

## Licence Application Decision

### (Transportation Network Services - New)

<b>Application #</b>	10149-20 TNS	<b>Applicant</b>	Facedrive Inc.
<b>Trade Name</b>	Facedrive		
<b>Principals</b>	Sayan Navaratnam Junaid Razvi		
<b>Address</b>	44 East Beaver Creek, Unit 16 Richmond Hill, ON L4B 1G6		
<b>Primary Areas of Operation</b>	Originating Area Requested: <ul style="list-style-type: none"> <li>• Region 1 – Lower Mainland, Whistler</li> </ul> Destination Area: <ul style="list-style-type: none"> <li>• BC or outside BC</li> </ul>		
<b>Current Licence</b>	None		
<b>Publication of Application</b>	September 23, 2020		
<b>Application Summary</b>	New Special Authorization: Transportation Network Services Authorization (TNSA)		
<b>Deadline for Submissions</b>	October 5, 2020 (original submissions) October 20, 2020 (second set of submissions) March 10, 2021 (COVID-19 Investigation submission) October 12, 2021 (Investigation Report submission)		
<b>Submitters (and representatives)</b>	<ul style="list-style-type: none"> <li>• BC Taxi Association (the “BCTA”)</li> <li>• Kimber Cabs Ltd. (Richmond, BC)</li> </ul>		
<b>Board Decision</b>	<b>The special authorization is refused for the reasons set out below.</b>		
<b>Decision Date</b>	December 14, 2021		
<b>Panel Chair</b>	Carmela Allevato	<b>Panel Member</b>	William Bell

## 1. Introduction

[1] The *Passenger Transportation Act*, S.B.C. 2004, c. 39 (the “Act”) regulates the licensing and operation of commercial passenger transportation vehicles in British Columbia. The Passenger Transportation Board (the “Board”) is established under the Act and its powers, duties and functions are set out in section 7. In general terms, the Board has authority to make decisions on licence applications for passenger directed vehicles (e.g., taxis, limousines, and other small shuttle and tour vehicle licences). With some exceptions, the Act defines passenger directed vehicles to mean commercial passenger vehicles that are being operated to or from locations determined by or on behalf of passengers.

[2] In September 2019, amendments to the Act and the *Passenger Transportation Regulation* (the “Regulation”) came into force which enable the Board to make licensing decisions for transportation network services (“TNS”), commonly referred to as ride-hailing.

[3] Facedrive Inc. (“Facedrive”) originally applied (7703-19 TNS) for a passenger transportation licence with a special authorization in the form of a TNS authorization (“TNSA”) to provide ride-hailing services in Region 1 – Lower Mainland, Whistler. That application was published in the Board’s [Weekly Bulletin](#) on November 27, 2019. Facedrive subsequently withdrew that application and notice of the withdrawal was published in the Board’s [Weekly Bulletin](#) on March 25, 2020.

[4] On July 31, 2020, Facedrive reapplied for a passenger transportation licence with a special authorization in the form of a TNSA to provide ride-hailing services in Region 1 – Lower Mainland, Whistler (the “Application”). In accordance with section 26 of the Act, the Registrar of Passenger Transportation forwarded Facedrive’s Application to the Board for a determination on September 10, 2020.

[5] Section 28 of the Act governs determinations by the Board about whether to approve, in whole or in part, licence applications for a special authorization such as a TNSA. Section 28 provides that such approval may be granted after the Board considers whether:

- (a) there is a public need for the services that the applicant proposes to provide under the special authorization;

- (b) the applicant is a fit and proper person to provide, and is capable of providing, those services; and,
- (c) the application promotes sound economic conditions in the passenger transportation business in BC.

[6] If approved, the Board is required to specify the special authorizations to be included in the licence and establish licence terms and conditions as provided for in sections 28(3) to (6) of the Act.

[7] For the reasons set out below, the Board refuses the Application.

## 2. Procedural History

[8] Section 26 of the Act requires the Board to publish notice of the Application, which it did on September 23, 2020. Section 27(2) provides that any person may, within the time period specified by the Board and on payment of the prescribed fee, make a written submission to the Board respecting the Application.

[9] In relation to Facedrive's Application, the Board received submissions from BCTA and Kimber Cabs Ltd., Richmond (collectively, the "Submitters").

[10] This Application is one of over 40 applications that have been made by various companies since the introduction of the TNS legislative amendments. To date, the Board has approved 17 TNS licences in Region 1.

[11] The BCTA asked the Board to conduct an oral hearing. The Act confers broad authority on the Board to control its own process when making decisions on licence applications. That authority includes discretion to conduct a written, electronic, or oral hearing, or any combination of them, as the Board considers appropriate. The Board has decided to follow its usual process set out in the [Industry Advisory](#) dated October 30, 2019.

[12] In accordance with the October 30, 2019 Industry Advisory, the Board sent an application package to the Submitters which included the documents provided by Facedrive in support of the Application (i.e., TNS Declaration Form, TNS Information Sheet, Business Plan, Cash Flow Projections, Statement of Business Assets, Resume, Criminal Record Check, Signing Authority, and Disclosure of Unlawful Activity and Bankruptcy Form). Consistent with Rule 17 of the Board's *Rules of Practice and Procedure*, the application package and supporting documentation sent to the Submitters contained

redactions which were necessary to protect the personal and confidential business information of Facedrive. The Submitters then had 14 days to provide further written submissions on the Application. The Board then provided copies of the written submissions received from the Submitters to Facedrive.

