

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

Cancels & replaces the same document of 3 May 2018

Working Party No. 2 on Competition and Regulation

Taxi, ride-sourcing and ride-sharing services - Note by Spain

4 June 2018

This document reproduces a written contribution from Spain submitted for Item 3 of the 65th meeting of Working Party No 2 on Competition and Regulation on 4 June 2018. More documents related to this discussion can be found at www.oecd.org/daf/competition/taxis-and-ride-sharing-services.htm

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JT03431648

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1. The transport sector in Spain plays a substantial role in economic and social cohesion, due to its ability to connect cities and its forward and backward linkages to other industries and to consumer welfare. As a result, the transport sector generates positive carry-over effects in other economic sectors. It also has a large impact on growth and employment both at a national and at a supra-national level.

2. At present, the dynamics of competition in the transport sector are undergoing significant changes, mainly due to the development of the sharing economy and the information and communication technologies. These new developments are disruptive, and generate opportunities and a potential paradigm shift in the transport markets, by which business structures and dynamics, as well as the competition landscape, could significantly change. This provides new challenges for the Competition and Regulatory Authorities, which face a number of issues brought about by these new developments.

3. Within the transport sector, the urban passenger transport segment is where the most significant innovations and profound effects on final users have taken place. Nowadays, both drivers and passengers could easily be geo-localized via the use of specific technology. This increases the information available for all actors involved and third parties, in particular in the taxi and ride sharing markets. Moreover, in the case of private hire vehicle market (PHV or chauffeured car rental), passengers could also have access to information about the drivers' past performance and behavior through rating and reputation systems online.

4. These innovations have reduced the asymmetric information in the market and have increased the level of competition in the taxi and PHV markets, increasing the pressure on prices, the choice available for consumers, the level of safeness in the market, and introducing better price mechanisms.

5. In that regard, public administrations have the responsibility to allow innovation, and even to foster it, and therefore to increase the level of competition. To that end, they might need to review the regulatory framework applied to both the new transport services and the traditional businesses, such as the taxi sector, and to reflect on whether to downregulate those markets where liberalization processes have not taken place yet.

6. The necessary review of the transport regulatory framework provides an opportunity for the CNMC to intervene through advocacy powers. In this sense, the CNMC advocacy toolkit includes a number of instruments, *inter alia*: (i) issuing general reports on sectors, (ii) making proposals for liberalization, deregulation or regulatory amendment in the markets, or (iii) challenging before court uncompetitive regulations which raise obstacles to effective competition in the markets. These advocacy tools, either separately or jointly, could promote greater competition in the taxi and PHV markets, maximizing consumer welfare with innovation, quality, variety and prices.

1. Characteristics of the Taxi and Private Hire Vehicle Markets

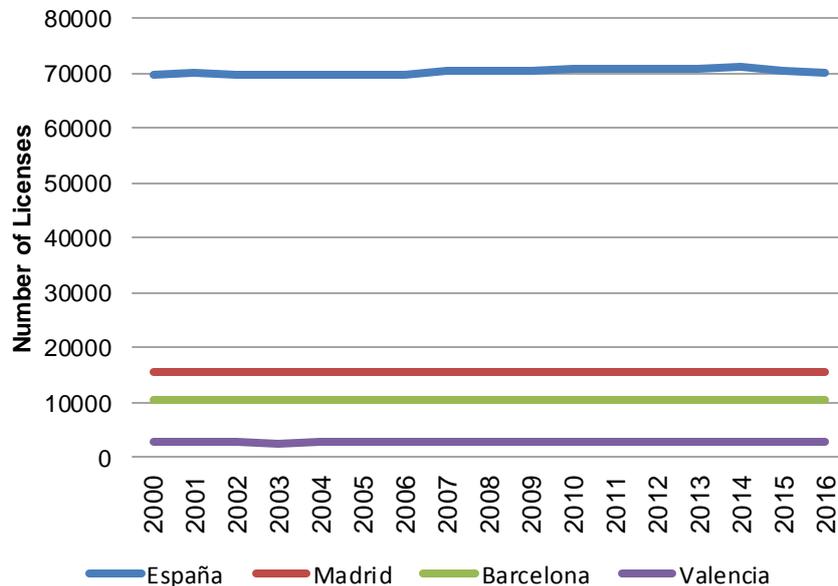
7. The new services offer an alternative to the services traditionally offered by the taxi and the chauffeur-driven passenger car hire services. These new services have been developed in a context where the regulations of the taxi and private hire vehicle markets

