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## Global Forum on Competition

### **USING MARKET STUDIES TO TACKLE EMERGING COMPETITION ISSUES – Contribution from Austria**

- Session IV -

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This contribution is submitted by Austria under Session IV of the Global Forum on Competition to be held on 7-10 December 2020.

More documentation related to this discussion can be found at: [oe.cd/mktcomp](https://oe.cd/mktcomp).

Please contact Mr. James Mancini [E-mail: [James.Mancini@oecd.org](mailto:James.Mancini@oecd.org)], if you have any questions regarding this document.

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## *Using market studies to tackle emerging competition issues*

### **- Contribution from Austria –**

#### **1. General considerations**

1. The Federal Competition Authority (BWB) regularly uses market studies and/or opinions to identify both existing and emerging competition issues. BWB's legal statute allows it to give opinions on general issues of economic policy, to investigate a specific business sector if circumstances suggest that competition may be restricted or distorted in such business sector or to conduct competition monitoring, particularly to assess competition intensity of individual business sectors or markets. All three may involve the usage of market studies to a certain extent.

2. The reasons that may trigger a market study consist, for example, in repeated complaints or the observation by the BWB that there exist certain market characteristics that may harm effective competition and thereby have adverse effects on consumers.<sup>1</sup> Such characteristics include high barriers to entry, strong network effects or anticompetitive regulation. Once market structures are assessed and competitive conditions are analyzed, the results of the market study are published and enter a broad societal debate that involves a diverse set of stakeholders. Reports are used as an advocacy tool to issue recommendations to lawmakers and regulators or market studies may also result in the BWB initiating further investigations into the conduct of specific firms.

3. An advantage of market studies in comparison to other advocacy tools is that they can provide helpful evidence for a regulatory political debate. The BWB as independent, bipartisan authority can give the view through the competition lens. However, market studies are quite resource and time intensive and require both comprehensive and reliable data made available to the competition authority. Also, close dialogue with all stakeholders is needed to understand all aspects of a specific market.

4. Market studies are best suited to uncover structural risks and competition problems. They are not primarily used as an investigative tool to detect harmful conduct of specific companies. In our experience, market studies work well as an advocacy tool in the public debate. Yet, the key challenge for the BWB is tackling competition issues that become apparent as a result of market studies due to the lack of legal options for intervention.

5. Recently, the BWB launched a joint investigation with the telecommunication regulator to monitor online platforms to develop adequate tools to analyze markets within the new economy. The cooperation aims to detect potential risks to competition and problems that might emerge on platform markets. Similarly, the BWB is currently taking a closer look at the health sector and analyzes the dynamics in certain markets where it frequently encounters competition issues, for instance with regard to the distribution of

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<sup>1</sup> Sometimes also other public bodies suggest to BWB (not binding) to conduct a study eg the Ministry of Finance in 2016 regarding the ATM market.

pharmaceutical products and to pharmacies. Other market studies concerned amongst others the regulation of ATM fees, the telecom sector and the fuel market.<sup>2</sup>

6. Another sector that has recently been subject to a market study is the taxi- as well as the ride-hailing services which include services provided by online platforms such as Uber or Bolt. In this sector investigation, the BWB analysed the rather strongly regulated market for passenger carriage regarding competition law and economics. The following contribution will elaborate on this most recent market study in greater detail highlighting the underlying motivation as well as problems encountered. It illustrates how the underlying economic problems related to trust goods cause issues to competition on certain markets and how digitalization may contribute to reduce regulative burden.

## 2. Case STUDY: Market Study on Taxi and pre-booked ride market

### 2.1. Relevance from a competition perspective

7. The BWB initiated the market study on the taxi and ride-hailing market as it frequently received complaints as to its malfunctioning caused by particularly rigid market structures. As in most industrialized countries, the sector is strongly regulated in Austria and is currently experiencing considerable regulatory changes, which the BWB aimed to evaluate in terms of its welfare effects on consumers. For this purpose, the BWB did not only conduct a detailed survey with companies but also carried out an empirical analysis to elicit consumers' preferences.