[13] The Submitters opposed the Application and argued that the Board should decline the Application because of the negative impact of the COVID-19 pandemic on the passenger transportation business. The COVID-19 pandemic has been impacting all facets of the Province since March 2020. On March 17, 2020 the Province of British Columbia declared a state of emergency. Regulations and orders issued under the *Emergency Program Act*, RSBC 1996, c. 111, together with orders and guidance from the Provincial Health Officer curtailed social and economic activities that affected the provincial economy, including the passenger transportation industry. The state of emergency officially ended on June 30, 2021 and provincial health orders were lifted or modified as the Province entered a phased recovery and restrictions were eased.

[14] The Board was concerned it did not have sufficient empirical data to properly consider whether there is a public need for the proposed service and whether granting the Application would promote sound economic conditions, given the impact of COVID-19. The Board is required by section 28 of the Act to consider these factors in arriving at a decision.

[15] As such, on February 24, 2021, the Board sent a letter to Facedrive and the Submitters inviting submissions as to whether the Board should conduct an investigation on the impact of the COVID-19 pandemic on the passenger transportation industry, pursuant to section 27(3) of the Act. No submissions were received by the Board.

[16] On April 20, 2021, the Board issued a preliminary decision in which it decided to conduct an investigation on the impact of the COVID-19 pandemic on the passenger transportation industry and to adjourn this Application and the application (10268-20TNS) made by Uber Canada Inc. to expand in all areas of the Province pending the investigation. The decision was published in the [Board's Weekly Bulletin](#) on April 21, 2021.

[17] The Board retained Dr. Dan Hara of Hara Associates, a professional economist, to assist the Board in conducting its investigation. Dr. Hara's report, "Economic Effects of Covid19 on the BC Passenger Transportation Industry" (the "Report") was released on September 17, 2021. A copy of the Report was provided to Facedrive and to the Submitters

and all were provided the opportunity to comment on the Report. It was also publicly posted on the Board's website.

[18] On October 21, 2021, Facedrive provided a response to the Report for the Board's consideration.

[19] The Report and Facedrive's response are canvassed in the reasons that follow.

### **3. Facedrive's Application**

[20] Facedrive was incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 in January 2016 and registered in BC as an extra-provincial company in September 2019.

[21] Facedrive's rideshare (ride-hailing) platform is currently operational in the Greater Toronto area, and in other Ontario cities such as London, Hamilton, Guelph, Kitchener and Waterloo. It has grown to serve more than 8.5 million passengers throughout Ontario and currently has 11,000 registered drivers, to serve 50,000 registered users on its platform. The company also operates Facedrive Rideshare, Facedrive Foods, Facedrive Marketplace, Facedrive Health and HiRide Social.

[22] Facedrive is embarking on a growth plan to become the first Canadian-founded ride-hailing company to operate in all major Canadian cities and is poised to expand its services globally. In September 2019, it became a publicly listed entity on the TSX Venture Exchange. It is currently focused on expanding to high-density Canadian markets. Outside of Ontario, Vancouver is the next projected market.

[23] Relying on sourced research, Facedrive submits that revenue from ride-hailing services in Canada is estimated to be \$829 million and is projected to grow to US \$1.067 billion by 2023. Facedrive indicates that, according to one study, ride-hailing will expand at a compounded annual growth rate of 19.8% to 2025.

[24] According to Facedrive, transportation-as-a-service ("TaaS") sits at the intersection of four macro trends:

- Green, environmentally friendly vehicles
- The sharing gig economy
- Autonomous vehicles

- Connectivity

[25] Facedrive's mandate involves leveraging the intersection of these four macro trends and then adding another: the drive toward sustainability. Facedrive outlines that it is a ride-hailing service that offers emissions-free, on-demand, green vehicle choices to a growing environmentally-conscious and diverse consumer sector.

[26] Facedrive refers to itself as a first-of-its-kind TaaS platform designed to incentivize and empower the green consumer. It is:

...the only on-demand interactive TNS platform for ride-hailing and transport, which supports the drive to carbon-neutral rider services in today's market. Emissions from hybrid and gas vehicles are calculated by a proprietary platform, and riders who choose a green alternative can see their accumulated carbon-neutral footprint.

[27] Facedrive intends to do this by offering a socially-conscious, eco-friendly platform divided into two portals: one for drivers and one for riders. It will allow individuals to make environmentally conscious transportation choices by offering incentives for riders who choose fully electric and hybrid Facedrive vehicles instead of gas vehicles, which other companies do not offer. It claims Facedrive drivers will see higher tips compared to other TNS providers without green options as consumers are willing to pay more for green services. Facedrive describes the green options available to consumers as follows:

Through a simple process commonly known as single sign-on (SSO), users can create an account through their social media profile of choice and hop into their ride within. Each time a new ride is ordered, Facedrive allows riders to choose a vehicle based on carbon emissions impact by offering them the choice between gas, electric and hybrid options.

[28] The rider's incentive to choose a green alternative involves lower rider carbon offset fees for choosing electric or hybrid vehicles which the company uses for tree planting and emission reductions programs.