have major unjustified restrictions on entry and practice of the activity in Spain. The regulatory framework in place has made it difficult, if not impossible, for these new business models to flourish. As an example, Uber Pop entered the Spanish market in 2014. However, after the adoption of preliminary measures against its activity by a Spanish Court, Uber decided to leave the Spanish market in December 2014. In 2016, Uber started to operate in Spain under Uber X, a chauffeur-driven car hire alternative with a more limited scope, as the number of licenses for this service is very limited and dependent on the number of taxi medallions in the proportion 30 to 1.

8. The CNMC is of the opinion that limiting or prohibiting the development of these new models and the entrance of new players in the market via restrictive regulation is not only problematic, but also counterproductive, as it has a negative impact on the market itself, by limiting its potential growth, innovation and its consumer welfare.

9. In the case of the taxi sector, the number of taxis in Spain in 2016 amounted to 70,223¹, of which 46,427 corresponded to provincial capitals and 23,796 to other towns. Since 1995, however, this figure has remained practically unchanged (in 1995 the number of licenses amounted to 71,272, *i.e.* slightly higher than in 2016). The growth rate in bigger cities (provincial capitals) has been also negative, with 46,758 taxis in 1995 and 46,427 in 2016. In a nutshell, the number of taxis in Spain, as well as in the main Spanish cities, has remained practically constant, with hardly any changes in those years regardless of the population growth.

Figure 1. Evolution of Taxi Licenses in Spain and the cities of Barcelona, Madrid and Valencia

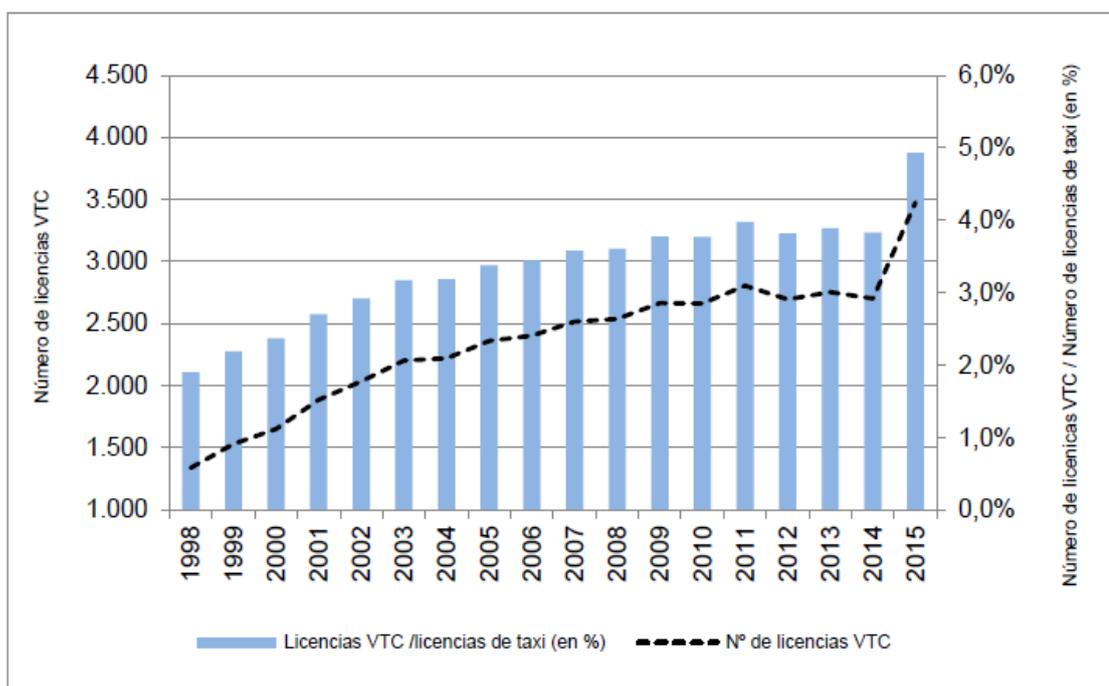


Source: CNMC

¹ Taxi statistics INE (Instituto Nacional de Estadística – National Institute for Statistics)

As regards the PHV market, from 1998 to January 2016 the number of chauffeured car rental vehicles increased from 1,336 to 4,296. Despite the fact that the growth rate of PHV has been positive during the entire period, it should be noted that the number of PHVs is still remarkably lower than the number of authorized taxis. The number of taxis has remained practically unchanged from 1998 (70.373) and 2015 (70.509).

