

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

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Working Party No. 2 on Competition and Regulation**Taxi, ride-sourcing and ride-sharing services - Note by Italy**

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Italy

1. The regulatory framework

1. In Italy, **traditional taxi services** are regulated both at the national and local level¹. The general principles of the sector regulation are stated in the national law n. 21/1992, which states two important restrictions as far as entry in the market is concerned: the first one deals with the characteristics of the subjects that can apply for a license, that can only be individuals; the second one is that each individual cannot hold more than one license.

2. Part of the implementation of the national regulation is established in regional laws but it is at the local (municipal) level that the economic and qualitative standards are regulated. In particular, Municipalities fix the number of taxi licenses, how frequently to assign new licenses and the assignment procedures; establish number and characteristics of vehicles, rules of service provision (such as shifts), and the criteria for setting taxi fares. Licenses have generally been assigned for free, through a public procedure in which applicants are ranked through a score system; once obtained, licenses can be privately traded according to the conditions set out in the national law). The only form of organization that emerged is that of co-operatives of taxi drivers that offer some common services (for example radio dispatch services and financial services), in exchange of a fixed fee paid monthly or annually.

3. In 2006, the Decree n. 223/2006 promoted a liberalization reform in several sectors including taxi services, by granting a greater flexibility to the Municipalities in the organization of taxi services, including the possibility of issuing new licences assigned through a beauty contest. However, the principle of one taxi driver one license was retained.

4. The national law also contains the provisions for **private hire car services**. These services, as taxis, provide point to point personal transport, but while taxis are available at taxi ranks, can be hailed on the streets or pre-booked by telephone, private hire car services can only be pre-booked. In order to provide private hire car services, it is not necessary to hold a license but an authorization from the Municipality is sufficient. Besides, there is no restriction on the number of authorizations that an individual can hold. The other main difference with respect to taxi services is that private hire vehicles' fares are not regulated.

5. Over the years, private hire car services have developed as an alternative to taxi services, especially for customers needing transport that can be pre-booked (airports, railway stations etc.). In addition, many operators authorized in smaller Municipalities began to operate in larger metropolitan areas with higher demand (e.g., Rome and Milan), becoming an alternative to taxi drivers at least for users willing to pay higher fares for more customized services. In 2008, following protests by taxi associations, the

¹ For more information on the taxi regulation in Italy, see the Authority's contribution to the 2007 OECD Policy Roundtable on Taxi Services: Competition and Regulation, available at: <http://www.oecd.org/daf/competition/sectors/41472612.pdf>

government amended the law n. 21/1992 by introducing (with law n. 31/2008) stringent conditions on private hire car services, such as the obligation to return to the garage after each ride and to operate only in the territory of the Municipality which granted the license or the authorization.

6. In 2009, the 2008 amendments to the law n. 21/1992 were suspended subject to an intervention of the government to reform the sector; however, with the revision of the regulatory framework being postponed every year, the sector entered a long transition period characterized by legal uncertainty due to the absence of an explicit suspension of the validity of the rules introduced in 2008 and, at the same time, the conflicting jurisprudence generated by legal controversies between taxi drivers and private hire car drivers.

7. The entry of new operators with innovative business models such Uber and MyTaxi has more urgently called for an overhaul reform of mobility services. In October 2017, the government committed itself to adopt, within a year, a legislative decree to reform the sector to be inspired by some general principles: promotion of new technologies and new forms of mobility, greater consumer protection and awareness, competition and harmonization of the regional and local regulations in this area. However, due to the general elections in March 2018, the reform has been procrastinated.

2. Sector developments

8. Over the years, every time Municipalities have announced the intention of assigning new licenses, there have been protests by taxi drivers that often resulted in the reduction of the number of assigned new licenses or even in the decision of not assigning licenses at all. Since for many years (sometimes even twenty or thirty years) most Municipalities did not grant any new license, buying one has been the only way to enter the market. As a result, the market value of licenses increased considerably and estimates set this value in large cities between 140,000 and 300,000 euros².

9. The issuing of new authorizations for private car hire services has also occurred rarely: for instance, the latest ones granted by the City of Rome date back to 1993 and in 2015 their total number amounted to 993, considerably less than the overall number of private hire car drivers actually circulating in the city, 6,000, a number including those who obtained the authorization from other Municipalities.

10. In 2013, Uber started to offer services of private car hire through its apps in three main cities (Milan, Rome and Florence), by developing three services: UberBlack and UberVan which involve professional drivers with the latter offering 6-passenger vehicles; and UberPop which allowed private non-professional drivers to offer a ride. As of December 2015, Uber was active with 100 drivers in Florence and around 1,000 drivers in each of the cities of Rome and Milan.

