

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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1. The Swiss Competition Commission (COMCO) conducted a detailed examination on the digitalization of the economy.¹ The new business models and innovations of the digital economy generally improve competition conditions and increase welfare. However, these opportunities can also imply risks for competition. New types of agreements and abuses of a dominant position could reduce the overall gains from digitalization for the economy as a whole. In its role as an advocate for effective competition, COMCO recommends to assess critically the appropriateness of existing regulations and to identify regulations that inadequate with regards to the new possibilities on the market.

2. With respect to new ride-sourcing services, COMCO sets its priority on its advocacy role rather than on the enforcement of competition law. While it is important to identify the potential risks for competition from new types of agreements or behaviours that may constitute abuses of a dominant position, there are currently no indications that new ride-sourcing services in themselves restrict competition. On the contrary, they challenge the traditional taxi service providers in Switzerland. The new services have not yet achieved a sufficiently high degree of market power what for the time being excludes possible abuses of a dominant position.

3. This contribution thus focusses on the advocacy role. In a first step, the regulatory landscape for taxi services in Switzerland outlined. The second part identifies potentials for deregulation. The third part outlines the Swiss Internal Market Act (IMA)² that allows COMCO to effectively advocate competition with respect to market access. The fourth part provides an example of the deregulatory effect of the IMA in the taxi sector. The fifth part concludes by assessing the long-run impact on the ride-sourcing services sector.

1. Regulatory Landscape in Switzerland

4. In Switzerland, there are three levels of regulation: the federal, the cantonal and the municipal. This leads to a diversity of rules and regulations. There is no law or regulation at the national level dealing specifically with taxis. However, most notably the federal laws on traffic³, on labour⁴ and on social security⁵ have an impact on the

¹ See Annual Report 2016, available <https://www.weko.admin.ch/weko/fr/home/la-comco/rapports-annuels.html>.

² RS 943.02, available <https://www.admin.ch/opc/fr/classified-compilation/19950280/index.html>

³ LCR (fr) ; RS 741.01 , OTR 2 (fr) ; RS 822.222.

⁴ LTr (fr) ; RS 822.11.

⁵ LAVS (fr); RS 831.10, LPP (fr); RS831.40.

regulation of taxi and other of ride-sourcing services (e.g. cantonal Taxi Act in Zurich⁶ or in Geneva).

5. The regulations in Switzerland typically distinguish two forms of ride-sourcing services. On the one hand, there are taxi services, e.g. where a customer takes a taxi at a taxi rank, calls by hand sign a taxi on the street or orders a taxi by a call at a taxi control centre. On the other hand, Switzerland knows general ride-sourcing services that are exclusively ordered in advance, as limousine services. However, the providers of these services are not allowed to take customers from (public) taxi ranks or pick up customers on the street who order a ride by hand sign.

6. The motives to regulate taxi services are threefold. First, taxi regulations have a public service provision aspect. To provide a basic transportation service for mobility-impaired persons or during night-time, taxi licenses typically include a 24-hour service obligation, respectively a transport obligation. To compensate for these requirements, taxi licensees have privileged access to taxi ranks on public ground.

7. The second regulatory reason stems from safety considerations. Cantons and municipalities impose minimal requirements on the safety-related quality aspects of vehicles. The federal traffic law imposes limits on driving hours of professional drivers and minimal requirements on their health condition.

8. The third consideration concerns the information asymmetry between the taxi providers and the customers. Customers who pick a taxi from a public taxi rank or order a taxi via hand sign from the road typically have no prior knowledge on the service quality or the price. Therefore, federal (e.g. Federal Ordinance on the Indication of Prices⁷), cantonal respectively municipal regulations requires a test on the drivers knowledge of the local routes and imposes obligations on price transparency or maximum prices in order to guarantee fair pricing and the quality of the service.

9. However, the innovation in ride-sourcing services affects mostly these regulatory rationales. Customer ratings reduce the traditional information asymmetry on the service quality of the driver. The ride-sourcing applications inform the clients in advance about the (estimated) final price. The new technology therefore reduces the need of price transparency obligations. Additionally the mobile applications make use of the GPS, which challenges the necessity of a regulatory requirement on local routes knowledge. These outdated regulations in the taxi sector should be abolished.

10. COMCO interacts with the cantonal respectively communal regulators that are adapting their taxi law. These interactions are based mainly on the application of IMA, which is outlined below.

⁶ e.g. Taxigesetz in Canton Zurich, 2016; Loi sur les taxis et les voitures de transport avec chauffeur (LTVTC) in Canton Geneva, 2016.

⁷ OIP (fr) ; RS 942.211.

2. Swiss Digital Strategy

11. The Federal Council adopted in 2016 the "Digital Switzerland" Strategy⁸ to ensure that Switzerland can benefit from increasing digitization and address its challenges. As a part of this strategy, the Swiss government analysed the consequences of digitization for the economy.⁹ It investigated which basic conditions are necessary to ensure that the Swiss national economy can exploit the opportunities presented by digitization. The Swiss government took into account that legislation should not lead to a protection of individual market participants from new business models or competitors. For transportation services, it concluded that the technological innovation should in fact reduce the necessity of regulations.

12. On the federal level, the road traffic laws¹⁰ have an indirect impact on ride-sourcing services. Currently, employers of professional drivers have more duties compared to self-employed professional drivers. For example, employers have to utilize tachographs. The Swiss government is currently evaluating the possibility to adapt or even partially lift the existing traffic law regulation with respect to these differences to ensure a level playing field.