[29] In its Application, Facedrive notes there is substantial green consciousness in Vancouver that translates into consumer trends toward adopting services with green alternatives. Through its research and according to a Sustainable Cities Mobility Index, Facedrive notes that Vancouver was accorded a bronze standing for sustainability in 2017.

[30] Facedrive intends to provide the proposed service through the Facedrive app, which is available to install from Google Play and the Apple App store accounting for 99% of the smartphone operating system market share. In the Application, Facedrive describes the key app features as follows:

Its real time booking reduces passenger wait times by coordinating and optimizing trip details through GPS as well as by providing enhanced passenger safety by logging ride details and customer pickup and drop-off location. The app discloses the cost of a proposed trip on the app prior to the trip. The app has built in payment option to allow for cashless funds transfer for both driver and rider safety and convenience along with payment confirmation.

The app allows for daily payments to drivers including journey payout and tips. Its rider benefits includes responsive driver ratings regarding behavior and driving practices by allowing users to choose drivers with the highest ratings and avoid the problem of trip refusals, long wait time and unsafe driver actions. Included also is 24-hour live support for both drivers and riders to ensure safety, compliance and service quality issues are promptly dealt with.

[31] Facedrive sets out its pricing strategies in its Business Plan. It intends not to introduce surge pricing in Vancouver at start-up and will implement this in the future in line with that of other ride-share companies. It outlines that its base rate and kilometre rate will match and be in line with other ride-hailing competitors in Vancouver, such as Uber and Lyft. Riders will be incentivized by .01 cents per km for use of a hybrid vehicle and .02 cents per km for an electric vehicle. Drivers will be paid a premium from the Facedrive portion of each ride, so drivers have the potential to earn more than they would with competitive operators.

[32] With respect to its drivers, Facedrive states: “In Vancouver, drivers will be required to prove possession of a BC Class 4 Drivers’ licence with a verifiable photo and meet all other PTB and TNS requirements.” New drivers can complete an application online and upload documents directly to a driver portal. Facedrive will review driver history as well as personal vehicle documents and confirm identity, eligibility and enrollment. Driver vehicles must be 7 years old or newer with vehicle maintenance up to date and records provided. Drivers are also expected to maintain insurance offered through Facedrive. It plans to offer accessible vehicles and claims to have drivers of accessible vehicles in Vancouver who have expressed interest in working with the Facedrive platform.

[33] With respect to the recruitment of drivers Facedrive intends to tap into the informal sharing, or *gig economy*, that is, independent contractors bound by formal agreements with on-demand companies. According to Facedrive:

This business model has fewer barriers to overcome with regard to licencing and owner operating costs than does other ride options. Facedrive will encourage participation among individuals in all areas of the employment spectrum who are seeking a supplementary source of income and social engagement, including fractionally employed and part-time workers, and those who are moonlighting.

[34] Facedrive will also rely heavily on social media channels, word-of-mouth, and online posting boards for recruitment of drivers. It will also look to leverage its existing network of employees throughout Ontario to provide ratings and feedback to help with new hires.

[35] Facedrive indicates its drivers' compensation, while in line with that of other major companies, has a competitive advantage for the recruitment and retention of drivers in its rate structure. According to Facedrive, drivers of green vehicles are expected to earn a larger tip than average, as studies show consumers are willing to pay more for an eco-friendly service. Further, to reduce turnover and ensure driver quality consistency the most active drivers will receive equity and/or company dividends in Facedrive.

[36] Facedrive also intends to provide its drivers in Vancouver with training, orientation and onboarding that will include a review of the technology including app usage and operational logistics. Facedrive states it has an extensive training plan and has developed a training guide with information on how to add bank accounts, accept and complete ride requests, review rides, view earnings and other "do's and don'ts to ensure driver and passenger safety." Drivers are also expected to take appropriate safety training for the jurisdiction, know appropriate laws for the industry and licence boundaries that Facedrive will provide and define. The Application also included detailed COVID-19 safety protocols.

[37] Facedrive plans to operationalize a Vancouver support office to coordinate Western Canada operations with full-time and part-time positions. The Business Plan outlined a Vancouver office organizational structure that includes a Head of Regional Office ("HRO") that reports to headquarters, a local office coordinator and functional groups reporting to the HRO for marketing, user acquisition, and a head of driver and customer service. The roles and responsibilities of the local office coordinator, in partnership with the regional office, would include the recruitment and training of drivers, oversight and compliance



with government regulatory standards and the implementation of service-quality metrics for Facedrive's operations.

[38] With regard to applicable legislation, Facedrive states the following:

Facedrive and its employees and drivers will operate according to both federal and provincial legislation and local laws, regulations and board requirements. Facedrive will maintain all required forms, logbooks, and access to required publications in conducting its operations. These include:

- Motor Vehicle Act
- Motor Vehicle Act regulations (see Division 37-safety code)
- Commercial Transport Act regulations
- Passenger Transportation regulations
- National Safety Code ("NSC") Carrier Safety Guide

[39] With respect to NSC requirements, Facedrive states:

...it will direct and control all NSC requirements such as safety plan, hours of service for drivers, trip, and vehicle inspection requirements and record keeping and will ensure that drivers comply with the PTB and all regulations.

