

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****Implications of E-commerce for Competition Policy - Note by Colombia****6 June 2018**

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## Colombia

1. In recent years, E-commerce in Colombia has grown and evolved in the same way as in many emerging economies, at least in Latin America. According to Kantar's study, although Latin America is lagging behind in terms of E-commerce activity compared to the Asian region, since in the case of consumer goods, E-commerce hardly represents close to 0.5% of total sales, it is still relevant that the competition authorities of the region begin to be vigilant about these forms of business **Invalid source specified.**
2. An important case, that undoubtedly raises a great deal in electronic transactions relationships, is the so-called sharing economies in which the service offered is proposed in several technology platforms which, in turn, are responsible for making a matching with those potential users. This contribution focuses specifically on this type of electronic transactional relationships related to individual transport service, which platforms, few years ago, were described as disruptive innovations.
3. For this, the present document, written by the Economic Studies Group of the Superintendencia de Industria y Comercio, is divided into four sections. First, we introduce the importance of the sharing economy, the advantages and the drawbacks that this new model raises in terms of free economic competition. Then, we define the main factors that favored its emergence. Finally, in the third and fourth sections, we describe the evolution of the sharing economy in and we propose some recommendations on competition and economic regulation.

### 1. Introduction

4. Recently, sharing economy has enabled the creation of new forms of production, trade and consumption. Particularity, it has changed the way in which consumers and producers exchange goods and services taking into account the benefits offered by digital platforms as a means for supporting transactions. This, indeed, has imposed a new model of collaboration in exchange for monetary or non-monetary revenues such as the reduction of transaction costs, the efficient use of technologies and the possibility of reducing some externalities like asymmetry of information. As a result, we are facing new configurations of market interaction in the middle of the *fourth industrial revolution*.
5. However, one of the main concerns faced by competition authorities, around the development of sharing economies, is the way in which traditional tools used to study the performance of markets are considered in view of fighting anti-competitive practices.
6. As such, the Economic Studies Group of the Superintendencia de Industria y Comercio has carried out a review of the theoretical and normative literature, which has allowed to note the advantages and the challenges that this new form of organization of work and exchange imposes on the market and, in the same way, the chain of events and effects in terms of free economic competition.

## 2. Sharing economy: a global vision

7. Over time, humans have used diverse ways to trade goods and services, which created different types of markets that emerge to reach sellers and customers. Similarly, the emergence of new collaborative models, which were developed through digital platforms, has had a remarkable impact on existing markets. In this way, it is important to define and understand the factors and means that have favored the emergence of new models.

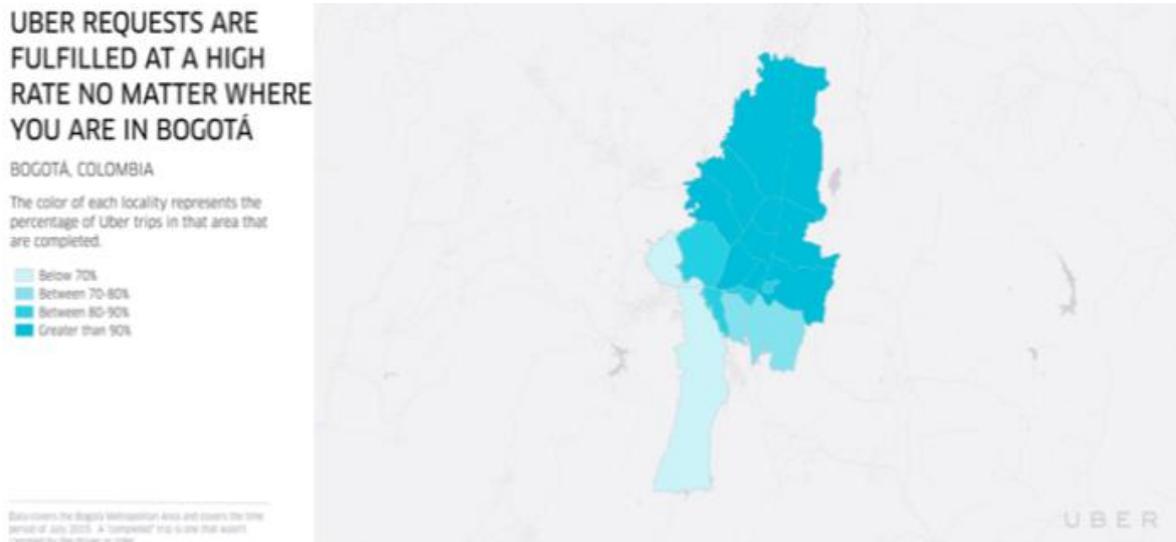
8. First, the recent financial crises are conceived as a key scenario for the development of new market models where people, to obtain a source of income from the goods they own, can access more quickly to certain services. On the other hand, the consequences of climate change and global warming have encouraged mechanisms increase that helps to rethink how to make efficient use of resources. This is how sharing economy models are built to achieve these goals.

