

Comments to the draft Motor Vehicle Aggregators Scheme, 2021

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Authored by **Chiara Furtado, Aayush Rathi and Abhishek Sekharan**

Reviewed by **Ambika Tandon**

The Centre for Internet and Society, India

Preliminary

This submission presents a response by researchers at the Centre for Internet and Society, India (CIS) to the draft Motor Vehicle Aggregators Scheme, 2021 published by the Transport Department, Government of National Capital Territory of Delhi, (hereafter “**draft Scheme**”).¹

CIS, established in Bengaluru in 2008 as a non-profit organisation, undertakes interdisciplinary research on internet and digital technologies from public policy and academic perspectives. Through its diverse initiatives, CIS explores, intervenes in, and advances contemporary discourse and regulatory practices around internet, technology, and society in India, and elsewhere.

CIS is grateful for the opportunity to submit its comments to the draft Scheme. Please find below our thematically organised comments.

Comments

Clarifications in the coverage of Aggregators services

(i) Section 2(2) of the draft Scheme includes Aggregators providing delivery services of goods (“[...] product, package or parcel”). This is a wider definition than that adopted by the Motor Vehicles (Amendment) Act, 2019 and the Motor Vehicle Aggregators Guidelines, 2020 (hereafter “**Guidelines**”)² which only include Aggregators providing passenger transportation services.

The long title/preamble of the draft Scheme indicates the intent of the draft Scheme to include aggregators providing delivery of both goods and services. This could potentially include aggregators providing services such as domestic work, child and elderly care, home repair, beauty work, etc.

We submit that the long title/preamble and Section 2(2) of the draft Scheme be harmonised.

(ii) Further, Section 2(2) of the draft Scheme includes Aggregators providing delivery services of goods for sellers, e-commerce entities and consignors. It is not clear if the draft Scheme shall be applicable to Aggregators involved in providing delivery services of goods that do not amount to the transfer of a commercial interest in the nature of a sale or assignment.

¹ Transport Department. (2022). The Draft Motor Vehicle Aggregators Scheme, 2021. The Government of National Capital Territory.

. https://transport.delhi.gov.in/sites/default/files/All-PDF/Draft_Aggregator_Scheme_.pdf

² Ministry of Road Transport and Highways. (2020). Motor Vehicle Aggregator Guidelines, 2020. The Government of India.

https://morth.nic.in/sites/default/files/notifications_document/Motor%20Vehicle%20Aggregators27112020150046.pdf

We submit that including aggregators that also provide services for exchange of goods for non-commercial purposes will ensure more complete coverage of the services offered by aggregators providing services for delivery of goods.

(iii) Subsequently, in Section 8(2), the draft Scheme further broadens the scope of Aggregators to include entities providing two-wheeler bike-sharing services. This is inconsistent with the scope outlined in Section 2(2) as bike-sharing services do not necessarily involve transportation services in the nature of a driver-passenger relationship, or the delivery of goods by drivers. A large number of provisions of the draft Scheme pertain to ensuring passenger safety in driver-passenger relationships and do not apply *mutatis mutandis* to bike-sharing services.

We submit that entities providing two-wheeler bike-sharing services should not be included within the scope of Aggregators under the draft Scheme. A separate framework should be devised for regulating entities providing two-wheeler bike-sharing services.

Regulating algorithms

The draft Scheme engages with ‘algorithm’ only once in its entirety while defining ‘dynamic pricing’, and it identifies algorithmic management only in terms of surge pricing. However, research has time and again brought to light the role played by algorithms in manipulating base fares, incentives, deductions, and matching of Drivers-passengers. Despite the central role played by algorithms in organising service delivery and working conditions, these have remained opaque and black-boxed.

In such a scenario, we recommend that compliance standards and audits be enforced upon algorithms deployed by Aggregators. Such standards should be drafted in consultation with worker groups. Section 9(6) of the Guidelines aims to ensure such transparency in operation of the ‘App algorithm’ as it relates to the incentive structure of Drivers.