[40] It also states it has established policies for tracking hours of service, vehicle maintenance, and safety programs to ensure the policies and regulations are followed. Facedrive also outlined its provision of data requirements as required by licensees holding a TNS authorization.

[41] In its Business Plan, Facedrive sets out a marketing plan to promote its proposed TNS. It will promote itself as a green, on-demand, shared mobility and transportation platform and service that offers sustainable solutions to reduce vehicular traffic and ultimately CO<sub>2</sub> emissions. It describes its target market as "millennials and others who prefer not to own a vehicle, want to support green initiatives, and appreciate the opportunity to track their carbon footprint and plant trees." It states it will advertise, develop and promote its brand using traditional channels such as radio, newspaper, brochures, etc. as well as digital channels, social media, partner companies, initiative partners (e.g., Facedrive Health), corporate and community sponsored events.

[42] Facedrive provided Consolidated Financial Statements for the years ending December 31, 2018 and 2019. It also included Consolidated Statements of Financial Position, Loss and Cash Flow for four years (2020-2023). With respect to the latter, assumptions made with these cash flow projections were also provided, but with limitations which are discussed below.

#### **4. The Board's Investigation**

[43] As noted above, having received and reviewed Facedrive's Application and the submissions, the Board commenced an investigation in accordance with section 27(3)(b) of the Act. The Board retained Dr. Hara to prepare a report on the impact of COVID-19 on the passenger transportation business.

[44] The Report investigated the impact of COVID-19 on monthly trip volumes for taxis and transportation network companies ("TNCs") as well as consequences for operating costs and market share for both types of licences. The impact of COVID-19 on key broad economic factors such as employment, airport volumes, and tourism was also considered in the Report. These indicators are primary drivers of business for taxis and TNCs.

[45] The Report provides the Board with trip data for taxis and TNCs in each of the regions of the Province starting in May 2019 and ending in May 2021. This is comparative data as no TNSAs were approved until January 2020. While trip data for TNCs was readily available through the Data Warehouse, a program operated by the Ministry of Transportation and Infrastructure that gathers data on behalf of the Board, taxi data was not as easily available. The Report explains the issues Dr. Hara identified with the data and then explains how the final estimates were arrived at in the Report.

[46] The Board accepts the data provided in the Report as evidence in this proceeding.

[47] The first TNSAs were issued at the end of January 2020, approximately two months prior to the commencement of the COVID-19 pandemic. TNS activity since January 2020 has been primarily in Region 1 with a small amount of activity in Region 2. There has been no TNS activity in other regions. As the Report indicates, although the Board has issued TNSAs to TNCs in other regions, COVID-19 has affected the start up of those services.

[48] The Report analyzes local and provincial data from a number of sources and concludes that, overall, there was a strong decline in trip volumes in the Province at the

commencement of the COVID-19 pandemic followed by a partial recovery to still depressed levels in the months that followed.

[49] The Report compares regional total trips as of May 2021 to total trips in May 2019. Total trips in May 2021 included trips by taxis and TNCs both in Regions 1 and 2. TNCs did not operate in the other regions so the reference to “total trips” means taxi trips. The estimates are as follows:

Region 1 - Total trips declined by 8.8% (taxi trips declined by an estimated 66.3%)

Region 2 - Total trips declined 24.5% (taxi trips declined by an estimated 26.6%)

Region 3 - Total trips declined by 32.7%

Region 4 - Total trips increased by 3.6%<sup>1</sup>

Region 5 - Total trips declined by 23.5%

[50] As to Region 4, the Report notes that although there is an increase in the number of trips from May 2019, the May 2021 number is still at 84% of the December 2019 number of trips immediately prior to the pandemic.

[51] The Report also provides data on airport passenger volumes, hotel occupancy, and general unemployment levels on both a provincial and regional level. Generally, as with the trend for total trips, there was an initial dramatic decrease in activity with a slow recovery, but still not to levels observed before the COVID-19 pandemic. The sole exception was Prince George, which saw an increase in hotel occupancy.

[52] The Report suggests that the lower rate of decline in total trips in Region 1 as compared to Region 2 may be due to the “vigorous” presence of TNS services in Region 1. That is, the Report theorizes that more people took passenger directed trips than they normally would have because of the availability of the TNS option, and this led to a greater increase in trip volumes than would have been the case without the TNS. According to the Report, this observation would be consistent with the experiences of other jurisdictions prior to the pandemic where the introduction of TNS led to an overall increase in trips.

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<sup>1</sup> The Report did not provide a total trip percentage for Region 4 and the Board mirrored the Report’s calculation  $[9460 \text{ (Increase)} / 2626100 \text{ (May 2019 total)} = 0.036 \times 100]$  to derive an increase of 3.6%.

[53] However, the Report also states the experience in Region 1 shows that the introduction of TNS has led to a significant loss of market share on the part of taxis. See for example, the analysis of Region 1 in Section 4 of the Report at pages 22-23:

Combined trips for TNS and taxis declined 8.8% over the May 2019 to May 2020 period (1,749 thousand to 1,595 thousand). TNS trips rose rapidly to roughly one million trips in May 2021, significantly higher than the 589 thousand taxi trips. By themselves, taxi trips fell an estimated 66.3%, or two-thirds.