## 3. Sharing economy evolution in Colombia

9. In 2016 Colombian public administrations have established some policies that aim to solve the problems associated with mobility and the serious consequences of climate change: excessive car use and contrary, the underutilization of low-contaminating transport such as bike.

10. This is the case in Bogota, where the local Council approved a project which indicates that all public institutions will have to promote different types of mobilization such as "*shared car*" strategies and the use of bikes in exchange of some profits for public workers. Similarly, in Bucaramanga and Medellin, the institutions concerned have laid down some rules in order to promote "*shared car*" as a measure of sustainable mobility (Ecomobility) **Invalid source specified..**

11. Moreover, to characterize the importance gained by the initiatives registered in the framework of sharing economies, the National Planning Department (DNP) has found that during the period between 2002 and 2012 the disposition of citizens to travel in public transport in Bogota decreased from 73% to 51%. In opposition, in this same period, the intention to use the car has increases from 18% to 29%. In fact, some initiatives like Uber have estimated that 43% of Uber users in Colombia would be willing to stop using their private cars if the alternative is safe and reliable **Invalid source specified..**

**Figure 1. Percentage of demand for Uber in Bogota**

Source: Lizarazo, 2015

12. In addition, a significant portion of Uber requested routes (represented by the blue lines, Figure 2) begins or ends near Transmilenio<sup>1</sup> stations (shown in the black lines, Figure 2). In other words, Bogota habitants begin to opt for multimodal travels by combining different mobility alternatives **Invalid source specified.**

**Figure 2. Uber connectivity in Bogotá**

Source: Lizarazo, 2015

13. Despite the advantages associated with this type of disruptive innovation, its implementation in legal terms in Colombia has caused significant regulatory difficulties. In this regard, it is important to mention that in Colombia the Decree 1079 of 2015

<sup>1</sup> Massive bus transport system created in 2000 in Bogota.

establishes the single regulation of the transport sector, where Article 2.2.1.3.3 regulates the provision of the public passenger transport service at the individual level in taxis; Article 2.2.1.3.2.1 establishes the appropriate conditions for the supply of a taxi service by recognizing, as the main element, the legal constitution of a company to operate and be able to provide the transport service; and Article 2.2.1.3.7.1 requires service to be performed only with cars that are part of the authorized fleet<sup>2</sup>.

14. Considering this legal framework as well as the decision of the national government led by the Ministry of Transport which seeks to establish an update of this normative in order to include a modality named luxury taxis, the Superintendencia de Industria y Comercio, exercising its functions of advocacy competition, explicitly set out the risks arising from the loss of jurisdiction following the implementation of this new version of the Decree.

15. In its arguments, it acknowledged that the traditional taxi service faced at least three important issues: (i) information asymmetries; (ii) coordination problems; and (iii) distortions caused by regulation. Similarly, the Colombian competition authority has had the opportunity, on the one hand, to analyze in detail each risk inherent in the promulgation of the draft Decree and, on the other hand, to recognize that the sharing economies models, associated with the transport sector, can mitigate externalities related to problems (i) and (ii) previously proposed.

16. Despite this technical effort, the authority responsible for regulating the transport sector did not consider the proposed recommendations and proceeded to implement a regulation that did not consider the concept issued by the Colombian authority competition by arguing general technical reasons for doing so.

17. Beyond sharing this experience, not necessarily successful, over the past three years, the Superintendencia de Industria y Comercio has had the opportunity to study disruptive innovations typical of new forms of sharing economy, developed largely thanks to digital platforms, and it had recognized the importance of analyzing the advantages and disadvantages of its implementation. All this if there is a normative framework that allows platforms to be considered as legal platforms within the individual passenger transport service delivery model, which establishes rules aimed to remove existing barriers in the marketplace and, at the same time, rules that emphasize the use of available instruments in promotion and defense of competition in order to avoid behavior that could be characterized as contrary to free economic competition.

