

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Taxi, ride-sourcing and ride-sharing services - Note by Costa Rica****4 June 2018**

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Costa Rica

1. The Commission for Promoting Competition (*Coprocom*, for its abbreviation in Spanish), as part of its authority to deliver an opinion, when it considers appropriate, in competition and free concurrence matters; as well as for issuing practical guidelines for disseminating competition and guiding economic agents on their market behaviour; has been aware of the need of analysing digital platforms' development in the country, particularly for their impact in the case of remunerated passenger transportation.
2. Thus, since the arrival of Uber as a new transportation network, *Coprocom* issued an opinion, noting that all regulation attempting to be part of the Costa Rican legal framework, must necessarily address and respond to competition and free concurrence principles and postulates in the market (article 4 of the minute of regular meeting No. 27-2015, held on August 25, 2015).
3. In the specific case of Uber, *Coprocom* has expressed the importance of not being detached from reality with respect to developments in the telecommunications field, as well as the development of innovative and different ways in the provision of services; whether they are public, of public interest or private, and the benefits it brings to users and to the generation of an increasingly competitive market.
4. Given that technologies have acquired a leading role in the development of societies, governments, far from ignoring this reality, must take care on understanding development events. Regarding their responsibilities, governments should analyse and propose, if this is the case, those possible, necessary, proportionate and reasonable regulations addressing markets' evolution.

1. On remunerated passenger transportation modalities in the country

5. After years of conflict between formal taxi drivers and those commonly referred to as "door-to-door transporters" ("porteadores" in Spanish)¹, Costa Rica enacted Law No. 8955 in 2011, entitled "Amendment to the Commerce Code, Law No. 3284, of 30 April, 1964, and to the Regulatory Law on Paid Transport of People in Vehicles in the Taxi Modality Public Service, Law No. 7969 of 22 December, 1999". This law eliminates the door-to-door transport modality from the Commerce Code, relocating it into the public sphere under the name of "Special Stable Taxi Service" ("*Servicio Especial Estable de Taxi*", *Seetaxi*, for its abbreviation in Spanish), which is defined as a public service of paid transport of people, addressed to a closed group of users, that satisfies a limited, residual, exclusive and stable demand. Likewise, this Law expressly provides on the entitlement of the State on all kinds of paid transport of people in motor vehicles².

¹ The door-to-door transport (*porteo* in Spanish) figure is established in the Commerce Code as the private transportation of people, allowed the private contracting of the service of transport of persons, which went on to become a competition for taxi drivers.

² It also provides that the amount of permissions to grant for *Seetaxi* will be of up to 30% of the formal taxis inventory.

6. According to a study³ conducted by the Institute for Research in Economics (*IICE* for its abbreviation in Spanish) of the University of Costa Rica, for the Transport Division of the Public Services Regulation Authority (*Aresep*, for its abbreviation in Spanish), there are currently 13,097 formal taxis in the country (regular operation base or formal taxis (red taxis), Seetaxis and special operations base taxis (airport taxis)), and approximately 3,800 of the denominated informal taxis. It is said that the national average is 34 sedan-type formal taxis (red taxis) for every 10,000 inhabitants. The study also points out that the denominated informal taxi drivers, together with door-to-door transporters (*Seetaxi* or “porteadores” in Spanish) meet a real demand which probably could not be satisfied by formal red taxis, mainly because they operate within the market with 10+ hours work shifts and daily trips averaging more than 25.

7. Four years after the enactment of Law No. 8955, operation of Uber technological platform starts in the country, specifically on 25 August, 2015, under the “self-supply community” figure, based on a group of members that was created for self-managing their specific mobility needs. According to company information for different media, as of January 2017, they accounted for 16,000 collaboration partners, most of whom were professionals from different fields, between 25 and 35 years old, who used the platform to supplement their income. From November 2016 to January 2017, more than 500,000 people used the platform, 34.3% of these between 2 to 5 times per week.

8. Uber is part of the denominated collaborative economy⁴, a concept that has gained strength with the technological revolution and the development of the internet, which occurs in various industries of the economy, not only in transportation. When these companies enter a market that has been historically regulated, as the case formal taxis, they generate a disruption that causes discontent from the guild subject to traditional regulation. Hence, formal taxi drivers in our country have made various manifestations in opposition to the entry of Uber company since August 2016; arguing that the service provided by said company is remunerated passenger transportation, and that by providing it on the fringe of the existing rules, it places them in a situation of illegality and unfair competition.