As discussed earlier, this rapid growth in TNS trips only occurred in Region 1, where international TNS companies like Uber and Lyft had been licensed to operate and led this expansion. The net result is that total trips have recovered to a little over 90% of previous levels, with more recent data on hotel occupancy and trip volumes suggesting further recovery. Taxi companies, however, have lost significant market share as a large proportion of passengers chose the TNS. TNS trips now exceed taxi trips in the region.

[54] The Report also describes vigorous TNS activity in Region 1 that was, in part, at the expense of taxi companies. This resulted in a lower recovery for taxi companies in Region 1 where by themselves taxi trips fell an estimated 66.3%, a rate significantly higher than other Regions. At pages 4 and 5 of the Report, Dr. Hara writes:

All taxi company reports from both data sources showed the same pattern of a strong decline in trip volume in March/April 2020 when Covid and associated government restrictions on movement and economic activity began. This was followed by a partial recovery to still depressed levels in the months that followed. The common pattern lends credibility to submissions by each company, and the net results recorded.

The same decline in March/April 2020 is also reported by TNS companies, although they had just launched operations at that time. In the case of TNS companies, their later expansion in the Lower Mainland was more aggressive, occurring in part at the expense of market share of taxi companies in that area. As a result, the partial recovery of Lower Mainland taxi companies from the initial shock of Covid has been much lower than for taxi companies in other regions.

[55] The Report also analyzes the impact of COVID-19 on TNCs start up. According to the TNS business model, new companies must have a sufficient number of drivers and

vehicles and must advertise so as to gain a market share quickly. The number of vehicles will ensure that customers do not have to wait long and gaining market share will give drivers enough business. The Report states at page 15:

The requirement to enter at a large enough scale imposes natural entry barriers to new companies. Not only must they have enough drivers and vehicles from the beginning to cover the area efficiently, they must also advertise and gain market share quickly to give their drivers enough business.

Covid added to this barrier. The decline in customers meant less passenger volume, especially at peak weekend times when restaurant and entertainment travel would normally produce a shortage of taxis and an opportunity for new TNS entrants. There is also a shortage of drivers, at first because of the risks, and later because of the general shortage of labour in service occupations as the economy began to revive. BC's requirement for a commercial level driver's licence also adds to the difficulties since upgrading one's BC driver license require an in-person driver test. Covid has meant cancelled tests and a large backlog and long waiting time.

It is apparent from the data that large international companies with good access to long-term capital were able to overcome the additional cost and scale barriers imposed by Covid and launch their services while smaller companies were not. The TNS growth to date is driven by Uber and Lyft in Region 1. Their licenses are restricted to Region 1. Other licensees who employ the TNS/app-based business model have restricted their offering and entry. BC companies like Kuber and Lucky to Go have full rights to operate across the province, but have limited their operations to small scale operations in Region 1 and Region 2. Canadian companies with active and fully functional TNS operations in other provinces, have delayed entry into the BC market (e.g., TappCcar, Uride, ReRyde).

The Report expects TNS operations to eventually emerge in all regions of BC from current licensees either because the pandemic comes to an end or COVID-19 becomes endemic and TNCs will stop postponing entry at scale in BC markets.

[56] The labour shortage has also affected taxi companies, some of which suspended operations. The Report notes:

In addition, respondents reported a taxi driver shortage which increased costs and contributed to the decision to suspend operations. This is consistent with media

stories from other parts of Canada, and with general reports of labour shortages in the service industry, even though average unemployment rates are still high. (page iii)

[57] The Report elaborates on the impact of driver shortage on taxi companies during the current economic conditions at page 40:

Another feature of the driver shortage is the relative advantage of the TNS business model over the taxi business model with fixed and regulated meter rates.

Within boundaries, the TNS business model allows flexible fares. Fares rise when there is a shortage of vehicles and drivers, attracting more drivers and deterring some customers who will wait for a less busy time. This is an advantage for customers in that it allows reliable supply in peak period, at least for those willing to pay. It is also a disadvantage to customers in that the rate is not fixed, and those wishing to return home on a Saturday night may face a higher fare than they planned for. For fixed rate fares – taxis are the alternative offered by the system.

...

*However, in the face of an ongoing driver shortage, taxis can be put under a rate-squeeze.*

During a driver (and therefore vehicle) shortage, passenger demand can exceed supply. This will drive up TNS rates, a mixed blessing since the higher rates mean fewer customers, but the higher rates also retain drivers and attract more of them. Since taxi companies have fixed fares, their ability to raise returns to drivers is more limited. During a shortage, taxis will be busier. However, at a given meter rate there is a limit to how many fares can be carried and to the amount that can be earned at a fixed meter rate.

*In normal conditions an equilibrium will be reached. But, during an ongoing driver shortage, it is possible that taxi company margins will be squeezed by fixed meter rates to the point where they cannot retain drivers even though taxi demand justifies it. The drivers will then tend to move to TNS where the hourly earnings are higher because of the higher average rates and the high customer demand.*

(emphasis in the original)

## 5. Analysis and Findings

[58] Section 28(1) of the Act sets out the three factors that the Board must consider. While the Board does not recite all of the information filed by Facedrive and the Submitters, it has carefully considered all of the submissions when making its determination. In addition, the Board has considered the Report, discussed above, and Facedrive's submission in response to the Report.

