

Unclassified

DAF/COMP/WP2/WD(2016)15

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

28-Oct-2016

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

INNOVATIONS AND COMPETITION IN LAND TRANSPORT

-- Note by Brazil --

28 November 2016

This document reproduces a written contribution from Brazil submitted for Item III of the 62nd meeting of the Working Part No. 2 on Competition and Regulation on 28 November 2016.

More documents related to this discussion can be found at: <http://www.oecd.org/daf/competition/competitionand-innovation-in-land-transport.htm>

Please contact Ms. Ania Thiemann if you have any questions regarding this document [phone number: +33 1 45 24 98 87 -- E-mail address: ania.thiemann@oecd.org].

JT03403962

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

DAF/COMP/WP2/WD(2016)15
Unclassified

English - Or. English

-- BRAZIL --

1. Introduction

1. Over the past years, ridesharing has become an important trend in the field of land transportation in urban areas. Based on the widespread expansion of internet services and the smartphone market, new economic agents have developed innovative services to compete in the individual private transportation market, which has taxi services as incumbents.¹ As evidenced in different jurisdictions, the disagreement between the new competitors and the taxi drivers has entailed conflicts ranging from legal measures against ridesharing platforms and drivers up to episodes of open violence.²

2. The relevance of the matter prompted the global competition community to examine the new services and advice against premature attempts by legislative, regulatory bodies, unions, taxi companies and other stakeholders to ban or hinder the development and the entrance of new competitors and innovators in ridesharing services.

2. Ridesharing services and the Brazilian context

3. The debate on ridesharing platforms in Brazil has been centered in the taxi drivers and taxi associations' argument that online platforms cause unfair competition by opening the market to unlicensed drivers. Taxi drivers argue that if they have to observe regulations and pay taxes, then rideshare platforms' drivers also would have to comply with the same regulations and pay the same taxes.

4. Ridesharing services counter argue that its drivers are not required to be licensed due to the different nature of the service provided. In addition, by providing mechanisms that enable clients to rate drivers, track the vehicles' routes and calculate the rides' final prices in advance, among other tools, ridesharing services offer more information for consumers. Thus, these services provide consumers additional mechanisms for their choice regarding which service to use.

5. Beyond the arguments from each side, it is worth noting that the interface between innovation and regulation also carries a relevant political weight – especially in the individual transport sector. In Brazil, taxis are considered “rental cars” and drivers must be licensed by the local state government to offer the service. The amount of licenses available is defined by the government and granted licenses are tradable.³ Licensed drivers can also buy cars with tax benefits. The discussion therefore encompasses professional class interests, which represent a particularly relevant challenge for regulators and policymakers.

¹ Perhaps the most notable example of the new ridesharing services based on smartphone platforms is the company Uber. Since its creation in 2008, the company has expanded to more than 60 countries and operates its app platform in 518 cities around the world.

² Cases of open violence against drivers connected to ridesharing companies have been noticed in Brazil since the arrival of the new services in the recent years and the publicity surrounding the subject.

³ Taxi licenses are considered an asset because of the limited number of licenses granted by the government and the fact that those licenses are tradable. With new technologies that allow drivers to enter the market without licenses, the value of the licenses may fall, which is a concern for taxi drivers' associations.

3. Regulation, Innovation and Competition

6. Regulation is based on the need to address market failures, such as those arising from monopolies and asymmetry of information. Such failures have a direct impact on social welfare, as they are associated with an inefficient allocation of resources. In such cases, the government might intervene through regulatory agencies in order to fix them. Notwithstanding, regulation might cause different concerns and not be able to properly address all the concerns regarding market failures.

7. On the other hand, innovation has the potential to fix market failures and address regulatory concerns in several markets. When a disruptive innovator enters the market, it can break monopolies, provide more even information and match supply and demand more efficiently. Whenever disruptive innovations properly fix regulatory concerns, regulation of such markets is no longer necessary and its continuation may cause loss of consumer welfare.

4. CADE's studies

8. In order to favor a discussion based on clear arguments and to contribute to the public interest, CADE's Department of Economic Studies (DEE, for its acronym in Portuguese) released two studies in 2015, which analyzed the effects of disruptive innovations on the individual transportation market.⁴ The first study examines the market of individual transport of passengers, assessing the market's regulatory framework and externalities derived from possible changes in the regulation, allowing a better assessment of the impacts of ridesharing innovations in each of its segments.⁵

9. Focused on the two main regulatory criteria – market entry and prices – the study presented arguments in favor and against market regulation. Concerning the entrance of new competitors, regulation would address important issues such as excess of cars in circulation with low occupation rates and possible price increase. On the other hand, this kind of regulation is expensive and may confer protection over licensed taxi drivers.

10. As for prices, regulation would grant economic protection for consumers against abusive prices and prevent that a few areas become more attractive to taxi drivers, thereby granting that the services are provided more widely. On the contrary, price regulation by the government may generate distortions in the definition of optimal price levels. In the bargaining process for price readjustments, the regulatory body can be captured by class interests and lobbies.

11. The second study evaluates the impact of the entrance of the Uber service upon taxi rides in four Brazilian capitals. The preliminary results of the study evidence the creation of a new market by ridesharing services, which brings into question the arguments of unfair competition presented by taxi drivers and taxi associations.

