reacted with fury. They immediately went on strike, and blockaded the centre of Dublin and other locations across Ireland. For the taxi customers, there was a sense of relief; the licensees’ stranglehold over taxi policy was broken. Within three months, the number of licences in Dublin nearly doubled, and a year later the long queues for taxis were a distant memory. For the first time in over a decade, citizens had a functioning taxi service.

The regulation of the taxi sector would seem, on the face of it, to be a relatively simple affair for a government to deal with. However, during the whole decade of the 1990s, the regulation of this sector caused continuous controversy. Many newspaper column inches and talk-radio hours were devoted to discussing it; protesting drivers on numerous occasions blockaded streets; politicians and public servants spent numerous hours trying to negotiate a solution. It became a regular topic of ‘water cooler’ or ‘dinner party’ conversation amongst the Irish people, and criminal elements within the sector issued a government minister with a death threat (Walsh, 2000). The crux of the problem was that in the absence of any public transport after midnight, people in Dublin either spent hours queueing for a taxi or, in frustration, walked home.

In this paper, using the four-factor framework of institutions, ideology, interests and irrationality, I explain the decision-making

processes behind the policy of revoking the quantitative restrictions on the issuance of taxi and hackney licences in November 2000. This was a policy success. I then examine the period after liberalisation to see if the same approximate forces within the same policymaking structure reassert themselves and recapture the policy. I find that while there are significant indicators of regulatory recapture, it is too early to draw a firm conclusion. Policymakers should take steps to ensure it does not occur. As we saw above, the policy was contentious for a considerable time. In order to provide the most coherent analysis, I examine the period from the intervention of the Tánaiste Mary Harney, TD, in January 1999, when she called for reform of the area, until March 2001, when the High Court affirmed the minister's decision to liberalise the sector. I then examine the period after liberalisation. These periods are of sufficient length to capture all the key influences and details of this particular policy process. The methodology used is process tracing using a causal narrative as its basis. The paper proceeds firstly by setting out the general background to the policy. Secondly, I analyse a detailed timeline of events leading to the decision and the reassertion of interest group power over the following years. Thereafter, I explore the policy under each of the four factors, and finally I draw conclusions and make recommendations.

General background to policy decision

The regulation of the taxi industry caused controversy in each year of the 1990s. One issue caused the problem – the retention of a limit on the number of taxi licences (also known as taxi plates). In 1978 the taxi licensees successfully lobbied the government to change the regulations on licence issue. Because of this policy change, apart from a small number in 1979, the authorities did not issue any licences until the release of the small number of 100 in late 1991 and another 50 in May 1992. These licences were issued on recommendation of an ‘inter-departmental’ committee, set up due to the shortage of taxis in Dublin. This brought the number of licences up to 1,974 (Government of Ireland, 1992). The taxi licensees vigorously resisted these new licences through a series of protests, blockades and court actions (Weir, 2011).

The continuous growth of the Irish economy during the 1990s ensured the inadequate number of plates became ever more apparent as each year passed. Fingleton et al. (1998, p. 6) note that had taxi licences been indexed to real GDP, the fleet would have increased to

4,200 in 1997 compared to the actual fleet number of 1,974. Barrett (2003, p. 4) states that between 1978 and 2000 the number of persons employed in Ireland increased by 68 per cent, from 1.1 million to 1.8 million.

People queued for taxis for hours or, in frustration, walked home. The government response was meek. Licences increased sporadically but by woefully insufficient numbers during the remainder of the decade. The existing licensees intensely opposed and delayed each proposed small increment of licences by lobbying politicians, taking court action, protesting, striking and blockading the city. As a way around the inability to agree increases in the number of plates, much to the taxi licensees' annoyance, the authorities increased the number of hackney licences in circulation from 450 in 1991 to 3,500 in 2000.¹ Hackneys accounted for 56 per cent of all cabs in that year (Goodbody Economic Consultants, 2009, p. 32).

An unusual feature of the small public service vehicle (SPSV) sector in the Greater Dublin Area was that Dublin City Council was solely responsible for its regulation even though the taximeter area extended into the administrative areas of the other three Dublin local authorities. These other three local authorities became increasingly frustrated at Dublin City Council's unwillingness to properly deal with the issues. They threatened to set up their own taximeter areas. Consequently, in 1997 the four Dublin local authorities came together and commissioned economic consultants Oscar Faber to examine the sector. They concluded that there was a shortage of supply amounting to at least 2,000 licences and recommended a gradual liberalisation of entry to the sector. At this stage, taxi licences were being sold at figures of around IR£80,000, with some selling at levels above IR£100,000.