8. Services in the taxi and ride-hailing sector can - economically - be classified as services based on trust. Therefore, market failure may occur on the basis of a lack of information on the part of the consumer (asymmetric information). When someone hails a taxi from the side of the road, the customer must place his\*her trust in the reliability of the taxi driver. The problem arising from information asymmetry can be reduced through use of new technologies which present the price transparently to the consumer before starting a journey. For this reason, it may be adequate to revise the existing regulatory framework that previously tried to touch upon the market failure caused by asymmetric information by regulating prices and, to some degree, quality in the taxi market.

9. The regulatory changes concern the amendment of the Occasional Traffic Act ("GelverkG NEU", BGBl. I No. 83/2019) that combine the previously separate taxi and the ride-hailing business sectors into one uniform passenger carriage business sector. Yet, some open questions arising from amendments to GelverkG concerning the effects on the new legal framework - that is based primarily on the previous regulations governing the traditional taxi business sector - remain. It is unclear whether the proposed regulation simply acknowledges different circumstances in terms of the divergent business models. The new legal framework leaves according to our analysis little or no freedom to implement innovative business models that are facilitated by the increasing degree of digitalization of society in almost all areas of our lives, including modern passenger carriage services provided by online platforms. The new regulatory framework can thus have negative effect on the variety and fairness of the competition as well as consumers' freedom of choice.

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<sup>2</sup> Results of all market studies are published on the website of the BWB (<https://www.bwb.gv.at/branchenuntersuchungen/>), some of them in English ([https://www.bwb.gv.at/en/sector\\_inquiries/](https://www.bwb.gv.at/en/sector_inquiries/)).

## 2.2. Empirical Study

10. The BWB conducted a survey with players on the taxi and pre-booked ride sector to learn about its structure and potential competition issues in the market. Further, consumers' preferences were elicited based on a survey with a representative pool of the population in the greater Vienna area, where both traditional taxis and pre-booked rides are active.

## 2.3. Market participants: Taxi and Platform services

11. The BWB regularly undertakes sector investigations and in some cases, gathering the information necessary to derive conclusions about a market may prove difficult as market participants may be reluctant to cooperate. As regards the traditional taxi market, obtaining information was particularly challenging as we experienced strong opposition from branch representatives and other stakeholders within the industry. Due to this lack of information, the BWB was unable to determine the market size exactly and could only provide rough estimates about the size and recent developments. From our perspective, one of the greatest challenges in conducting market studies is gathering valid data. This may be particularly true in markets in which a close dialogue with all stakeholders proves difficult.

12. Our study suggests there is a substantial degree of heterogeneity in the taxi and ride-hailing market. The various market players on the supply side range from a classic one person taxi business through larger businesses with a larger number of licensed vehicles to traditional radio networks and innovative online intermediary platforms.

13. A key takeaway from the survey is that the market for taxi and pre-booked ride has grown considerably since the entry of platform intermediaries in 2014. A large part of this rise can be attributed to rides placed via online platforms such as Uber or Bolt. This result suggests that innovative services in the taxi and pre-booked ride industry generated additional demand.

## 2.4. Consumers

14. Since the amendments to GelverkG will lead to a fundamental change of the regulations covering the area of passenger carriage by car, the sector investigation undertaken by BWB is also aimed at assessing effects from the point of view of the consumers. Some empirical studies suggest that the platform intermediaries such as Bolt or Uber in the market for intermediation of passenger carriage services generate an additional demand and therefore - at least for a certain population group - bring additional benefits with them and in this way increase the consumer surplus.<sup>3</sup>

15. The initial goal was to design an explicit choice experiment to perform a conjoint analysis to estimate consumers' price elasticities and consumer welfare. The BWB aimed to evaluate the changes in consumer surplus. However, the timing of the field survey overlapped with the peak of the Covid-19 crisis in Austria. Due to this unprecedented shock, it would not have been possible to assess the willingness to pay of consumers adequately at that point in time. As the BWB aimed to inform the public debate timely in the legislative process regarding the redesign of the exact design of the new regulative framework (for instance regarding taxi fares), it was not possible to delay the consumer survey to a later point in time when the effects on demand caused by the Covid-19 crisis level out.