12. Furthermore, CADE's research evidences that ridesharing platforms have the potential to provide a superior substitute for private cars for a group of consumers, and a superior substitute for taxis for another group of consumers, with a potential reduction of prices charged by taxis. The new market would also provide an alternative for taxi drivers who would like to change business models.

⁴ CADE has conducted two different studies regarding the subject. Both studies can be retrieved in the following link: <http://en.cade.gov.br/topics/about-us/dee/working-papers>.

⁵ The taxi market is usually divided into three segments: rank, hailing and booking. Taxi rank is the service provided from fixed taxi stations. Hailing comprises the taxis that keep circulating on the street to get passengers. Booking is the provision of the service in a pre-arranged time and place, usually by phone.

13. Legal frameworks that tend to restrict innovative services must be submitted to an in-depth analysis and a transparent debate between public authorities, consumers and economic agents. Given the wide set of considerations that go beyond competition matters when assessing the individual transport public policies, the best alternative to accommodate the different concerns at stake is to strengthen the ties between competition authorities, legislative and regulatory bodies in order to provide a transparent regulatory framework that successfully equates competition concerns and other public interest goals.⁶ In this situation, the role of the competition authority is that of advocacy with both civil society, government and legislators in order to promote awareness about the benefits of competition in the sector. The competition authority may also engage in advocacy efforts with regulatory agencies in order to assess the need for regulation in the market.

5. Ongoing Investigations

14. In addition to several complaints raised by both incumbents and newcomers, there are two main investigations within CADE's General Superintendence. The first one is an Administrative Inquiry, which analyzes a complaint filed in 2015 by the Commission of Consumer Defense of the Brazilian House of Representatives against Uber. According to the complaint, Uber would be allegedly trying to dominate the market of paid individual transportation by illegal means. In attention to this complaint, the antitrust authority has already notified the parties involved and is currently analyzing the arguments brought to the agency.

15. The second proceeding, which is currently at the stage of preparatory inquiries, consists in an investigation of anticompetitive conducts allegedly practiced by taxi drivers and taxi associations against Uber drivers and passengers. Such conducts include sham litigation, threats and violence. The investigation began out of a joint complaint filed by two University Student Associations in Brasília, Brazil.

16. On one hand, while the current controversy regarding Uber's legal status is not clarified by the Brazilian Executive, Legislative and Judiciary bodies, the company should be considered as being a normal competitor, protected by the Brazilian Competition Law against anticompetitive conducts. On the other hand, the authority did not accept part of the complaint presented by the Student Associations, which argued that taxi drivers would have been abusively pressing public authorities to enact laws blocking the entry of competitors in the market of paid individual transportation. Taxi drivers' actions to promote their interests in representative bodies have been considered legitimate.

6. A relevant Brazilian experience

17. With regards to the regulation of ridesharing services, the Brazilian experience provides an interesting case, which reflects the context, the different issues at stake and the close cooperation between CADE, legislators, executive bodies and regulatory agents in order to successfully address the issue.

⁶ As transport costs influence important aspects of urban areas (e.g. the cities' geographical dimensions, land occupation and use), the positive impact of the entrance of new competitors to consumers in the individual transport market may be counterbalanced by externalities that are not assessed by competition authorities. There are several externalities that may derive from regulatory changes, including traffic congestion, environmental pollution and urban sprawl, among others. Regulation therefore becomes more complex, requiring a closer dialogue between competition authorities and other public bodies in order to find an adequate and coordinated response for the subject.

18. As the largest Brazilian city, São Paulo was a complex stage where to articulate competition, innovation and regulation in the individual transportation market. Considering the pressure exerted by the taxi drivers' union to ban ridesharing apps, especially Uber, the local Legislative Assembly passed a bill that forbade such services in the city. The city's executive government, inspired by CADE's previous study on disruptive innovation and the market of passengers' transportation, implemented a working group in order to evaluate Uber's impact on the sector. Besides CADE's study, the local government also discussed issues related to the market and its regulation with the authorities' analysts. The cooperation resulted in a decree enacted by the Mayor of the city of São Paulo, allowing drivers of the ridesharing platforms to transport passengers in the city.

19. The decree regulates the new services, allowing ridesharing companies to acquire the right to use the city's road infrastructure, paying BRL 0.10 (Brazilian reals, ten cents) per kilometer run by its drivers, although this fee may vary according to the time and location of the service. There is also a monthly limit of 27 million kilometers available for all the companies that provide the service. In order to enable monitoring compliance with the new regulation, ridesharing companies are required to register to a municipal control system, and provide information about their services.

20. Although the measures adopted by the city of São Paulo are still subject to change, the local authorities have managed to act proactively, consulting different stakeholders in order to deliver a suitable answer for the issue.

7. Conclusion

21. The aforementioned considerations evidence the importance of clarifying the purpose of regulation. Transparency is essential to prevent the capture of regulation by political and lobbies' pressures. By clarifying the arguments that underpin the set of bylaws composing the paralegal framework in the individual transport market, it is possible to assess which considerations should be taken into account when devising a regulatory framework that stimulates innovation, contributes to a competitive environment and prevents market failures.