In response to the Oscar Faber report, the Taoiseach Bertie Ahern, TD, intervened to set up the Dublin Taxi Forum, which reported in August 1998 (see Government of Ireland, 1998). This was widely seen as an attempt by the Taoiseach to reaffirm control of the issue at the behest of the taxi drivers ('Taxi ranks swell', 1998). In 1999, on the insistence of the junior government coalition partner, the Progressive Democrats (PDs), the government proposed a scheme that saw the granting of extra licences, most of which were to be issued to the

¹ A hackney cab could only accept a fare, if the customer went to a hackney premises or following a telephone booking. A taxi, in contrast, could be hailed by the customer on the street or 'stand for hire' at an official taxi rank.

current taxi licensees. The granting of the extra licences to the existing licensees was to go some way in compensating them for the loss in value of their existing licences (Dáil Éireann, 1999). However, following a judicial review taken by a number of hackney drivers, the High Court ruled in October 2000 that the minister was acting ultra vires his powers in favouring the existing taxi licensees with the additional licences. Because of this ruling, the minister removed all quantitative restrictions on the issuance of licences. The floodgates opened. By 2002 the number of licences had increased by 216 per cent from 2,722 to 8,609 (see Gorecki, 2014, Table 3, p. 6). The High Court affirmed the minister's decision after it rejected an appeal in a ruling in March 2001.

Detailed timeline and analysis: 1999–2012

Period 1: January 1999 to January 2000

In December 1998 the Tánaiste, and leader of the PDs, Mary Harney stated that the holiday season just passed would be the 'last Christmas of taxi mayhem' (Tynan, 1998). As the leader of the junior party in the coalition government, Harney was giving a strong public signal that her party wanted the taxi problem solved.

The Taoiseach's brother, Noel Ahern, TD, heavily criticised Harney's statement, responding, 'I realise its Christmas and in the absence of hard news, we must listen to some party leaders sounding off with their brain wave, but I must record my shock and horror at some of the headline-seeking comments of the Tánaiste' (McNally, 1999). Ahern was part of a group of Fianna Fáil (the larger party in government) TDs who strongly supported the taxi licensees (see 'Taxi drivers close ranks', 2000).

During the summer months of 1999, the two coalition parties held a mid-term review of their agreed programme for government. In the initial stages of the negotiations, the Fianna Fáil side told the PDs that taxi reform was 'too sensitive' within the Fianna Fáil parliamentary party (Coghlan, 2000). It was the single issue left for the two party leaders to negotiate before they signed off on the revised programme. The Tánaiste prevailed on the Taoiseach that the government had to do something to deal with the problem (Coghlan, 2000). The revised *Action Programme for the Millennium as Reviewed by Fianna Fáil and the Progressive Democrats*, published in early November 1999, stated with regard to Dublin taxis, 'We will introduce measures to increase progressively the number of taxi licences in Dublin as quickly as

possible in order to ensure a proper balance between supply and demand in the market' (Fianna Fáil & Progressive Democrats, 1999, p. 25). The party leaders instructed Molloy to proceed with measures that would solve the problem but also go some way to placate the taxi lobby and their Fianna Fáil backbench supporters (Holland, 1999).

On 30 November 1999 Molloy announced in the Dáil proposals to grant 3,100 new taxi licences, with 2,600 reserved for existing licensees. Of the 2,600 licences, the government proposed that 500 would be for wheelchair accessible taxis (WATs) (Dáil Éireann, 1999). The grant of the majority of the licences to existing taxi licensees was to compensate them for the loss in the value of their existing licences. The remaining licences were to be granted using a 'points system' that favoured 'cosy' drivers.² The licensees responded by striking, and blockading Dublin Airport.

In formal and informal contacts with the government during December, the taxi drivers tried to delay and reduce the number of licences issued, and lobbied for the WATs to be offered through the points system to cosies, with the more lucrative ordinary licences reserved for existing licensees.³ The minister stood firm on his original proposals and, on 13 January 2000, he signed regulations allowing existing taxi licensees to apply for their extra licences before a deadline of 18 February 2000.⁴

Period 2: February 2000 to October 2000

A group of hackney drivers threw the government's plan into disarray on 10 February 2000 when the High Court granted them leave to apply for a judicial review of the new regulations. They challenged successive ministers' power to restrict the number of licences and the plan to favour existing taxi licence holders in allocating the new licences ('Hackney licence holders', 2000). The court granted interim injunctions restraining the authorities from allocating any taxi licences while the case was ongoing.

² The licensing system consisted of separate licences for vehicles and drivers. The vehicle licences were subject to numerical control while the driver licences were not. Consequently, a vehicle licensee could rent his licensed cab to a licensed driver. In most cases, the person who owned the vehicle licence was also licensed as a driver. The 'cosy' term originated because the licensed driver kept the drivers' seat 'cosy' (warm) for the vehicle licensee owner-driver.