We also recommend the inclusion of Section 12 of the Guidelines, which pertains to non-discrimination between vehicles owned by the Aggregator and those which are not owned. It is also important to ensure non-discrimination between passengers based on demographic characteristics such as gender and caste, as well as artificial Driver/delivery worker classifications created by Aggregators. Algorithmic audits and transparency are important in ensuring that non-discrimination policies can be actionable.

We suggest that the draft Scheme include provisions for significantly stronger algorithmic regulation. Section 9(6) and Section 12 of the Guidelines may be used as starting points, and further guidance may also be sought from Chapter 3 (Algorithmic management) of the recently published Platform Work Directive in the European Union³.

³ European Commissions. (2021). Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work.
<https://ec.europa.eu/social/BlobServlet?docId=24992&langId=en>

Incentivising the formation of drivers' associations

Inter alia, Section 4(2) of the draft Scheme specifically includes cooperative societies formed by associations of Drivers or motor vehicle owners within the ambit of applicants who may apply for the Aggregator licence.

This is a useful starting point to encourage the formation of drivers' associations to operate as Aggregators. As we can gather from examples around the world, drivers' cooperative associations hold a lot of potential in terms of achieving better work outcomes for drivers when compared to working for traditional aggregators.⁴ At the same time, it is important to address the challenges that drivers' associations face in setting up and sustaining their operations.

These associations and cooperatives are primarily self-financed by Drivers, who do not have access to external financing, and operate on limited institutional capacity. This is in contrast to dominant aggregators who have vast financial and institutional resources.

The draft Scheme imposes several costs of compliance that will make it impossible for drivers' associations to operate. These include, but are not limited to, additional financial costs relating to the maximum number of vehicles that can be on-boarding without applying for an Aggregator licence (Section 4(1)), annual renewal and cost of Aggregator licence (Section 6), and the establishment of an operating centre/CCC (Section 7).

We submit that Aggregators that are incorporated as a cooperative of drivers be allowed exemptions from, and reduction of compliance burden such that it encourages the formation and sustenance of worker-owned Aggregators. The department may additionally consider fiscal support tools such as grants and welfare contributions to further incentivise drivers' associations.

Including an induction program in the 'on-boarding' process

Section 2(17) read with Section 9 of the draft Scheme limits the 'on-boarding' process to the execution of a service provider contract between the Driver and the Aggregator, along with the verification of Driver and vehicle documents. However, this is not sufficient as these tend to be click-wrap contracts that are designed to make it hard for users to make informed decisions.⁵ In cases where Drivers are provided with a written contract, there have been instances wherein they have not been presented a contract in the language understood by them, or are not provided an explanation of the terms and obligations specified in the contract.

⁴ Touissant, K. (2021). How the Drivers Cooperative built a worker-owned alternative to Uber and Lyft. *Fast Company*.
<https://www.fastcompany.com/90651242/how-the-drivers-cooperative-built-a-worker-owned-alternative-to-uber-and-lyft>

⁵ For an exploration of alternate communication of digital contracts, see Naidu, S. (2018). Design Concerns in Creating Privacy Notices. *The Centre for Internet and Society*.
<https://cis-india.org/internet-governance/blog/design-concerns-in-creating-privacy-notices>

The draft Scheme should include specific induction training prior to the 'on-boarding' which include an explanation of the terms and conditions of the Aggregator, walk through of the web-interface, payment and incentive structures, rating and grievance redressal mechanisms, provisions of various relevant legislations, and road safety practices.

We suggest that the draft Scheme include induction training for Drivers modelled along the lines of the Section 5(2) of the Guidelines as a part of the 'on-boarding' process. As far as possible, this should be done face-to-face, and Drivers should be adequately compensated for their time.

We also suggest that the draft Scheme include the "employment contracts" as a possible relationship that exists between Aggregators and Drivers, in addition to the existing stipulation of "service provider contracts".

Curbing the excesses of Aggregator power

(i) Section 7(5) relates to the sharing of data with regards to the number of vehicles in operation, trips taken, and further analytics.