Figure 2. Number of PHV licenses and their weight in relation to taxi licenses, period 1998-



2015.*Licencias VTC= Licenses PHV, *Licencias Taxi = Taxi Licenses

Source: CNMC – Economic report on Competition Restrictions on PHV Regulation (2016)..

10. Given the above, the CNMC decided to analyze the existing barriers to competition in both markets, with the aim to identify the ones that were not justified by the existence of a market failure or an overriding reason relating to the public interest.

2. Taxi and Private Hire Vehicles Regulation

11. The taxi and private hire vehicle markets are two of the markets in which the sharing economy is having a notable impact in Spain. While some countries are approving regulations that allow the development of the new transport models, in Spain the existence of restrictive regulation, based on licenses, *numerus clausus* and regulated tariffs, *inter alia*, prevents the entry of new agents in both markets.

12. Within the taxi sector, the economic literature has traditionally distinguished three different segments:

1. Hiring of taxis on the spot on the public highway, while they circulate.
2. Hiring of taxis on the spot in specifically authorized stops.

3. Taxis that come to provide the service, after arranging the appointment by telephone or telematic means, generally through reservation centers.
13. In the third segment, characterized by the prior agreement of the service, users have a greater choice (i.e., they can decide to which reservation centre to go to formalize the service). This facilitates competition in prices and other variables in order to differentiate the service.
14. The private hire vehicles activity competes directly with the third segment of the taxi. Despite carrying out a similar economic activity, taxis and private hire vehicles services present different regulatory frameworks, with different requirements to exercise the activity, and different price policies for the provided services.
15. The state regulations² on land transport provide that regional governments (i.e. Autonomous Communities) can create their own authorization regimes regardless of the national regime, as long as their geographical scope does not exceed that of the region. All the Autonomous Communities have assumed exclusive competences in terms of intra-regional road transport. Also, in the case of taxis, municipalities can adopt their own regulations.
16. The current regulations (i.e. national, regional or local) include a number of requirements and legal provisions that restrict competition and make it harder, if not impossible, for the new sharing economy services to enter the market and compete in an effective manner. Moreover, the fact that taxis and PHVs have different regulations further fragments the urban transport market, imposing different requirements and conditions to similar services. It is therefore mandatory to review the existing horizontal regulations in these markets.
17. Disruptive innovations change the scope for public intervention, typically reducing the need for traditional restrictions to competition. However, many Public Administrations in Spain, instead of having adopted a more flexible and cohesive regulatory approach, have rolled old regulatory regimes onto new technologies and sectors, thereby shielding the traditional taxi and PHV sectors. The CNMC believes that the regulatory response to the new models of the sharing economy should be solely based on the evaluation of general interest, regardless of routine, alleged acquired rights or particular interests of incumbents. The regulatory review must be therefore performed following the principles of efficient economic regulation: necessity (i.e. mitigating a market failure that endangers a point of imperative general interest), appropriateness (i.e. there is no alternative measure that generates fewer distortions in the market) and non-discrimination.
18. As a result, it should not be ruled out that the absence of regulation is efficient in those instances where: (i) there is no market failure and, (ii) free market mechanisms are the most suitable for achieving efficient economic and social welfare outcomes.
19. In light of the above, the CNMC has undertaken a number of initiatives with the aim to shed light on the major regulatory challenges brought about by the new models on the urban transport services. The CNMC identified these challenges mainly via advocacy efforts, although a number of them were also identified thanks to industry and consumer

² Law 16/1987, on the Organization of Land Transport and the Royal Decree 1211/1990 on Land Transport Management.

complaints. Based on this information, since 2015, the CNMC has conducted a number of efforts in the digital economy arena using all the regulatory and competition tools it had at hand.

3. CNMC's advocacy initiatives in the markets for taxi and ride-sharing services

3.1. Market studies and regulatory reports

20. In March 2016, the CNMC published the preliminary findings of a Study on the New Models for Service Delivery and on Sharing Economy and launched a public consultation on the preliminary conclusions and recommendations of the study³.