³ Ministerial Briefings 04/01/2000.

⁴ S.I. No. 3/2000 – Road Traffic (Public Service Vehicles) (Amendment) Regulations, 2000.

Mr Justice Roderick Murphy ruled in late October 2000 that the regulations were ultra vires the power of the minister because they curtailed his discretion to act under the Road Traffic Act, 1961. He stated that any such ‘fettering of the ministerial discretion which affected the rights of citizens to work in an industry for which they may be qualified was impermissible and ultra vires’.⁵

Period 3: November 2000

The National Taxi Drivers’ Union (NTDU) decided to appeal the High Court ruling at a meeting in mid November. Molloy stated, ‘It is clear from the High Court judgement that no useful quantitative restrictions could be imposed under new regulations and if they were they would immediately be challenged and found invalid’ (‘This week they said’, 2000). The taxi licensees exerted intense political pressure on the government, the political parties and the minister to restrict the increase in licences (Brennock, 2000). In the immediate period before liberalisation, ‘sources close to the Taoiseach, Mr. Ahern, said he believed quality controls could be put in place to restrict entry, so the drivers would not need to be compensated’ (O’Connor, 2000). At the Fianna Fáil parliamentary party meeting prior to liberalisation, Ahern had left the ‘impression that deregulation was not on the cards’ (‘No wonder Bertie’, 2000).

At 8 p.m. on 21 November 2000 Molloy signed new regulations into law, completely removing any numerical restrictions on taxi licences. When asked if the PDs were prepared to collapse the government on the issue, he stated that the PDs were going ahead with the policy and Fianna Fáil could push the issue if they wanted.⁶ The senior civil servant in charge of the area stated with regard to liberalisation, ‘[The Minister] had only one choice and that was the liberalisation of licences. That was the only way to do it in the time frame... The court case said that you can’t do what you want to do. Your policy is to increase numbers rapidly. There is only one way to do this. Open the market.’⁷ The PDs wanted the issue dealt with and they believed that Fianna Fáil and the taxi drivers would try to scupper any attempt to properly deal with the issue.

The response of the taxi drivers, in unofficial action, was to immediately blockade Dublin City, Dublin Airport, and towns and

⁵ *Humphrey and Others v. The Minister for the Environment, Local Government, Ireland, the Attorney General and Others* [2000] IEHC 149.

⁶ Interview with Bobby Molloy.

⁷ Interview with John Weafer.

cities across the country. The taxi associations, in meetings with politicians and government, continued to propose policies to delay and limit the increase in licences (O'Connor & Cullen, 2000). The authorities started to issue the new licences.

Period 4: December 2000 to March 2001

The NTDU applied *ex parte*, late on 28 November, for leave to seek judicial review of the new regulations of 21 November on the basis that the regulations interfered with their constitutional rights, that the regulations were unreasonable or irrational, and that they were not in keeping with the rules of natural justice. The judge ruled that it was necessary to hear both sides. On 7 December the High Court granted the NTDU application to challenge the legality of the liberalisation regulation; however, Justice Kelly stated that 'the grant of leave did not in any way hinder, impede or prevent the continued operation of the statutory instrument... [It] continues in full force and operation unless and until such time as this court directs otherwise. The grant of leave is not such a direction.'⁸

The hearing started in the week before Christmas. On the last day before the holiday break, the NTDU again applied to the court for a temporary injunction stopping the issuance of licences until the resumption of the case in January. Mr Justice Carney refused the application stating that he understood that the taxi drivers had asked for and received an early hearing on the basis that there would be no application for restraining orders ('Taxi drivers fail', 2000).

When the case resumed in January the authorities had issued 740 licences, with a further 2,230 conditional offers made (Donnellan, 2001). By the end of February they had approved 2,137 new licences, with licences now numbering 4,861 in Dublin (O'Brien, 2001). On March 23 Mr Justice Carney upheld the government's policy to liberalise the taxi sector.⁹

Success or failure? Regulation post liberalisation

The liberalisation of the taxi licensing regime was undoubtedly a victory for the users of SPSVs in Ireland. The taxi licensees had used their political power over the previous decades to attain and maintain the regulatory capture of the sector. The 1998 Oscar Faber report,

⁸ (Kelly J.) *Gorman v. Minister for the Environment* [2000] IEHC 207.

⁹ *Gorman v. Minister for the Environment and Local Government* [2001] IEHC 47; [2001] 2 IR 414.

prior to liberalisation of the sector, found widespread dissatisfaction with the service. A total of 75 per cent of street survey respondents disagreed or strongly disagreed with the statement that taxi and hackney services 'can be easily hired at peak times'; 72.6 per cent of businesses had difficulties in obtaining a taxi, especially between 4 p.m. and 6 p.m. During the late night period from 11 p.m. to 4 a.m., waiting times in excess of 1.5 hours were 'frequently observed' (see Barratt, 2003, p. 4).