In accordance with the principles of the latest draft of the Data Protection Bill, 2021, we recommend that such data sharing be limited to aggregate non-personal data of Drivers and delivery workers rather than personally identifiable data on Drivers/workers' movements, except as relates to specific clauses dealing with complaints and grievances as stipulated under Section 7(4), or remedial trainings as stipulated under Section 7(7).

(ii) Section 7(6) under the draft Scheme specifies that Aggregators may take 'appropriate action' against Drivers if a Driver has 15 percent or more grievances lodged against them by passengers for the rides undertaken by them in the period of one month.

In doing so, the draft Scheme allows full discretion to Aggregators to penalise Drivers, without consideration for what would constitute an "appropriate action" by the Aggregator. This is an allowance for unilateral decision-making by Aggregators, who already practise automated and arbitrary employment termination policies, and in the absence of effective grievance redressal or appeals mechanisms for Drivers.

We submit that the draft Scheme lay out a non-exhaustive list of possible actions that Aggregators are empowered to take, and more crucially create a responsive, independent and comprehensive appeals and review mechanism for Drivers.

(iii) Section 7(7) under the draft Scheme utilises the Driver rating as a measure for decision making by the Aggregator and the Transport Department on issues relating to remedial training, corrective measures, and the determination of an observation period, which may lead to the termination of the PSV badge of the Driver by the Transport Department.

It is important to recognise that the ratings system of Aggregators has several limitations which render it unreliable to be used as the sole measure to rely on for termination decisions. The ratings system includes limitations of some passengers providing ratings based on arbitrary criteria, not providing ratings at all, or providing ratings on non-service

related aspects, which are not within the Drivers' control. Research has shown that consumer-sourced ratings are quite likely to be inflected with biases against individuals from marginalised groups.⁶

Drivers are also unaware of ratings received for each ride, and instead only receive aggregated weekly reports. In such a scenario, relying on ratings alone to terminate Driver IDs, ensure quality of service provision and safeguard rider's interests, are detrimental to Drivers who are most often not aware about why they are being penalised with a low rating, and therefore, have no way of improving service provision.

We submit that rating systems should not be a mandatory feature of Aggregators, and should certainly not be used to make judgements on Drivers' employment opportunities. Instead, human-led qualitative assessments of grievances expressed by passengers and rehabilitative approaches should be adopted.

Logistics of multiple Aggregators

(i) In a note to Section 5(2), the draft Scheme recognises that Drivers may be engaged with multiple Aggregators and allows for the registration and integration of Drivers with multiple Aggregators. This is a welcome move that acknowledges the realities of Drivers working for Aggregators.

The draft Scheme, however, should contemplate scenarios with multiple Aggregators in later sections, especially with regard to demarcating the role of Aggregators in decision-making capacities with regard to 'appropriate action' on grievances/ complaints raised by passengers, and remedial training, corrective measures, and monitoring of Drivers as specified in Sections 7(6) and 7(7). For Drivers working with more than one Aggregator, it is also not clear which Aggregator will be responsible for additional compliances specified in Sections 9(6) and 9(7).

We submit that these questions be clarified in the final Scheme.

(ii) The draft Scheme does not specify the minimum number of rides undertaken in a month for the calculation of percentage of grievances lodged in Section 7(6), nor does it specify the minimum amount of time that a Driver must be active on an Aggregator's platform during the period of one year for the calculation of the rating as in Section 7(7).

Drivers often undertake a variable number of rides through multiple Aggregators, and may undertake only a small number of rides with some of those Aggregators. Relatedly, they may not be active with an Aggregator at all times of the year. Their accounts are often subject to deactivation or a ratings downgrade in case of inactivity.