2. Government's position with respect to Uber

9. With the arrival of Uber, and the manifestations of taxi drivers against it, *Coprocom* agreed, as established in the opinion mentioned above on urging the Executive Branch (President of the Republic and the Minister of Public Works and Transport) for filing consultation to the technical bodies over said digital platform and the type of service it provides. This, aiming to determine and clarify if there was some type of applicable regulation and under which conditions it should be applied. In case of the latter being necessary, aiming that such regulation to be developed observing the constitutional criteria of proportionality and reasonableness.

³ IICE, 2017. "Operating parameters values update and determination, and paid transport of people (taxi modality) performance indicators".

⁴ Collaborative Economy: Heterogeneous and rapidly changing set of production and consumption modes, by which agents share underused assets, goods or services in an innovative way, in exchange or not of a monetary value, by using digital social platforms and, specifically, the internet. (CNMC, 2016)

10. It should be noted that, after analysing Uber's situation, the Council of Public Transport (*CTP*, for its abbreviation in Spanish), an entity attached to the Ministry of Public Works and Transportation (*Mopt*, for its abbreviation in Spanish), and the Public Services Regulation Authority⁵ (*Aresep*, for its abbreviation in Spanish) agreed on the illegality of the service provided, in the light of the provisions of the Law No. 8955. In a report prepared by the regulatory body of the industry, it is concluded that the service provided through the Uber platform corresponds to remunerated passenger transportation service for the terms in which the contract for the provision of the service is developed. Therefore, it requests the government to take all kind of actions to prevent the unauthorized provision of remunerated passenger transportation and to adopt measures for ensuring the defence of the legal structure in regard to this service.⁶

11. The Government has made unsuccessful efforts to stop Uber's operation in the country. On August 2017, the Presidential Directive No. 083-P, "Prohibition of advertising messages from companies that provide an illegal paid transport of people service" was issued and addressed to the public sector. The Directive ordered the Central Administration and instructed the Decentralized Administration, within the current regulatory framework, to make use of their powers and deploy all necessary measures for preventing advertising messages from companies that use digital platforms for the provision of illegal paid transport of people services in their spaces.

12. Subsequently, the Government issued a guideline in which it requests certain ministries and agencies of the Executive Branch to take actions for halting the illegal delivery of the paid service of transportation of people. Thus, for example, the Ministry of Economy, Industry and Trade (*Meic*, for its abbreviation in Spanish) requested various companies to interrupt the offers and promotions linked to the Uber service, as it is considered as a company operating outside the law. In addition, the MOPT was requested, through the Traffic Police, to perform operatives for stopping Uber drivers' activity.

13. On the other hand, *Coprocom* ordered the initiation of an investigation on paid transport of people in August 2017, whether it is in the taxi modality, or through technological platforms or otherwise, with the purpose of deepening the analysis of the regulations governing them and their implications in the country from the competition perspective. This study is currently under development.

⁵ Regulatory public services body, including paid transport of passengers in taxi modality, in relation to fares and service quality. Regulation of this service is shared with the Public Transport Council of the Ministry of Public Works and Transport (Mopt), which is responsible for concessions granting and bidding conditions, among other aspects.

⁶ There is even a discussion about whether on the provisions of the Treaty on Free Trade between Central America, the Dominican Republic and the United States in relation to signatory countries commitment on not taking discriminatory measures that restrict market access in terms of supply and marketing of services in their territories, the operation of Uber in the country would be allowed. However, the Government, through the Mopt indicates that, considering that Annex I of the Treaty (Costa Rica List), reserves the country on the ownership and everything connected with the transport of persons, including international transport of passengers, and special services, Uber, like any other company, domestic or foreign, requires the approval of the Council of Public Transport, for setting up the paid transport of people service, which is sought to be provided through a mobile application. (See <https://www.nacion.com/opinion/foros/el-tlc-y-el-caso-uber/WHZD4WBHFFEPXEWVMLNLAQDVVA/story/>)

3. Impact of digital platforms on competition of passenger transportation sector

14. As already indicated, Uber company operates as a self-supply corporation in Costa Rica since 2015. The version which came into operation in the country consists in a ridesharing app known as "Uber" (also called UberPOP in other countries) for users, and "Uber driver" for driver partners. The application allows choosing between vehicles of the UberX type, which must be a 2006 model vehicle or newer, with displacement equal to or greater than 1100cc, four-doors, air conditioning and ample space trunk. The other offered option is UberXL, which is a vehicle with similar requirements, but for larger groups of people (maximum of 6).

