

Sharing Economies and Urban Mobility: the Uber Case

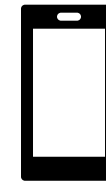
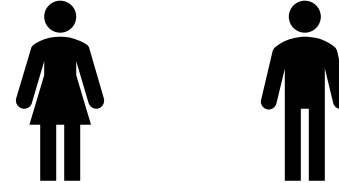
20th May 2019

Alessandro Cardinali

- There are Law restrictions on urban transport in Italy
- Some transport services which have been conceived and currently run abroad are not allowed
- Demand of urban mobility is not completely satisfied by traditional transport providers (taxis)

How Uber works

- Users order urban transport services
- The app recognises the location of the user and finds available drivers
- Drivers accept the trip and complete it



What the app does

- Recognises the location of the users
- Matches passengers and drivers
- Calculates the fare according to distance and duration of the trip (+ surge pricing)
- Enables drivers and passengers to rate each other

Drivers

- Use their own cars
- Have to fulfill requirements set by Uber
- Receive their fare for the single transport by Uber
- Are not Uber's employees
- Can be excluded by the platform in case of bad score

Uber Yes/Uber No

- more transport solutions
- cheap price
- less control on the quality of the service

Asociación Profesional Elite Taxi v Uber Systems Spain SL

CJEU Case C-434/15

Questions referred for a preliminary ruling

QUESTION 1

Inasmuch as Article 2(2)(d) of [Directive 2006/123] excludes transport activities from the scope of that directive, must the activity carried out for profit by the defendant, consisting of acting as an intermediary between the owner of a vehicle and a person who needs to make a journey within a city, by managing the IT resources — in the words of the defendant, “smartphone and technological platform” interface and software application — which enable them to connect with one another, be considered to be merely a **transport service** or must it be considered to be an electronic intermediary service or an **information society service**, as defined by Article 1(2) of [Directive 98/34]?

Directive 2006/123

Art. 9

1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

(a) the authorisation scheme does not discriminate against the provider in question;

(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

Article 2(2)(d) of Directive 2006/123

2. This Directive shall **not apply** to the following activities:

[...]

(d) **services in the field of transport**, including port services, falling within the scope of Title V of the Treaty;

Article 1(2) of Directive 98/34

For the purposes of this Directive, the following meanings shall apply:

(2) “service”, any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services [...].

CJEU Case C-434/15

Questions referred for a preliminary ruling

QUESTION 2

Within the identification of the legal nature of that activity, can it be considered to be ... **in part an information society service**, and, if so, ought the electronic intermediary service to **benefit from the principle of freedom to provide services** as guaranteed in [EU] legislation — Article 56 TFEU and Directives [2006/123] and ... [2000/31]?

CJEU Case C-434/15

Mere Intermediation or Intermediation + transport?

CJEU Case C-434/15

Mere Intermediation or Intermediation + transport?

- *“the provider of that intermediation service **simultaneously offers urban transport services**”*



CJEU Case C-434/15

Intermediation + transport

WHY?

1. Without the App:
 - (i) drivers would not be led to provide transport services
 - (ii) persons who wish to make an urban journey would not use the services provided by those drivers.

CJEU Case C-434/15

Intermediation + trasport

WHY?

2. Uber exercises decisive influence over the conditions under which that service is provided by those drivers:
 - i. Determining fare
 - ii. Controlling the quality of vehicles, drivers and their conducts (possible exclusion)

CJEU Case C-434/15

JUDGMENT OF THE COURT 20 December 2017

Article 56 TFEU, read together with Article 58(1) TFEU, as well as Article 2(2)(d) of Directive 2006/123/EC [...] and Article 1(2) of Directive 98/34/EC [...] to which Article 2(a) of Directive 2000/31/EC ('Directive on electronic commerce') refers, must be interpreted as meaning that an intermediation service such as that at issue in the main proceedings, the purpose of which is to connect, by means of a smartphone application and for remuneration, nonprofessional drivers using their own vehicle with persons who wish to make urban journeys, must be regarded as being inherently linked to a transport service and, accordingly, **must be classified as 'a service in the field of transport'** within the meaning of Article 58(1) TFEU. Consequently, such a service **must be excluded from the scope of Article 56 TFEU, Directive 2006/123 and Directive 2000/31.**