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<sup>3</sup> see, for instance: Lam, C., Liu, M., Hui, X. (2020). The Geography of Ridesharing: A Case Study of New York City, doi: <http://dx.doi.org/10.2139/ssrn.2997190> and Shapiro, M. (2018). Density of demand and the benefit of UBER. 1-74. Research Collection School Of Economics.

16. Thus, the BWB instead asked a representative pool of the relevant population about their general service preferences and whether they attribute certain characteristics more to traditional taxis or to platform rides. An empirical investigation was carried out to define each of the product features consumers value concerning traditional taxis and online intermediaries. This allows us to draw conclusions about consumer preferences and benefits from the new digital business models.

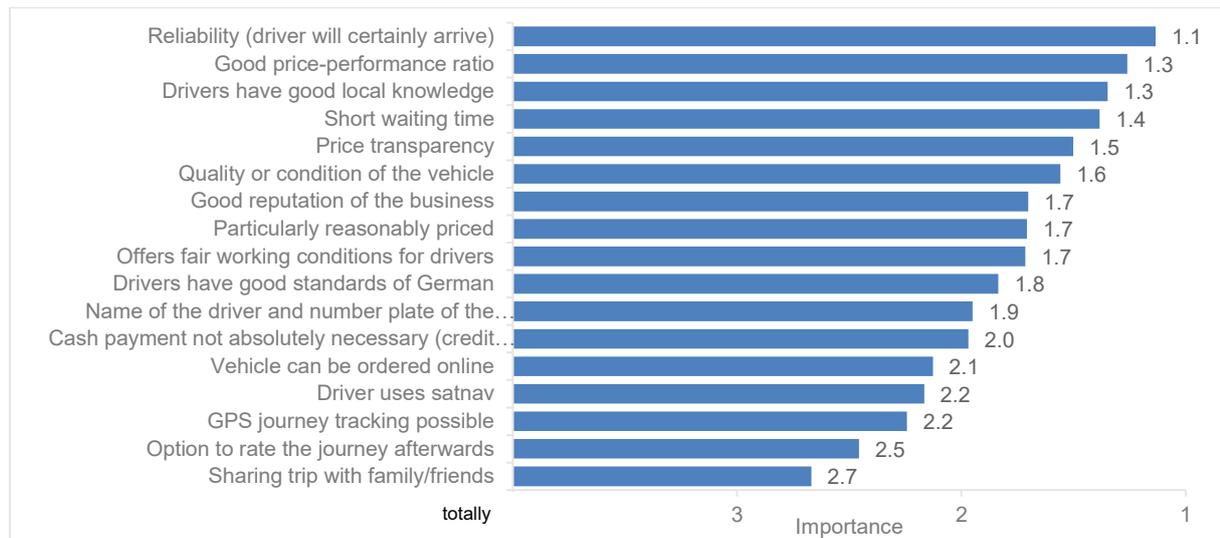
17. Although our study shows that the use of traditional taxi intermediaries appears to be more pronounced in society, the largest online intermediary Uber represents the best known company on the market. In addition to their concrete usage behaviour, study participants were also asked about which services they generally prefer. 40% of respondents expressed a preference for online intermediaries such as Uber or Bolt, which is a significant proportion of the population, especially given the likely expiration date of the underlying business model. This result is driven, above all, by the preferences of younger citizens aged between 15 and 29, where the demand is presumably relatively more price sensitive. Above all, respondents see the advantage of traditional taxis in their convenience, their reliability as well their availability. By contrast, the main argument offered by those persons who prefer to use an online intermediary, by a majority of more than 50%, was the more favourable price. Factors that also play a very significant role are the comfortable ordering process by app as well as the availability of precise information and price transparency.

18. One factor which fundamentally differs between traditional taxis and online intermediary services is price transparency. While the exact calculated price for a journey is known in advance with great accuracy from online intermediaries there can be significant variations with journeys made with traditional taxis - depending on the taxi tariff. Since this trait is very popular for consumers (particularly younger ones), the question was also asked in the course of the survey how well people can estimate the actual average price for a journey by taxi for a planned route. A very small percentage of people, 14%, stated that they knew exactly what the taxi tariffs are in Vienna and can estimate exactly what a journey would cost. A large majority of persons, 55%, did not know the precise taxi tariffs but could at least make a pretty good estimate what the price would be. On the other hand, a large percentage, 31%, had no idea about taxi tariffs and had no idea - based on their own assessment - about what the actual price would be.