11. During the same period, as an alternative to the dispatch and reservation services offered by taxi co-operatives, Daimler AG Group came into the market by offering a service through its app called MyTaxi. Taxi drivers can join at no fixed cost the MyTaxi

² Boeri, T., *Un taxi chiamato desiderio*, from: www.lavoce.info, July 2006 and Visco Comandini V., Gori S. and Violati F., *Le licenze dei taxi: abolizione, regolazione o libero scambio di diritti?*, in *Mercato, Concorrenza e Regole*, n. 3, December 2004, pages 515-548.

platform, paying a commission fee on each transaction booked through the app; unlike Uber services, taxi drivers using the app continue to apply the regulated fares (i.e., maximum fares with the possibility of discounting) decided by local authorities. Taxi drivers using MyTaxi are free to decide when and how often to use offer their services through the app.

3. Civil proceedings

12. Since 2015, Uber and its services have attracted the protests of taxi drivers who filed lawsuits, in particular in Milan and Rome. In May 2015, the Tribunal of Milan issued an interim measure banning UberPop services all over the Italian territory on the basis that UberPop drivers were holders of neither a taxi license nor an authorization for driving private hire cars. Moreover, the Court argued that Uber, while acting *de facto* as a transport regulator, had not received any authorization according to the taxi regulation and was in breach of the privacy law by allowing users to track their drivers through the app³.

13. Similarly, in 2017, the Tribunal of Rome issued interim measures and banned UberBlack services, i.e., those services offered by Uber professional drivers. Uber, which appealed the ruling, was given 10 days to suspend its services after which it would have been subject to a fine for every day of non-compliance. According to the Tribunal, UberBlack services constitute ‘unfair competition’ against taxi drivers and professional drivers who are required to return to a garage in between rides; in addition it ruled that Uber is not a mere platform or intermediary between passengers and drivers but a truly transport operator which is not authorized by the taxi regulation; finally, it found that the company disrespected privacy laws by allowing users to track their drivers through the app.

14. By assimilating UberBlack services to the regulatory category of private hire car, the Tribunal of Rome found that they were not complying with the existing regulations and in particular with the restrictions introduced in 2008⁴.

15. Uber appealed the injunction decision which was annulled by the Court of Appeal: following the AGCM intervention as *amicus curiae*, the Court of Appeal took a different view on the application of the 2008 amendments on the activity of private hire car services and, by assimilation, on UberBlack services. Despite the legal uncertainty due to a prolonged transition period, the appeal judges affirmed that the restraints introduced in 2008 did not apply to the activity of private hire car drivers.

16. At the EU level, lawsuits filed against Uber in France and Spain triggered requests for preliminary rulings from the Court of Justice of the European Union, stating

³ The injunction was confirmed by the Milan Court on July 2, 2015 (*Taxiblu and other taxi driver associations vs. UberPop*).

⁴ Such as: the obligation to return to their garage before offering a new ride to customers; the restriction to operate only in the area of the Municipality granting the permission; and the imposition of checks points at the entrance of congestion charge areas.

that UberPop intermediation services should be regarded, under the EU regulatory framework, as transport services⁵.

4. The Authority's advocacy interventions

17. The Authority has long promoted a pro-competitive reform of the taxi industry even before the appearance of the new digital services and it has employed all the advocacy tools at its disposal, including advocacy opinions to Government and Parliament, and hearings before the Parliament and, for the first time, an *amicus curiae* opinion to the Tribunal of Rome in the course of Uber proceedings in 2017.

18. Back in 1995⁶, in recognition of the importance of protecting the public when determining the quality and the quantity of the service, the Authority considered that there were good reasons why the administrative authorities should impose limits on maximum charges, make the service mandatory and set professional standards for taxi drivers, but that there was no justification, as far as protecting consumers was concerned, for the administrative control of minimum taxi fares.

19. In 2004, the Authority issued a new advocacy opinion⁷, containing suggestions to foster a gradual process of liberalization. In order to ease quantitative restrictions to market access, the Authority suggested giving a free license to every current license holder, who might sell them or use them as a sort of compensation scheme for the social costs of this form of liberalization. This would entail the abolition of the existing prohibition to hold more than one license.

20. In the same report, the Authority also suggested additional measures in order to bridge the gap between demand and supply. The suggested measures included: i) issuing part-time licenses, in order to increase the supply of taxi service in periods of peak demand; ii) eliminating the current territorial segmentation, in order to allow licensees to provide taxi service outside of the geographic district for which the license was originally issued; iii) granting licenses for the provision of innovative taxi services; iv) promoting services alternative or complementary to traditional ones, such as "taxibuses" and group taxi service. These suggestions were partially taken on board by the legislator in 2006 in the Decree n. 223/2006, as explained in section 2 above.

