Uber, the online car-sharing service: a critical review of European approach to competition vs. local regulation

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Introduction

• How does Uber work?
• Strengths of Uber’s business model
• Is Uber bad news for taxi drivers?
• Anti-Uber protests
• Regulation, deregulation or re-regulation?
• Why is Uber illegal in many cities?
• Could public restrictions preventing Uber to compete be challenged under EU law?
• The need for a regulatory solution
• Conclusions
• Uber, the world’s largest taxi company, owns no vehicles. Facebook, the world’s most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory. And Airbnb, the world’s largest accommodation provider, owns no real estate. Something interesting is happening...
How does Uber work?

• Uber is a marketplace connecting drivers offering rides and passengers seeking them through its mobile application.

• A prospective passenger who has downloaded the software on his smartphone and set up a user account can, when clicking on the application, see Uber drivers near his location and on that basis submit a trip request which is then routed to the drivers.

• The passenger is given an estimation on how long his car will take to show up at his location.

• Uber charges are based on a combination of time and distance parameters and all payments are handled automatically by the Uber service, which will charge the passenger’s business card on file.

• Once destination is reached, a receipt is sent automatically to the passenger’s email address.

• On average 80% of the fares will go to the driver, the rest being kept by Uber
Strengths of Uber’s business model

- Uber model is that it considerably reduces search costs for drivers and passengers.

- **No fixed price!** When available cars are scarce (e.g., Friday and Saturday nights), Uber incentivizes drivers to take the road by increasing their fees (a process referred to as “dynamic” or “surge” pricing).

- **No cash! No credit cards!** All you need is a smartphone.

- Prices increase will at same time increase supply as drivers will be incentivized to take the road to earn higher fees, but also reduce demand as price-sensitive users are incentivized to consider alternatives, such as take their car or public means of transport.

- **Uber does not directly employ its drivers.**

- **No taxi license payment.** It costs €230,000 for a taxi license in Paris, €430,000 in Nice, A$500,000 in Melbourne, US$600,000 in New York.

- Passengers can rate drivers, which gives them an incentive to perform. Below 4.4 out of 5 stops working. **Drivers also rate customers!**

- Uber is currently valued at $40 billion.
UBER

• 60 countries, more than 300 cities mainly in the U.S.
• First Uber permanent water taxi (UberBoat) launched in Istanbul (previously seasonal attempts in Boston and Stockholm)
• UberX (lowcost) or UberPop
• Uber Taxi (regular service)
• Uber Black (Stylish)
• UberSUV (6 ppl)
• Uber Lux (luxurious)
• Uber Boat (Istanbul and Bodrum)
Is Uber bad news for taxi drivers?

Average monthly number of trips per cab (San Francisco)

Taxis and Accessible Services Division report by SF Municipal Transportation Agency, 2014
Competition versus Regulation: let the hostilities begin - Anti-Uber protests

• Over a thousand Rio taxi drivers block main city route to protest Uber

• Uber protests in Mexico turn violent

• Taxi drivers threaten to strike over Uber in midst of Toronto Pan Am Games

• Paris, Sao Paolo, Guangzhou, Rio de Janeiro, Johannesburg, Hong Kong, London ...
Anti-Uber protests – Paris June 2015

• Taxi drivers blocked roads, burned tires and attacked drivers who they thought were working for Uber; that disrupted Paris and slowed traffic to a crawl.

• ”We are against the government, If Uber is doing some economic terrorism, the government has to react.”

• In France, UberPop (low cost service) is illegal. Other Uber services are permitted under strict conditions, and the company is contesting the constitutionality of parts of the law limiting UberPop.
Anti-Uber protests – Paris June 2015

- Rocker Courtney Love (the widow of the Nirvana frontman Kurt Cobain) got caught in the violent anti-Uber taxi protests at the airport. She and her driver were held hostage on her way from the airport until she was rescued by passing motorcyclists.

- Love wrote on Twitter protesters were whacking vehicles with metal bats. “ambushed our car and are holding our driver hostage,” “Is this France? I’m safer in Baghdad.” “François Hollande where are the f..police?? is it legal for your people to attack visitors?”
Anti-Uber protests- Italy

In February over 2,000 taxi drivers converged in Turin for a protest against the mobile app. Taxi drivers from Genoa, Milan, Rome and Naples have joined the march, which kicked off at Piazza Arbarello, where the city's council is based, before heading to the headquarters of Italy's transport regulator in Lingotto.
Uber - Germany

• As of March 2015, German court banned Uber (nationwide) from running its services using **unlicensed** cab drivers and it set stiff fines for violations of **each** local transport by online taxi firm.