### **(a) Is there a public need for the service Facedrive proposes to provide under the special authorization (section 28(1)(a))?**

[59] The first consideration is whether there is a public need for the service that Facedrive proposes to provide. This requires Facedrive to demonstrate that there are people who would use its proposed service. In this respect, Facedrive relies on the February 2018 Select Standing Committee report entitled "Transportation Network Companies in British Columbia" (the "2018 TNC Report").

[60] The 2018 TNC Report resulted from the Select Standing Committee's inquiry into the potential introduction of ride-hailing into BC. In November 2017, the Legislative Assembly authorized the Select Standing Committee on Crown Corporations to examine, inquire into and make recommendations on ride-hailing in BC. During the course of its inquiry, the Committee invited 67 expert witnesses to either present at a public hearing or to provide a written submission. Over three days of hearings in January 2018, the Committee heard 26 presentations and received 12 written submissions. Overall, as reflected in the 2018 TNC Report, the Committee agreed that TNCs should be permitted to operate in this Province within a provincial regulatory framework and saw the key benefit of TNS to be improved access to transportation services.

[61] In addition to the 2018 TNC Report, Facedrive provided information and statistics regarding the Canadian market for ride-hailing, population growth for Vancouver, as well as comparative taxi operation and ride-hailing trip to population statistics for Toronto and Vancouver.

[62] Facedrive also cited factors such as the significant growth of taxis operating in Metro Vancouver since 2010 that indicates taxis cannot keep up with public demand. Facedrive also referred to a 2019 University of Toronto study and other data regarding Toronto and Vancouver transportation markets to argue that there is a strong potential need for ride-hail vehicles in Vancouver. It also referred to a 2018 motion by the Vancouver City Council

that supports ride-hailing. Facedrive also notes other factors that support the need for ride-hailing, including in Vancouver, such as a decrease in parking availability, lack of vehicle ownership, continued population growth and density, and poor taxi service at peak times.

[63] In addition, it referred to a ride-sharing survey for Vancouver by Environics Research in 2019, which included the following key findings:

- 8 out of 10 persons want ride-hailing companies to operate;
- Strong overall political support for ride-hailing;
- Residents' top ride-sharing priorities include compliance with safety regulations, up front pricing and affordability; and
- Almost all residents claim ride-hailing will make it easier to get a ride, provide safe transportation late at night and will make transportation without owning a vehicle easier.

[64] Facedrive also referred to the following:

- Morningstar Research that determined in 2019 that ride-hailing services in Canada grew 24% from 2018 to 2019.
- A 2019 Deloitte report that shows the top 3 benefits to ride-hailing in Canada are: no need to find parking, mitigation of impaired driving, and reduced costs when compared to vehicle ownership.
- A Toronto Ground Transportation Review Findings Report (September 2015) referenced in a November 2015 Report "Modernizing Regulation in the Canadian taxi industry" by the Competition Bureau in November 2015 by that found Toronto's taxis provide service across the city with an average wait time of 9 minutes while TNS passenger could expect a wait time of 2-4 minutes.
- GenY and millennial groups, who are the largest TNS users, seek environmentally friendly ride options and statistically are willing to pay more for services that promote a green economy. It highlights that it is the first to offer green transportation solutions in Canada's ride-hailing space as its app tracks a user's CO<sub>2</sub> emission and it is the only such app supporting city and provincial green initiatives.

[65] The Submitters argued that there was no public need as there were TNS already active in Region 1 and COVID-19 had damaged the passenger transportation industry.



[66] The Report notes that from May 2019 to May 2021 taxi trips in Region 1 had fallen from 1,726,717 to 589,328. In January 2020, the month prior to the introduction of TNS in the Region and just before the declaration of the state of emergency there were an estimated 1,548,979 taxi trips. TNS trips increased during the same period from 44,637 in January 2020 to 1,006,214 in May 2021. According to the Report, aggressive TNS activity in Region 1 took a significant portion of the market share of taxis.

[67] This growth was driven by Uber and Lyft, which according to the Report are large international companies that were able to overcome the “cost and scale barriers imposed by Covid and launch their services, while smaller companies were not.” Companies such as Kabu and Lucky to Go have small scale operations in Region 1 and other TNCs that have been granted TNS licences have not started up operations. This indicates to the Board that there is insufficient demand in Region 1 to allow existing TNS licensees to become fully operational let alone a new entrant such as Facedrive.

[68] Having considered the submissions and the evidence, the Board is not persuaded that in the current economic circumstances, the public need element in section 28(1)(a) of the Act has been met.

**(b) Is the applicant a fit and proper person to provide the proposed service and is the applicant capable of providing it (section 28(1)(b))?**

[69] The second consideration is whether Facedrive is a fit and proper person and has the capability to provide the proposed service.

[70] Fit and proper person is not a defined phrase. In previous decisions, the Board has held that “fit” means “well adapted or suited to the conditions or circumstances of the case, answering the purpose, proper or appropriate ... possessing the necessary qualifications, properly qualified, competent, deserving”. The Board has observed that the term “proper” is defined to mean “suitable for a specified or implicit purpose or requirement; appropriate to the circumstances or conditions; of the requisite standard or type; apt, fitting; correct, right”. The Board continues to accept these definitions of “fit” and “proper”. The context for what is fit and proper is the passenger transportation industry in BC. This reflects that a licensee has a responsibility to exercise the powers conferred by the granting of a licence with regard to proper standards of conduct.