15. Also, since the end of 2017, Uber expanded its market niche by introducing *Uber Eats*. Despite taxi drivers' guild pressures and the presidential guidelines. *Uber Eats* has managed to operate normally, even with a greater number of competitors than in the passenger transportation segment, since currently there are around 4 similar platforms in the country.

16. As for remunerated passenger transportation, the closest to Uber that has been currently developed is a company named *Nova* that started operations at the end of 2017, 100% domestic capital and operating under the franchise scheme. Research done by *Coprocom* has determined that its modality is somewhat different to the Uber's, not only by operating under a franchise scheme, but because the collection modality suggests that the driver pays the company a fixed monthly fee of US \$35 to have access to the platform, regardless of the trips made. *Nova* company insists that the modality of establishing a fixed monthly amount for drivers for the use of the platform makes the business more advantageous, not only for users, but also for drivers, as many prefer this mechanism than Uber's, which represents a percentage of each trip.

17. This collection modality differs from that used by Uber, where the company collects and holds the entire amount from each trip, and then compensates the driver partner for the service, the elapsed time and travelled distance. In this case, the fee is set automatically by the application through an algorithm that is displayed to the public on the website of the company.

18. In the case of *Nova*, the fee is likewise calculated by a formula that considers time and travelled distance during the trip, charging per minute and per kilometre⁷. On that regard, the manager stated that their intention is always to charge lower fees than the ones from its main competitor, Uber. The platform establishes the amount to be charged for each trip, but *Nova* does not withhold any amount of the money collected, the money goes directly to the driver. Even the payment is made in cash or by mobile digital transfers by the user, since no credit or debit card is accepted.

19. *Nova* indicated that they had some problems at the beginning of its operations because Uber was already consolidated in the country and also known worldwide. In addition, they also indicated that there are some access barriers as for Google Maps usage, mainly due to costs. Nonetheless, at the time of the interview, *Nova* was holding conversations with Google, for being able to use some of its main tools, such as the possibility to view the route of the driver in real time once the service has been requested.

⁷ The cost per travelled kilometre in the case of *Nova* rounds US \$1.21; yet, the manager said that those fees were going to be increased eventually due to inflation-related adjustments.

20. *Nova* notes that they have 2000 registered drivers, of which approximately 20% are formal taxi drivers that use *Nova* to complement their income. The company also has interest to incorporate vehicle rental and to become an employment source by financing drivers to acquire vehicles and entering the business. They also want to include motorcycles to provide a service similar to *Uber Eats*.

21. To date, the platform has not been able to reach the number of drivers and users of Uber, in part due to the access barriers already mentioned and because of the reaction of the government regarding services provided under these platforms. Nevertheless, *Nova* claims that neither they nor their drivers provide an illegal service, since what the company does is to monthly “rent” the use of the platform. Their representatives have met with the authorities for defining a clear and safe legal framework for all. However, the response has not been what they expected, and the government has been unequivocal in its position to declare these platforms illegal, seeking to ban their operation.

22. Another platform that has very little time operating in the country in the transport industry is *Zipcar*, which is a “car sharing”⁸ platform, a collaborative economy modality a little different from Uber and *Nova*. Through *Zipcar*, vehicles can be shared per hour or per day, with fuel and insurance included in the fee. These types of applications are promoted as a quick way to rent a car, by just downloading the application and locating the nearest *Zipcar*, without having to wait, making lines and moving to a traditional car rental.

4. Perspectives due to change of government

23. Currently the country is going through an important juncture, as on April 1st, Carlos Alvarado Quesada, candidate of the ruling party, was elected in a second electoral round. Mr. Alvarado is going to be President of the Republic from May 8th, for the next 4 years. *Coprocom* expects to be able to initiate conversations with the new government, aiming to raise the interest again in defining a strategy to follow in the case of Uber, as well as regarding the disruptive innovations phenomenon⁹, all from the competition point of view.

24. In his Plan of Government, called "Believe and Create the Costa Rica of 21st Century: Country Commitment", the newly elected President of the Republic sets a series of goals related to public transportation. Among them, it states having a modern and dynamic transportation system that improves citizens' quality of life, comprises less polluting individual means of transportation, upgrades the quality of public transportation and provides for better conditions of safe and sustainable urban mobility.

⁸ ‘Car sharing’ has to do with car sharing platforms. There are three main types:

1. A car shared via a private company: for example, *ConnectCar* or *Car2Go*.
2. A car shared between individuals: for example, *SnappCar*, *MyWheels* and *WeGo*.
3. Sharing a self-owned car, with the owner as a driver.