• Each violation of the German court order covering violations of local passenger transport licensing laws by Uber and its UberPOP online service will be subject to a 250,000 Euro ($264,825) fine

• The case was, of course, brought in the regional court by German taxi operator Taxi Deutschland against UberPop.

• Uber continues to operate services in Germany using **licensed limousine and taxi drivers**. (In Munich not in Berlin)

• In May, launched a new service, UberX, uses drivers who have obtained a special license for commercial passenger transportation. UberX drivers will also return to their company’s headquarters after each trip, a requirement for **chauffeur services**

• the requirement to return to their home base after each trip means they will have to drive additional distances while at the same time getting lower fares due to the low price of the service
Uber - Belgium

• Uber is banned in Belgium, but operating under the alternative name UberPop, continues to offer residents of Brussels a cheaper alternative to traditional taxis.

• (May 2015) An Uber driver in Belgium was found guilty of breaking taxi laws, in the first case to land in a Brussels court. The driver was shown leniency with an unspecified suspended sentence, but his car, was confiscated.

• (April 2015) Brussels' mobility minister Smet has set out a plan to regularise the service which is still technically illegal in Belgium

• Uber drivers would be liable for tax on their earnings but would be free to operate so long as it was not their main job.

• Former Belgian prime minister: “All too often, our outdated laws provide barriers to new and exciting home-grown services. And existing service providers feel threatened, resulting, for example, in a number of physical assaults on UberPop drivers by taxi drivers in Brussels and Amsterdam. We need to prepare for [the next wave of digitisation] not by slamming on the brakes, but by embracing change,”

• Uber filed official complaints with the European Commission against France and Spain, where its ride-sharing service is banned. Uber said efforts by national governments to shut it down breached EU laws on competition and the single market. Several departments in the Commission are now working together in examining the complaints as they struggle to decide whether Uber is a tech or transport company.

• Taxi service regulation is left to Member States to work out, not the usual Brussels bureaucrats because of its local nature
Uber – France (distortion of competition)

• Regulatory change 2009, made registration of private car service companies easier; gave rise to the spread of Uber.

• February 2013, French government prohibited the display of any distinctive taxi signs of taxi-aliases, imposed stricter qualification and ‘honourability’ requirements for their drivers. Criminal sanctions were institutioned for illegal hail and ride.

• November 2013 a decree was drafted to introduce a mandatory 15-minute waiting period between the reservation of a taxi and the effective use of the car by the passenger.

• Prior to the adopting of the decree, the government nevertheless sought the opinion of the French Competition Authority.

• (December 2013) The non-binding opinion of the FCA was negative. The 15-minute delay imposed on Uber between the time of booking and the picking up of the customer is discriminatory since traditional taxis are not subject to such a constraint. Constitutes a distortion of competition hampering the development of a very dynamic new market.

• FCA pointed out Uber actually had a more flexible price-setting model which allowed them to compete aggressively. Tax, tariffs on the other hand are regulated. They cannot adjust to the demand.
Uber – France (distortion of competition)

• FCA’s solution: 1- to introduce more flexibility in taxi pricing, particularly for advance booking, in order to allow traditional licensed cabs to compete more efficiently with online-enabled cars.

• 2- Either to abandon the new 15-minute rule or to redesign the exceptions in a way that covers booking requests from customers who have already subscribed to the services of the online-enabled cars.

• 3- To create a statistical tool for monitoring and surveying taxi business in order to measure the supply and demand of taxis, to document more seriously impact studies advocating changes to the profession’s rules.

• Despite the opinion, the decree was adopted. And as expected, online-enabled car companies reached out to the supreme administrative court (Conseil d’Etat) requesting interim measures at suspending the decree’s implementation.

• Conseil d’Etat had an interim order: the protection of the lawful exercise of the taxi profession does not justify the administrative police (i.e. regulatory) measure introduced by the decree. The fact that a vehicle may simply accept, while in the public domain, a booking by phone or through the Internet for the immediate pick up of a customer, is not part of and does not encroach on the activities legally reserved for taxis. Therefore, it is doubtful that the introduction of a waiting period specific for online-enabled cars can be justified by the need to protect the lawful exercise of the taxi profession.
Uber – France

• French president, Hollande declared UberPop’s presence a problem of “unfair competition”. “Non-compliance with tax and competition rules is illegal. UberPop should be dissolved and branded illegal and cars should be seized.”

• His socialist government has also passed a law that in effect declared UberPop illegal in January, but the law has proved difficult to enforce and the service has continued to operate.

• The law is currently being reviewed by the constitutional court.