21. In its analysis, the CNMC identified, on a preliminary basis, a number of unnecessary and/or disproportionate restrictions on competition that were found in sectorial and horizontal regulations in the markets for transport and tourist accommodation. These restrictions impeded the users to fully benefit from the potential benefits that would be derived from new entries in the market.

22. In particular, the study brought up the existence of significant barriers to competition in the markets for taxi and private hire vehicles, and recommended to eliminate or remove the following requirements:

- The imposition of a *numerus clausus* on the supply of taxis and private hire vehicles
- The restriction on the territorial scope of the license.
- The compulsory insurance premiums
- The requirement for an individual operator to have a minimum number of vehicles to carry out private hire vehicles' activity.
- Quality and safety requirements that are unnecessary or disproportionate to perform the activity (such as minimum dimensions of the vehicle, minimum power, maximum age, limits on specific vehicle models, minimal equipment, etc.).
- Mandatory schedules and rest schemes in the taxi sector.
- The limitation of ownership of taxi licenses to individuals or work cooperatives.
- The need for an administrative authorisation to carry out private hire vehicles' activity.
- The requirement that private hire vehicles should be previously hired to be able to circulate and the inability of private hire vehicles to circulate on public roads in search of customers or pick up passengers who have not previously contracted the service.

³ CNMC – Comisión Nacional de los Mercados y la Competencia (2016b): Resultados preliminares. E/CNMC/004/15 Estudio sobre los nuevos modelos de prestación de servicios y la economía colaborativa.

- Regulated rates (either fixed or maximum rates) which are included in all regulations of taxi services in Spain.

23. Along with the market study on the New Models for Service Delivery and on Sharing Economy, the CNMC has published several reports on draft regulation concerning the markets for taxi and private hire vehicles⁴. These reports analyzed the implications of draft regulations from the standpoint of competition and efficient economic regulation, with the aim of preventing the introduction of new provisions that could damage competition in the market.

24. The *ex-ante* nature of this intervention enables the CNMC to exert a pre-emptive influence on regulatory policy. In addition, these reports facilitate the awareness and assimilation of competition policy and regulation at all levels of the Spanish public administration, as well as to the public, as all regulatory reports of the CNMC are made public.

3.2. Legal Active Capacity

25. The CNMC has also challenged restrictive regulations in courts. This is the case, for instance, of the jurisdictional challenges of several national private hire regulations or the apps to book taxis through smartphones and other devices.

26. The current Spanish Act on Competition grants the CNMC, as part of its advocacy toolkit, the capacity to challenge before the Courts any act adopted by a Public Administration and any general regulation subordinate to Law under competition grounds. In particular, the CNMC has *locus standi* to challenge before national Courts uncompetitive administrative acts and regulations which raise obstacles to the maintenance of effective competition in the markets. This represents an advanced command that not many jurisdictions enjoy but has nonetheless proved to be highly effective in the fight for a more competitive and efficient economic regulation. The legal basis for this *locus standi* is [Article 5.4 of Law 3/2013 of 4 June 2013, of creation of the CNMC](#).

27. Likewise, under [Article 27 of Law 20/2013 of 9 December 2013 guaranteeing the single market](#), the CNMC possesses another active legal capacity by which, it may, at the request of an economic operator, challenge administrative acts and rules which are inconsistent with effective economic regulation and the principles of need and proportionality.

28. The CNMC has used these legal capacities in four instances in the PHV and taxi sector.

⁴ IPN/CNMC/012/15: Draft Royal Decree which modifies the regulation of Law 16/1987, on the Organization of Land Transport to adopt it to the Law 9/2013, of July 4th, which modifies the Law 16/1987, of July 30, on the Organization of Land Transport ; IPN/013/15 : Draft Ministerial Order which modifies the Ministerial Order FOM/36/2008, of January 9th, that develops section II of chapter IV of Title V about chauffeured car rental of the Royal Decree 1211/1990 on Land Transport Management ; IPN/CNMC/018/17: Draft Royal Decree which adapts the existing rules to the Law 16/1987, on the Organization of Land Transport.