[71] When considering whether an applicant is fit and proper, the Board considers factors such as the applicant’s past conduct and the potential risk of harm to the public and

the integrity of the transportation business if a licence is granted to the applicant. Where, as here, the applicant is a corporate entity, the Board will consider any relevant information concerning the conduct of the directors and key management staff to assess how the business is likely to be run in this jurisdiction.

[72] When considering capability, the Board considers whether the applicant has demonstrated knowledge and understanding of the relevant regulatory requirements and policies governing passenger transportation, the applicant's ability to comply with those regulatory requirements, and the applicant's capability to provide the proposed service in a proper and lawful manner. The Board will also consider whether the applicant has the business capability to operate the service. This will include consideration of the business knowledge and experience demonstrated by management and the applicant's Business Plan and financial statements.

[73] Facedrive relies on its experience in the passenger transportation business in Ontario to support that it is both a fit and proper person and it is capable of providing the proposed service.

[74] Mr. Sayan Navaratnam, CEO and Chairman of Facedrive. He has more than two decades in senior executive positions in the technology, communications, and security sectors. He is also the CEO and Chairman of Connex Telecom Corporation and Chairman of AC Technical and DeCosta Global. Mr. Suman Pushparajah is the Chief Operating Officer of Facedrive and is responsible for overseeing day to day operations and marketing activities.

[75] Facedrive holds a valid NSC safety certificate issued on November 12, 2019. Mr. Navaratnam together with Mr. Heung Hung Lee, Chief Financial Officer, and Mr. Junaid Razvi, Executive Vice President and Corporate Secretary, signed a Declaration on behalf of Facedrive under the *Liquor Control and Licensing Act* and the *Cannabis Control and Licensing Act* declaring that Facedrive will operate its vehicles in accordance with this legislation and that it will comply with the Board's Supplementary Terms and Conditions Respecting Apps. Further, Mr. Navaratnam and Mr. Razvi completed the Disclosure of Unlawful Activity & Bankruptcy form. Criminal Record Checks for Mr. Navaratnam and Mr. Pushparajah were completed to the satisfaction of the Board.

[76] Based on the information provided, the Board is satisfied that Facedrive is fit and proper for the purposes of section 28(1)(b).

[77] However, with respect to Facedrive’s capability to provide the proposed service, the Board has several concerns.

[78] While the Business Plan regarding driver recruitment addresses the requirement for a Class 4 driver’s licence and other documentation such as driver history and vehicle information, the Application does not refer to the required criminal record check for drivers. As noted above, Facedrive’s recruitment activity will be driven by word of mouth and social media among both drivers and riders. Facedrive says that it will rely heavily on social media channels and online posting boards for recruitment. It also makes a vague reference to leveraging its existing network of employees throughout Ontario to provide ratings and feedback to help with new hires.

[79] The Application does not set out a proposed fleet size of drivers and vehicles at start-up. Further, the Application does not acknowledge the current shortage of drivers with a Class 4 licence and the inherent competition and difficulty associated with securing drivers for the proposed service. The Board considers this to be inadequate for a proposed service that covers an extensive geographic operating area.

[80] The Application refers to a training guide; however, no further information was provided with respect to this program and how it will be implemented in Vancouver. While the subject matter of the training is outlined in the Application, the actual content and specifics on the substantive elements of the training were not provided. For example, Facedrive stated it plans to train all drivers to know the applicable law and its licence boundaries and app usage; however, no additional information was provided about this proposed training. The most specified aspect of the training deals with driver etiquette and “do’s and don’ts”. Further, no evidence was given regarding the need to retain a record of all training programs provided to drivers. There is also no mention of providing a record check certificate, or the other requirements drivers must carry

[81] Facedrive’s Application also does not provide sufficient information to satisfy the Board it is capable of complying with the Board’s policy regarding “Supplementary Terms and Conditions Respecting Apps”. There is a vague reference to “Vancouver TNS Standards Will Be Met”. While the Application refers to certain capabilities, such as advance fare information, GPS tracking, pick-up/drop-off information, and cashless payments, it does not address other important capabilities, such as the shielding of personal information, pre-ride information concerning the transmission of driver name and photo and vehicle information, accessibility requests (particularly in light of its plan to operate wheelchair accessible vehicles) and geo-fencing. With regard to the latter, the Board observes that

Facedrive only makes a vague reference regarding driver training that it “will ensure drivers know the boundaries of the licence.” Also, while it refers to a 24-hour live support for drivers and riders to ensure that safety, compliance and service quality issues are dealt with, Facedrive has not provided detailed information regarding how potential incidents will be addressed.

[82] Although Facedrive has obtained an NSC certificate, the Business Plan evinces a limited understanding of NSC obligations, which must be followed by TNS drivers and vehicles. There are insufficient details on how pre-or post-trip vehicle inspections will be conducted or how NSC requirements for drivers will be enforced. Of concern is the lack of sufficient information in the Business Plan to show how Facedrive will provide active management of the vehicles and drivers that it proposes to operate in Region 1 as required by sections 6 and 7 of the Regulation. Further, it did not provide sufficient evidence regarding monitoring NSC inspection dates, vehicle mileage and service records. There is also insufficient evidence of appropriate monitoring of drivers’ records, a lack of explanation as to the vetting and storage of driving and criminal record check documents.