⁹ Disruptive Innovation: The process by which a product or service, due to technological innovation or otherwise, is installed in one part of the market, generally marginal; and in an unstoppable, and often unpredictable way, expands to its entirety, even extending it, eventually displacing established or incumbent competitors. (OECD, 2016)

25. Reference is also made to unifying efforts of different governmental institutions, state and local governments regarding the mobility area. Also, it refers to integrating the participation of various sectors, both private and social, that can contribute to the improvement of the mobility system. In this context, it is essential for this Commission to initiate conversations with the incoming government, in the same way it was addressed with the outgoing government: with the purpose of exercising the competition advocacy and promotion tasks and rethinking the new challenges the so-called disruptive innovations entail.

26. *Coprocom* has also undertaken discussions with consumer associations as part of the study that is currently being conducted. They claim that self-regulation imposed by the collaborative mobility platforms to their community (drivers and users) is superior to the imposed-on taxi and *Seetaxi* services. With respect to this claim, even though Law No. 8955 and its regulations impose certain conditions for granting a taxi concession, form or permit, in the case of *Seetaxi*, many of these are not complied.

27. For example, a 15-year-old vehicle lifespan is established for formal taxis and a maximum of 10 for the stable special taxi service. However, according to data from the Institute for Research in Economics (*IICE*, for its abbreviation in Spanish) of the University of Costa Rica (*UCR*, for its abbreviation in Spanish) most formal regulated taxis surpass 10 years of use, and a significant percentage is in the 15 years limit, which affects both the quality of the service, as spare parts change frequency and operating parameters¹⁰. The *IICE* estimates that, in the case of a sedan taxis, 57.8% of the total are more than 10-year-old vehicles, followed by a 34.2% that are within the 5 to 10-year-old range.

28. Hence, for *Coprocom* it is vitally important to consider that, although these platforms have effective enough self-regulation mechanisms to solve potential market failures, the collaborative economy and the new markets associated with it, do not escape the possibility that these failures may occur. This situation must be considered by the government in case it is decided to issue a regulation related to digital platforms.

29. *Coprocom* shares the view of the Federal Economic Competition Commission of Mexico (COFECE)¹¹ in the sense that, when platforms such as Uber and others are to be regulated, authorities must identify market failures that said platforms solve, as well as minimum safety standards for users and consumers that need to be guaranteed. This, for the legislation to simply address the problems that are not being solved by the business models themselves, and to avoid imposing requirements that duplicate attention on already solved market failures. Furthermore, it opens an opportunity for authorities to even reconsider the necessity of certain regulatory requirements related with the traditional activity.

30. Public transport strengthening, as well as the arrival of collaborative economy platforms in the passenger transportation field aims, among other things, to reduce as far as possible road congestion that is mainly generated in the Greater Metropolitan Area (*GAM*, for its abbreviation in Spanish). Uncontrolled growth in vehicle inventory, coupled with low investment in road infrastructure and the lack of an efficient transport

¹⁰ *IICE* (2017). "Operating parameters values update and determination, and paid transport of people (taxi modality) performance indicators".

¹¹ COFECE (2018). "Rethinking Competition in the Digital Economy".

system, brings not only economic, but also social costs. As an example of the above, commuting times and traffic accidents and pollution increase.

31. According to studies conducted by the Costa Rican Engineers and Architects Association (*Colegio Federado de Ingenieros y Arquitectos de Costa Rica, CFIA*, for its abbreviation in Spanish), urban transport consumes about 3.5% of regional GDP in the larger cities, and this percentage is incremented by traffic congestion incidence, which increases commuting times and raises the price of the tickets of collective transport users must pay. For example, for the year 2007, the Andean Development Corporation (*CAF*, for its abbreviation in Spanish) estimated that the average travel time of the public transport (standard bus) in San José is 1.46 times the average travel time of a car, which encourages the use private vehicles and decreases public transport service quality. On the other hand, mobile sources (automotives) are the first pollution source in the country, producing about 56% of the pollutant emissions on air, which present an annual growth rate of 7.4%.

32. The State of the Nation Program (*Programa Estado de la Nación, PEN*, for its abbreviation in Spanish) report, points out in its 2017 issue that the transportation sector requires public policies that improve alternatives and facilitate changes, for example, by encouraging the use of collective public transportation as the main way of commuting, whether it is bus or train.