Following licensing liberalisation, a report on the impact of the new regime in Dublin by Goodbody Economic Consultants found that waiting times had declined rapidly. 'In 2001, 48% of persons waited less than five minutes' (Goodbody Economic Consultants, 2002). In 2001 the average percentage of people waiting after midnight in excess of thirty minutes had declined from 43 per cent in 1997 to 6.2 per cent. More broadly 'over two-thirds of people believed that deregulation was a good idea' and only 5 per cent indicated that they believed the service had dis-improved (see Barrett, 2003, p. 12).

From the above, I conclude that availability in the SPSV sector undoubtedly improved post liberalisation. As the many years of regulatory capture unwound, consumers benefited from the fact that they could now actually get a cab without a significant waiting time. As could be expected, there were some problems regarding the quality of the service due to the rapid pace of liberalisation but the authorities set about improving those in the following years. However, with an eye on the four-factor framework, one might suspect that with a mostly unreformed institutional basis of policymaking and political interests that largely remained unchanged, a similar pattern of regulatory capture may re-emerge. I now examine how policy developed after the liberalisation had 'bedded in' and examine if recapture did in fact happen.

Period 5: March 2001 to September 2004

As one can imagine, the sector was in a state of flux in the aftermath of liberalisation. The number of licences increased from 3,934 in November 2000 to 11,630 by March 2003 (Gorecki, 2014, p. 6). The taxi associations' initial focus was on securing compensation for their members and they were successful in attaining the establishment of a Taxi Hardship Panel. It reported in September 2002. The result of the general election in May 2002 saw the Fianna Fáil and PD coalition returned to power. Seamus Brennan, TD, was appointed the Minister for Transport. Brennan was on the liberal side of the Fianna Fáil Party

and had good relations with the PDs. In June 2003 Brennan introduced 'landmark' SPSV sector legislation which he said marked an 'act of completion' on the issue of taxi numbers. He stated that it would not allow the introduction of controls on the number of licences (Gorecki, 2014, p. 6).

In the lead up to the introduction of the legislation, taxi licensees withdrew services for 24 hours and staged a protest by driving 480 taxis through Dublin. 'Their immediate demand is for the issuing of licences to be suspended' (Dooley, 2003). The taxi lobby's focus was back on restricting licences. The Taxi Regulation Act, 2003, passed through parliament, and the government established a statutorily independent countrywide Commission for Taxi Regulation (CTR) in September 2004. The government at this stage appeared resolute to maintain free entry to the SPSV sector.

Period 6: September 2004 to March 2010

The CTR set about its job to increase the standards in the sector. It established a national taximeter area and a national maximum taxi fare in 2006. This replaced the system where each local authority independently regulated thirty-four taximeter areas and fare structures (see Goodbody Economic Consultants, 2009, p. 12). There were few protests during this time as the economy was in the midst of a property boom with full employment. A general election in May 2007 saw the return of a Fianna Fáil/PD coalition with the added membership of the Green Party. The 'credit crunch' began, with Northern Rock, in September 2007, becoming the first UK bank to suffer a bank run in 150 years. As the global economy rapidly faltered, the Irish Government provided a guarantee to the Irish banks' creditors in late September 2008.

The CTR had commissioned a review of the SPSV sector in autumn of 2008, with the key objectives of a 'review of the trends shaping the general environment in which the industry operates' and to 'assess the economic impact of liberalisation of the SPSV sector, in particular on supply, demand and industry earnings' (Goodbody Economic Consultants, 2009, p. 6). The taxi drivers staged protests in early February 2009 in Dublin City Centre and Dublin Airport. Tommy Gorman of the NTDU called for the CTR regulator, Kathleen Lynch, 'to consider her position'. He further added, 'we said to her 18 months ago but she persisted in issuing so many licences to the extent that there is no living in it for anybody anymore' (McGreevy, 2009).

The review was published in early March 2009, against the backdrop of a rapidly worsening economic climate. It found that liberalisation had resulted in significant benefits to consumers. The review recognised that drivers were working longer hours and their income was 'well below the average industrial wage' (see Goodbody Economic Consultants, 2009, p. 7). Significantly, the review did not consider that a reintroduction of a moratorium on the issuance of new licences was justified (see Goodbody Economic Consultants, 2009, p. 9). The taxi drivers, predictably, reacted with anger to this recommendation. In response, they again resorted to blockading the city and airport (Healy, 2009).