• (July 2015) French police raided Uber’s Paris offices and confiscated 1,200 cell phones, some computers and documents as part of an investigation begun in November into the UberPOP service and questions of whether Uber illegally retained customers' personal data.

• Two Uber bosses were arrested and will go on trial in September, charged with "misleading commercial practices, complicity in the illegal exercise of the taxi profession and illegal use of private data"

• Uber suspends its controversial low-cost UberPOP service in France, six months after it was banned.
Uber - Italy

• According to a 1992 law, for hire car services have to be booked in advance by users that request a specific journey for a specific time. Hire cars are prohibited from stationing in public areas and are obliged to return to the parking area after providing the service. Their number is restricted and cannot pick up clients outside the municipality that granted authorisation.

• (May 2015) An Italian court banned unlicensed car-sharing services such as those offered by Uber across Italy.

• The court in Milan said the Uber POP service created "unfair competition".

• The ruling, triggered by a petition from taxi associations, said using Uber POP was forbidden, as was the offering of paid car-ride services by unlicensed drivers in any other way.

• Uber was given 15 weeks to comply with the ruling or face a fine of 20,000 euros for each day's delay in meeting the court ruling.

• The UberPop application for mobile devices is shutdown in Italy even if the company has appealed the decision.
Uber – U.S.A (California and D.C.)

• 2013. the Washington D.C. Taxicab Commission issued a notice according to which a digital dispatch service shall be exempt from Regulation by the Commission, other than rules and regulations that are necessary for the safety of customers and drivers or consumer protection. Legislation was promptly enacted in D.C. so as to make sure (Uber and other online-enabled car) drivers have proper insurance and a proper criminal background.

• The California Public Utilities Commission (CPUC) created a specific regime to apply to companies that provide prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using their personal vehicles.

• This regime establishes 28 rules: they must obtain a license from the CPUC to operate in California; require each driver to undergo a criminal background check; establish a driver training programme; implement a zero-tolerance policy on drugs and alcohol; hold a commercial liability insurance policy that is more stringent for limousines; conduct a 19-point car inspection...
Uber U.S.A (New York City)

• NY Mayor de Blasio and Uber (and Lyft) reach deal (July, 2015)

• After a weeks-long battle between ride-hailing companies and New York City Mayor Bill de Blasio, an agreement between Uber and the city has been reached to not cap for-hire vehicle company growth in New York while a study on their impact in the municipality is conducted.

• de Blasio has withdrawn a bill to put a one-year cap on the growth of transportation network companies like Uber.

• The proposal that has been tabled would have temporarily capped the growth of Uber and other for-hire vehicles in New York City through April 2016. Instead, a bill is expected to be voted that would authorize a study on how these cars have impacted traffic, air quality, noise and public health. As part of the agreement, Uber will provide data for the study.

• Uber released its data: During a 24-hour period on July 19, there were 3,198 Uber drivers in NYC, however that number pails in comparison to the 13,400 taxis in NYC, of which anywhere from 67 to 85 % of those on the road at one time. In June there were 3,492,389 pickups in NYC, which is not even a quarter of the 14,000,000+trips provided a month by NYC yellow cabs. Uber is most busy during the hours of 9p.m.-12 a.m.
Uber U.S.A

• (June, 2015) A ruling from the California Labour Commission was made public because popular ride-sourcing company Uber appealed it. A San Francisco-based driver named Barbara Ann Berwick brought a case alleging that she is an employee, not an independent contractor as Uber claims. It emerged that the commission ruled in her favour, saying the company owed her $4,152 in expenses.

• 22,000 Uber drivers in San Francisco. Uber and rival Lyft are facing separate lawsuits in federal court in San Francisco that seek class-action status by drivers who say they should be classified as employees.

• If a court makes a sweeping ruling that allows workers to retroactively claim expenses, that could result in a large hit. But that would likely hurt valuations of weaker sharing-economy companies more. The benefits of treating workers as contractors rather than employees are more important in a start-up's early days and less so now that Uber and many similar companies have grown. Smaller companies need more flexible work forces and contractors solve that problem. Larger companies with more predictable demand for their products or services can benefit from having employees scheduled to work regular shifts.
Mexico City Embraces Smart Regulation for Ridesharing

• July 2015. What started with an open discussion where citizens spoke and their government listened ended with Mayor Miguel Mancera’s decree providing a legal framework for ridesharing in the world’s largest city.

• The rules include a mandatory 1.5 percent ride levy, meaning Uber and the others will have to contribute that percentage of their revenue to an as-yet non-existent fund for public transit, roadways and pedestrian traffic.