21. In 2009, 2010 and 2014, the Authority intervened with its advocacy powers to call for the removal of the 2008 amendments which severely restricted the activities of the private hire car drivers, whose services had expanded greatly over the years due to the bottlenecks in the taxi sector⁸. According to the AGCM, the absence of any public service obligations on the activity of private car hire services would not justify the existing regulatory burdens, which proved to be neither functional nor proportional to any public

⁵ See Case C-434/15, *Asociación Profesional Elite Taxi*, ECJ ruling on 20 December 2017 and Case C320/16, *Criminal proceedings against Uber France SAS*, ECJ ruling on 10 April 2018.

⁶ AGCM opinion AS 53, "Passengers Transport Services by Taxi", July 1995.

⁷ AGCM opinion AS 277, "Competition Distortions in Taxi Services", March 2004.

⁸ See AGCM opinion AS501 "Disciplina dell'attività di noleggio con conducente", February 2009, AS683 "Disciplina dell'attività di noleggio con conducente" April 2010, and AS1137 "Proposte di riforma concorrenziale ai fini della legge annuale per il mercato e la concorrenza", July 2014.

policy concerns, such as road safety and passenger security, and instead they were intended only to limit the number of operators and the growing importance of this type of service in meeting, at least partially, the excess demand of users willing to pay fares higher than the regulated taxi ones.

22. Between 2015 and 2017, with the emergence of new business models, the Authority has intensified its advocacy role by issuing several opinions addressed to policy makers urging them to come up with an overall reform of the sector.

23. In its 2015 opinion⁹, the Authority renovated the call for the elimination of the discrimination between taxi drivers and (professional) private hire vehicles drivers in light of the technological progress which rendered the territorial restriction and the obligation to return to the garage anachronistic thanks to the emergence of app-based taxi booking services such as UberBlack services. With regard to the UberPop services involving non-professional drivers, the Authority advocated for the need to adopt a minimal regulation, the least invasive, to balance the different interests at stake, all worthy of protection (competition, road safety and passenger security). This regulation would include the set-up of a register for the platforms and the identification of a set of requirements and obligations for the non-professional drivers.

24. In October 2015, in a hearing before the Parliament, the AGCM Chairman reaffirmed the views expressed in the 2015 opinion¹⁰, urging for the introduction of a light regulation for these new platform-based services. However, he added, the introduction of a regulation for these new services should not be a pretext to impose restrictions to their operations, thus limiting their competitive effects, for example by imposing maximum working hours for non-professional drivers¹¹. A more preferable solution, according to the AGCM Chairman, would contemplate no working hour restrictions for non-professional drivers of the platforms, counterbalanced by explicit and transparent forms of compensation for public service obligations. The topic of compensation was developed by the AGCM two year later, when it submitted its proposal for the reform of the sector following a commitment from the government to consult stakeholders and draft a new framework.

25. Indeed, in its 2017 opinion¹², the Authority favoured the adoption of a new framework in which traditional taxi services, private hire car services and new ride-sharing services would compete in the same market. In particular, the Authority pointed out to three elements of a potential reform:

⁹ See AGCM Opinion N. AS1222 – LEGGE QUADRO PER IL TRASPORTO DI PERSONE MEDIANTE AUTOSERVIZI PUBBLICI NON DI LINEA, September 2015, available at: <http://www.agcm.it/component/joomdoc/allegati-news/AS1222.pdf/download.html>.

¹⁰ See Hearing of the Chairman Pitruzzella before the Committee X Industry, Commerce and Tourism, 28 October 2015, available at the following link: <http://www.agcm.it/component/joomdoc/audizioni-parlamentari/Audizione-20151028.pdf/download.html>.

¹¹ A proposal was advanced by the Italian Transport Regulator, calling for the elimination of several regulatory burdens and the introduction of a specific regulation for Uber-like services.

¹² See AGCM opinion n. AS1354 - RIFORMA DEL SETTORE DELLA MOBILITÀ NON DI LINEA, March 2017, available at: <http://www.agcm.it/component/joomdoc/allegati-news/S2782Segnalazione.pdf/download.html>

- The elimination of the discrimination between taxi drivers and (professional) private hire vehicles drivers;
- The removal of any barriers to entry to the new forms of mobility services by reforming the existing regulatory framework in order to capture the new trends in demand and supply conditions;
- The introduction of a compensation scheme to attenuate the social costs of the reform.