The taxi regulator, Kathleen Lynch, and Bernard Feeney of Goodbody Economic Consultants appeared before the Joint Oireachtas Committee on Transport soon after publication in late March 2009. They both faced hostile questioning from some members of the committee who attacked the report's theoretical basis, methodology and recommendations. The committee focused on the finding that 'the review found that earnings were not collapsing... [and] the reduction in drivers' income is insufficient to justify a moratorium' (Joint Committee on Transport, 2009a).

The chair of the committee, Frank Fahey, TD, criticised the report's methodology as 'like reading the front of *The Beano*' and stated 'Mr Feeney has no idea about drivers' incomes... The report's finding is ludicrous and every cab driver in this city and throughout the country is hopping mad about it' (Joint Committee on Transport, 2009a). Committee member Fergus O'Dowd, TD, said, 'were I a cab driver, my wages would undoubtedly be decreasing... The market is contracting. In terms of public transport usage, the number of Luas trips has decreased by more than 1 million in the past year. Journeys on the Luas and Dublin Bus have declined significantly so it is a fact that taxi drivers are in the same position.' Another committee member, Tommy Broughan, TD, said that he had met delegations of taxi drivers and stated, 'These are family men and women with small families who tell us a difficult tale of their struggles to earn any kind of living in the current market place with 27,000 licences. I met more than 500 taxi drivers and have walked around town with them. I have listened to the serious situation of these families' (Joint Committee on Transport, 2009a).

The data collection for the report had started in the last quarter of 2008, as the full effects of the recession were only becoming apparent, so the report's findings on income, which Mr Feeney accepted were

already low (Joint Committee on Transport, 2009a), may have by then been unreflective of the reality on the street.

In July 2009 the committee recommended a three-year moratorium on the issuance of new licences (Gorecki, 2013). The CTR, following a consultation process, announced a set of sector reforms in mid October 2009. Before the committee in early November 2009 Kathleen Doyle stated the commission's view was that a moratorium would be 'anti-competitive' (Joint Committee on Transport, 2009b). However, the CTR proposed to issue only wheelchair accessible licences 'to meet the commission's objective to increase the wheelchair accessible fleet', and a restriction that licensees could not transfer their licence to another as they left the sector (Joint Committee on Transport, 2009b).

The chair of the committee welcomed this policy, stating, 'On the positive side, we welcome the fact that the regulator has ceased issuing licences, as we recommended, with the exception of licences for wheelchair accessible taxis. We recommended a three-year moratorium. Does the regulator have a specific timeframe in mind?' (Joint Committee on Transport, 2009b). Importantly, the new prohibition was not time limited.¹⁰ Committee member Fergus O'Dowd stated, 'While this is not a moratorium, it has the same effect because the new taxis will cost so much that few people will be able to do so. In addition, the taxi regulator is imposing a further restriction in that an operator may only transfer his or her licence once more. I believe these measures are meeting many of the issues raised by the taxi owners' (Joint Committee on Transport, 2009b). The CTR proposal de facto was to limit entry to the market (see Gorecki, 2017).

The taxi drivers held a number of strikes and staged a sit-in at the CTR in March 2010 (Carroll, 2010). The prohibition on new licences, except WAT licences, and the restriction on licence transferral were signed into law through the means of a statutory instrument in June 2010.

Period 7: March 2010 to January 2012

The troubles in the economy continued, with the government accepting the International Monetary Fund/EU/ECB 'troika deal' on 21 November 2010. As a means to cut public expenditure, the government dissolved the CTR by order S.I. 614/2010 on 1 January

¹⁰ S.I. No. 248/2010 – Taxi Regulation Act 2003 (Wheelchair Accessible Hackneys and Wheelchair Accessible Taxis – Vehicle Standards) Regulations 2010.

2011. With effect from that date, the National Transport Authority started to carry out the principal functions of the commission under the Taxi Regulation Act, 2003 (Wall, 2011). Following a general election in late February 2011, Fine Gael and the Labour Party formed a coalition government. Labour Party TD Alan Kelly was given responsibility for SPSV regulation as Minister of State for Public and Commuter Transport.

Following a special report from RTÉ's *Prime Time Investigates* in mid March 2011 showing widespread poor practice and some criminality in the SPSV sector, the government appointed the Taxi Regulation Review Group (TRRG) in June 2011, to conduct a broad analysis of the sector. Chaired by Kelly, the group recommended forty-six actions when it reported in December 2011 (see Indecon International Economic Consultants, 2011). At the start of the process in June 2011, Kelly stated that 'quantity as well as quality' and the income considerations of the drivers needed to be examined (O'Brien, 2011). When cabinet approved measures as a result of the TRRG recommendations in late January 2012, Mr Kelly stated, 'I expect there to be a serious exit of the industry as a result of these recommendations. Hence I expect that the volume of drivers... will change significantly' (Minihan, 2012).