• Uber drivers will have to pay a yearly permit fee of 1,599 pesos. That will add to the currently estimated 150,000-peso start-up cost for new Uber drivers. It may go up further with another regulation imposed - Uber cars will have to have an initial sticker price of at least 200,000 pesos.

• There are also a number of requirements for the vehicles — such as air conditioning, air bags and seat belts — and limitations on the company operations, such as not accepting cash or prepaid cards and not using taxi stands.

• most significant is a proposed regulation that will not be applied. **There will be no limit to the number of vehicles Uber and the others can deploy.** That’s an invitation to growth for Uber, which now has 500,000 customers and 10,000 drivers in Mexico City. Cabify (rival of Uber) claims 300,000 riders.
They call unfair competition — and what we would call competition

• Anti-Uber protests: Taxi industry demonstrates powerful lobbying skills, with regulatory capture being widespread.

• Anti-Uber protests by taxi drivers are part of a long tradition of established suppliers challenging new technologies that would cost them their jobs. But when, the Luddites of the early nineteenth century protested against newly developed textile machinery by smashing it, the authorities did not intervene to limit new technologies. As a result, the Industrial Revolution ultimately led to an unprecedented increase in living standards around the world.

• The (general) European response to Uber shows Europe’s governments are not flexible and as a result European economy suffers. The problem is that entry into any market depends on the perceived opportunities for profit from new initiatives at a particular point in time. Regulations can delay market entry, but technology cannot be stopped forever, new entrants eventually will break through. However their business model may no longer be profitable or may be less profitable than they would have been.
Why is Uber illegal in many cities?

• Taxi services are subject to fairly intrusive regulation:
  - Limitation on the number of taxis (e.g., there is a maximum of 1,300 taxis in Brussels)
    - Price control.
    - Safety and quality regulations.
• Uber drivers do not comply with these requirements, which are usually incompatible with Uber’s business model.
• Uber pays no tax. No social security for Uber drivers
• Taxi drivers would like Uber to be subject to the same regulatory requirements or be declared illegal.
• While some of these requirements are designed to protect users, others amount to barriers to entry.
A brief history of taxi regulation

- Taxi services are basic in nature (transporting passengers from point A to point B); do not require much capital or skill, subject to fairly intrusive regulation.

- During Great Depression, people jumped at the opportunity to drive unlicensed taxis at the absence of stable jobs → increase in accident rates, poor insurance coverage, road congestion

- 1970s, early 1980s → deregulation Atlanta, Indianapolis, Milwaukee, Kansas City, Phoenix, San Diego, Portland, Seattle ... → removed regulations on fares, licensing, accessibility requirements → A decade later these cities re-regulated the taxi market because:
  - Prices for taxi riders increased
  - Vehicle quality decreased
  - Average age of vehicles increased
  - Fares become confusing; unpredictable to passengers
  - Taxi rides in low-density areas neglected; 7/24 transportation became difficult
  - Living standards of taxi drivers decreased due to over supply
  - Accidents increased due to inexperienced drivers
  - Traffic increased
  - Pollution increased
Why is taxi market regulated?

• 1- in the absence of control of entry, there would be too many taxis in the streets, this would create congestion.

• 2- If taxis were in excessive numbers, they would engage in ruinous competition, which would lead to low quality of service.

• 3- To correct information asymmetries, as in the absence of rate control, consumers would have no guarantee the fares they pay are fair and reasonable.

• 4- users have no means to know whether they will be driven in a safe vehicle.
Regulation of taxi services typically involves:

• Control of entry (with local authorities, for instance, setting the maximum number of vehicles that can be used to provide taxi services) → theoretical arguments based on externalities (pollution and congestion) → why not impose a tax that would internalise such negative effects instead of restricting taxi numbers???

• Licensing and performance requirements (for the drivers and the taxi companies) designed, for instance, to ensure safety standards for both drivers (who need to receive proper training) and vehicles (which must be inspected on a regular basis)

• Financial responsibility standards (such as compulsory insurance)

• The setting of maximum rates based on various methodologies
Problems of regulation of taxi services that lead to the deregulation! And then to re-regulation!!

• The insufficient availability of cars during peak hours or in certain areas (seen as less profitable by drivers. A good example is the unwillingness of Istanbul (Turkey) taxis to go to the other side of Bosphorus (European or Asian sides). In many instances efforts to prevent the oversupply of taxi services effectively led to an undersupply of such services leading to user discontent.