26. With respect to the first element, the Authority advocated for the removal of the restrictions introduced in 2008 to allow private hire car drivers to exploit the new opportunities offered by online platforms matching passengers and drivers. In addition, the AGCM suggested that permissions shall be released at a more centralized level, either at government level (e.g., the Minister for Transport) or, at best, at regional level; moreover, the entities responsible for planning the release of new permissions should abstain from any form of cap regulation which is not based on economic analysis of the actual and future demand for mobility services (also through consumer surveys).

27. In relation to the second element, the Authority suggested a ‘minimal regulation’ that would reap the benefits of these new forms of transportation while ensuring competition and safety as indicated in the 2015 opinion; at the same time, the AGCM underlined the need for softening the regulation for traditional taxi services by removing the current stringent limits on their activities (e.g., one license principle, rigid schemes for shifts and promotional discounts and requirements such as an insurance scheme for passengers) to allow them to compete with the new services on a level playing field.

28. In relation to the third element, the Authority considered at length the issue of compensation which was first mentioned in its 2004 advocacy opinion on taxi services. Disruptive technologies, by definition, may exacerbate these social costs in scope, pace and effects, making more difficult for politicians any attempt to reform the sector.

29. While recognizing that this type of discussion invests the competences of other public entities, the Authority invited the government to consider monetary compensations to accompany the liberalization reform by looking at experiences of other jurisdictions. In particular, the Authority envisaged three forms of compensation matching different degrees of liberalization process while expressing a preference for the one consistent with a full liberalization reform which would contemplate both traditional actors and new players operating in the same market. Under this scheme, during a defined transition period, existing incumbents may have the option to leave the market by selling its license to the State at a price reflecting the difference between the current value and the “book” value: the Authority recalled that a similar compensation scheme was envisaged at the time of the liberalization of the trade sector in the 1990s. To finance this scheme, the Authority has pointed out the possibility to consider forms of “entry fee” to be applied all new drivers; and/or a fee to be applied on each ride booked through a platform (to be collected by the platform itself), as it occurred in some jurisdictions¹³.

¹³ The other compensation schemes are related to a scenario in which the reform only envisages an expansion of the supply side by increasing the number of licenses. One scheme would use the earning from the sales of these additional licenses to compensate existing incumbents. The other compensation scheme would assign additional licenses at no cost to the existing drivers with the possibility of trading in the secondary markets.

30. The implicit message for the government and legislator in these recommendations is that, in order to be successful, pro-competitive reforms need to be accompanied by transitory social form of protection, as long as it is a protection from the disruption generated by the innovation and not a protection from the innovation itself.

31. Some of the considerations expressed in the above opinion to the government have been reiterated in the Authority's *amicus curiae* opinion in April 2017 during the course of Uber proceedings before the Tribunal of Rome related to UberBlack services (see section 4 above). In highlighting the importance of a harmonization of the regulation on taxi and private hire car services, the AGCM called for an interpretation of the current rules therefore respectful of the principle of freedom of private economic initiative as per art. 41 of the Italian Constitution with a view to achieving the right balance between the competitive advantages deriving from the development of digital platforms (and the protection of public interests connected to them) and the protection of individual categories of drivers. In addition, the Authority outlined that, despite the legal uncertainty about the suspension of the applicability of the 2008 amendments, it was important to recognize the underlying ratio legis, consisting in the necessity of an overall reconsideration of the taxi regulation in light of the new technological developments and the considerable benefits for the users. Furthermore, the AGCM recalled that under the current regulatory framework traditional taxi services may use the price levy to compete against private hire car services offered by professional drivers: the existence of taxi fare regulation at local level is not an obstacle to price cutting strategies since regulated fares are intended as maximum prices.

5. Concluding remarks

32. In the area of taxi and other ride services, the emergence of new players with innovative business models has increased both static and dynamic competition, posing challenges to incumbents as well as policymakers trying to keep pace with rapidly evolving scenarios. The advocacy interventions by the Italian Competition Authority are playing an important role in promoting a comprehensive new regulation that achieve different public policy objectives in a way that minimizes impact on competition, especially in the dynamic perspective.

33. On the enforcement side, a priority for the AGCM is to continue to monitor market trends and intervene to impede any anticompetitive conduct attempting to delay the new opportunities of the digitalization in this sector. In this regard, in January 2017, the Authority opened proceedings against the main taxi co-operatives in Rome and Milan, for an alleged violation of Article 101 TFEU by imposing exclusivity in the vertical agreements with their affiliated members (taxi drivers), with the potential effect of foreclosing MyTaxi as a competitor in the taxi reservation and dispatch services. A final decision by the AGCM is expected in June 2018¹⁴.

¹⁴ The opening decisions of the AGCM cases are available online: I801A – Taxi dispatch services in Rome (click [here](#)) and I801B Taxi dispatch services in Milan (click [here](#)).