3. Internal Market Act

13. The IMA aims to reduce restrictions on free access to the market under cantonal and communal public law. The IMA guarantees apply to all persons and entities having their registered office or their establishment in Switzerland, which includes ride-sourcing service providers.

14. COMCO ensures that the Confederation, cantons, municipalities and other bodies performing public tasks comply with this law. While COMCO has no decision-making powers in relation to the IMA, it has strong advocacy instruments. Towards businesses and authorities, COMCO can give informal advice on request or self-initiated investigations with published recommendations. Further, it may issue an expert opinion in court cases at request. Finally, COMCO has the independent right of appeal in order to obtain a court judgement on the issue of whether a cantonal or communal ruling limits access to the market in a manner contrary to internal market law.

15. The provisions of the IMA basically include two market access rights. First, the right to market access in accordance with rules on origin (origin principle as Cassis de Dijon principle, Art. 2 para. 1-5 IMA), which entails the right to unrestricted market access for goods, services and labour (prohibition of restrictions, Art. 3 para. 1 IMA) and the right to non-discriminatory market access (ban on discrimination, Art. 1 para. 1 in conjunction with Art. 3 para. 1 let a IMA). Second the right to the recognition of professional qualifications (recognition principle, Art. 4 IMA).

⁸ <https://www.bakom.admin.ch/bakom/en/homepage/digital-switzerland-and-internet/strategie-digital-schweiz.html>.

⁹ The report is available on <https://www.seco.admin.ch/seco/fr/home/wirtschaftslage---wirtschaftspolitik/wirtschaftspolitik/digitalisierung.html>.

¹⁰ LCR (fr) ; RS 741.01 , OTR 2 (fr) ; RS 822.222.

16. These rights are not absolute. A market restriction can be in some case justified if some conditions are fulfilled, i.e. for the protection of a preponderant public interest and by observing the principles of equal treatment and proportionality.

17. In practice, this means that any ride-sourcing provider in Switzerland, as far as he is entitled to work as a driver, is legitimated to provide services in other cantons or communities, even though they have a different regulatory system. Disproportional market access restrictions are thereby under pressure as COMCO's activities in the taxi sector shows (see below).

4. 2012: Recommendation for the taxi sector

18. Before 2012, COMCO observed that some cantonal or more often communal regulations of the taxi trade did not comply with the IMA. For example, the taxi ordinance of the city of Zurich prohibited taxi control centres to arrange rides for drivers without a license from the city of Zurich. This provision violates the IMA, as it limits the market access of drivers from outside the city. While the abovementioned information asymmetry between the taxi providers and the customers might justify a regulation of taxi calls by hand sign, the prohibition to taxi orderings by phone call was deemed to be disproportionate.

19. COMCO provided a recommendation to implement the free access market based on the IMA in the ride-sourcing sector.¹¹ This recommendation is meant as a tool for any cantonal and communal authorities, as a set of guidelines for regulating the taxi industry in accordance with IMA's principles.

20. In sum, the recommendation affirms these important concepts:

- A taxi driver with a permit from municipality A (place of origin) can transport a customer in municipality B (place of destination) without any authorization from municipality B.
- A taxi driver, with authorization of municipality A, which must pick up a customer (by its request) in municipality B, must not have any authorization of the place of destination.
- A taxi driver, with the authorization of municipality A, can pick up another customer at his request from municipality B and transport him to another place other than municipality B ("return transport").

21. The city of Zurich implemented the content of the recommendation in its new taxi ordinance, which came into force on 1 January 2013. Other cantons, as Geneva, Vaud or Bern, implemented or are trying to implement new regulations concerning the ride-sourcing service which are almost, even if not fully, in line with COMCO's recommendation of 2012.

22. As a further consequence of the recommendation, COMCO gets into contact with communities who adapt their taxi regulation or taxi operators who seek market access. These instances are an opportunity not only to advice on the IMA but also to encourage

¹¹ RPW 2012/2, 438 et seq., available <https://www.weko.admin.ch/weko/fr/home/documentation/droit-et-politique-de-la-concurrence-en-pratique--dpc-.html#-1220786166>.

more competition-friendly regulation in general. For example, COMCO recommended the Canton of Geneva to abstain from a provision that would oblige taxi control centres to impose uniform prices on connected taxi operators.¹² The canton of Geneva followed the recommendation in this point.

5. Conclusion

23. The innovations in the digital economy partially lifted the necessity of regulations in the ride-sourcing services sector. Outdated regulations should be abolished. Even more, as they unnecessarily block market access of new entrants and tilt the playing field to the disadvantage of the incumbents. The federal government aims to diminish the regulatory burden within its fields of competence, as shown in its digital strategy.

24. With the IMA, COMCO has a tool that advances regulations towards a level playing field. Directly, the IMA prohibits disproportionate restrictions on market access for businesses resident outside of the respective canton or municipality. Indirectly, the right to market access incentivizes regulators to abolish disproportionate regulations for local providers as well: Otherwise, they would create regulatory disadvantages for local providers.

25. It can be expected that in the longer run the IMA has a deregulatory impact towards a level playing field for both new ride-sourcing services and traditional taxi operators. Customer ratings, GPS-systems and price-information put the regulatory needs for service quality and price transparency in question. Protective regulations that would block market access would be disproportionate under the IMA. Cantons and municipalities will therefore have an incentive to reduce the regulatory burden for taxi services and new ride sourcing services.

¹² RPW 2016/2, 565 et seq. <https://www.weko.admin.ch/weko/fr/home/documentation/droit-et-politique-de-la-concurrence-en-pratique--dpc-.html#-1220786166>.