Policy had come full circle. We saw earlier that, in 2003, Minister Seamus Brennan stated that the 2003 regulations were an 'act of completion' on the issue of taxi numbers. Furthermore, the taxi regulator stated to the committee in 2009 that the market should determine the number of providers in the sector, to the position where the government minister responsible for the area actively promoted policies to reduce numbers in the sector. A stark change in government policy had occurred, one promoted solely by the taxi licensees. They had reasserted significant influence over SPSV policy.

Present day – Industrial peace

In the years following to 2019, there has been industrial peace in the sector. The prohibition of the issuance of ordinary licences has remained. The policy has had success in as far as the absolute and relative amount of WATs has increased while the absolute number of SPSV licences has declined (National Transport Authority, 2018, p. 7). However, as the economy has recovered, there is evidence that waiting times are increasing. The challenge for the regulator now is to

negotiate a suitable means of meeting demand as the economy expands. It can be expected that the taxi drivers, as ever, will vigorously oppose this. However, wise heads within the sector should take heed of the mistakes made in the 1990s.

Analysis: Policymaking in the SPSV sector – Capture and recapture

Over the course of the period analysed, we see the various elements of the four-factor framework at play. The taxi licensees' blind refusal to accept the issuance of any new licences throughout the whole decade of the 1990s displayed a complete denial of the evidence before them. Fear, greed and self-interest were the primary motivating forces. The situation worsened as the decade proceeded, as taxi licences exchanged hands for increasingly large amounts. Taxi licences, reflecting their scarcity, had been reaching higher and higher prices over the decade. At their peak, licences were selling for around IR£80,000, with some even selling for over IR£100,000 (see Gorecki, 2014). In addition to the existing licensees who refused to change position, the continual entrance to the sector of a group of licensees under significant financial pressure to recoup a large capital outlay ensured that there was always a significant group within the lobby with a very strong preference not to allow new licences. Consequently, the taxi associations found it impossible to reach a consensus and, as a result, it was impossible for them to form a long-term rational strategy.

In addition, the taxi lobby significantly overestimated their ability to control policy when Fianna Fáil was in coalition government, particularly when their tactic of opposing every attempt to issue licences was reaching its natural end. The public and politicians, in general, were sick and tired of their behaviour. Furthermore, they failed to comprehend that the strategy of continuously appealing to the courts on every regulation with which they disagreed was fraught with danger. When the hackney drivers appealed to the High Court in February 2000, a rational way forward for the taxi vehicle licensees would have been to negotiate with the hackney drivers to withdraw their action and subsequently, as a unified group, negotiate a compromise with government. However, the taxi licensees again missed an opportunity to compromise and move forward.

The political interest and institutional elements of the framework are significant complementary drivers of policy change. Ireland's institutional structure, as would be expected, had a significant impact

on the direction, length and depth of the policy issue. The taxi lobby effectively captured policy over the course of the decades leading up to liberalisation in 2000. They had built relationships with the elected members of Dublin Corporation when it regulated the sector in the 1980s.¹¹ These relationships served them well in the 1990s when a number of these politicians rose to national prominence as TDs and ministers. The taxi licensees nurtured relationships with politicians from all parties, but particularly those from Fianna Fáil. A common sight in the back window of many taxis was a sticker proclaiming the taxi drivers' support for Fianna Fáil.

During the late 1990s, as the issue came to prominence, then Taoiseach Bertie Ahern gave the taxi licensees strong support (see 'Taxi drivers close ranks', 2000). When it looked as if the four Dublin local authorities who had commissioned the Oscar Faber report were going to deal with the issue, Ahern intervened and set up the Dublin Taxi Forum, which stalled the reform of the sector for over a year. Over the lifetime of the government, the issue had become more prevalent in the public mind and the PDs had grown increasingly frustrated at the glacial pace of reform in the sector. Fianna Fáil was committed to a policy of a very slow and gradual release of additional licences. Fianna Fáil's relationship with the taxi licensees increasingly looked like the type of 'stroke politics' that the PDs had made their name opposing. Ahern had assured the taxi licensees he would not liberalise the market. However, he also had to agree policy with the PDs. As we saw above, Ms Harney had to persuade Ahern to include it in the revised programme for government. In an interview, Molloy described the taxi situation at that time as 'embarrassing'.