29. Firstly, in April 2016 the CNMC challenged at court two national private hire regulations: Royal Decree 1057/2015, of 20 November and Order FOM 2799/2015, of 18 December.

30. The main restrictions established by those pieces of regulation were the following:

- Quantity restrictions on PHV authorizations: the number of licenses for the PHV service is limited and dependent on the number of taxi medallions in the proportion 30 to 1.
- Obligations for prior booking of the PHV service and the prohibition for PHV to compete in the hail market.
- Geographical restrictions in service provision which result in the fragmentation of the Spanish internal market.
- Minimum fleet size requirements– which are especially detrimental to self-employed workers – and other unnecessary and discriminatory restrictions for new entrants, related to maximum vehicle age restrictions and other technical requirements.

31. The CNMC considers that these restrictions are contrary to the freedom of establishment, are unjustified, hamper effective competition in the market for urban passenger transport services throughout the national territory, limit innovation and, as a consequence, reduce general welfare.

32. To support the Court case, the CNMC also issued an [Economic Report](#)⁵. The report quantified the loss of consumer welfare in a minimum of 324.3 million euros per year.

33. Secondly, the CNMC challenged at court a Decree adopted in the region of Catalonia on the apps to book taxis through mobiles and other devices. The [CNMC's analysis](#) estimates the challenged regulation to have originated a surcharge of 12,3% in prices and a loss of consumer welfare of 61,4 M euros per year in the city of Barcelona.

34. Finally, the CNMC decided to challenge the taxi regulation in the Municipalities of Córdoba⁶ and Málaga⁷. The taxi regulations included provisions that restricted effective competition by impeding new entrants to enter the market and reducing the incentives of the established market operators to compete. In this case, the CNMC

⁵ CNMC – Comisión Nacional de los Mercados y la Competencia (2016), Informe económico sobre las restricciones a la competencia incluidas en el Real Decreto 1057/2015 y en la Orden FOM/2799/2015, en materia de vehículos de alquiler con conductor, de la Subdirección de Análisis Económico de la CNMC, de 8 de junio de 2016.

⁶ CNMC – Comisión Nacional de los Mercados y la Competencia (2016): Informe económico sobre las restricciones sobre los límites cuantitativos y las restricciones a la competencia en precios en el sector del taxi de la ciudad de Córdoba, de la Subdirección de Análisis Económico de la CNMC, de 15 de enero de 2016.

⁷ CNMC – Comisión Nacional de los Mercados y la Competencia (2015): Informe económico sobre las restricciones sobre los límites cuantitativos y las restricciones a la competencia en precios en el sector del taxi de la ciudad de Málaga, de la Subdirección de Análisis Económico de la CNMC, de 22 de diciembre de 2015.

estimates that the welfare loss resulting from the municipal ordinances for both municipalities amounted to over 4,3 M euros in Málaga and 2,5 M euros in Córdoba.

35. All the cases referred to above are still pending before the courts.

4. Conclusion

36. The taxi and PHV sector has been traditionally highly regulated and subject to significant barriers to competition. The development of the sharing economy and the information and communication technologies have changed the scope for public intervention, by generating new business models and opportunities which can benefit consumers. However, the traditional barriers to competition in regulation have proven to be highly resilient.

37. The CNMC has diverse advocacy instruments available for exercising its non-enforcement powers to foster competition and efficient economic regulation in Spain.

38. The CNMC's advocacy toolbox includes *ex ante* and *ex post* instruments including purely consultative, non-coactive instruments (such as market studies and public reports on draft regulations) as well as quasi-coactive mechanisms (such as active legal capacity to challenge administrative acts and regulations on Spanish Courts).

39. The CNMC has used all its advocacy instruments in order to introduce more competition and a more efficient economic approach onto regulation.

40. First, the CNMC's work has led to identifying the main underlying competition issues in these markets, as well as the challenges brought about by the new models of the sharing economy and the way regulation should be adapted. Secondly, the CNMC has focused on informing new regulation, aiming at preventing the introduction of new restrictions to competition. Thirdly, the CNMC has challenged before the courts regulations that distort competition, which are still pending.

41. The CNMC believes that its work has contributed to identifying significant barriers to competition in a highly regulated sector and to bringing the public's attention to the cost of these barriers. However, significant restrictions to competition still exist in these markets. The CNMC will continue its efforts to remove such obstacles.