19. In order to be able to assess how an amalgamation of the taxi and the ride-hailing businesses will affect consumers, it is essential to examine the attributes which are associated with this service. To achieve this, a list of criteria was created which could be associated with businesses engaged in individual passenger carriage and the respondents were asked to assign a value to these attributes in terms of their relative importance.

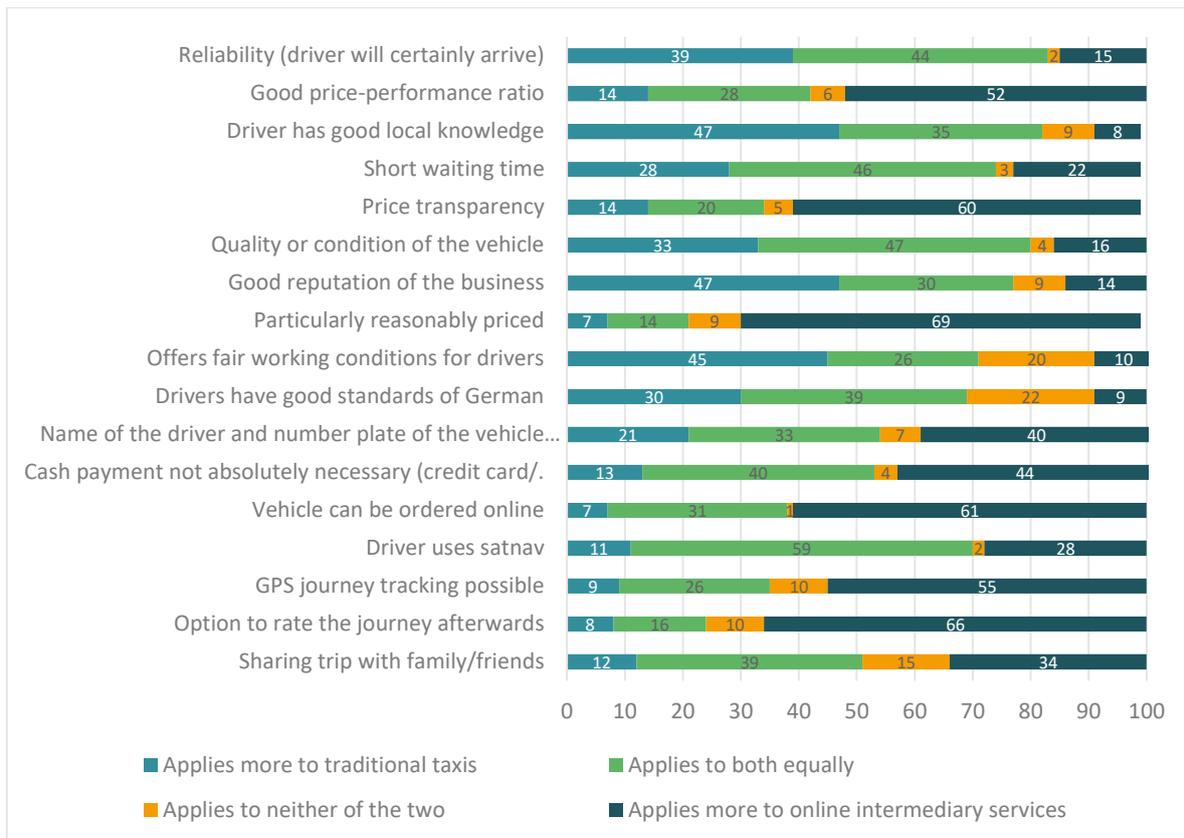
20. A good price-performance ratio is very important for the majority of the respondents. About 98% of the participants on the study rate this feature as very important. In this connection 52% of the respondents stated that this is more likely to be achieved with online intermediaries while 28% believe that traditional taxis and online intermediaries are the same. Only 14% find that traditional taxis offer a good price-performance ratio. The results are illustrated in figure 1.