• With the prices and quality standards set by public authorities, taxi regulations did not incentivise taxi companies to innovate or provide superior quality of service. This led some countries to deregulate taxi services (Netherlands, Ireland, France, USA)

• In most cases the number of taxis increased but this did not translate into lower waiting time and cheaper services. In the States service performance decreased after deregulation which led to re-regulate!
Regulatory flexibility

• The Regulation of any economic activity should be flexible enough to accommodate all developments of supply and demand that are in the public interest → economic growth → an adaptable Regulation provides incentives for innovations to the market → if firms fear an innovation slightly questions existing rules would be stopped how is it possible to encourage innovation??? → a flexible regulatory structure in itself is in public interest

• Regulatory flexibility? Let the law identify the very general principles and leave the application of those general rules to the (local) enforcer
Vicious circle: Regulation-deregulation-re-regulation

• The important point is these deregulatory efforts did not lead to major innovation as new entrants essentially use the same business model as incumbents.

• The restrictions placed on Uber’s activities are undesirable as they deprive users of an attractive and innovative alternative to regular taxi services.

• But Uber should not be allowed to operate in a legal void.

• Regulatory framework should be adapted to allow Uber to operate legally, as well as to compete on a level playing field with taxi services. However legalization of Uber’s services raises a number of complex issues. A complex question is whether online-enabled car transportation services and taxi services should be subject to the same regulatory regime or to separate regimes adapted to their characteristics. Another question is whether taxi companies and/or drivers should be compensated for the loss of investment they may have made in acquiring a license.
An EU-wide solution? Is it possible (for Uber) to challenge public restrictions preventing it to compete under EU law?

• **Scenario 1**: Uber can invoke Art 101 and 102 TFEU with Article 4(3) TEU which places a duty of loyal cooperation between EU and Member States.

• Requires the existence of an agreement Article 101(1) TFEU, which will be strengthened or encouraged by the legislation of the MS in question.

• A pure regulatory measure adopted by a public authority, i.e. A decree regulating taxi services cannot be challenged under these provisions unless this decree transforms an anti-competitive agreement adopted by taxi operators into binding law; or delegates to taxi operators the power to set taxi fares; or impose other regulatory requirements

• **Scenario 2**: Uber to invoke Art 101, Art 102 + Art 106 TFEU (state granting special or exclusive rights to an undertaking)

• The state measure e.g. a decree regulating taxi services should benefit companies which have been granted exclusive/ special rights, Would the granting of licences to taxis be regarded as special rights? Even if granting of licences amounts to special rights, these should create a dominant position which is doubtful....
An EU-wide solution? Is it possible (for Uber) to challenge public restrictions preventing it to compete under EU law?

• Scenario 3: The application of Article 106(1) requires that the State measure in question, e.g. a decree regulating taxi services, should benefit companies which have been granted exclusive or special rights.

• The State measure in question must maintain or strengthen a dominant position.

• Articles 49 and 56 TFEU:

• A further possibility is to argue that the taxi legislation in question breaches the free movement provisions of the TFEU, such as the right to establishment) or freedom to provide services.

• The question thus becomes whether the restrictions that are contained in taxi regulations in question are necessary to meet overriding requirements of general public importance and whether they proportionate to achieve the objectives they seek to protect. This is of course an intensely factual assessment.
1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
Art 101 TFEU cont.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
   - any agreement or category of agreements between undertakings,
   - any decision or category of decisions by associations of undertakings,
   - any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
ART 102 TFEU

Article 102 (ex Article 82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
The Treaty on European Union (TEU)

Article 4

1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.
Art 106 TFEU

(ex Article 86 TEC)

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.
Art 49 TFEU (right to establishment)

Art 49

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.
Art 56 TFEU (freedom to provide services)

Article 56

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.
The need for a regulatory solution

• Adoption of an EU Directive regulating online platforms?
  • But would it survive the subsidiarity test?
  • How long would it take?

• Adoption of pro-competition frameworks at the national/local level.
  • Single framework for taxis and online-enabled car transportation services.
  • Specific regulatory framework for Uber and other similar companies.
    Ex: The regime developed by the California Public Utilities Commission (CPUC).
    But how light or heavy would this framework be?
    And should the framework applying to taxis be revised downward?

• How should we deal with losers?
  • Transition vs. no transition
  • Compensation vs. no compensation
Conclusions

• Uber has introduced dynamic in a typically static sector.
• Investors believe that Uber will succeed.
• Because it provides an innovative service that is attractive to users, Uber should be allowed to compete legally.
• The question is of course which regulatory framework should apply to Uber.

  Requirements that are needed to protect users (insurance, safety, etc.) should apply
  Barriers to entry and other unnecessary regulation should be removed.
• The elephant in the room: Does Uber threaten the European social model?
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