We submit that the grievances should not be looked at as a static figure in percentage terms. Instead, the grievances should be qualitatively assessed, and proportionate, rehabilitative approaches be adopted. These may be in the form of refresher trainings and

⁶ Rosenblat et al. (2016). Discriminating Tastes: Customer Ratings as Vehicles for Bias. *Data and Society*.
https://datasociety.net/pubs/ia/Discriminating_Tastes_Customer_Ratings_as_Vehicles_for_Bias.pdf

access to professional help that Aggregators should make available. Relatedly, we reiterate the need for the draft Scheme to create a responsive, independent and comprehensive appeals and review mechanism for Drivers, to appeal against grievances lodged.

Section 9. Compliances with regard to Driver(s) and the vehicles

(i) Section 9(3) of the draft Scheme requires that Aggregators will ensure that, at the time of registration of the vehicle, all new vehicles will not be older than 5 years, and further that all vehicles in the fleet will not be older than 8 years. These requirements are not harmonious with the National Green Tribunal's stipulations regarding the deregistration of 10 and 15 year old diesel and petrol vehicles respectively. Additionally, the requirements of 5 and 8 year old vehicles are not in line with the loan tenures exceeding 5-8 years without which most Drivers will not be able to afford a vehicle within the age threshold.

We submit that the draft Scheme be in accordance with the 10 and 15 year deregistration threshold set by the National Green Tribunal. Notwithstanding this, the draft Scheme should also lay out a framework for the sharing of cost of retrofitting of internal combustion engines of eligible vehicles with electric engines.

(ii) The Sections 9(6) and 9(7) under the draft Scheme specify additional compliances for Aggregators. These include, but are not limited to, the fitment of an AIS 140 Certified Vehicle Tracking and Monitoring System with panic buttons, and placement of a fire extinguisher in vehicles integrated with the Aggregator. While the draft Scheme specifies that these compliance will be 'ensured' by the Aggregator, it provides no clarity on who is responsible for bearing the financial costs for these compliances. The draft Scheme should clarify this as Aggregators rely on a worker-financed model of business operations, where they offload all direct and indirect costs to the Driver.

We suggest that the burden of costs of additional compliance be borne by the Aggregator, and there be a strict prohibition on offloading the cost to Drivers. Relatedly, we also suggest that inclusion of provisions that mandate disclosures regarding charges levied by Aggregators on Drivers. Guidance may be sought from Section 9(6) of the Guidelines.

(iii) The draft Scheme also fails to include stipulations for Drivers' welfare and occupational health. These should include, at the very least, sufficient health and term insurance cover.

We strongly suggest that Sections 7(2)(a) and (b) of the Guidelines be included within the draft Scheme.

(iv) Section 7(2) (d) also specifies restrictions for hours logged on to the application to 12 hours per day, and a mandatory break of 10 hours after a login period extending 12 hours. The draft Scheme should bring in restrictions of daily hours in the interest of both Drivers' and public safety. However, these restrictions are complicated by the payment and incentive models adopted by Aggregators, and the creation of a gamified model that nudges Drivers into working longer. Restrictions on working hours alone will not alone resolve broader structural issues with Aggregators' extractive business models. It will correspondingly have to be ensured that Drivers are not penalised through lower earning

capacities as a result of following the restrictions on hours logged, given that the payment and incentive models of Aggregators are directly tied to working hours.

We reiterate that Section 9(6) of the Guidelines be incorporated in the draft Scheme to mandate transparency in the incentive structures generated by Aggregators, along with Sections 7(2) (d) and (e) of the Guidelines to bring in daily work ceilings and moratorium periods.

Channels for Drivers' assistance

(i) Section 10(2) of the draft Scheme requires that Aggregators establish call centres with 24x7 operations for both Drivers and passengers. Time and again, gig workers across many different services have found that helplines designated for them are unresponsive and often handled by automated systems. These workers have repeatedly highlighted the importance of a human manager/executive to reach out to in case of a crisis related to safety during operations.⁷

We submit that the draft Scheme specify that assistance lines be non-automated and non-IVR.

(ii) While the draft Scheme stipulates that assistance be provided in English and Hindi, it is silent in making similar stipulations towards the front-end language options for the digital or an electronic facility or a web platform. The draft Scheme omits provisions under Section 9(2) of the Guidelines indicating that the application be made available in English and Hindi as primary languages, and in such language understandable by the Driver.