[83] Regarding vehicle insurance, Facedrive states its drivers will be expected to “maintain insurance offered through Facedrive”. However, in British Columbia, drivers operating their vehicle on the Facedrive platform must have their vehicle and passengers insured through the Insurance Corporation of British Columbia (ICBC). This policy offers basic insurance during ride-hailing use and this blanket basic coverage is mandatory. While drivers may have the option to purchase additional coverage through Facedrive, the Board is concerned that the above statement demonstrates a lack of knowledge of ICBC in this Province.

[84] Facedrive’s Application includes 4-year cash flow projections (2020-2023). Facedrive is proposing to operate in the extensive operating area of Region 1. The Board makes the following observations regarding the cash flow projections:

- In the cash flow projections, Facedrive refers to Tier 1, 2 and 3 cities and rides. However, no explanation of these terms is provided. It is unclear to the Board what these refer to.
- In the cash flow projections, the revenues fluctuate month to month. However, it is unclear what is driving the projected fluctuations. Facedrive does not describe this in the assumptions and there is no detail about the various factors impacting revenue estimates. For example, apart from seasonality, it is not clear what the expected number of drivers/vehicles are or what rates Facedrive used to estimate

the revenue figures. Overall, there is little detail regarding their roll out expansionary plan in the cashflows and/or assumptions.

- Payouts to drivers as a certain percentage of overall gross fees are depicted consistently in each of the 4 years, yet the 1-page cash flow assumption statement sets out a percentage figure that is 17% greater. There is no explanation for this inconsistency.

[85] Overall, the Board finds the projections are of limited use and unrealistic as Facedrive has failed to set out the underlying assumptions and has not provided the necessary insights into the projections.

[86] Considered as a whole, Facedrive's evidence falls short of demonstrating that Facedrive has the capability to provide the proposed service. Therefore, while the Board finds that Facedrive is a fit and proper entity, Facedrive has not demonstrated it is capable of providing the service applied as required by section 28(1)(b).

**(c) Would the application, if granted, promote sound economic conditions in the passenger transportation business in British Columbia (section 28(1)(c))?**

[87] The remaining consideration is whether granting the Application would promote sound economic conditions in the passenger transportation business in the Province.

[88] In considering section 28(1)(c), the Board strives to balance public need for available, accessible and reliable commercial passenger transportation services with overall industry viability and competitiveness. The Board considers this issue from a wide-ranging perspective, which includes consideration of harm to other industry participants such as taxi companies. It is the Board's view that, generally speaking, the economic interests of the transportation business overall weigh more heavily than the economic and financial interests of any particular applicant or submitter.

[89] The Submitters argued that granting the Application would not promote sound economic conditions and that COVID-19 had devastated the taxi industry as well as other businesses.

[90] In its October 2021 submission, Facedrive relies on the Report's statements that the increase in TNS trips may not have been wholly at the expense of taxis and that TNS companies in the Lower Mainland may have expanded the market with their different

service, offsetting some of the impact of the COVID-19 pandemic. The Board agrees that the increase in TNS trips may not have been wholly at the expense of taxis. However, the Report also states that taxi companies in Region 1 lost a significant portion of the market share to TNS and that the recovery of the taxi industry in Region 1 was slower than in other regions where TNS activity is minimal or non-existent. While taxi trips declined by 66.3% in Region 1, in other regions the largest decline was 32.7%.

[91] In normal economic times, and based on the experience in other jurisdictions, the Board has accepted that declines and increases in the taxi share of the business will occur both before and after the introduction of TNS. However, the Board now has evidence before it from which it infers that the presence of TNS operations has delayed the recovery of the taxi industry in the Lower Mainland. This is due not only to passengers choosing to use TNS, but also because of the impact of COVID-19 on the availability of drivers. As discussed in the Report the shortage of drivers is exacerbated by the backlog in driver testing for Class 4 licences and the difference in the regulated rate structure for the two sectors which encourages drivers to move from driving taxis to driving for TNCs.

[92] According to the Report, the pandemic has contributed to a shortage of qualified drivers for both taxis and TNCs. The TNS business model requires a large number of drivers to be available in order to start up and to be successful. As noted above, the Board has not found a public need for added TNS service in Region 1. The Board finds that adding another TNS company in Region 1 would increase the competition for drivers which would make it more difficult for existing licensees to recruit or retain qualified drivers.

[93] The [Board's Operational Policy](#) (publicly posted on the Board's website) principles state that TNCs should be provided with the opportunity to be viable and meet the public need for the service and that negative impacts on taxi stakeholders with the introduction of TNS be minimized where possible. At this time, the Board has found that there is no public need for the service applied for in Region 1. With the lack of public need, coupled with the ongoing impacts of COVID-19 and the current driver shortage, the Board is of the view that adding another TNC into Region 1 would be harmful to existing licensees. In the current circumstances, the Board finds that granting this Application would not promote sound economic conditions in the passenger transportation business in British Columbia.

## **6. Conclusion**

[94] For the reasons stated above, the Application is refused.