One effect of Ireland's multi-seat, proportional representation by single transferable vote (PR-STV) electoral system is that smaller minority parties and independent politicians find it easier to win electoral seats than the main alternative: a single-member plurality system (see Farrell & Sinnott, 2018). A further effect of this system is that politicians are responsive to constituents and those who can influence constituents. Consequently, the electoral system tends to lead to coalition governments and significant power for interest groups who can influence a relatively small number of votes (see Halligan, 2014; Mair, 2008). As Murphy (2018, p. 274) notes, 'the centrality of interest groups to the political process is clear, as much of the process of governance can be seen as the management of the

¹¹ 'Taximen protest' (1986); interview with D. Dempsey, taxi driver.

interface between government and groups'. As we saw throughout the analysis above, the taxi interest group was able to exercise significant influence over policy. We know since Olson (1965) that an interest group seeking a policy change that predominantly affects only the group's members has a significant advantage over the public. We see this to be the case here.

The taxi lobby understood this and exerted significant influence over the Fianna Fáil Party. In interviews, several politicians stated that they were wary of taxi drivers as a group because they met a large amount of the public on a daily basis. In addition, politicians recognised taxi drivers' usefulness in election campaigns due to their ability to advertise the favoured candidates on their vehicles and provide transport on election day.¹² However, as mentioned above, the taxi licensees failed to understand the significance of the reality of a coalition government. If the PDs had not been in coalition with Fianna Fáil, it is unlikely that the issue would have been dealt with as comprehensively as it was. The PDs took this issue to its conclusion. In the aftermath of liberalisation, they widely briefed the press, stating the policy was an example of their influence and effectiveness in government ('Taxis put Harney in driving seat', 2000). We see that the political interests of the PDs and the fact of a coalition government drove policy reform forward.

The referral of the issue to the High Court is significant in the move towards liberalisation. The judiciary is not elected and is largely guided by legal principles and precedents. The judiciary are far freer than politicians to view the larger picture when deciding on issues. The inability of the licensees to see their broader place within society, and to recognise that the judiciary was far more likely than politicians to consider the broader interests in society, cost them dearly. The doctrine on the separation of powers provided checks and balances on the policymaking system. However, the movement to a better policy occurred only after a significant passage of time. Baumgartner & Jones' (1991) punctuated equilibrium theory recognises that as an issue comes to the public notice, other actors become involved and venue change may occur. We see that this occurred in the present case study. The taxi issue attracted political players from outside the subsystem (hackney drivers and the PDs). The hackney drivers brought about a change in venue and the PDs ultimately provided for the 'punctuation' of the liberalisation of policy.

¹² Interviews with Martin Brady, TD; Olivia Mitchell, TD; Catherine Murphy, TD; and Michael Smith, TD.

The PDs were an economically liberal party that advocated policies of liberalisation and deregulation. The 1980s and 1990s can be described internationally as the era of privatisation, liberalisation and deregulation. EU and, consequently, Irish Government policy promoted the liberalisation of many formerly state-run and regulated markets; for example, the Irish Government privatised the national telecoms provider Eircom by initial public offering in the summer of 1999. While liberalisation was a significant driving force of policy reform at that time, the minister and his party did not see the liberalisation of taxi licensing as a matter of strong principle. The PDs happily promoted the initial policy that rewarded existing licensees but maintained control over licences. The general background of market reform provided space for the sector to be liberalised; however, the coalition government ensured a compromise, in the first instance, because Fianna Fáil wanted to go some way in protecting the taxi licensees. After Mr Justice Murphy's ruling, Minister Molloy brought in liberalisation because he felt it was the only way that he could get taxis on the street quickly and before an election. The predominant aim of the minister was to come up with a solution to the issue. The behaviour of the taxi licensees and Fianna Fáil created an atmosphere where the minister believed he could not trust his coalition colleagues.¹³

Policy recapture?

As we saw above, the taxi licensees were able to capture licensing policy up until liberalisation in 2000. In the absence of institutional change, one might expect the interest group to reaffirm this position. Indeed, since liberalisation, as we saw above, there is strong evidence that they have been rebuilding their influence over policy. Economic downturns provide a significant opportunity for interest groups to push their agenda. During recessions politicians are generally struggling to satisfy voters. Due to income losses, the interest group members are in a state of significant mobilisation and the strength of their preferences are heightened. This leaves policy open to easy, immediate 'solutions' that are subsequently difficult to reverse when the economy recovers.

We saw above that the taxi drivers, within a short period of liberalisation, were agitating for the reintroduction of a moratorium.

¹³ Interview with Bobby Molloy, TD.