33. In its chapter of citizens' perceptions, it states that 26% of the people interviewed believe that traffic congestion affects their daily lives in an important manner. More than 20% indicate that they are willing to travel by bike or to organize with other people for sharing trips (carpooling). Although bicycle commuting shows potential (60% is willing to use this option), 33% of the people has limitations for this and 27% simply does not. In turn, 59% of the people who were consulted, claims to be willing to use public transportation, but has limitations, or simply does not. 30% of the people never used public transport, essentially because they have their own vehicle. Population that mainly travels in a self-owned vehicle (25% of the people inquired) shows a high willingness to make changes, and some already have changed the ways of traveling, using public transportation on an occasional basis, or sharing the vehicle. Despite the apparent intention of changing means of transportation, the prevalence of certain habits and the quality of the alternatives discourages people to change. Other reasons are low service frequency, lack of direct connections, long transfer times, the need to use the car for working, insecurity, or because it is more comfortable to travel by car. It should be noted that less than 1% points out that the problem is lack of knowledge about public service alternatives. The above-mentioned leads to suggest that not only platforms such as Uber, but also several ridesharing options, have the potential to be promoted in the country.

34. As noted above, the collaborative economy phenomenon is not beyond the scope of competition legislation since, given its nature (network economies, among others), there is a certain propensity to economically concentrate, as well as to carry-out anti-competitive practices. COFECE has manifested that it is essential to question whether current competition policy tools for preventing abuse of dominant position and collusive practices are sufficient or would have to be reconsidered.

35. It is too early to be able to evaluate the effects of the operation of platforms such as Uber in the country, and their use of tariff fixing mechanisms (algorithms). Notwithstanding the above, conversations have begun with Uber and Nova, with the aim of having the necessary inputs to estimate effects derived from the use of their services. Therefore, this Commission has requested co-operation, mainly from Uber company,

regarding the possibility of having on demand data (Big Data), which are provided not only by the way in which the platform is programmed, but also by electronically making the payments, which allows to retrieve relevant information for analysing market behaviour.

36. Cases like Uber reflect what is known as two-sided markets, these markets have asymmetric price fixing structures, since, on one side of the market, the user does not make a monetary payment for using the platform. End users are not charged any type of commission beyond the projected fee; in contrast drivers are usually charged this fee for the use of the platform.

5. Conclusions

37. The collaborative economy phenomenon is very recent in Costa Rica and, as in the rest of the world, its penetration has been blocked to some extent by the sector that until recently was the only market participant. Operating under a specific regulation, the formal taxi drivers' guild demand equal conditions, as they consider that those platforms constitute unfair competition that threatens to make traditional taxis disappear.

38. From the point of view of promoting competition, this Commission considers that it is possible that both, formal taxi drivers and platforms such as Uber could coexist. This implies a greater variety of transportation options for users. On many occasions the segments of the population that use the services of formal taxi drivers are different from those who use platforms. There's a possibility for many taxi drivers to organize themselves into co-operatives and, instead of having a telephone central, to manage their operation through a mobile application. This was attempted in our country by some of the co-operatives; however, it has not been an extended use given that the door to door service is not the main business of formal taxis.

39. It is the opinion of this Commission that, indeed, remunerated passenger transportation in any of its forms, and must comply with the minimum necessary regulations for the adequate provision of the service. That is why it is also essential to carry out a review of the regulations governing formal taxi services, to adapt them to current context. Analysing alternative regulatory options is a path to follow; for example, assessing whether if the number of taxi plates limitation (supply restriction) is still functional or rethinking if it is necessary to even modify the concept of public service in the case of the taxi service, always with the conviction that the user is the reason of being of the service.

40. In line with the study carried out by the IICE, *Coprocom* believes it is reasonable to perform some legal changes, like establishing a registry outlining basic requirements that ensure the user safety, quality and efficiency of the service, mandatory for all those who decide to offer the service, regardless of the legal structure they use. Also, the establishment of a maximum price to prevent abuse in the fares, with rigorous controls on both, requirements compliance and fares. Geo-referenced modern technologies systems for control can be adopted.

41. Nonetheless, as noted above, the collaborative economy phenomenon is not beyond the scope of competition legislation. *Coprocom* shares the view of the COFECE in terms that it is essential to question whether current competition policy tools for preventing abuse of dominance and collusive practices are sufficient or would have to be reconsidered.

42. In case the authorities decide to regulate the sector, it is important that they take into consideration rules that allow benefiting from the digital economy and that, at the same time, neutralize the dominance of some companies.

43. It is too early to be able to evaluate the effects of the operation of platforms such as Uber in the country, and their use of tariff fixing mechanisms (algorithms). Notwithstanding the above, conversations have begun with Uber and Nova, with the aim of having the necessary inputs to estimate effects derived from the use of their services.