#### 4. Sharing economy in Colombia: A deal in competition and economic regulation

18. Colombia is not strange to new logic resulting from the development and consolidation of sharing economies. Indeed, there is clear evidence of the entry of new players who have experienced some changes around the traditional way in which most sectors are built and formed. This is how we recognize the efforts of The Organization for Economic Co-operation and Development (OECD) to propose new practical methodologies that lead to redraw and reinterpret the tools needed to define markets, calculate market power, find the effects of practices that have the purpose or effect of

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<sup>2</sup> There is a number determined exogenous by the local governments in order to satisfy the taxi service demand in each city.

preventing, restricting or distorting competition in the analysis of multi-sided platform markets **Invalid source specified.**

19. Subsequently, various institutions of the Colombian government, such as the Telecommunications Sub-Direction of the National Planning Department (DNP) and the Appscó Direction at the Ministry of Information Technologies, have looked for various methods and mechanisms that help to understand the problem and, at the same time, to examine how the multiple disruptive innovations reach the different spheres of society, not only because they are effective but also because they are aligned with the regulation that should exist within each sector. In relation to this first comment, it is imperative to establish a balanced play camp that can guarantee effective and real competition between old and new players. Above mentioned will produce an efficient assignment, socially desired, as a product of market interaction.

20. However, some evidence has shown that, at present, companies participating in disruptive economies, in the absence of effective regulation, can behave in a way that does not necessarily coincide with consumer expectations. Thus, in terms of mobility, to quote just one example, companies could create situations facilitating the use of algorithms to discriminate against customers under similar conditions, within the framework of a tariff system. In addition, they would be able to implement dumping strategies to dominate the market. Above, by setting an extremely low tariff, taking advantage of their losses with revenues from similar activities in other countries. In this way, the clear effects will be reflected on a total or partial elimination of free competition, the concentration of the market and the possibility of having the capacity to exert some effects of exploitation on consumers in next periods.

21. How can we level the playing field without interrupting innovation and at the same time stimulate free economic competition? In this sense, these types of models of sharing economies invite to submit to evaluation the relevance of the current regulation for new players as for existing ones since there would be a risk of discouraging innovation. Similarly, it is suggested to start by understanding the problem in depth, regardless of the sector where the activity is developing, in order to make the necessary adjustments, which implies not only advancing in an economic analysis of the sector, but also the opportunity to fully understand the existing legal framework and to identify opportunities for improvement. The challenge is to strengthen the advocacy competition function of the competition authority, which is becoming a priority.

22. In addition, it is necessary to create regulatory schemes that privilege the use of Big Data resulting from the sector activity. This does not imply encouraging cartelization scenarios, conversely, what is sought is to promote the use of public data associated with the activity of sharing economies as a contribution to the construction of Public Policies. The aim is not only to strengthen market competition through an effective regulatory framework, but also to enhance consumer welfare in a free economic competition scenario.

23. Thus, the main purpose of the digital platforms should be the reduction of transaction costs and the increase of efficiency in an equality scenario for providers. To meet this goal, it should not be forgotten that any regulatory initiative should consider that within markets several agents compete, privileging those who have acquired some experience in the sector studied, and consider the evolution market in order to avoid the obsolescence of the scheme described, in line with other competition authorities'

recommendations, for example COFECE in Mexico<sup>3</sup>, which have mentioned this notion in their respective studies.

24. In addition, the proliferation and development of collaborative initiatives and disruptive innovations in various sectors imposes the institutional challenge regarding: (i) the creation of scenarios for coordination between regulators and competition authorities and (ii) the revision of the rules and tools to ensure an adequate assessment of these anticompetitive behaviors.

25. Thus, these recommendations try to contribute actively to the setting up and updating of legal frameworks that can host each initiative that the market proposes by avoiding, in the short and medium term, a conflict between formality and informality in different economic activities associated with sharing economies.

26. As a result of this previous analysis, it can be seen, from one of the spheres of E-commerce as sharing economies and in particular those related to the provision of individual transport services, that there are great challenges for competition authorities. Indeed, these new dynamics implies not only understand the efficiency gains acquired by the consumer of the good or the service, but also the risks inherent to the emergence of new markets and the contractual relations which require a methodical and analytic study of possible practices anticompetitive derivatives in this new context. In this way, the Superintendencia de Industria y Comercio commits itself to continue studying and analyzing the evolution of these new business forms considering as priority the promotion and protection of the free economic competition.

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<sup>3</sup> COFECE, 2018