We submit that the draft Scheme specify that the digital or an electronic facility or a web platform of the Aggregator be accessible to Drivers in a regional language of their choice. Section 9(2) of the Guidelines may be referred to here.

(iii) The draft Scheme is only concerned with passengers' safety. We feel the need to reinforce that safety remains an everyday concern for Drivers working for Aggregators as well.⁸

We submit that the draft Scheme include provisions targeted at ensuring Drivers' safety.

⁷ See All India Gig Workers' Union. (2021). On the Issues and Demands of Urban Company Partners in Delhi NCR. <https://www.facebook.com/aigwu/photos/pcb.547190543303498/547190149970204>

⁸ See Press Trust of India. (2021). Woman arrested in San Francisco assault on Uber driver. *The Hindu*. <https://www.thehindu.com/news/international/woman-arrested-in-san-francisco-assault-on-uber-driver/article34050494.ece>; Press Trust of India. (2021). Police book model for framing Zomato delivery boy. *The Times of India*. <https://economictimes.indiatimes.com/news/politics-and-nation/police-book-model-for-framing-zomato-delivery-boy/articleshow/81516898.cms?from=mdr>

Regulation of Fares, Dynamic Pricing and Cancellation Fees

(i) The draft Scheme does not specify the minimum percentage of the fare that a Driver is entitled to receive.

We strongly suggest that the draft Scheme include provisions specifying the net minimum percentage of each fare that a Driver should receive. This may be harmonised with the net 80% floor set by Section 13(4) of the Guidelines.

(ii) Section 11(2) places a ceiling on surge pricing at two times the notified base fare. This is an increase of 50 basis points from the ceiling set out in Section 13(3) of the Guidelines.

Given the clear conflict between the Guidelines and the draft Scheme, it may be most prudent to harmonise the ceiling at 1.5 times the base fare. Notwithstanding the above, the GNCTD should mandate that Aggregators are able to showcase the tangible social value offered by dynamic pricing and the exact way in which it is calculated. Any cap should only be set thereafter.

(iii) The draft Scheme is silent on the matter of cancellation fees.

We submit that Section 14(1) and 14(2) of the Guidelines be incorporated in the draft Scheme.

Suspension and Cancellation of Aggregator Licence

The grounds for suspension and cancellation of an Aggregator's License under the draft Scheme are ambiguous and do not specify the provision for complaints which can be made against Aggregators by or on behalf of Drivers and passengers. Specifically, the draft Scheme completely omits Section 16 of the Guidelines on the complaints procedure and grounds for filing a complaint against the Aggregator.

Notwithstanding the limitations of relying on ratings and contracts to determine non-compliance, these grounds for complaints in the Guidelines include Sections 16(1)(a) on the systemic failure to ensure safety of passengers and Drivers; 16(1)(b) on repetitive financial inconsistencies regarding fares, surge pricing, commission, and unsubstantiated imposition of charges on Drivers; 16(1)(c) on a failure to comply with contractual obligations towards the Driver; 16(1)(e) on the effect on health and safety of passengers and Drivers which may have been averted by complying with the Guidelines; 16(1)(f) on number of deaths or severe injuries caused to passengers and Drivers due to violation of safety standards; and 16(1)(g) on the effect of a violation of contractual obligations to the Driver on Driver welfare and livelihood.

The omission of this Section results in virtually no accountability safeguards with regard to Aggregators for both Drivers and passengers. This is especially concerning in the context of existing precarious working conditions faced by Drivers working with Aggregators, the prevailing informational asymmetries regarding the terms of work and the general apathy Aggregators have displayed for the occupational health and safety of

Drivers, not least during instances of harm or injury caused to the Driver during the course of their work.

We strongly suggest that the draft Scheme should adopt provisions of Section 9(6) and Section 16 of the Guidelines to ensure standards for transparency and accountability from Aggregators towards Drivers and passengers.