Figure 1 Consumer-rated importance of attributes



21. Price transparency is considered as given with the online intermediary services by 60% of respondents. Only 14% see this feature demonstrated by traditional taxis and just 20% see it demonstrated by both models. These findings are demonstrated in figure 2. This result illustrates that consumers consider the pricing of journeys regulated by traditional taxi tariffs as less predictable or more strongly dependent on traffic conditions than the surge-price model of the platform intermediary services from which the average price is known to them in advance. As consumers place high value on price transparency, the unavailability of platform services is very likely to affect at least certain groups of consumers negatively.

Figure 2: Association of attributes with traditional taxis or pre-booked platform rides



### 3. Conclusion:

22. The main results of the BWB’s market study find that the adaption to the regulatory framework will most likely have a negative impact on total consumer surplus. Further, it may lead to relatively high barriers to market entry, which may again have adverse effects on the competitive environment. The following section presents the main findings in greater detail.

- The formal merging of the taxi and the ride-hailing business sectors into one uniform passenger carriage business basically establishes the traditional taxi business sector as the sole business model and thus may prevent innovative business models such as the ride-hailing business sector with online intermediary services (e.g. Uber or Bolt). It may thus push these digital actors (or at least their current business model) out of the market and limit consumer choice.
- This reduction of the options on offer will cause customers to be deprived of the right to choose between the strongly diversified business models according to their preferences regarding price or quality. This situation appears to be particularly problematic since almost 40% of the population living in Vienna and parts of Lower Austria demonstrate a preference for the new business models of online intermediaries. Overall this could lead to a very significant loss of welfare. Furthermore, empirical studies have generally demonstrated

the positive welfare effects achieved through the surge-pricing models<sup>4</sup> of the online intermediaries and the underlying price transparency.<sup>5</sup>

- This petrification can lead to a drop in quality and price competition and prevent innovation. One central characteristic of innovative business models is price transparency (that is knowledge of the exact price being asked before starting a journey, when requesting a trip) which was felt to be important by more than 95% of consumers and which was primarily associated by the majority (60%) with online intermediaries.
- The transparency and predictability of the transport fare (as provided by the business model of the online intermediary services) is no longer guaranteed for the customer. One result of the market survey showed that more than 30% of consumers admitted that they cannot estimate the price of a journey by taxi. The respective innovative technologies required to ensure this would also fundamentally be available to the traditional taxi business sector, but both the currently valid as well as the (proposed) new legal situation hinders the use of these and thus also adequate transparency for the consumer. This is very likely to have a negative effect on the consumer surplus and will, above all, disadvantage younger consumers who are a particularly price sensitive group.
- The entry barriers to the new business sector are increased to the detriment of ride-hailing company drivers and drivers for online intermediary services, while existing taxi drivers do not have to fully comply with these conditions.
- At the same time it seems unlikely that ride-hailing company drivers and drivers for online intermediary services have enough time, during the remaining months before the entry into force of GeverkG NEU as well as the operating regulations, to adapt in order to fulfil the requirements for the new business style on time due to a lack of audit capacities. The fact alone that the audit capacities seem not sufficient as well as the potential departure from the market of a number of online intermediary services may lead to a sudden loss of many jobs (this could involve thousands of drivers amongst the cooperation partners of Uber alone).
- The intention of the lawmaker to preserve the advantages of both business types will in BWB's view not likely be realised. The basic principle of equal treatment of what is identical and permission of unequal treatment of what is not identical is not reflected sufficiently in BWB's view. This is essential because, as elaborated, differences in business models and characteristics of taxi and online intermediary services do exist, e.g. concerning (dynamic) pricing models, price transparency, booking mechanisms, payment and service rating systems.

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<sup>4</sup> In surge-pricing models companies adapt the price for products or services according to the current market demand. In the case of Uber, an algorithm reacts when there is increased demand for taxi rides and the prices increase. This should act as an incentive for drivers to react to the increased demand (e.g. during evening hours and late at night at weekends) and therefore to counteract a supply shortage.

<sup>5</sup> see, for instance: Lam, C., Liu, M., Hui, X. (2020). The Geography of Ridesharing: A Case Study of New York City, doi: <http://dx.doi.org/10.2139/ssrn.2997190> and Shapiro, M. (2018). Density of demand and the benefit of UBER. 1-74. Research Collection School of Economics.