With the memory of queues, blockades, long walks home and the bullying behaviour of the taxi licensees in recent memory, the public and politicians in the early 2000s were in no mood to listen to the drivers. However, as the years moved on and with the occurrence of the economic downturn, the drivers' influence over policy increased. The public were distracted by their own economic troubles and politicians were in a weak position to resist. In speaking to a Labour Party member with regard to their policy in relation to taxi licences, he stated that the view in the party at the time was that they were losing so many votes from all other sections of their support base that they had to shore up support wherever they could.¹⁴ Dal Bo et al. (2007) and Dal Bo & Di Tella (2003, 2006) show that interest groups have an inherent strategic advantage because they are long-term players while politicians, who have to seek re-election, have a short-term focus. Consequently, interest groups can wait for an opportune moment to secure their long-term goals. From the evidence above, there are strong indicators of increased interest group influence over policy. This is not necessarily a bad thing. At the time of writing, there is insufficient evidence to assert that the interest group has recaptured policy; however, it is important to ensure that policy remains balanced and, as the economy further recovers, supply is increased when there is evidence of excess demand.

Thoughts on reform

The liberalisation of the taxi licensing regime in 2000 was certainly dramatic. The licensees went on strike and blockaded towns and cities. Minister Molloy's liberalisation of the regime led to drastic changes in the sector, particularly in Dublin. The experience of public service vehicle users changed enormously. Was the policy a success? From the point of view of the travelling public, it was definitely a success. Politically, it defeated a very effective cartel that had controlled the sector for a considerable period. For the taxi licensees who sustained large losses, one would have to feel sympathy. Despite rhetoric stating that it was a business risk turned bad, it is no consolation for those who were burnt. Some licensees suffered heavily due to the policy change but the licensees and the politicians that obstructed reasonable change for a considerable period must take the blame in this regard. The government provided some comfort through the Taxi Hardship Panel.

¹⁴ In conversation with Cllr Brian Collins, Labour Party.

We see that the Irish policymaking system has the information, knowledge and capability to design effective policy; however, the institutional system allows regulatory capture by interest groups to occur and for the consequent policy dysfunction to continue for a considerable period. We saw throughout the detailed timeline that the taxi drivers were capable of exerting significant influence over the executive and legislature due to their ability to impose costs and confer benefits on politicians and government.

As noted above, the electoral system leaves politicians in a weak position when dealing with interest groups. The regulatory capture of policy is a problem in many countries but appears to be particularly prevalent in Ireland. Interest groups play an important, beneficial role in society; however, how can we avoid the type of regulatory capture as documented above? Constitutional change to reform the electoral system is one avenue to explore in order to rebalance the power structure in the country's institutions and to make the policy system less susceptible to regulatory capture. This has been formally examined several times in Ireland, most recently in the Convention on the Constitution in 2013, where members voted overwhelmingly not to change the system. As Farrell & Sinnott (2018, p. 104) conclude, 'This would seem to have put to bed the question of replacing PR-STV with another electoral system for the foreseeable future.'

However, this does not mean that meaningful reform cannot be considered. In recent times, a Citizens' Assembly, tasked with examining the issues around the Eighth Amendment, showed that as an institutional structure it was capable of advancing an issue that had been intractable to the political system since at least the 1980s. John (2018) and John et al. (2011) advance the concepts of 'Think' and 'Nudge Plus', where the public examine their own actions and those of the public officials. John (2018) states, 'Debate, self-ownership, and collective decision-making are the key ways of achieving behaviour change. People are given information to debate issues: they have the space to deliberate; and then policies may be changed as a result for collective benefit.' The problem with traditional, 'independent' sectoral regulators that have been popular since the 1980s are that they are subject to regulatory capture and political interference. The regulator needs to be independent but also democratically accountable. In the current structure, these goals are incompatible. The independence allows for regulatory capture and accountability affords political interference. An option may be to use a forum similar to the Citizens' Assembly to deliver policy change.

A forum of citizens chosen at random to assess policy would be free to do so impartially and without the politicians' fear of losing their seat at the next election. The citizens, to some degree, act like a jury in a court case. They assess the evidence before them and they make a decision without the overbearing influence of an interest group. The fact that the forum is constituted occasionally and the participants chosen randomly mitigates against regulatory or political capture. With the appropriate safeguards, this could become a functioning policy institution. Of course, further and deeper research would be required before a firm recommendation could be made.

The SPSV sector is currently going through major change. In the last few years, taxi apps have revolutionised the market, and in the future there is the possibility of driverless vehicles. Uber has led the push to substitute public regulation for private regulation. The Irish Government has so far resisted this. A key change here from a regulation point of view is that the apps have the potential to fill the informational asymmetry that has dogged the regulation of the sector up until now. There is now the real possibility that a regulator can observe key metrics such as waiting times, driver incomes and hours worked. With this information available, the regulation of the sector alters dramatically. Regulators could assess in real-time the supply and demand needs of the market and act accordingly. The availability of this type of information is a 'game-changer' with regard to regulation.

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